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न्यायिक अधिकारी प्रशिक्षण संस्थान

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(LATEST IMPORTANT AMENDMENTS IN CENTRAL/STATE ACTS)

WE ARE THANKFUL TO THE PUBLISHERS OF A.I.R., M.P.L.J. AND A.N.J. FOR USING SOME OF THEIR MATERIAL IN THIS JOURNAL.

- EDITOR

CORRIGENDA

In Part - II
- Page 39 in Note 63 for "OFFICE" read "OFFENCE"
- Page 43 in Note 70 for "2002 (1) ANJ (SC 132) read "2002 (1) ANJ (SC) 132"
- Page 54 in Note No. 81 for "DISCLALIMER" read "DISCLAIMER"
- Page 57 in Note No. 84 2nd line for "JUDGMEN" read "JUDGMENT"

In Part III - Page 3 under head 10 for "FUNCTION" read "FUNCTIONS"

FROM THE PEN OF THE EDITOR

A.K. SAXENA
Director

As you Know I have taken over the charge of Director, Judicial Officers Training Institute, High Court of M.P., Jabalpur and Shri Ved Prakash Sharma has joined this Institute as Additional Director, recently. Although we are new to this Institute yet we have already started thinking what is to be done for the benefit of Judicial Officers through this Institute. The interest of Judicial Officers is paramount for us and certainly we shall work in their interest. The motto of our Institute is to develop creativity and level of awareness among the Judicial Officers, so that we can reach at a higher level of performance as Judicial Officers.

I know your expectations and I assure you that we shall try our best to fulfill them. We are also aiming at diversification and expansion of the activities of this Institute, so that it may emerge as one of the best Training Institutes in our country. Perhaps, you are aware of the functions of the Institute. The Institute has been imparting training to Judicial Officers and it also publishes a bimonthly magazine JOTI Journal for the benefit of the Judicial Officers. When this issue of JOTI Journal reaches in your hands, you will notice certain changes in it. I know these changes may not fulfil your expectations because everybody has own ideas and thoughts but these changes are the beginning of the upliftment of the standard of our Journal. We are moving on the path of making our Journal one of the best but without your participation nothing can be done.

JOTI Journal is ours. It is meant for the benefit of Judicial Officers. It appears that Judicial Officers of our state are not taking active part in the publication of this Journal. Your active participation is very much needed. I request you to send your articles for publication in JOTI Journal. The articles should be of good standard and neatly typed without any typing errors. You can send your articles on any subject relating to legal field. It would certainly be helpful to all Judicial Officers. It is felt that there is some hesitation on the part of the Judicial Officers in actively associating themselves with this Journal which must be shed off. Please don't hesitate.

We always come across different kinds of problems related to different fields in discharge of our judicial duties, therefore, the knowledge on different subjects of different fields is utmost necessary. How can we gain the knowledge and how can we deliver justice truly and effectively in different kinds of cases? These are the most important questions in our mind. A very simple answer to these questions is by reading and by exchange of views. ***John Adams,*** *a famous thinker, said,* ***'you and I ought not to die before we have explained ourselves to each other.'*** If we try to exchange our views, then certainly, we shall be benefitted by it. Deep knowledge on any subject is the sole key of success and it is very much

applicable to Judicial Officers also. Our treasure of knowledge would not become empty if we exchange our views. It is not just like a treasure of money. Our knowledge would certainly flourish through exchange of our views and continuous reading. The JOTI Journal is one of the most effective means for this purpose. If you throw some light on legal aspects of any problem by writing articles for this Journal, the Judicial Officers shall be benefitted by it and your contribution to JOTI Journal would be a valuable ornament for this Journal as well as for this Institute.

I shall also welcome your valuable suggestions for the upliftment of the standard of JOTI Journal. What should be the content of this Journal? How should the Journal be made more beneficial for Judicial Officers? What else can be published in this Journal? These are the important questions before us. I would like to invite your valuable suggestions and try to continue this process as long as the Institute publishes this Journal.

Another important aspect for maintaining our just approach in publishing JOTI Journal, is your well founded criticism which I do welcome. Whenever you think that we are deviating form the right path, you will certainly have a right to inform us, so that we may try to correct ourselves and at the same time discuss all the aspects on relevant points to satisfy you.

There are a lot of things to talk and I shall regularly talk to you in future through this Journal. I need your active co-operation in publishing this Journal and I am very much hopeful that you will extend your full co-operation to us.

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HAVE SOMETHING TO SAY, AND SAY IT AS CLEARLY AS YOU CAN. THAT IS THE ONLY SECRET OF STYLE.

Matthew Arnold.

LAW IS A BOTTOMLESS PIT.

Dr. Arbuthnot

PART - I

OFFENCES UNDER EXPLOSIVE SUBSTANCES ACT AND ITS TRIAL

A.K. SAXENA
Director, J.O.T.I.

Explosive Substances Act, 1908 (herein-after referred to as 'the Act') was enacted for the express purpose of dealing with anarchist crimes when it was found that the provisions of the Indian Explosive Act, 1884, The Indian Arms Act, 1878 and The Indian Penal Code, 1860 are inadequate to deal with the crimes by means of explosive substances. The Act is an independent Act and it provides for a punishment of any person who causes an explosion likely to endanger life or property or makes or has in his possession an explosive substance with an intent to endanger life and property. It further makes the manufacture or possession of explosive substances for any other than a lawful object a substantive offence and throws on the person who makes or is in possession of any explosive substances the onus of proving that the making or possession was lawful.

Sections 3 to 6 of 'the Act' deal with the offences and punishment whereas Section 7 deals with restriction on trial of offences.

It is pertinent to know that in respect of trial and procedure, no specific provisions have been made in 'the Act' and therefore, the trial and procedure should be in accordance with the provisions of the Code of Criminal Procedure.

Section 3 of 'the Act' runs as follows :

> "Any person who unlawfully and maliciously cause by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not be punished with imprisonment for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added."

The offence under Section 3 of the Act is punishable with imprisonment for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added. Section 4 of the Act deals with the offence of attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property and it is punishable with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added. The offence under Section 5 of the Act is punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added. Section 6 of the Act of course, does not provide specific punishment and the abettors can be punished with the punishment provided for the offence.

The offence under Section 3 of the Act is punishable with imprisonment for life and fine or with imprisonment for a term which may extend to ten years and fine. The provision under Section 26 (b) of the Code of Criminal Procedure makes it clear that

when no Court is mentioned in any other law then any offence under any other law may be tried by any other Court by which such offence is shown in the First Schedule of the Code to be triable. Since the procedure or trial has not been provided in the Act, therefore, we have to refer Part II of the First Schedule of the Code of Criminal Procedure which provides that if offences against other laws are punishable with death or imprisonment for life, or imprisonment for more than seven years, then such type of cases are triable by Court of Session. Since, the offence under Section 3 of the Act is punishable with imprisonment for life or with imprisonment for a term which may extend to ten years, therefore, the cases of this offence shall be triable by Court of Session and the trial and Procedure will remain the same against the abettor of this crime and his case shall also be triable by the Court of Session.

Now, let us examine the procedure for the offences under section 4 and 5 of 'the Act'. The words 'transportation' is very important in section 4 and 5 of 'the Act'. A simple question may arise, when an offence under Section 4 of the Act is punishable with transportation for a term which may extend to twenty years and the offene under section 5 of the Act is punishable with transportation for a term which may extend to fourteen years, then whether these offences can be tried by Court of Session?

The answer would be 'No' and for this answer the provision of section 53-A of the Indian Penal Code would be relevant.

Section 53-A of the Indian Penal Code, 1860 provides as under :

"(1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to "transportation for life" in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to "imprisonment for life"

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955), the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to "transportation" in any other law for the time being in force shall.

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) If the expression means transportation for any shorter term, be deemed to have been omitted.

The provisions of sub-section (3), (4) (a) and 4 (b) of Section 53-A of the Indian Penal Code are very important in present context. Section 4 of 'the Act' provides the sentence of transportation for a term which may extend to twenty years. It does not mean that this punishment was equivalent to transportation for life. A specific term of twenty years of transportation has been provided in this section. It has been held in

a case, **Subhash Chander Vs. Krishan Lal and others, AIR 2001 Supreme Court 1903** as follows :

> "Section 57 of the Indian Penal Code provides that in calculating fractions of terms of punishment of imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. It does not say that the transportation for life shall be deemed to be for 20 years. The position at law is that unless the life imprisonment is commuted or remitted by appropriate authority under the relevant provisions of law applicable in the case, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison."

It has been further held as under :-

> "Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; not does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all embracing fiction. A sentence of transportation for life or imprisonment for life must prima facia be treated as transportation or imprisonment for the whole of the remaining period of convicted person's natural life."

Thus, it is clear that imprisonment for life or transportation for life is graver punishment than the punishment of imprisonment or transportation for certain period. When Section 4 of 'the Act' provides for a punishment of transportation of twenty years then it does not mean that it is a punishment of transportation for life. Under Section 53-A of the Indian Penal Code, the expression of 'transportation of Life' has been construed as 'imprisonment for life' but it is also provided that in reference to transportation for a term in any other law for the time being in force shall be deemed to have been omitted. The punishment of transportation for a term which may extend to twenty years under Section 4 of the Act has been omitted and thereafter, only the punishment for a term which may extend to seven years remains for the offence under this section. Same is the position with punishment provided under Section 5 of 'the Act'. The offence under Section 5 of 'the Act' is punishable with transportation for a term which may extend to fourteen years. This punishment has also been omitted by Section 53-A of the Indian Penal Code and after its omission, only the punishment of imprisonment for term which may extend to 5 years remains under section 5 of the Act.

The provisions of Part II of the First Schedule of the Code of Criminal Procedure again come into play. According to Part II of the First Schedule, if the offence is punishable with imprisonment for three years and upwards but not more than seven years, then the offence is triable by Magistrate of First Class and, therefore, the offences under Sections 4 and 5 of the Act are also triable by Magistrate First Class and not by the Court of Session. The offence under section 6 of the Act shall also be triable according to procedure of these offences.

Section 7 of 'the Act' provides restriction on trial of the offence. According to this Section no Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Central Government. The Central Government had delegated the powers to the Provincial Government in exercise of the powers of sub-section (2) of Section 124 of the Government of India Act, 1935. The State Government is not a personal body and it can only function in the manner and through the machinery prescribed by law. No particular form of consent is required. It is not necessary for the prosecution to obtain the sanction of the State Government when the case was in the stage of an inquiry.

In my opinion the position in respect of trial and procedure emerges from above discussion that the offence under section 3 of 'the Act' is triable by the Court of Session and the offences under sections 4 and 5 of 'the Act' are triable by the Magistrate of First Class and the offence under section 6 of 'the Act' shall be triable as per the procedure provided for above offences.

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एक दुर्घटना से उद्भूत अनेक क्लेम प्रकरणों के निराकरण की प्रक्रिया व अवार्ड लिखने की कला

ए.के. सक्सेना
संचालक

मोटर दुर्घटना दावा अधिकरण द्वारा मोटर यान अधिनियम के अन्तर्गत प्रस्तुत क्लेम प्रकरणों का निराकरण किया जाता है, परन्तु दावा अधिकरण के सदस्यों के समक्ष समय–समय पर यह कठिनाई उत्पन्न होती है कि जहां एक दुर्घटना होने पर अनेक व्यक्तियों की मृत्यु हो जाती है अथवा अनेक व्यक्तियों को विभिन्न प्रकार की चोटें आती है और मृतक के वारिसों अथवा अन्य दावेदारों द्वारा एक से अधिक क्लेम प्रकरण प्रस्तुत किये जाते हैं, तब उस स्थिति में अवार्ड को लिखे जाने का कौन सा तरीका अपनाया जाये तथा किस प्रकार की प्रक्रिया अपनाई जावे, जिससे संबंधित क्लेम प्रकरणों का निराकरण एक साथ हो सके।

ऐसे प्रकरणों में अवार्ड को पारित किये जाने से पूर्व कुछ महत्वपूर्ण तथ्यों पर ध्यान देने की आवश्यकता है। ऐसे मामलों में दावेदारों के अलावा विपक्षीगण सामान्यतः एक जैसे ही होते हैं। अतः अधिकांश बिन्दुओं पर उनके प्रतिउत्तर भी लगभग एक जैसे ही होते हैं। ऐसे प्रकरणों में यदि कॉमन बिन्दुओं पर एक जैसे वादप्रश्न बनाये जाते हैं, तो उस स्थिति में उनके संबंध में अवार्ड में विवेचना किया जाना और निष्कर्ष दिया जाना अधिक आसान हो जाता है। अतः ऐसे समस्त प्रकरणों में कॉमन बिन्दुओं पर एक जैसे वादप्रश्न बनाये जाना आवश्यक है अन्यथा एक अवार्ड इन प्रकरणों के लिये पारित करने में अत्यधिक कठिनाई आयेगी।

एक दुर्घटना से उद्भूत प्रकरणों में सुनवाई और साक्ष्य लिये जाने की कार्यवाही एक साथ की जाना उचित होता है। इन प्रकरणों में समस्त कॉमन बिन्दुओं पर संपूर्ण साक्ष्य किसी एक ही प्रकरण में लिये जाने का आदेश यदि दिया जाता है, तो उस स्थिति में कॉमन बिन्दुओं पर प्रत्येक प्रकरण में साक्ष्य लिये जाने की आवश्यकता नहीं रहेगी और साथ ही साथ समस्त प्रकरणों में बनाये गये एक जैसे वादप्रश्नों

की विवेचना किये जाने में आसानी होगी। यहां पर यह ध्यान रखे जाने की आवश्यकता है कि कॉमन साक्ष्य लिये जाने पर अन्य संबंधित प्रकरणों के समस्त पक्षकारों को सुनवाई, साक्ष्य प्रस्तुत करने तथा कूट–परीक्षण करने का पूर्ण अवसर मिले। अवार्ड पारित करने की स्थिति आने के पूर्व सभी महत्वपूर्ण परिस्थितियों का ध्यान रखा जाना आवश्यक है, जिससे किसी भी पक्षकार को यह कहने का अवसर प्राप्त न हो कि उसे सुनवाई का अवसर प्रदान नहीं किया गया।

जहां एक दुर्घटना से अनेक प्रकरण उद्भूत होते हैं, वहां दावा अधिकरण द्वारा साक्ष्य लेने के पूर्व इस आशय का आदेश पारित करना उचित रहता है कि समस्त प्रकरणों की कॉमन बिन्दुओं पर उभय पक्षों की संपूर्ण साक्ष्य कौन से प्रकरण में ली जावेगी और वह साक्ष्य संबंधित सभी प्रकरणों के निराकरण के लिए पढ़ी जावेगी। इस आशय का आदेश अन्य सभी संबंधित प्रकरणों में भी पारित किया जाना उचित होगा कि संबंधित प्रकरण में ली जाने वाली साक्ष्य इस प्रकरण में भी पढ़ी जावेगी, ताकि किसी प्रकरण में उसके पक्षकार को भविष्य में कोई आपत्ति न रहे।

उपरोक्त आदेश का यह अर्थ कदापि नहीं होगा कि प्रत्येक प्रकरण के पक्षकार अलग–अलग बिन्दुओं पर अलग–अलग साक्ष्य प्रस्तुत नहीं कर सकेंगे। उन्हें अलग–अलग बिन्दुओं पर अपनी–अपनी साक्ष्य प्रस्तुत करने का पूर्ण अधिकार रहेगा। जब कॉमन बिन्दुओं पर किसी एक प्रकरण में साक्ष्य ली जा रही है और जो पक्षकार उस साक्ष्य को प्रस्तुत कर रहा है, उसके अलावा अन्य प्रकरणों के शेष पक्षकारों, चाहे वे दावेदार हो अथवा विपक्षी, उन्हें कूट परीक्षण करने का पूर्ण अधिकार होगा और यही स्थिति विपक्ष द्वारा प्रस्तुत की जाने वाली साक्ष्य के साथ भी होगी।

जहां तक दस्तावेजों को साक्ष्य में प्रदर्श करने का प्रश्न है, वहां ली जा रही कॉमन साक्ष्य के आधार पर विभिन्न प्रकरणों में प्रस्तुत विभिन्न लेखों साक्ष्य को प्रदर्श कराया जा सकता है। ऐसे साक्षी के कथन में दस्तावेज वर्णित करते हुए प्रदर्श संख्या तथा प्रकरण क्रमांक लिखा जाना उचित है। अलग–अलग प्रकरण के दस्तावेजों की प्रदर्श संख्या को क्रमांक 1 से ही आरंभ किया जाना आवश्यक है। इस तरह प्रत्येक प्रकरण के दस्तावेजों की प्रदर्श संख्या सिलसिलेवार क्रमांक के अनुरूप होगी। यही स्थिति उभय पक्ष के साक्षी क्रमांक के साथ भी रहेगी। इस तरह से प्रदर्शित दस्तावेजों में प्रदर्श सील का उपयोग करते समय संबंधित प्रकरण क्रमांक और साक्षी क्रमांक को लिखने में आसानी रहेगी। अवार्ड में भी साक्ष्य विवेचना के दौरान साक्षी क्रमांक या दस्तावेज के प्रदर्श क्रमांक को लिखते समय प्रकरण क्रमांक को लिखना उचित होगा।

धारा–168 मोटर यान अधिनियम में अवार्ड पारित होने से संबंधित प्रावधान है, परन्तु इस विधान के अन्तर्गत यह वर्णित नहीं किया गया है कि अवार्ड किस शैली में लिखे जावेंगे। इस संबंध में व्यवहार प्रक्रिया संहिता के आदेश 20 नियम 1 से 5 तथा म.प्र. उच्च न्यायालय नियम एवं आदेश (सिविल) के चेप्टर IX का अवलोकन करना और उनसे मार्गदर्शन प्राप्त करना आवश्यक होगा।

एक दुर्घटना से संबंधित एक से अधिक प्रकरणों में एक अवार्ड पारित करते समय समस्त प्रकरणों के नम्बर और उनके साथ उभय पक्षकारों के नाम वर्णित किया जाना आवश्यक होगा। अवार्ड के प्रथम पैराग्राफ में समस्त प्रकरणों के क्लेम की प्रकृति को दर्शाना उचित होगा। यदि संबंधित प्रकरणों की संख्या काफी अधिक है, तो इस प्रथम पैराग्राफ को एक से अधिक पैराग्राफ्स में सुविधानुसार विभाजित किया जा सकता है। यदि दावेदार एक जैसे है अथवा चोट खाये व्यक्ति एक ही परिवार के है, तो उनके क्लेम की प्रकृति के संबंध में एक पैराग्राफ लिखा जा सकता है अथवा मृतक के संबंध में किये गये क्लेम और चोटों

से संबंधित किये गये क्लेम्स के अलग–अलग पैराग्राफ्स बनाये जा सकते हैं। इस तरह विभिन्न प्रकरणों के क्लेम की प्रकृति तथा अन्य परिस्थितियों को दृष्टिगत रखते हुए पहला पैराग्राफ अथवा एक से अधिक पैराग्राफ लिखे जा सकते हैं, परन्तु इनकी संख्या अत्यधिक रखने की आवश्यकता नहीं होनी चाहिये।

उपरोक्त पैराग्राफ में क्लेम की प्रकृति स्पष्ट रूप से लिखे जाने के पश्चात् अगले पैराग्राफ में विभिन्न प्रकरणों में आये स्वीकृत तथ्यों को लिखा जाना होगा। इसके पश्चात आगामी पैराग्राफ्स में विभिन्न प्रकरणों में दावेदारों द्वारा बताये गये तथ्यों को लिखा जाना होगा। समस्त संबंधित प्रकरणों में सामान्य रूप से दुर्घटना के संबंध में, वाहन के बीमा के संबंध में, वाहन के चालक तथा स्वामी के संबंध में सामान्यतः एक जैसे तथ्य होते हें। अतः समस्त प्रकरणों के कॉमन तथ्यों को स्पष्ट करते हुए तथा उनके विस्तृत विवरण को दृष्टिगत रखते हुए उन्हें एक या दो पैराग्राफ में वर्णित किया जा सकता है। इसके पश्चात् प्रत्येक प्रकरण के दावेदार द्वारा बताये गये उन तथ्यों को अलग–अलग पैराग्राफ्स में लिखा जाना चाहिए, जो तथ्य एक–दूसरे के प्रकरण से संबंधित न हों। इसमें मुख्य रूप से मृतक की आय, मृतक से दावेदारों का संबंध, दावेदारों को हुई क्षति, दावेदार को आई चोट का स्वभाव और उससे हुई क्षति आदि तथ्य होंगे। इस प्रकार विभिन्न क्लेम्स के विभिन्न तथ्यों के संबंध में अलग–अलग पैराग्राफ्स बनाये जा सकते हैं।

उपरोक्त स्थिति अनावेदकगण द्वारा दिये गये प्रतिउत्तर के संबंध में भी होगी और जो भी तथ्य समस्त संबंधित प्रकरणों में दिये गये प्रतिउत्तर में कॉमन होंगे, उन्हें आगामी एक–दो पैराग्राफ में वर्णित किया जा सकता है और प्रतिउत्तर में जो तथ्य अलग–अलग बताये गये होंगे, उन्हें सुविधानुसार पैराग्राफ्स में लिखा जा सकता है।

इसके पश्चात वादप्रश्नों को लिखे जाने की स्थिति आयेगी और यह आवश्यक है कि जिस सरल क्रमांक में अवार्ड के आरंभ में प्रकरणों के नम्बर और पक्षकारों के नाम वर्णित किये गये हैं, उसी सरल क्रमांक में प्रकरण क्रमांक लिखते हुये उनमें बनाये गये वादप्रश्नों को वर्णित किया जावे। इसका स्पष्ट अर्थ यह है कि जब एक दुर्घटना से उद्भूत प्रकरणों के संबंध में एक अवार्ड पारित किया जा रहा है, तब समस्त प्रकरणों के वादप्रश्नों को पूर्ण रूप से लिखा जावे, भले ही इन प्रकरणों में अनेक वादप्रश्न कॉमन हों। इसी प्रकार प्रत्येक प्रकरण के प्रत्येक वादप्रश्न के समक्ष निष्कर्ष लिखा जाना भी आवश्यक होगा।

वादप्रश्नों को लिखे जाने के पश्चात निष्कर्ष के कारणों के अन्तर्गत वादप्रश्नों की विवेचना प्रस्तुत साक्ष्य के आधार पर की जावेगी। जब कोई वादप्रश्न कुछ प्रकरणों में या समस्त प्रकरणों में कॉमन है, तो उसका निराकरण एक साथ उन प्रकरणों के लिए किया जा सकता है, परन्तु उचित यह होगा कि वादप्रश्न क्रमांक लिखने के पश्चात् संबंधित समस्त प्रकरणों के नम्बर लिखे जावे, ताकि यह जानकारी हो सके कि उस वादप्रश्न का निराकरण किन–किन प्रकरणों के संबंध में किया जा रहा है। इस प्रकार कॉमन वादप्रश्नों का निराकरण संबंधित प्रकरणों में ली गई साक्ष्य अथवा किसी प्रकरण में ली गई कॉमन साक्ष्य के आधार पर किया जा सकता है।

ऐसे वादप्रश्न जो समस्त प्रकरणों के लिये अथवा एक से अधिक प्रकरणों के लिये कॉमन है, उनका निराकरण एक साथ हो सकेगा। उदाहरण के तौर पर ऐसे कॉमन वादप्रश्न दुर्घटना के तथ्य, ड्राईविंग लाईसेंस, वाहन का बीमा, वाहन के स्वामित्व आदि के संबंध में हो सकते हैं, परन्तु ऐसे वादप्रश्न जिनका संबंध क्लेम राशि के निर्धारण अथवा सहायता एवं व्यय से है अथवा जो पृथक–पृथक है, उनका

निराकरण वादप्रश्न क्रमांक और उनके आगे संबंधित प्रकरण क्रमांक लिखते हुये अलग–अलग किया जाना चाहिए।

जब समस्त वादप्रश्नों का निराकरण हो जावे, तब प्रत्येक प्रकरण में दी जा रही सहायता (रिलीफ) के संबंध में अलग–अलग पैराग्राफ्स संबंधित प्रकरण क्रमांक दर्शाते हुए लिखा जाना उचित होगा, ताकि इस तथ्य की जानकारी स्पष्ट रूप से हो सके कि वास्तव में किस प्रकरण में क्या सहायता किस दावेदार को और किसके विरूद्ध प्रदान की गई है। इस प्रकार प्रत्येक प्रकरण का अंतिम पैराग्राफ जो अंतिम रिलीफ से संबंधित है, अलग–अलग होगा।

अवार्ड की उपरोक्त स्थिति के पश्चात एक अन्य पैराग्राफ क्षतिपूर्ति राशि के वितरण के संबंध में लगाई जाने वाली शर्तें (यदि कोई हो) के संबंध में होगा और इन शर्तों को न्यायिक दृष्टांत ***जनरल मैनेजर केरल स्टेट रोड ट्रांसपोर्ट कारपोरेशन त्रिवेन्द्रम विरूद्ध सुसम्मा थॉमस आदि (1994) 2 सुप्रीम कोर्ट केसेज 176*** में प्रतिपादित सिद्धान्त को दृष्टिगत रखते हुए उक्त पैराग्राफ के अन्तर्गत लिखी जावेगी। इस तरह एक दुर्घटना से उद्भूत अनेक प्रकरणों का निराकरण एक अवार्ड पारित कर किया जा सकता है।

इस स्थिति पर यह प्रश्न उत्पन्न होता है कि जिस प्रकरण में कॉमन अवार्ड पारित किया गया है, उसके अलावा अन्य संबंधित प्रकरणों में अवार्ड को शामिल किये जाने के संबंध में क्या कार्यवाही करनी होगी? इसके संबंध में दो तरह की प्रक्रिया अपनाई जा सकती है। सर्वप्रथम पारित किये गये कॉमन अवार्ड की प्रतिलिपि, सत्य प्रतिलिपि के रूप में प्रमाणित करते हुये अन्य प्रकरणों में शामिल की जा सकती है, परन्तु इसमें समय, स्टेशनरी काफी अधिक व्यय होगी और कभी–कभी इतनी अधिक प्रतिलिपियां तत्काल निकाल पाना संभव भी नहीं होता है। ऐसी स्थिति में प्रत्येक संबंधित प्रकरण में आर्डरशीट लिखी जा सकती है, जिसमें यह स्पष्ट रूप से वर्णित किया गया हो कि किस प्रकरण क्रमांक में किस दिनांक को (दिनांक वर्णित करते हुये) इस प्रकरण का अवार्ड भी पारित किया गया है तथा उसमें वर्णित किये गये आधारों पर इस प्रकरण का अवार्ड निम्नलिखित है तथा इसके बाद के पैराग्राफ में इस प्रकरण से संबंधित अंतिम सहायता संबंधी उन तथ्यों को उसी अनुरूप लिखा जा सकता है, जिस अनुरूप पारित कॉमन अवार्ड में उन्हें लिखा गया हो। इसके पश्चात अगले पैराग्राफ में क्षतिपूर्ति राशि वितरण से संबंधित उन शर्तों को लिखा जाना उचित होगा, जिन शर्तों को कॉमन अवार्ड में इस प्रकरण के संबंध में लिखा गया हो। इस तरह पारित संबंधित प्रकरणों की अलग–अलग आर्डरशीट में यह स्पष्ट जानकारी हो सकेगी कि कॉमन अवार्ड के अन्तर्गत संबंधित प्रकरण में किन शर्तों पर किस पक्षकार के पक्ष में और किस पक्षकार के विरूद्ध क्या सहायता प्रदान की गई है।

एक दुर्घटना से उद्भूत हुये अनेक क्लेम प्रकरणों का निराकरण कॉमन अवार्ड पारित करते हुए उपरोक्तानुसार किया जा सकता है, परन्तु न्यायाधीश के लिए इस प्रकार की प्रक्रिया हमेशा अपनाई जाना प्रत्येक स्थिति में आवश्यक नहीं है और विभिन्न परिस्थितियों को दृष्टिगत रखते हुए इनमें सुविधानुसार फेरबदल किया जा सकता है, परन्तु व्यवहार प्रक्रिया संहिता के आदेश 20 नियम 1 से 5 तथा म.प्र. उच्च न्यायालय नियम एवं आदेश (सिविल) के चेप्टर IX के अन्तर्गत निर्णय लिखे जाने के संबंध में जो प्रक्रिया बताई गई है, उसमें कोई मूलभूत बदलाव नहीं किया जा सकता। उपरोक्तानुसार एक दुर्घटना से संबंधित अनेक प्रकरणों में साक्ष्य लिये जाने एवं उनका निराकरण कॉमन अवार्ड द्वारा किये जाते समय आने वाली कठिनाईयां दूर करने में सहायता मिलेगी।

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THE DOCTRINE OF CONFIRMATION BY SUBSEQUENT FACTS

SECTION 27, INDIAN EVIDENCE ACT

VED PRAKASH
Addl. Director, JOTI

Section 25 and 26 of the Indian Evidence Act, 1872 (herein- after referred to as 'The Act' only) enact the general rule that confession made by an accused to police or in police custody is inadmissible in evidence. Section 27 of the 'The Act', which is an exception to the aforesaid general rule, provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 27 of the Act incorporates the doctrine of confirmation by subsequent facts. This doctrine is based on the idea that if a fact is actually discovered on the basis of such information some guarantee is afforded thereby that the information is true and it can be safely allowed to be given in the evidence.

The issue relating to the ambit and scope of Section 27 of 'The Act' in its application to various situations has been a matter of diverse opinions before the law Courts, thereby at times rendering it very difficult to use it in an effective and judicious manner for the advancement of the cause of justice. This Article is an humble attempt to clear the mist surrounding the ambit and scope of Section 27 in the light of various authoritative pronouncements.

Outlining the scope of Section 27, the Apex Court in the case of **Mohammed Inayatullah Vs. State of Maharashtra, AIR 1976 SC 483** laid down that to bring Section 27 into operation four conditions must be satisfied :

Firstly - The discovery of a fact, albeit a relevant fact in consequence of the information received from a person accused of an offence;

Secondly - The discovery of such fact must be deposed to;

Thirdly - At the time of the receipt of information the accused must be in the custody of police; and

Lastly - only so much of the information as relates distinctly to the facts thereby discovered is admissible.

ACCUSED OF ANY OFFENCE :

The expression, "Accused of any offence" used in section 27 is descriptive of the person against whom evidence relating to information alleged to be given by him is made probable by section 27 of the Act. It does not predictate a formal accusation against him at the time of making a statement sought to be proved as a condition of its applicability. (See : ***State of U.P. Vs. Daemon Upadhyay, AIR 1960 SC 1125***).

CUSTODY :

For the purpose of Section 27, the word "Custody" does not necessarily mean detention or confinement. Submission to custody by any action or by words is also custody within the meaning of this expression. (See : ***State of U.P. Vs. Deoman***

Upadhyay* (supra), *Umed Shobhit Vs. State of M.P. 1978 MPLJ 742). A person called to the police station to be interrogated as an accused in investigation of a crime must be deemed to be in police custody and his formal arrest is not necessary. (See : ***Onker Vs. State of M.P., 1974 MPLJ 429 and Kadori Nandlal Vs. State of M.P., 1978 MPLJ 706***).

FACT DISCOVERED :

Sir Johan Beaumonth in the case of ***Pulakuri Kotayya Vs. Emperor. AIR 1947 PC 67*** observed that it is fallacious to treat the phrase 'fact discovered' as equivalent to the 'object produced'. The phrase 'fact discovered' embraces the place from which the object is produced and knowledge of accused as to this. Though in the case of **Mohd. Inayatullah (supra)** it was held that expression 'fact discovered' includes not only the physical object produced but also the place from which it is produced and the knowledge of the accused as to this. However later on in the case of ***State of Maharashtra Vs. Damu Gopinath Shinde. AIR 2000 SC 1691*** it was authoritatively declared that recovery of an object is not discovery of the fact as envisaged in the section.

PRESUMPTIONS :

Dealing with the presumptive course to be adopted in cases where some incriminating material is recovered on the basis of the information given by the accused, the Apex Court laid down in the case of ***State of Maharashtra Vs. Suresh, (2000) 1 SCC 471*** that three possibilities are there in such a situation when the accused has not stated that the incriminating material was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it, and the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the preseumption is a well-justified course to be adopted by the criminal court that the concealment was made by him. Such an interpretation is not inconsistent with the principle embodied in section 27 of the Evidence Act.

RECOVERY FROM OPEN/PUBLIC PLACE :

There appears to be a general impression that discoveries made from open place accessible to public are not discoveries within the scope of Section 27 of 'The Act'. But this impression is erroneous because distinction has to be made between open/public place and ordinarily visible place. Dealing with this aspect the Apex Court in the case of ***State of Himachal Pradesh Vs. Jeet Singh, AIR 1999 SC 1293,*** has laid down that there is nothing in section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the article was made from any place which is "open or accessible to others." It is a falacious notion that when recovery of any incriminating article was made from a place which is open or accessible to other it would vitiate the evidence under S. 27 of the Evidence Act.

Any object can be concealed in places which are open or accessible to others. For example, if the article is burried on the main road-side or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred into hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

RECORDING OF STATEMENT :

Again there is wide spread impression that the statement given by the accused leading to the discovery of the fact must be recorded on a separate paper along with his signature. There is no such legal requirement as such which can be gathered from the language used in Section 27 of 'The Act'. (See ***Bhakua Kampa Vs. State of Orissa, 1996 Cr.L.J. 350***). No doubt there has been common practice that the information given by the accused is usually recorded in the form of a memo but in cases where such course has not been adopted the evidence of recovery based on the information given by the accused cannot be thrown overboard. On this point the Apex Court's decision in the case of ***Suresh Chand Bahri Vs. State of Bihar, AIR 1994 SC 2420*** is referable, which was a case relating to the murder of a woman and her two children. One of the accused persons made disclosure statement on the basis of which some incriminating articles were recovered by the police. The Disclosure statement of the accused was, however, not recorded. Despite this fact, it was held that no fault could be found with regard to discovery and seizure of incriminating articles.

MULTIPLE RECOVERIES- SAME WITNESSES :

Sometimes same set of witnesses are joined with the multiple recoveries in a case. In such situation, it is often stated before the Court on behalf of the defence that the recovery is tainted one because same set of witnesses have been used. This point was considered by the Apex Court in the case of ***Himachal Pradesh Administration vs. Om Prakash, AIR 1972 SC 975*** and it was held that it is neither a rule of law nor a rule of practice that where recoveries have to be effected from different places on the basis of information furnished by the accused, different sets of persons should be called into witness them; because evidence relating to the recoveries is not similar to that contemplated under section 103 (old) of the Code of Criminal Procedure, where searches are required to be made in the presence of two or more inhabitants of the locality in which the place to be searched is situate. This view was reiterated by a Three Judge Bench of the Apex Court in the case of ***Khujji @Surendra Tiwari Vs. State of M.P., 1991 Cr.L.J. 2653 (SC).*** In the case of ***Himachal Pradesh Administration (Supra)*** the Apex Court further held that in an investigation u/s 157 Cr.P.C. the recoveries could be proved even by the solitary evidence of the Investigating Officer if his evidence could otherwise be believed.

EXTENT OF INFORMATION ADMISSIBLE :

Section 27 of the Act mandates that only that information which distinctly re-

lates to the fact discovered is admissible in evidence. The information might be confessional or non-inculpatory but if it results in discovering of facts, it becomes admissible. Dealing with the aspect of extent of admissibility of information relating to discovery the Apex Court in the case of ***State of Maharashtra Vs. Damu Gopinath Shinde (supra)*** laid down that the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. In the instant case, the fact discovered by investigating officer was that accused had carried on dead body of child to the spot on the motorcycle. No doubt, recovery of dead body of child from the canal was antecedent to the information which the investigating officer had obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from the spot and that piece was found to be part of the taillamp of the motor cycle of co-accused alleged to be used to carry deceased child, it can safely be held that the Investigating Officer discovered the fact that accused had carried the dead body on that particular motor cycle up to the spot.

A NOTE OF CAUTION :

No doubt provisions of Section 27 of the Act are sometimes used by the overjealous police officers to implicate even innocent persons as per their preconceived notions but that should not detract the court from making effective and judicious use of the provisions of Section 27 of 'The Act'. Sounding a note of caution in this respect, the Apex Court in the case of ***Sanjay Vs. State (NCT of Delhi), AIR 2001 SC 979*** observed that as Section 27 is alleged to be frequently misused by the police the Courts should be vigilant about its application. The Court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. If does not, however, mean that any statement made in terms of aforesaid section should be seen with suspicion; and it cannot be discarded on the ground that it was made to the police officer during investigation.

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NO ONE MEANS ALL HE SAYS, AND YET VERY FEW SAY ALL THEY MEAN, FOR WORDS ARE SLIPPERY AND THOUGHT IS VISCOUS.

- Herry Brooks Adams

FAME IS LIKE A RIVER, THAT BEARETH UP THINGS LIGHT AND SWOLLEN, AND DROWNS THINGS WEIGHTY AND SOLID.

- Francis Bacon

मध्यप्रदेश ग्राम न्यायालय अधिनियम 1996–एक परिचय

वेदप्रकाश
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ग्रामीण क्षेत्रों के साधारण सिविल, आपराधिक एवं राजस्व मामलों के ग्राम स्तर पर निराकरण हेतु ग्राम न्यायालयों के गठन एवं संचालन आदि का प्रावधान मध्यप्रदेश ग्राम न्यायालय अधिनियम 1996 {मध्यप्रदेश राजपत्र (असाधारण) 19 मई 1997 में संप्रकाशित}, जिसे एतस्मिपश्चात् "अधिनियम" कहा जावेगा, में किया गया है। अधिनियम की धारा–1 (2) के अनुसार "अधिनियम" का विस्तार ऐसे क्षेत्रों को छोड़कर जो तत्समय प्रवृत्त विधि के अधीन स्थापित किसी नगरपालिकनिगम, नगरपालिका परिषद, नगर पंचायत या छावनी बोर्ड की अधिकारिता की स्थानीय सीमाओं के भीतर है, संपूर्ण मध्यप्रदेश में है। 'अधिनियम' की धारा–1 (3) के अन्तर्गत मध्यप्रदेश शासन द्वारा जारी अधिसूचना {मध्यप्रदेश राजपत्र (असाधारण) दिनांक 12.1.2001 में संप्रकाशित} द्वारा इस अधिनियम को राज्य के **अनुसूचित क्षेत्रों** को छोड़कर शेष राज्य में दिनांक 26 जनवरी 2001 से लागू किया गया है। 'अधिनियम' द्वारा प्रदत्त शक्तियों के अन्तर्गत राज्य शासन ने मध्यप्रदेश ग्राम न्यायालय नियम 2001 {मध्यप्रदेश राजपत्र (असाधारण) दिनांक 10 अप्रैल 2001 में संप्रकाशित} विरचित किये हैं जिनके द्वारा विभिन्न स्वरूप के मामलों के विचारण में ग्राम न्यायालय के समक्ष अपनाई जाने वाली प्रक्रिया आदि प्राविधित की गई है।

ग्राम न्यायालय का गठन- स्वरूप

दस से अधिक ग्राम पंचायतों के क्षेत्र के लिए राज्य शासन द्वारा गठित प्रत्येक वृत्त में एक ग्राम न्यायालय स्थापित किया जाना है (देखें धारा–3,4)। प्रत्येक ग्राम न्यायालय में कुल सात सदस्य होंगे जिन्हें जनपद पंचायत द्वारा सर्वसम्मति से नाम निर्देशित किया जावेगा, तथा इसमें विफल रहने पर राज्य शासन ऐसे सदस्यों को नाम निर्देशित करेगी। इन सदस्यों में से अनुसूचित जनजाति, अनुसूचित जाति एवं अन्य पिछड़े वर्ग के व्यक्तियों के लिए क्रमशः एक–एक स्थान आरक्षित किया गया है। प्रत्येक वर्ग में चक्रानुक्रम में एक महिला सदस्य रहेगी। अनुसूचित जाति एवं अनुसूचित जनजाति के सदस्यों के लिए न्यूनतम शैक्षणिक योग्यता कक्षा 5 परीक्षा उत्तीर्ण तथा शेष सदस्यों के लिए मैट्रिक परीक्षा उत्तीर्ण होगी (संदर्भ धारा–6)। ग्राम न्यायालय के सदस्यों में से एक सदस्य विधि का जानकार व्यक्ति होगा जो ग्राम न्यायालय का पदेन सचिव भी होगा। सदस्यों की न्यूनतम आयु 45 वर्ष निर्धारित की गई है जो विधि के जानकार व्यक्ति के संबंध में 25 वर्ष तक हो सकेगी। सदस्य नाम निर्देशित किये जाने की तिथि से 5 वर्ष की अवधि के लिए पदधारित करेंगे। ग्राम न्यायालय के सदस्य अपने बीच एक सदस्य को प्रधान के रूप में निर्वाचित करेंगे।

ग्राम न्यायालयों की अधिकारिता

अधिनियम की धारा–16 निर्दिष्ट सिविल, आपराधिक एवं राजस्व मामलों में ग्राम न्यायालयों की अनन्य अधिकारिता प्रावधित करती है, जिसका अर्थ यह है कि ग्राम न्यायालय के गठन के साथ ही संबंधित क्षेत्र के सिविल/आपराधिक/राजस्व न्यायालय की अधिकारिता ऐसे मामलों में अपवर्जित हो जावेगी।

अधिनियम की धारा–31 के प्रावधानों के अनुसार ग्राम न्यायालय की अधिकारिता के किसी भी मामले में ग्राम न्यायालय द्वारा किया गया विनिश्चय अंतिम है। लेकिन ऐसे विनिश्चय के विरूद्ध सिविल

मामलों में व्यवहार न्यायाधीश वर्ग–1 के समक्ष, आपराधिक मामलों में न्यायिक दण्डाधिकारी प्रथम श्रेणी के समक्ष तथा राजस्व मामलों में उपखण्ड अधिकारी के समक्ष अधिकारिता संबंधी त्रुटि या विनिश्चय के अनुचित होने के आधार पर पुनरीक्षण याचिका प्रस्तुत की जा सकती है।

अधिनियम की धारा–16 के अन्तर्गत ग्राम न्यायालय को, 1,000/– रूपये तक के धन वसूली के वाद तथा उससे संबंधित निष्पादन एवं प्रकीर्ण मामलों की सुनवाई की अधिकारिता प्रदान की गई है लेकिन इसके अन्तर्गत निम्न स्वरूप के वाद अपवर्जित हैं :

(क) जो भागीदारी लेखा के अतिशेष के लिए हैं,

(ख) जो किसी निर्वसीयतता के अधीन अंश या अंश के भाग के लिए या किसी बिल के अधीन किसी वसीयत संपदा के लिए या वसीयत सम्पदा के भाग के लिए हैं,

(ग) जो किसी स्थावर सम्पत्ति के किराए की वसूली के लिए हैं,

(घ) जो किसी बंधक के मामले में पुरोबंध, विक्रय या मोचन के लिए या किसी स्थावर सम्पत्ति में किसी अन्य अधिकार या उसमें हित की घोषणा के लिए हैं,

(ड) जो अवयस्कों या विकृत्तचित वाले व्यक्तियों द्वारा या उनके विरूद्ध हैं,

(च) जो केन्द्र सरकार या राज्य सरकार के सेवक या किसी स्थानीय प्राधिकारी या किसी कानूनी निकाय या किसी ऐसे लोक सेवक द्वारा उसके विरूद्ध जो अपनी प्रदीय हैसियत में कार्य कर रहा है या जिसका उस प्रकार कार्य करना तात्पर्यित है,

(छ) जिसका किसी सिविल न्यायालय द्वारा संज्ञान किया जाना तत्समय प्रवृत्त किसी विधि के अधीन वर्जित है।

दंड न्यायालय के रूप में ग्राम न्यायालय भारतीय दंड संहिता की धारा 160, 172, 174, 175, 178, 179, 180, 269, 277, 279, 283, 289, 290, 294, 323, 334, 336, 341, 352, 358, 374, 379, 411, 426, 428, 447, 448, 506 (प्रथम भाग), 509 तथा 510, पशु अतिचार अधिनियम 1871, तथा सार्वजनिक द्यूत अधिनियम 1867 की धारा–13 के अन्तर्गत आने वाले अपराधों की जांच और विचारण की अनन्य अधिकारिता निम्न स्वरूप के मामलों में अधिकारिता अपवर्जित करते हुये प्रदान की गई है :

(क) जहां अभियुक्त पूर्व सिद्धदोष है,

(ख) भारतीय दंड संहिता की धारा 379, 411 और 428 के अधीन ऐसे अपराध जहां, यथास्थिति, संपत्ति या पशु का मूल्य 500/– रुपये से अधिक है,

(ग) भारतीय दंड संहिता की धारा 172, 174, 175, 178, 179 और 180 के अधीन अपराध, जब तक कि ये अपराध ग्राम न्यायालय के संबंध में न किए गए हों,

(घ) ऐसे अपराध जहां शिकायतकर्ता या अभियुक्त लोक सेवक है या ग्राम न्यायालय का सदस्य है।

दंड न्यायालय के रूप में ग्राम न्यायालय को किसी भी स्वरूप का कोई भी कारावासीय दंड अधिरोपित करने की अधिकारिता नहीं है तथा संबंधित अपराध के लिए प्रावधित अर्थदंड की सीमा तक भा.दं.सं. के मामलों में अधिकतम रूपये 1,000/– तथा शेष मामलों में अधिकतम 500/– रुपये का अर्थदंड ग्राम न्यायालय द्वारा अधिरोपित किया जा सकता है। साथ ही साथ 'अधिनियम' की धारा 27 के

अन्तर्गत ग्राम न्यायालय ऐसे मामलों में जो मिथ्या या तुच्छ या तंग करने वाले हैं, वादी या प्रतिवादी से यथास्थिति प्रतिवादी या अभियुक्त को एक सौ रूपये तक प्रतिकर राशि दिला सकता है।

अर्थदंड/प्रतिकर की राशि साधारणतः 15 दिवस तथा अधिकतम 30 दिवस के अन्दर संदाय न किये जाने पर ग्राम न्यायालय इसकी सूचना कलेक्टर को प्रेषित करेगा तथा तदोपरान्त कलेक्टर द्वारा अर्थदंड/प्रतिकर की वसूली भूराजस्व के बकाया के रूप में की जावेगी (सन्दर्भ धारा–28 एवं 30)।

दाण्डिक मामले परिवाद या पुलिस रिपोर्ट के द्वारा संस्थित किये जा सकते हैं। यथा–स्थिति ग्राम न्यायालय अभियुक्त को सूचना पत्र द्वारा आहूत करेगा तथा सूचना पत्र निर्वाहित होने के उपरान्त भी उसके उपस्थित न होने पर इस तथ्य की जानकारी स्थानीय अधिकारिता वाले मजिस्ट्रेट को प्रेषित करेगा। संबंधित मजिस्ट्रेट अभियुक्त की उपस्थिति हासिल करने के लिए उसके विरूद्ध जमानतीय अथवा अजमानतीय गिरफ्तारी वारंट जारी कर सकता है तथा वारंट के पालन में अभियुक्त को पेश किये जाने पर संबंधित मजिस्ट्रेट उसे प्रतिभूति सहित बंध पत्र निष्पादित करने पर अभिरक्षा से निर्मुक्त कर नियत तिथि को ग्राम न्यायालय के समक्ष उपस्थित होने के लिए निर्दिष्ट करेगा तथा अभियुक्त के ग्राम न्यायालय के समक्ष इसके बाद भी उपस्थित न होने पर बंध पत्र राशि राजसात कर वसूल करने की कार्यवाही ग्राम न्यायालय नियम 2001 के नियम–24 के अन्तर्गत दंड प्रक्रिया संहिता 1973 के उपबंधों के अनुसार की जा सकेगी।

शमनीय अपराधों से संबंधित दांडिक प्रकरणों में तथा सिविल प्रकरणों में पक्षकारों के मध्य समझौते का प्रयास ग्राम न्यायालय द्वारा किया जाना अनिवार्य है। समझौता ना होने पर सामान्य नैसर्गिक न्याय के सिद्धान्तों के आधार पर संबंधित व्यक्ति को सुनवाई का युक्तियुक्त अवसर प्रदान करते हुये मामले का विचारण किया जावेगा। आपराधिक मामले में ग्राम न्यायालय संक्षिप्त विचारण प्रक्रिया का अनुसरण करेगा। परिवाद के आधार पर संस्थित आपराधिक मामले तथा सिविल मामले परिवादी या वादी के अनुपस्थित रहने पर निरस्त किये जा सकेंगे, तथा 30 दिवस के अन्दर प्रार्थना किये जाने की दशा में ग्राम न्यायालय, यह समाधान होने पर कि अनुपस्थिति अपरिहार्य कारणवश थी, मामले को पुनः स्थापित कर सकेगा।

राजस्व न्यायालय के रूप में मध्यप्रदेश भूराजस्व संहिता 1959 की धारा 248 एवं 250 के मामलों की सुनवाई की अधिकारिता ग्राम न्यायालय को है।

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गुरू के सामने बड़े से बड़े व्यक्ति ने सिर झुकाया है।

- अमरनाथ

समय और सागर की लहर किसी की प्रतीक्षा नहीं करते।

- रिचर्ड ब्रेथकर

A UNIQUE CASE OF SUICIDE

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ABSTRACT

A Case of death of a 15 years old girl is presented who had contact gunshot wound of her right temple. It was reported as a case of suicide. Medical officer performing autopsy had also visited scene of incidence. He ruled out the possibility of suicide. The investigation was then handed over to C.I.D. and after 8 days of incidence Ballistics expert was called for spot inspection and report. On detailed examination and experiments conducted in the laboratory, combined with the results of thorough investigation of the scene of death, scrutiny of physical evidence relating to the fatal missile and responsible weapon and circumstantial evidence finally it was reported that the manner of death was suicide.

The case is worthy of report and comment because :

1. A suicidal contact gunshot wound of the temple region in the circumstances described is quite uncommon : and
2. It emphasizes the importance of considering physical and circumstantial evidence in the evaluation of deaths involving firearms.

INTRODUCTION

To decide whether a particular case of shooting is that of homicide or suicide, the medical evidence furnished by a medical officer conducting autopsy is very important, however, it is necessary that the postmortem findings of the medical officer be supplemented by police investigations and other forensic evidence such as that of a firearms expert. Otherwise a wrong conclusion may be drawn because postmortem findings in a shooting incidence are subject to variable medico-legal interpretation. Authors have emphasized the need of thorough investigation with close collaboration between forensic pathologists and criminal investigators.

Generally victims intending to kill themselves with firearms are reported to commit suicide in a closed room. The hours selected are such when all the family members are out, so as to make sure that no body obstructs them from doing so. The situation was quite different in the present case. In India the use of firearms for committing suicide amongst the women is rare. These were the two contentious points in the presents case.

CASE HISTORY

The deceased resided with her parents and other family members in a busy locality. She was a student of middle school and aged about 15 years. On the day of her death she returned home after spending few hours with her friends in the evening about 7 P.M. She was rebuked by the parents for frequent visits to the friends. On

this account she got upset and settled in her bedroom covering herself completely with a quilt. Her aunt and younger sister were sitting beside and trying to pacify. After some time at about 7.30 P.M. a sound like ballon bursting was heard. Her aunt pulled the quilt and saw a bleeding wound on the right temple of the deceased and a revolver in the right hand. She was immediately rushed to the hospital where medical officer declared her dead and conveyed about this incidence to nearest police station. A senior medico-legal expert conducted the autopsy and also visited the scene of incidence next day. He reported that a girl of this age cannot handle firearm. hence, it is not a case of suicide. The case was then handed over to C.I.D. The author was called to the scene of incidence only after a lapse of 8 days.

SCENE OF DEATH

The bedroom was adjoining to the another bedroom. Kitchen and dining room were in front of this room. Other bedroom was occupied by the parents. The bedroom involved had two beds. The blood stained bed sheet and pillow were removed earlier, however, presence of blood was observed on the mattress which was under the sheet. The windows had intact double wire net and glasspan intact excluding any possibility of shooting from outside. The construction of the house was such that nobody could come in unnoticed. The quilt had visible blackening and powder marks near one end. The distribution and configuration of blood splatters on bed sheet and pillow indicated that blood droplets were travelling outward and away from the position of her head indicating that her head was on the pillow when the shot was fired. There was no blood on the quilt. This explains that there was no flow back of the blood and body tissues and also why these were absent on the muzzle end of the revolver.

AUTOPSY

The deceased was clad in white salwar and printed kurta. Gunshot wound involved exposed portion and had not perforated the garments. Her neck region, face, head hair and left hand were soiled with blood. The nose and the ear were filled with clotted blood. Some blood stains were also present on the salwar and kurta. Rigor-morits was present all over the body.

A complete circular wound was situated on the right side of the lateral part of the forehead roughly 3 cms. behind the lateral angle of eye and 4 cms. near the hair line. Diameter of hole was about 0.4 cms. inverted, blackened and bruised. The hole was surrounded by muzzle impression. The bone had clean cut hole of size 0.7/0.6 cms. The bullet had travelled from front to backwards nearly horizontal from right to left passing through the soft tissues. The brain had been lacerated and echimosed. The exit wound had not made the appearance outside the scalp 4 cms. behind and above the root of mastoid process.

THE WEAPON

The weapon was a .32" calibre Webely & Scoot revolver. A fired empty cartridge was found in the chamber of this revolver. The revolver was removed

by the uncle of the deceased and was recovered from the parent's bedroom. It was a licensed weapon of the family which was kept in open almirah in the parents room. Presence of blood and body tissues was not found on the muzzle end of the revolver. The fired empty cartridge and fatal bullet matched with the test cartridges and test bullets of the revolver.

RECONSTRUCTION

To reconstruct the sound like balloon bursting and to reproduce the powder pattern on the quilt test firing with the alleged revolver were conducted. A card sheet box filled with cotton wool was used. The muzzle end of the revolver was pressed against the box and quilt covered over the whole arrangement, on pressing the trigger sound similar to balloon bursting and smoke deposition similar to the deposit found on the quilt were produced.

The situation of the revolver at the time of incidence was determined by the muzzle impression present on temple region by superimposition. It would appear that the revolver was held on the right temple with the forehand pointing towards the top of her head. The revolver had both single and double action. It could easily be operated using as a single action which required only 5 pounds pull to release the trigger. However, as a double action it required 13 pounds pull. No difficulty was encountered in placing the revolver in the position so as a reproduce the wound found on the temple. In so doing the revolver can be used either single or double action and index finger or thumb for operating trigger. The angle of the weapon was such that the emerging bullet would have reproduced the trajectory observed in the victim.

DISCUSSION

Suicide by firearms is very rare in India particularly amongst women. The main reason is probably they are not accustomed to the use of firearms and secondly it is out of reach in majority of cases. But it cannot be taken as a rule that a woman or girl cannot use it.

There were certain definite indications of it being a case of suicide. More than two-thirds of the people who shoot themselves aim for the brain either through the roof of the mouth, at the temple or through the forehead . Homicidal shooting through the temple region is very rare and if so the features of the gunshot wound, trunk followed by the bullet etc. should have been totally different from those seen in the present incidence. The powder pattern on the quilt and sound like bursting of balloon supports the statements of family members. Homicide in these circumstances was unlikely.

On reconstruction and detailed laboratory examination nothing contradictory was found in support of homicide, hence, finally it was decided to be the case of suicide. In such types of cases finger prints on the alleged firearm and powder resides in the hands of victim should be looked for, which can give important clue. But these were not looked at the initial stage.

Courtesy : **The Writers of this Article**

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Hon'ble Shri Justice S.S. Saraf demits office

Hon'ble **Shri Justice Shyam Sunder Saraf** demitted his office on 7th July, 2002 on reaching the age of superannuation. His Lordship joined M.P. State Judicial Services on 7.7.1965, and was promoted to the post of C.J.M. in 1978. In year 1982 his lordship was appointed as additional District Judge. During 1986 to 1990 he served as Deputy Secretary, Government of M.P., Law & Legislative Affairs Department. In November, 1990 he was posted as District & Sessions Judge at Rajnandgaon and thereafter at Seoni. In October 1994 he was appointed as Registrar (Vigilance) in the High Court of M.P. at Jabalpur. Thereafter he worked as Principal Secretary and Legal Remembrance, Law & Legislative Affairs Department, Government of M.P., which office he held till his elevation as Additional Judge of M.P. High Court on 26.4.1999. His Lordship was confirmed on 26.4.2001. His lordship was accorded farewell ovation on 5-7-2002 in South Block of the High Court Jabalpur.

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

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THE MOST JUST MAN IN THE WORLD MAY STILL NOT ACT AS JUDGE IN HIS OWN CASE.

- Pascal

PART - II

NOTES ON IMPORTANT JUDGMENTS

1. **CONTEMPT OF COURT- CIVIL CONTEMPT : What Amounts to ? Nature of Proceedings and Standard of Proof?**
Contempt of Courts Act, 1971, Section 2 (b) :-
Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, (2002) 4 SCC 21 :

NOTE : Paragraphs 13, 14 and 15 of the report are reproduced in toto :

13. Before proceeding with the matter further, certain basic statutory features ought to be noticed at this juncture. The Contempt of Courts Act, 1971 has been introduced in the statute book for the purpose of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country. Undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute. The observation as above finds support from a decision of this Court in ***Chhotu Ram Vs. Urvashi Gulati, (2001) 7 SCC 530*** wherein one of us stated as below :

> 2. As regards the burden and standard of proof, the common legal phraseology 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."

14. Similar is the situation in ***Mrityunjoy Das v. Sayed Hasibur Rahaman (2001) 3 SCC 739*** and as such we need not dilate thereon further as to the burden and standard of proof vis-a-vis the Contempt of Courts Act - suffice it to caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona-fide.

15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of Section 2(b) of the Act of 1971 - the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemner pertains to one such interpretation, the act or acts cannot be ascribed to be

otherwise conturracious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.

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2. ARBITRATION - INTERIM RELIEF : Stage for Grant of - Arbitration & Conciliation Act, 1996, Section 9 Bhatia International Vs. Bulk Trading S.A. and other, (2002) 4 SCC 105 :

Held : Under section 9 a party could apply to the court (a) before, (b) during arbitral proceedings, or (c) after the making of the arbitral award but before it is enforced in accordance with section 36. The words "in accordance with Section 36" can only go with the words "after the making of the arbitral award". It is clear that the words "in accordance with Section 36" can have no reference to an application made "before" or "during the arbitral proceedings". Thus it is clear that an application for interim measure can be made to the courts in India, whether or not the arbitration takes place in India, before or during arbitral proceedings. Once an award is passed, then that award itself can be executed.

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3. LAND ACQUISITION : Question of urgency to dispense with inquiry u/s 5-A of L.A. Act by invoking powers under section 17 of the Act - matter of subjective satisfaction of the concerned authority - Though not conclusive, entitled to great weight :- Land Acquisition Act, 1894, Sections 17 and 5-A :- First Land Acquisition Collector and others Vs. Nirodhi Prakash Gangoli and another, (2002) 4 SCC 160 :

The question of urgency of an acquisition under Sections 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Sections 17(1) and (4) of the Act, and issues notification accordingly, the same should not be interfered with by the court unless the court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala-fide. Whether in a given situation there existed urgency or not is left to the discretion and decision of the authorities concerned. If an order invoking power under section 17(4) is assailed, the courts may enquire whether the appropriate authority has all the relevant materials before it or whether the order has been passed by non-application of mind. Any post-notification delay subsequent to the decision of the State Government dispensing with an enquiry under Section 5-A by invoking powers under section 17(1) of the Act would not invalidate the decision itself specially when no mala-fides on the part of the Government or its officers are alleged. Opinion of the State Government can be challenged in a court of law if it could be

shown that the State Government never applied its mind to the matter or that action of the State Government is mala-fide. Though the satisfaction under section 17 (4) is a subjective one and is not open to challenge before a court of law, except for the grounds already indicated, but the said satisfaction must be of the appropriate government and that the satisfaction must be, as to the existence of an urgency. The conclusion of the Government that there was urgency, even though cannot be conclusive, but is entitled to great weight.

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4. EJUSDEM GENERIS : Rule of - Meaning and applicability :- Grasim Industries Ltd. Vs. Collector of Customs, Bombay, (2002) 4 SCC 297 :

The rule is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified. The rule reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies only when (I) the statute enumerates the specific words. (2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration, and (5) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad-based genus, as also to a narrower genus there is no principle that the general words should be confined to the **narrower genus.** In interpreting Section 30 of the United Towns Electrical Company Act, 1902 which reads "the company shall be liable for water rates on all lands and buildings owned by it in the aforesaid towns, but otherwise the company shall be exempt from taxation", the Privy Council rejected the contention that the word "taxation" should be considered ejusdem generis with "water rate". It was held that there is no room for application of the principle in the absence of any mention of a genus, since the mention of a single species, for example of water rates, does not constitute a genus. ***(See: United Towns Electric Co. Ltd. v. Attorney General for Newfoundland*** (1939) all ER 423 (PC). The rule cannot be applied unless there is genus constituted or a category disclosed. If the preceding words do not constitute mere specifications of a genus but constitute description of a complete genus, the rule has no application. The rule has to be applied with care and caution. This is not an inviolable rule of law, but it is only permissible inference, in the absence of any indication to the contrary. Where the context and the object of the enactment do not require restricted meaning to be attached to words of general import it becomes the duty of the courts to give those words their plain and ordinary meaning.

(II) INTERPRETATION OF STATUTES : Elementary principle of interpreting any word used in a statute :-

The elementary principle of interpreting any word while considering a statute is to gather the means or sentient lieges of the legislature. Where the words are clear

and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or altering the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in ***Crawford Vs. Sponger, (1846) 6 More PC 1,*** "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding particular case.

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5. SPECIFIC PERFORMANCE : Bonafide Purchaser - defence of - for value without notice - burden of proof is on the purchaser :-
Specific Relief Act, 1963, Section 9 :-
Zorawar Singh and another Vs. Sarwan Singh (Dead) by L.Rs. and another, (2002) 4 SCC 460 :

Held :

There cannot be any dispute on the point that burden of proving the fact that one is a bona-fide purchaser for value without notice would lie on the person who asserts the same.

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6. PRELIMINARY ISSUE : Principles to be Followed :-
C.P.C. Order 14 Rule 2 :-
Lakshminarayana Ponigrahi Vs. Jagannadhaswamy Temple Baruva, AIR 2002 NOC 67 (A.P.) :

In cases where the Courts are called upon to decide a particular issue as a preliminary issues the following principles may be kept in mind :-

(1) Normally Courts are expected to decide all the issues and pronounce the judgment and this is the general principle;

(2) If a party intends to seriously raise a question that a particular issue has to be decided as a preliminary issue, the objection should be raised at the earliest point of time and not at belated stage;

(3) The Courts are expected to decide whether a particular issue has to be tried as a preliminary issue or not, taking all the facts and circumstances into consideration and the discretion to be exercised in this regard must be judicious.

(4) Where matters are part-heard and application are filed with a view to stall the proceedings and are not bona-fide applications, practice of raising such objection has to be deprecated;

(5) Normally, Courts should not be inclined to try an issue as a preliminary issue, if

factual aspects also are involved, which may required letting in of evidence by the parties;

(6) Prima-facie, the Courts have to look into whether the issue to be tried as a preliminary issue is only a pure question of law or question of fact also are involved for deciding the matter.

(7) Courts must always try to avoid delay in disposing of matters and must be reluctant to try an issue as a preliminary issue if they are satisfied that such objections are raised only with a view to delay the disposal of the matter finally and

(8) Courts should be slow, cautious and careful while taking up an issue as a preliminary issue in the light of the resultant complications.

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7. PART PERFORMANCE : Suit for specific performance of agreement to sale becoming time barred-Suit by Transferrer for recovery of possession against Transferee - Whether Transferor can defend his possession over the suit property - held 'Yes'.
Transfer of Property Act, Section 53-A, Limitation Act, 1963, Art, 54 & Specific Relief Act, Section 27-A :-
Shrimant Shamrao Suryavanshi and another Vs. Prahlad Bhairoba Suryavanshi (dead) by LRS. and others AIR 2002 SC 960 :

Held :

The Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part-performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action.

But there are certain condition which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are -

1) there must be a contract to transfer for consideration any immovable property;

2) the contract must be in writing, signed by the transferor, or by someone on his behalf;

3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;

4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;

5) the transferee must have done some act in furtherance of the contract; and

6) the transferee must have performed or be willing to perform his part of the contract.

It was further held that the established rule of limitation is that law of limitation is not applicable to a plea taken in defence unless expressly a provision is made in the statute. The law of limitation applies to the suits and applications. The various articles of the Limitation Act show that they do not apply to a defence taken by a defendant in suit. Thus, the law of limitation bars only an action in a Court of law. In fact, what the Limitation Act does is, to take away the remedy of a plaintiff to enforce his rights by bringing an action in a Court of law, but it does not place any restriction to a defendant to put forward any defence though such defence as a claim made by him may be barred by limitation and cannot be enforced in a Court of law. On the said principle, a defendant in a suit can put forward any defence though such defence may not be enforceable in a Court of law, being barred by limitation.

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8. HINDU LAW : Divorce - Customary divorce is an exception to general law of divorce - ought to be pleaded and proved by party propounding such custom - Divorce by consent - not to be recognised by Court unless permitted by law -
Hindu Marriage Act, 1955, Section 13 :-
Yamanaji H. Jadhav Vs. Nirmala, AIR 2002 SC 971 :

As per the Hindu Law administered by Courts in India divorce was not recognised as a means to put an end to marriage, which was always considered to be a sacrament, with only exception where it is recognised by custom. Public Policy, good morals and the interests of society were considered to require and ensure that, if at all, severance should be allowed only in the manner and for the reason or cause specified in law. Thus such a custom being an exception to the general law of divorce ought to have been specially pleaded and established by the party propounding such custom since said custom of divorce is contrary to the law of the land and which, if not proved, will be a practice opposed to public policy. Therefore, there was an obligation on the trial Court to have framed an issue whether there was proper pleadings by the party contending the existence of customary divorce in the community to which the parties belonged and whether such customary divorce and compliance with the manner or formalities attendant thereto was in fact established in the case on hand to the satisfaction of the Court.

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9. SPECIFIC RELIEF ACT : Section 6 : Object :-
Specific Relief Act, 1963, Section 6 :-
S.R. Ejaz Vs. The Tamil Nadu Handloom Weavers Co-operative Society Ltd., AIR 2002 SC 1152 :

The procedure under section 6 of the Act is summary and its object is to prevent self help and to discourage people to adopt any foul means to dispossess a person. Dispossession of a tenant should be in accordance with law.

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10. ARBITRATION : Grounds of objection u/s 30 of the Arbitration Act, 1940 - transfer of arbitrator pending arbitration proceedings - Arbitrator continuing with the proceeding - party who continued to participate in proceedings is estopped from challenging the award on the ground of lack of jurisdiction due to transfer of the Arbitrator :-

Arbitration Act, 1940, Section 30 :-

Inder Sain Mittal Vs. Housing Board, Haryana and others, AIR 2002 SC 1157 :

(i) Grounds of objection under S. 30 of the Act to the reference made, with or without intervention of the Court, arbitration proceedings and the award can be classified into two categories, viz., one emanating from agreement and the other law.

(ii) In case the ground of attack flows from agreement between the parties which would undoubtedly be a lawful agreement, and the same is raised at the initial stage. Court may set it right at the initial stage or even subsequently in case the party objecting has not participated in the proceedings or participated under protest. But if a party acquiesced to the invalidity by his conduct by participating in the proceedings and taking a chance therein cannot be allowed to turn round after the award goes against him and is estopped from challenging validity or otherwise of reference, arbitration proceedings and/ or award inasmuch as right of such a party to take objection is defeated.

(iii) Where ground is based upon breach of mandatory provision of law, a party cannot be estopped from raising the same in his objection to the award even after he participated in the arbitration proceedings in view of the well settled maxim that there is no estoppel against statute.

(iv) If, however, basis for ground of attack is violation of such a provision of law which is not mandatory but directory and raised at the initial stage, the illegality, in appropriate case, may be set right, but in such an eventuality if a party participated in the proceedings without any protest, he would be precluded from raising the point in the objection after making of the award.

In the case on hand, it cannot be said that continuance of the proceedings and rendering of awards therein by the arbitrator after his transfer was in disregard of any provision of law much-less mandatory one but, at the highest, in breach of agreement. Therefore, by their conduct by participating in the arbitration proceedings without any protest the parties would be deemed to have waived their right to challenge validity of the proceedings and the awards, consequently, the objections taken to this effect did not merit any consideration and the High Court was not justified in allowing the same and setting aside the award.

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11. STATEMENT BY COUNSEL OF THE TENANT ACROSS THE BAR ADMITTING PLAINTIFF'S ALLEGED BONAFIDE NEED : Whether it amounts to admission by party and as such binding on it- held No.- Further held- It does not amount to compromise.
Evidence Act Sec. 18 and 107
Shri Swami Krishnanand Govindanand Vs. M/s. M.D. Oswal Hosiery (Regd.) AIR 2002 SC 1162 :

There can be no doubt that admission of a party is a relevant material. But can the statement made by the learned counsel of a party across the Bar be treated as admission of the party? Having regard to the requirements of Section 18 of the Evidence Act, on the facts of this case, in our view, the aforementioned statement of the counsel of the respondent cannot be accepted as an admission so as to bind the respondent. The compromise like a contract postulates consensus between two parties. A statement of a counsel conceding the grounds of eviction and seeking some time for the respondent to vacate the premises, cannot be termed a compromise.

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12. DECREE : Execution of- Limitation starts from the date of appellate Court decree and not from trial Court decree.
Doctrine of Merger of Decrees
Limitation Act, 1963, Art, 135
P.T. Xavier Vs. Lucy v. Papaly, AIR 2002 Kerala 146 :

When the decree is appealed against the enforceable decree is that of the appellate Court whether the appellate Court dismisses or varies the judgment of the Court below. Even though the trial Court decree may be enforceable in the absence of any interim order of stay passed by the appellate Court, that by itself will not show that the period of limitation for executing the decree starts from the date of the trial court decree because applying the principle of merger, the decree that is executable is that of the appellate Court. So viewed, the Court below was perfectly right in holding that the petition was not barred by limitation and that the same was filed within time.

Whether the appeal was filed by the plaintiff or the defendent has no relevancy in deciding the question of merger. It is final decree which becomes executable. ***In Kunhayammed Vs. State of Kerala, AIR 2000 SC 2587***, the Apex Court drew a distinction between dismissal of a Special Leave Petition which is a discretionary remedy and disposal of an appeal. Even though in the dismissal of the Special Leave Petition at the admission stage, the question of the principle of merger does not arise, the Apex Court held that once a decision is rendered in the appeal, the decree of the High Court merges with that of the Supreme Court. The Supreme Court further held thus at page 2592):

> "The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by inferior Court,

Tribunal or Authority was subjected to a remedy available under the law before a supreme forum then, though the decree or order under challenge continues to be effective (Emphasis supplied) and binding nevertheless its finality is put in jeopardy. Once the Superior Court has disposed of the lis before it either way whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, Tribunal or Authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, Tribunal or Authority below".

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13. DECREE : Amendment of :-
C.P.C., Section 152 :-
2002 (1) M.P.L.J. 7 (SC)
Plasto Pack, Mumbai And Another Vs. Ratnakar Bank Ltd.

Power to amend a decree under Section 152 of the Code of Civil Procedure cannot be exercised so as to add to or subtract from any relief granted earlier. **(2001) 5 SCC 37** referred to.

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14. MORTGAGE DEED : Unregistered Admissibility of :-
Transfer of Property Act, Section 59 & Registration Act, Section 49 :-
2002 (1) M.P.L.J. 16
Narendra Prasad Gopal Soni Vs. Manju Lata d/o Jai Kumar Jain And Others

An unregistered mortgage deed is inadmissible to prove the terms of the mortgage, but it is definitely admissible to establish the nature and character of possession of the mortgagee. Where a person obtained possession under an unregistered mortgage, his possession is permissive. **AIR 1919 PC 44, 1975 MPLJ 633 (FB) = AIR 1975 MP 230 relied on.**

(II) **MORTGAGE : Once a Mortgage Always A Mortgage :-**

Once a mortgage must always remain a mortgage. The owner of the house cannot lose his title to the house because the document by which he created the mortgage is unregistered.

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15. DECREE : Dismissal of Suit For Non-Payment of Costs - Dismissal could not be a Decree :-
C.P.C., Sections 2 (2) and 35-B :-
2002 (1) M.P.L.J. 28
Narayan Rao Raja Raghunath Rao Kher and others Vs. State of M.P. And Others :

Section 35-B of the Code does not specifically provide for dismissal of suit for non-payment of costs. The costs under that section are not costs in the suit. There-

Provided further that preference may be given to women having the requisite qualification:

Provided also that person shall be eligible for appointment on the post of Counsellor unless he attained the age of 35 years and is below 60 years of age;

(2) A Candidate who-

(a) has been a judge, or

(b) has experience of Counselling in family matters shall, other things being equal, be given preference in the matter of appointment.

9. **Payment of Honorarium/fee to Counsellors.-** (1) The Honorarium or fee admissible to persons employed as counsellor shall be such as may be determined by the State Government from time to time.

(2) The Counsellor shall be entitled to the payment of Honorarium or fee at the minimum rate of Rs. 75/- (Rupees Seventy Five) per case per sitting for reconciliation. The number of sitting restricted for each case should not be more than four. In any case, the total Honorarium or fee of a counsellors shall not exceed Rs. 300/- (Rupees Three Hundred) per day.

10. **Function of Counsellor.-** (1) The Counsellor, entrusted with any petition, shall -

(i) attend the Court as and when required by the Judge of the Family Court;

(ii) aid and advise the parties regarding settlement of the subject matter of dispute or any other part thereof;

(iii) help the parties in reconciliation;

(iv) submit report or interim report, as the case may be fixed by the Court;

(v) perform such other functions as may be assigned to him by the Family Court from time to time;

(2) In performing his functions under sub-rule (1) the Counsellor shall be guided by such general or special directions may be given by the Family Court from time to time.

11. **Conditions or service of employees of a Family Court.-** The qualifications, procedure for recruitment, pay and other conditions of service of the employees of a Family Court shall be the same as of the employees of similar category in the Courts under the control of District Judge and the rules relating thereto shall, *mutates mutandis,* apply.

12. **Assistance of medical experts, welfare experts.-** (1) Where the Family Court decides to secure the services of any expert or other person referred to in Section 12 of the Act, the Courts shall indicate the exact point or points on which and manner in which the service required is to be rendered.

(2) The expert or other person referred to in sub-rule (1), shall render the service and submit its report within such time as may be indicated in the order of the Family Court or within such extended time as may be given by the Court.

under the invalid grant. Thus in such a legal situation the possession of a person under invalid grant cannot be treated as permissive in nature. The party who is continuously in possession under invalid grant after more than 12 years his title can be said to have perfected by adverse possession and he can claim such a right.

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18. DECREE : Adjustment of :-
C.P.C., O. 21, Rr. 2 (2), (2-A) and (2-C) :-
2002 (1) M.P.L.J. 106
Mohini Devi Heerwani Vs. Kundanlal Jain :

The recording of payment or adjustment on application by the judgment-debtor can be done by the executing court if it is proved by documentary evidence as per Rule (2-A) (b) of Order 21 Rule 2. The alternative mode is given by Rule (2-A) (c) of Order 21, Rule 2. The payment or adjustment can be recorded when the decree-holder admits the adjustment in his reply to the notice issued to him after receiving the application under Order 21 Rule 2 (2) of the Code of Civil Procedure. **1987 MPLJ 599 AIR 1987 MP 262** distinguished.

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19. MOTOR ACCIDENT CLAIM : Death of Earning Wife- Husband who is Also Earning Person- Not A Dependent.
Motor Vehicles Act, 1988, Section 166 :-
2002 (1) M.P.L.J. 110
Daljeetsingh and others Vs. Hardeepsingh and others :

Husband and wife both earning members. Claim regarding accident of wife on the basis of dependency. Husband cannot claim any compensation on the basis of dependency where both the husband and wife were earning members of the family. In normal course both must have been contributing towards the household expenditure. In the facts and circumstances of the case, the husband who was earning Rs. 5000/- month cannot be said in any way dependent on the wife who was earning Rs. 3,000/- per month. The husband, therefore, cannot claim any compensation on the basis of dependency, compensation awarded in respect of contribution made by the deceased wife to the family.

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20. AMENDMENT OF PLEADINGS : The amendment of written statement seeking to introduce entirely new case and seeking withdrawal of admissions- Amendment disallowed :-
C.P.C., O. 6 R. 17
2002 (1) M.P.L.J. 122
Hansa Devi Sahu Vs. Bachchalal Jaisinghani and another :

Though it is true that Order 6 Rule 17 and Order 8 Rule 9 of the Civil Procedure Code confer wide discretion in the Court to permit amendment and to require a written-statement of any of the parties, such powers are to be exercised ex debit justitiae.

The Court shall exercise discretionary powers vested in it only to advance the cause of justice. It cannot be exercised in a case so as to enable the defendant to change the whole nature of his case and withdraw all admissions based on specific grounds. The defendant, without special and adequate reasons, cannot be permitted to raise the contention, which is totally inconsistent with his earlier stand.

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21. COMPULSORY RETIREMENT : Principles of Natural Justice Not Applicable:-
2002 (1) M.P.L.J. 146
S.S. Shrivastava Vs. State of M.P. :

Principles of natural justice have no place when case of an employee is examined for compulsory retirement, nor non-communication of adverse remarks affects it. **(1992) 2 SCC 299, 1994 SCC (L & S) 1077, (1997) 6 SCC 228, 2001 AIR SCW 262** relied on.

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22. EASEMENT : Transfer of Dominant Heritage- Effect :-
Easements Act, Section 19 And Transfer of Property Act, Section 8
2002 (1) M.P.L.J. 149
Dhananjan Bisen (Dr.) Vs. Smt. Devi Bai w/o Gyanchand Khatwani :

An easement annexed to the dominant heritage passes with it to the person in whose favour the transfer takes place. That is also the effect of section 8 of the Transfer of Property Act. An easement passes with the property for the beneficial enjoyment of which it exists, as a thing appurtenant thereto. As the benefit of an easement passes with the dominant tenement into the hands of subsequent owner of that tenement, similarly the burden of it passes with the servient tenement to every person into whose occupation the servient tenement comes. **AIR 1955 AP 199** relied on.

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23. COURT FEES ACT : 1870 (as amended by M.P. Amendment Act No. 12 of 1997), SCH. I. Art. 1-A ; Applicability :-
2002 (1) M.P.L.J. 168
Chairman, Gramin Vidyut Sahakari Samit Maryadit, Rewa and others Vs. Ratesh Kushwaha :

The Court Fees (Madhya Pradesh Amendment) Act, 1997 (No. 12 of 1997) is not retrospective in operation. It does not apply to those suits which were filed prior to its commencement i.e. 1st April, 1997; and consequently, it does not apply to those appeals arising out of suits filed prior to 1st April, 1997. **1956 NLJ 382=AIR 1956 Nag. 281, AIR 1950 Nag. 177, 1905 AC 369, AIR 1957 SC 540** relied on.

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24. LIS PENDENS : Doctrine of : Effect of Doctrine On the Rights of the Transferee :-

Transfer of Property Act, Section 52:-

2002 (1) M.P.L.J. 200

Gowardhan Vs. Ghasiram Deceased Through L. Rs., Ramkunwarbai and others :

Section 52 of the Transfer of Property Act creates only a right to be enforced to avoid a transfer made pendente-lite, because such transfers are not void but voidable and that too at the option of the affected party to the proceedings. The only effect of the doctrine of lis-pendens on the sale transaction is to make it subject to the decree or order to be passed in the suit. The rights obtained by way of transfer during the pendency of suit are subservient to the rights of the transferor and bind the transferee in the same manner in which the transferor is.

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25. EVICTION : Bona Fide Need :- Landlord- engaged in partnership business- It is no ground to negative the need of the landlord for new business.

M.P. Accommodation Control Act, Section 12 (1) (f)

2002 (1) M.P.L.J. 227

State Bank of Indore Vs. Satya Narayan Bajaj :

A person may be a sleeping partner and may therefore like to engage himself and start business of his own. Moreover, a person may be partner in several businesses and also may have his own business or businesses. There is no prohibition of a person engaging himself in several business and commercial activities. There is nothing wrong in doing so.

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26. RIGHT OF TRANSFEREE OF SUIT PREMISES TO BE IMPLEADED AS COPLAINTIFFS AND TO ADD GROUND UNDER SECTION 12 (1) (F) :

M.P. Accommodation Control Act, Sections 12 (1) (a) and 12 (1) (h) and C.P.C., O. 6 R. 17 CPC :-

2002 (1) M.P.L.J. 306

Bhupendra Singh Rana and others Vs. Ghansyam Garg and another :

Suit by original plaintiff/landlord on the ground of Section 12 (1) (a) and (h) of the Act- Suit premises sold by plaintiff during pendency of the suit- Transferee seeking permission to be impleaded as co-plaintiff and permission to amend the plaint seeking to add ground under Section 12 (1) (f) of the Act.

Paragraphs 17 to 29 of the Report are reproduced in toto :

17. The learned counsel for the applicant has strenuously urged that taking into consideration the bar envisaged under section 12 (4) of the Act, no such amendment at the instance of a transferee could be permitted in law.

18. The learned counsel for the applicant however does not dispute that on the date when the application for amendment had been filed it was open to the plaintiff to file a separate suit for the same relief as claimed in the present suit.

Such a suit could have been clearly entertainable and it could not have been hit by the provision contained in section 12 (4) of the Act.

19. The aforesaid question had come up for consideration before this Court in the case of ***M/s Bhanwarilal Trilokchand vs. Bannatwala Jain and Co., reported in 1980 MPRCJ SN 87 at page 187.*** In the said case, the plaintiff was a transferee landlord. The suit was one for ejectment of the tenant and the ground for ejectment became available to the plaintiff during the pendency of the suit.

20. The learned single Judge of this Court in the aforesaid decision had observed that the landlord was entitled to add and claim relief of ejectment of his tenant on grounds which become available to him during the pendency of the suit.

21. There were conflicting opinions on the aforesaid question and the matter was referred to a Division Bench in the case of ***Munshi Khan vs. Maya Devi, reported in 1993 MPLJ 933= 1993 JLJ 136*** to resolve the conflict. There was difference of opinion in the Division Bench in the matter and thereafter it was referred to the third Judge.

22. The third Judge after taking into consideration various aspects of the matter including the implications arising under section 12 (4) of the Act agreed with the opinion of one of the Judges constituting the Division Bench and affirmed the decision in the case of M/s. Bhanwarilal Trilokchand (Supra).

23. The aforesaid decision was therefore affirmed by the Division Bench.

24. While affirming the decision of this Court in the case of M/s Bhanwarilal Trilokchand (supra), the third Judge had taken notice of the decision of the Apex Court rendered by a three Judge Bench in the case of ***B. Benerjee vs. Smt. Anita Pan, reported in AIR 1975 SC 1146*** indicating that the ratio of that decision had a direct bearing on the controversy involved. It was observed that 'institution of a fresh suit was ruled out to pre-empt "litigative waste" and no statutory sanction was also found for such a course."

25. It was further observed as follows :-

> "To be more precise and candid, right of a transferee of evicting his tenant on a "ground" envisaged under clause (e) or (f) of section 12 (1) arises really in terms of section 12 (4) because his cause of action cannot arise without the basic requirement contemplated therein being fulfilled of his completing one year's waiting period. It will be a travesty of justice if he is held not entitled to continue suit already filed on any other ground or grounds and claim the same relief of "eviction" on any additional "ground" specified in clause (e) or (f). If a fresh suit on one of those grounds after expiry of one year from the date of his purchase of the suit premises is maintainable during the pendency of the suit earlier filed on other ground or grounds, by what logic his right to add a "new ground" in the pending suit for the same relief of "eviction" can be negatived when the language of section 12(4) does not yield to that construction? Provisions neither of Order VI, Rule 17, Civil Procedure Code nor of Order VII Rule 8, bar his

right to do so, To exercise the substantive right of evicting his tenant on expiry of one year from the date of his purchase on the ground of his bona-fide need of the suit premises, procedural entitlement is contemplated in terms of Order VI, Rule 17 which enables a Court to entertain and allow prayer made for amending the plaint "for determining the real question in controversy between the parties" (emphasis added) which would be the question indeed of landlord's obtaining possession of suit premises in terms of subsections (5) and (6) of section 12".

26. It was also indicated that the imperative underlying section 12(4) is only that on the date of making the "order" of eviction, Court must be satisfied that a transferee has completed one year's waiting period contemplated under section 12(4) and he is entitled to have an "order" from the Court which may be enforced in terms of sub-section (5) or (6) of section 12 to "obtain possession" of the suit premises from his tenant.

27. It was further indicated that the real purport of section 12 (4) and that plain legislative intendment cannot be frustrated by importing consideration of any extra-statutory theory of equitable content from the realm of uncodified procedural jurisprudence.

28. There can be no exception to the position in law as indicated hereinabove in the opinion of the learned third Judge in the case of Munshi Khan (supra).

I am further of the view that the ratio of the decision of the Apex Court in the case of B. Benerjee (supra) as well as the decision of this Court in the case of Munshi Khan (supra) stands clearly attracted in the facts and circumstances of the present case.

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27. ADVERSE POSSESSION : Proof of :-
C.P.C., Section 100:-
2002 (1) M.P.L.J. 335
Dilipprasad Vs. Ramdayal :

Person claiming adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner. He must clearly establish when the adverse possession commenced and the nature of such posssession.

A person pleading adverse possession has no equities in his favour. Since, he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish the facts necessary to prove adverse possession. ***Mahesh Chand Sharma Vs. Raj Kumari Sharma, AIR 1996 SC 869 relied*** on.

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28. DEBT : Time Barred - Promise to Pay Time Barred Debt Furnishes a Fresh Cause of Action :-
Contract Act, Section 25-A
2002 (1) M.P.L.J. 356
Govind Prasad Patel Vs. Dhani Ram Patel :

It is well settled that a "promise to pay" a time barred debt is a good consideration under section 25 (3) of the Contract Act ***(Vimala Pradhan Vs. United Commercial Bank***, 1990 MPLJ 819). A promise to pay a time barred debt is enforceable. Time barred debt is a good consideration for a fresh promise to pay ***(Bhansarlal Vs. Navalikishor, 1957 MPLJ 859 = AIR 1958 M.P. 21)*** Written promise to pay a time barred debt furnishes by itself a fresh cause of action ***(Ghansyamdas Vs. Ghasilal, 1969 MPLJ 501).***

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29. SUB-LETTING : Proof of : Payment of Consideration- Need Not Be Proved:- M.P. Accommodation Control Act, Section 12 (1) (b) :-
2002 (1) M.P.L.J. 365
Bhagchand Vs. Laxmi Narayan :

Paragraphs 4 and 6 of the Report are reproduced in toto :-

4. The law on the point whether the tenant has sub-let or parted with the possession of the suit accommodation has been succinctly stated by the Supreme Court in ***Bharat Sales Ltd. vs. Life Insurance Corporation of India, (1998) 3 SCC 1*** : "sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the Court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let".

6. The language of section 12 (1) (b) of the M.P. Accommodation Control Act, 1961 is much wider than in the Acts of some other States. According to the language used in section 12 (1) (b) if the tenant has sub-let, assigned or otherwise parted with the possession of the whole or any part of the accommodation for consideration or otherwise, he is liable to eviction. The use of the word "otherwise" at the end of Clause (b) shows that it is not necessary for the landlord to establish that the parting of the possession of the suit accommodation by the tenant is for consideration. "Parting with the possession" is itself a ground for eviction. Clause (b) was interpreted in this manner long back by a Division Bench of this court in ***Satyabhamadevi Vs. Ramkishore, 1974 MPLJ 906 = AIR 1975 MP 115.***

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30. DECREE : Drawing of :- Must be Self Contained :
C.P.C., Order 20 Rr. 6 and 6-A
2002 (1) M.P.L.J. 401
Sonulal and others Vs. Janki Bai and others :

Order 20 R. 6, Civil Procedure Code provides that the decree shall agree with the judgment and shall "specify clearly the relief granted". By the Amendment Act of 1976 Rule 6-A has been added in Order 20, Civil Procedure Code. It has been provided that the last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment. A decree should be drawn up in such a way as to make it self-contained and capable of execution. The relief granted should be clearly and tersely stated. That is also the requirement of Rules 156, 165 and 166 of the Rules and Orders (Civil) framed by the High Court. The first Appellate Court in the present case did not do its duty properly and that has given rise to all the confusion at the time of execution of the decree. It was its duty to correct its mistake when it was brought to its notice by an application under section 152, civil Procedure Code by the decree holder. The application was rejected by order dated 9.8.2000 on the ground that the mistake sought to be corrected is not "clerical or arithmetical" and the decree of the first Appellate Court has merged in the decree of this Court. The Court has the inherent power to correct its mistake at any time. In this case the decree passed by the first Appellate Court did not correctly state what the Court actually decided. It is a well settled principle that the act of the Court should not prejudice any party. It is a maxim of law that the act of a Court shall prejudice no man- acts curiae minimum gravabit. Every court has an inherent power to very or amend its own decree or order so as to carry out its meaning. This power can be exercised at any time.

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31. PROVISIONAL RENT : Fixation of :-
M.P. Accommodation Control Act, Section 13 (2) :-
2002 (1) M.P.L.J. S.N. 5
Indramanisharma Vs. Vijay Kumar Sanghi :

Order of Rent Controlling Authority fixing interim rent under section 11 of the

Act is not binding on Civil court. Civil Court may modify its order if Rent Controlling Authority subsequently fixes standard rent under Section 10. **1979 MPLJ 757** followed.

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32. REVIEW : Power of :-
C.P.C.O. 47 R. 1
2002 (1) M.P.L.J. 441
Surendra Kumar Vs. State of M.P. :

Paragraph 10 of the Report is reproduced in toto :-

Recently in case of ***Lily Thomas etc. etc. Vs. Union of India and others, reported in 2002 (3) AIR SCW 1760,*** it has been reiterated by the Supreme Court after discussing the entire case law on the subject that for interference in review petition there should be an error which is a patent and not a mere wrong decision and the word any other sufficient reason appearing in O.47, Civil Procedure Code must mean "a reason sufficient on ground at least analogous to those specified in the rule". A wrong or erroneous decision can only be interfered in an appeal and not in review petition.

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33. JURISDICTION OF CIVIL COURT : Ouster of By Agreement :-
C.P.C., Section 20 and Contract Act, Section 28 :-
2002 (1) M.P.L.J. 446 Sun Beverages (P) Ltd. and another D. Vivek and Company and others :

The jurisdiction of the Court cannot be ousted on the basis of the invoices in absence of specific written agreement between the parties for ousting the jurisdiction of the Court. In order to give effect to the ouster clause in agreement regarding jurisdiction, it has to be shown that the parties specifically agreed or acknowledged through agreement to exclude the jurisdiction of the Court envisaged under provision of section 20 of the Civil Procedure Code. In facts and circumstances, the printing of words 'subject to Agra jurisdiction only' on the invoices in itself was not the ground to indicate that it was a part of agreement between both the parties to oust the jurisdiction resulting from any disputes out of the business transactions as settled at Bhind between the parties. The trial Court in the circumstances had committed no error in assuming the jurisdiction of court at Bhind on basis of averments made in the plaint. **AIR 1989 SC 1239 and AIR 1999 M.P. 44** relied on.

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34. COURT FEES & SUITS VALUATION : Suit for declaration And Permanent Injunction :-
Court Fees Act, Section 7 (iv) (d), Art. 17 of the Sch. II and Suits Valuation Act, Section 8 :-
2002 (1) M.P.L.J. 458
Dharamraj Singh Chhotelal Singh Chouhan Vs. Vaidya Nath Prasad Khare and others :

The whole report is reproduced :-

This is a revision by the plaintiff against order dated 8-9-2001 of the 1st Additional District Judge, Sidhi in Civil Suit No. 22-A of 2000 by which he has been directed to value the suit for purposes of court fee at Rs. 82,500/- and pay ad valorem court fee.

2. The relevant averments in the plaint are that the defendant No. 1 granted sub-lease of a portion of the plot shown in red 'colour' in the plaint map to the plaintiff by lease-deed dated 29-7-1995 and placed him in possession thereof; the plaintiff is in possession of this land and has raised some construction thereon; the defendant No. 1 has got surrender deed dated 31.12.1999 in respect of this land registered in his favour in which a consideration of Rs. 85,500/- has been shown; the plaintiff has not signed on this deed and he is not a party to it; it is forged and the defendant No. 1 is threatening to dispossess the plaintiff from that plot. The plaintiff has claimed the relief of declaration that the said surrender deed is void and of permanent injunction for restraining the defendents from interfering with his possession on this plot.

3. It is well settled that the question of court fee must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by final decision of the suit on merits. This principle was laid down by the Supreme Court long back in ***Sathappa vs. Ramanathan, AIR 1958 SC 245*** and has been recently referred to by the Full Bench of this court in ***Subhash Chand vs. MPEB, 2000 (3) MPLJ 522.*** The impugned order shows that the trial judge was aware of this principle and yet it has not applied it while deciding the dispute regarding payment of Court fee. He has unnecessarily referred to the pleas of the defendant No. 1 in this respect. He has gone into the question whether the plaintiff is in "settled possession" of the land or not. As already stated, the allegation in the plaint is decisive for computation of court fee. The question of settled possession or unsettled possession is irrelevant.

4. The case of the plaintiff is that he is in actual possession of the land and he is not the executant of the surrender deed dated 31.12.1999. In such a situation he is required to pay fixed court fee as per Article 17 of Schedule II of the Court Fees Act (hereinafter to be referred to as the Act) on the relief of declaration claimed by him. This point has been settled by the Full Bench of this Court in ***Santosh vs. Gyansunder, 1970 MPLJ 363*** where it was ruled that if the plaintiff is not bound by the decree, agreement or document he is not required to have it set aside and he can pay court fee under Article 17 of Schedule II of the Act. In such a case section 7 (iv) (c) of the Act is not attracted.

5. For claiming the relief of permanent injunction the court fee payable is as per section 7 (iv) (d) of the Act. The plaintiff is at liberty to put his own valuation on such a relief, of course, it should not be wholly unreasonable or arbitrary. This has been clarified in ***Raj Kaur vs. Kinetic Gallery, 2000 (2) MPLJ 72*** that in cases falling within paragraph (iv) of section 7, the plaintiff is entitled to put his

own valuation. The Court normally accepts the valuation put by the plaintiff if it is not too low or high. In the present case the plaintiff has valued the suit for the purpose of injunction under section 7 (iv) (d) of the Act and that valuation is Rs. 20,000. He has paid the Court fee accordingly. The market value of the property is not the criterion for valuation under any of the clauses of section 7 (iv) of the Act. It is the value of the relief sought that is the basis. The plaintiff has correctly valued the suit for injunction. This would also be the value for purposes of pecuniary jurisdiction of the Court for the relief of injunction as per section 8 of the Suits Valuation Act. ***In Sabina vs. Mohd. Abdul, 1997 (1) MPLJ 554*** it has been held that section 7 (iv) (d) would be applicable for valuing the relief of injunction and Article 17 of Schedule II will apply in respect of court fee payable for declaration. That is also the view taken in ***Ambaram vs. Pramilabai, 1997 (I) MPLJ 13.***

6. In a case where fixed court fee is payable as per Schedule II Article 17 of the Court Fees Act for the relief of declaration the question is what should be the value for purposes of pecuniary jurisdiction. Section 8 of the Suits valuation Act is inapplicable in this respect as the court fee is not payable ad valorem but it is fixed court fee which is payable. In respect of revenue paying land rules have been framed under section 3 of the Suits Valuation Act and these rules would apply for valuation for the purpose of pecuniary jurisdiction as held by a Division Bench of this Court in ***Moolchand vs. Khushed Bi, 1983 MPLJ 767.*** However, these rules do not cover the land which is not agricultural land and, therefore, not assessed to land revenue. Therefore, as observed in ***Rajkumar vs. Kinetic Gallery 2000 (2) MPLJ 72,*** in a suit claiming relief in respect of land or interest in land not liable to be assessed to land revenue, the value has to be put by plaintiff which should be actual value of the relief. It cannot be too high or too low. Normally, value of an immovable property is its market value.

7. In a suit in which fixed court fee is payable as per Article 17 Schedule II of the Court Fees Act, the market value of the immovable property, is normally the criterion for purposes of the pecuniary jurisdiction.

In the present case the suit for purposes of pecuniary jurisdiction has been valued at Rs. 85,500/- so far as the relief of declaration is concerned, and it cannot be said to be improper, the plaintiff is not required to pay the court fee on the valuation for the purpose of pecuniary jurisdiction. The trial Court has wrongly directed the plaintiff to pay the court fee on the value of Rs. 85,500/- and that order is set aside. The trial judge is advised to study the law relating to the court fee and suits valuation by referring to the statutory provisions and the case law on those provisions and then should proceed to decide the question of valuation of the suit for purposes of court fee and jurisdiction.

The revision is allowed and the impugned order is set aside. There was no need of notice to the defendants as the question of court fee is between the plaintiff and the State as held in ***Haricharan Vs. M. Ojha, 2001 (2) MPLJ 152= 2001 (2) JLJ 122.***

35. COMPULSORY RETIREMENT: employee need not be heard before passing the order :

M.P. Civil Services (Pension) Rules, 1976, R. 42 :-

2002 (1) M.P.L.J. 461

Baldeo Krishna Bahl Vs. State of M.P. and others :

For passing order of compulsory retirement under M.P. Civil Services (Pension) Rules, 1976, the service record of the employee is to be taken into consideration to find whether he is suitable for retention in Government Service and if it is found in the negative, order of compulsory retirement can be passed. Since the order of compulsory retirement is not punitive in nature, it is not necessary to hear the employee before passing of the order. This order can be passed by taking into consideration annual confidential report which has not been communicated. As a matter of fact, utility of public servant is determining factor which can be assessed on the basis of performance during the past years. **1994 SCC (L & S) 1952, 1993 SCC (L&S) 521 and 2001 AIR SCW 862** relied on.

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36. SPECIFIC PERFORMANCE :

Specific Relief Act, Section 22, Transfer of Property Act, Section 55 (1) (f) And C.P.C., Sections 151 and 152 :-

2002 (1) M.P.L.J. 475

Mohd. Yukub Vs. Abdul Rauf :

Decree for specific performance of contract of sale of immovable property granted in favour of plaintiff-Decree is silent about the delivery of possession of the property. In execution of the decree sale deed executed in favour of the plaintiff by Court with the recital that plaintiff would be put in possession of the house pursuant to the execution of the sale deed-Application by plaintiff under Sections 151 and 152 CPC for amendment of decree to incorporate the relief of possession. Application opposed by judgment-debtor on the ground that such prayer was not included in the plaint and that executing court cannot go beyond the decree. Application dismissed by the Executing Court.

Held :

The impugned order passed by the executing Court is contrary to law. The sale-deed having been executed by the Court on behalf of the judgment-debtor in favour of the decree- holder and sale-deed having been registered has the effect of the transfer of title in the house from the judgment-debtor to the decree-holder. He is entitled to possession as provided in section 55 (1) (f) of the Transfer of Property Act. The executing Court has the power to direct delivery of possession of the property to the decree-holder even if the decree for specific performance of contract is silent on that point. The person in whose favour the decree for specific performance of contract has been passed is entitled to possession of the property. The relief of possession is implicit or inherent in the prayer for specific performance of a contract for sale of the property. The executing court in the decree for specific performance of

the contract of sale can grant possession to the decree-holder. ***Babu Lal Vs. M/s Hazari Lal Kishori Lal*, AIR 1982 SC 818 and *Bata Shoe Co. (p) Ltd. Vs. Preetam Das*, 1982 MPLJ 560 and *Shrikrishna Vs. Sitaram*, 1997 (2) MPLJ 501** relied on.

It was further held the amendment pleaded for by the decreeholder can be allowed even in the execution proceedings.

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37. AMENDMENT OF PLEADINGS : 'At any stage of proceedings'- stage of judgment is also stage of proceedings.
C.P.C., O. 6 R. 17 :-
2002 (1) M.P.L.J. 482
Swami Vivekanand Shishu Mandir and another Vs. Smt. Fehmida Begam :

Case closed for judgment- plaintiff submitting application for amendment in plaint- Application opposed by defendant mainly on the ground that as the case was closed for judgment trial court has no jurisdiction to entertain the application.

Held :

Part of para 4 and paras 5, 6 and 7 of the report are reproduced in toto :

Order 6, Rule 17, Civil Procedure Code provides that the Court may "at any stage of the proceedings" allow either party to amend his pleadings. It is argued that after the case was closed for judgment there remained no stage of the proceedings and, therefore, the trial Court could not allow the amendment. In support of his arguments the learned counsel for the petitioners has cited the decision of this Court in ***Dhirendra Vs. State Bank of India, 1993 M.P.L.J. 607***. It has been held in this case that where a suit was closed for judgment in trial Court and an application for amendment was filed before the pronouncement of judgment, the Court has no jurisdiction to entertain or allow the application under O. 6 R. 17, CPC. A perusal of this judgment shows that the earlier decision of this Court in ***Badri Prasad Vs. S. Kripal Singh 1981 MPLJ 606 = AIR 1981 M.P. 228*** was not brought to the notice of the Bench. The dictum of this Court in that case was as follows.

> "The suit is commenced on the presentation of plaint as is obtainable from Order 4, Rule 1, Civil Procedure Code instituted as "Suit to be commenced by plaint" and is disposed of so far as the trial Court is concerned, on the pronouncement of judgment under Order 20, Rule 3 of the Civil Procedure Code. This being the position regarding the commencement of the suit and its termination in the trial Court, in the light of the discussion contained in the preceding paragraph of this order, the irresistible conclusion is that delivery of judgment by the trial Court is a stage in the proceeding. In this view of the matter, it can safely be held that because of the expression "at any stage of the proceedings" employed in Order 6, Rule 17 of the Civil Procedure Code, the Court is competent to allow either party to alter or amend his pleading any time before the judgment is pronounced, as till then the Judge has the seisin over the case and is not functus officio".

5. In case the aforesaid decision of this Court had been brought to the notice of the Bench which decided Dhirendra's case the Bench would have either agreed with the said dictum laid down earlier or in case of any disagreement with the earlier view, the case could have been referred to a larger Bench as laid down by the Supreme Court in ***Ayyaswami Gounder vs. Munnuswamy Gounder, AIR 1984 S.C. 1789 and Eknath vs. State of Maharashtra, AIR 1977 SC 1177.*** In ***Badri Prasad's*** case decision of the Supreme Court in ***Arjun Singh vs. Mohindra Kumar, AIR 1964 S.C. 993*** which interpreted Order 9, Rule 7, Civil Procedure Code was held to be inapplicable to the construction of the words "at any stage of the proceedings" in Order 6, Rule 17, Civil Procedure Code.

6. In ***Narendra Singh vs. Maltidevi, 1993 MPLJ 610*** another Bench of this Court following ***Badri Prasad's*** case held that the Court can entertain an application for amendment under Order 6, Rule 17, Civil Procedure Code even if the case is reserved for delivery of judgment. The same view has again been taken in ***Kamta Prasad vs. Vidyawati, 1995 M.P.L.J. 127.***

7. In view of the above decisions the law laid down in Badri Prasad's case and followed in the two later decisions has to be treated correct and it must be held that the application under Order 6, Rule 17, Civil Procedure Code for amendment is legally maintainable even at the stage when the arguments have been heard and the case has been closed for judgment. The amendment at that stage should be allowed only if it is really necessary for determining the real questions in controversy between the parties and it does not work injustice to the other side. The discretion in this respect must be exercised judiciously after considering all the aspects.

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38. COURT FEES AND SUITS VALUATION :
Court Fees Act, Section 7 (iv) (c) and Suits Valuation Act, Section 8 :- 2002 (1) M.P.L.J. 489
Shabbir Hussain and others Vs. Naade Ali and others :

Suit by plaintiff/landlord for eviction and arrears of rent-plaintiffs also seeking declaration that they are the owners of the suit house and the defendants are their tenants- Relief of permanent injunction that the defendants No. 1, 2 and 3 be restrained from recovering rent from Defendant Nos. 4 to 7 also sought :

Held :

The allegations in the plaint are that the plaintiffs are the owners of the house and the defendants are their tenants; the defendants Nos. 1 to 3 have now started claiming to be co-owners of the house and thus a cloud has been cast on the title of the plaintiffs and for removal of that cloud they are seeking the relief of declaration of title and also the consequential relief of permanent injunction as mentioned above. The relief of injunction in this case flows from the relief of declaration claimed by the plaintiffs. The two reliefs are not independent or unrelated. The valuation of the suit

for purposes of court fee should be as per section 7 (iv) (c) of the Act and not according to article 17 (iii) of Schedule II and section 7 (iv) (d) of the Act. But for the said reliefs as prayed in the present case the market value of the house is not the criterion. The plaintiffs claim to be in juridical possession of the house through their tenants. They are not seeking possession of the house on the basis of their title. The suit under section 7 (v) (c) of the Court Fees Act is required to be valued "according to the amount at which the relief sought is valued". The real basis of valuation is the value of the reilef sought. Normally, the plaintiff is at liberty to value the relief claimed. The Court can correct it if it is arbitrary. It is not the value of the thing affected that settles the value of the relief sought. It is the value of the relief sought which has to be determined. What has to be valued is the relief and not the thing affected. The real relief claimed is the removal of the cloud cast on the title of the plaintiffs by the acts of the defendants. The subject matter of the suit covered by the reliefs of declaration and injunction is the said relief of declaration and injunction at Rs. 600/- is proper and it cannot on the facts pleaded in this case be said to be arbitrary or outrageous.

In the recent decision of this Court in ***Rajkumar vs. Kinetic Gallery, 2000 (2) MPLJ 72*** all the earlier decisions on the point have been considered and it has been held that in cases falling under section 7 (iv) of the Act the plaintiff is entitled to put his own valuation. The Court normally accepts the valuation put by the plaintiff if it is not too low or high. The valuation at Rs. 300/- for the relief of declaration and permanent injunction under section 7 (iv) (c) of the Act was held to be proper and the valuation of Rupees three lacs was held to be exaggerated and was directed to be deleted.

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39. EVICTION :

M.P. Accommodation Control Act, Section 12 (1) (f) :-

2002 (1) M.P.L.J. 497

Sakharam Vishwanath Prasad Agrawal Vs. Vijay Kumar Jain and others :

Suit of eviction- Premises in occupation of tenant bona-fide required by plaintiff No. 2 for running his business of printing press-Death of plaintiff No. 2-Widow of plaintiff No. 2 brought on record as legal representative carrying business of printing press and requiring suit shop for that business-Widow of plaintiff No. 2 can establish her need for suit accommodation for the existing business left by her husband-She need not be driven to file separate suit for that purpose-According to the amended plaint the widow of the original plaintiff was carrying on the existing business of her late husband. There was need of the suit accommodation for that purpose as the accommodation with her was insufficient. **(1975) SCC 770, (1981) 3 SCC 103, (1997) 4 SCC 413, AIR 1997 SC 2510, (1999) 8 SCC 1 and 2001 (2) MPLJ 1 (SC)** relied on.

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40. AWARD : Execution of :-
Arbitration And Conciliation Act, 1996, Section 36 :
Condition Precedent For Invoking Section 36 :-
2002 (1) M.P.L.J. 500
Vishnu Prasad Gontiya and another Vs. Ashok Leyland Finance Limited. Jabalpur and another :

The condition precedent before invoking section 36 of the Arbitration and Cancellation Act for enforcement of the award is that either the time for making an application to set aside the award under section 34 of the Act has expired or application having been made has been refused. There is no need of obtaining any stay order from the Court where the application under section 34 of the Act has been made. If such application has been made in time and until it has been "refused" the application for enforcement of the award under section 36 of the Act would not be maintainable and the enforcement would remain stayed automatically until the application under section 34 of the Act is decided. Prima-facie this result flows from the interpretation of the plain language of section 36 of the Act.

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41. KHASRA : Entries Made in Remarks Column - Evidentary Value :-
M.P. Land Revenue Code, 1959, Section 117 :-
2002 (1) M.P.L.J. 508
Maltibai Madhukar Rao Maratha Vs. Subhashchandra Kishorilal Jaiswal and others :

There is no presumption of entries in the remarks column of the Khasra. The entries made in the remarks column of Khasra cannot claim any presumptive value as regards its correctness as the provisions of M.P. Land Revenue Code do not require the Patwari to make such entry in the remarks column.

(ii) **ADVERSE POSSESSION :- VENDEES POSSESSION NOT ADVERSE**

Vendee's possession under an agreement of sale is permissive possession and not adverse. It is well said that the possession of vendee to an agreement of sale is permissive and not adverse. A person who is in possession of the property under an agreement for sale is in permissive possession in anticipation of sale by the owner hence his possession cannot be adverse to the owner.

Achal Reddy Vs. Ra. Krishana. AIR 1990SC 553 and Mohanlal Vs. Mirja, AIR 1996 SC 910 relied on.

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42. COMPROMISE DECREE : Challenge on the Ground of unlawfullness.
C.P.C., O. 23 R. 3 and Section 151 :-
2002 (1) M.P.L.J. 617
Raghuvir Singh and others Vs. Ramdarshan Ramcharan Kirar and Others :

Compormise Decree-Suit to Challange Such Decree-Though such suit is barred

under O. 23 R. 3-A, trial Court can treat subsequent suit as an application under Section 151.

Held :

There is no procedural hurdle in treating the suit which is legally not maintainable as an application under section 151, Civil Procedure Code in the earlier suit. The procedure devised by the Court to entertain an application under section 151, Civil Procedure Code for enquiring whether the compromise was unlawful is a judicial innovation in order to ensure that a party does not suffer because he was the victim of fraud or misrepresentation or the compromise is otherwise unlawful. Even after the decree has been passed on the basis of a compromise after verification by the Court, it is still permissible in a given case to assail the compromise on the ground of its unlawfulness. A separate suit has been barred but by a process of interpretation a procedure has been carved out to challenge an unlawful compromise. It would only be an extension of the said innovative thinking to treat the suit as an application under section 151, Civil Procedure Code in the earlier suit. Therefore, in substance the trial Court had not committed any legal error in fixing the case for inquiry whether the compromise was lawful. The trial Court directed to treat the subsequent civil suit as an application under section 151 and then proceed further according to law. **AIR 1993 SC 1139 and 2000 (3) MPLJ 204,** relied on.

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43. INHERENT POWERS OF HIGH COURT : Exercise of after dismissal of revision :

Cr.P.C., 1973, Sections 397 and 482

Rajinder Prasad Vs. Bashir & Ors., 2002 (1) ANJ (SC) 13 :

Held :

We are of the opinion that when the earlier revision petition filed under section 397 of the Code had been dismissed as not pressed, the accused-respondents could not be allowed to invoke the inherent powers of the High Court under Section 482 of the Code for the grant of the same relief.

Referring to its earlier decision on this point in **Krishnan & Ano. Vs. Krishnaveni & Ors.(997) 4 SCC 241, The Apex Court further held :**

A perusal of the aforesaid judgment, however, shows that the reliance by the learned judge was misplaced. This Court in Krishnan's case (supra) had held that though the power of the High Court under section 482 of the Code is very wide yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under section 482 of the

Code. It was further held, "Ordinarily, when revision has been barred by section 397 (3) of the Code, a person-accused/complainant cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of section 397 (3) or section 397 (2) of the Code".

II. COGNIZANCE OF OFFENCES : Scope of powers of the Magistrate u/s 190 Cr.P.C. to take cognizance of offences against persons not proceeded against by police-Powers u/s 319 Cr.P.C. vis-a-vis Sec. 190 Cr.P.C.

Note : Paragraphs 11 and 12 of the report reproduced in toto :

11. Under this section (sec. 190 Cr.P.C.) a Magistrate has jurisdiction to take cognizance of offences against such persons also who have not been arrested by the police as accused persons, if it appears from the evidence collected by the police that they were *prima-facie* guilty of offence alleged to have been committed. Section 209 of the Code prescribes that when in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrare that the offence is triable exclusively by the Court of Sessions he shall commit, after compliance with the provisions of Section 207 of Section 209, as the case may be, the case to the court of Sessions and subject to the provisions of the Code, pass appropriate orders. This Section refers back to Section 190, as is evident from the words "instituted on a police report" used in Section 190 (1) (b) of the Code. While dealing with the scope of Section 190 this Court in ***Raghubans Dubey v. state of Bihar (1967 (2) SCR 423)*** held that the cognizance taken by the Magistrate was of the offence and not of the offenders. Having taken cognizance of the offence, a Magistrate can find out who the real offenders were and if he comes to the conclusion that apart from the persons sent by the police some other persons were also involved, it is his duty to proceed against those persons as well.

12. Approving the judgment in **Raghubans Dubey's case (supra)** this Court in ***M/s. Swill Ltd. v. State of Delhi & Anr. (JT 2001 (6) SC 405 : 2001 (2) ANJ (S.C.) 1005)*** held :

"... in the present case there is no question of referring to the provisions of Section 319 Cr.P.C. That provision would come into operation in the course of any inquiry into or trial of an offence. In the present case, neither the Magistrate is holding inquiry as contemplated under Section 2 (g) Cr.P.C. nor the trial had started. He was exercising his jurisdiction under Section 190 of taking cognizance of an offence and issuing process. There is no bar under Section 190 Cr.P.C. that once the process is issued against some accused on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge sheet."

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44. HIRE PURCHASE AGREEMENT : Nature of Rights of the hirer and the person from whom the goods are hired- repossession of goods by person from whom goods hired- effect? No offence committed.
Charanjit Singh Chadha & Ors. Vs. Sudhir Mehra, 2002 (1) ANJ (SC) 22 2002 (1) MPLJ 321 SC :

Held :

The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence.

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45. ABETMENT : Whether there can be abetment of an abatement- 'No'- Abetment to commit suicide- abetment of offence punishable with imprisonment- offence be not committed.
I.P.C., Section 116 and 306
Satvir Singh & Ors. Vs. State of Punjab & Anr. 2002 (1) ANJ (SC) 68 :

Held :

The former (i.e.Section 116) is "abetment of offence punishable with imprisonment- if offence be not committed." But the crux of the offence under section 306 itself is abetment. In other words, if there is no abetment there is no question of offence under section 306 coming into play. It is inconceivable to have abetment of an abetment. Hence there cannot be an offence under section 116 read with Section 306 I.P.C.

II. I.P.C., SECTIONS 511 AND 304 B

ATTEMPT : Attempt to commit dowry death (i.e. an offence punishable u/s 304 B.I.P.C.)

Note : Paras, 9, 10, 11 and 12 of the report reproduced in toto :

Now, we have to see whether the appellanats can be convicted under Section 511 read with section 304-B IPC. For that purpose it is necessary to extract section 511 as under :

"511. Punishment for attempting to commit offences punishable with imprisonment for *life or other imprisonment.* - Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with such fine as is provided for the offence, or with both.

10. The above section is the solitary provision included in the last chapter of the I.P.C. under the title "of Attempts to Commit offences." It makes attempt to com-

mit an offence punishable. The offence attempted should be one punishable by the Code with imprisonment. The conditions stipulated in the provision for completion of the said offence are : (1) The offender should have done some act towards commission of the main offence. (2) Such an attempt is not expressly covered as a penal provision elsewhere in the Code.

11. Thus, "attempt" on the part of the accused is sine qua non for the offence under Section 511. Before considering the question as to what is meant by doing "any act towards the commission of the offence" as an inevitable part of the process of attempt, we may point out that the last act attributed to the accused in this case is that they asked Tejinder Pal Kaur (PW-5) to go the rail track and commit suicide. That act of the accused is alleged to have driven the young lady to proceed to the railway line on the next morning to be run over by the train. Assuming that the said act was perpetrated by the appellants and that the said act could fall within the ambit of "attempt" to commit the offence under Section 304-B it has to be considered whether there is any other express provision in the Code which makes such act punishable. For this purpose we have to look at Section 498-A which has been added to the I.P.C. by Act 46 of 1983. That provision makes "cruelty" (which a husband of a woman or his relative subjects her to) as a punishable offence. One of the categories included in the explanation to one said section (by which the word cruelty is defined) is thus :

"(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman."

12. Thus, if the act of the accused asking Tejinder Pal Kaur (P.W.-5) to go and commit suicide had driven her to proceed to the railway track for ending her life then it is expressly made punishable under Section 498-A. I.P.C. When it is so expressly made punishable the act involved therein stands lifted out of the purview of Section 511 I.P.C. The very policy underlying in Section 511 seems to be for providing it as a residuary provision. The corollary, therefore, is that the accused, in this case, cannot be convicted under Section 511 on account of the acts alleged against him.

I.P.C., SECTIONS 304 B, 306 AND 498 A AND EVIDENCE ACT, SEC. 113A

III. Abetment of Suicide - Cruelty or harassment "soon before her death" used in section 304 B IPC, but not used as such in section 113 A, Evidence Act- effect-to constitute offence u/s 306 r/w/s/ 113-A Evidence Act cruelty and harassment need not necessarily be soon before her death

Held :

Section 306 IPC when read with section 113-A of the Evidence Act has only enabled the court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in section 498-A IPC), if such woman committed suicide within 7 years of her marriage. It is immaterial for section 306 IPC whether the cruelty or

harassment was caused "soon before her death" or earlier. If it was caused, "soon before her death" the special provision in section 304-B I.P.C. would be invokable, otherwise resort can be made to Section 306 I.P.C. No doubt Section 306 IPC read with section 113-A of the Evidence Act is wide enough to take care of an offence under Section 304-B also. But latter is made more serious offence by providing a much higher sentence and also by imposing a minimum period of imprisonment as the sentence. In other words, if death occurs otherwise than under normal circumstances within 7 years of the marriage as a sequel to the cruelty or harassment inflicted on a woman with demand of dowry, soon before her death. Parliament intended such a case to be treated as a very serious offence punishable even upto imprisonment for life in appropriate cases. It is for the said purpose that such cases are separated from the general category provided under Section 306 IPC (read with Section 113-A of the Evidence Act) and made a separate offence.

DOWARY PROHIBITION ACT, 1961: SEC. 2

IV. Dowry Death : Section 304 B IPC and Section 2 Dowry prohibition Act, 1961- Phrase used in Sec-2, 'in connection with the marriage of the said parties'- connotation of- customary payments in connection with birth of a child- held not enveloped within the term 'dowry'

NOTE : Paras 20 and 21 of the report reproduced :

20. Prosecution, in a case of offence under Section 304-B I.P.C. cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused "soon before her death". The word "dowry" in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. that definition reads thus :

"In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly.

(a) by one party to marriage to the other party to marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but doesn't include dower or mahr in the case of persons to whom the Muslim Personal law (Shariat) applies."

21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouse. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies.

Such payments are not enveloped within the ambit of "dowry" Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

●

46. COUNTERFEIT CURRENCY NOTES OR BANK NOTES : use and possession of- mens-rea essential for conviction;
I.P.C., Sections 489-B and 489-C :
Umashanker Vs. State of Chhattisgarh, 2002 (1) ANJ (SC) 85 :

Held :

As perusal of the provisions, extracted above, shows that mens-rea of offences under Sections 489-B and 489-C is, "knowing or having reason to believe the currency-notes or bank-notes are forged or counterfeit." Without the aforementioned mens-rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or bank notes, is not enough to constitute offence under section 489-B of I.P.C. So also possessing or even intending to use any forged or counterfeit currency notes or bank notes is not sufficient to make out a case under Section 489-C in the absence of the mens-rea noted above.

●

47. Inherent Powers of The High Court- Scope of
Cr.P.C., 1973 Section 482
Dinesh Dutt Joshi Vs. The State of Rajasthan & Anr. 2002 (1) ANJ (SC) 89

Held :

Section 482 of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of the Court or otherwise to secure the ends of justice. It is well established principle of law that every Court has inherent power to act exdebito-justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. The principle embodied in Section is based upon the maxim: Quando lex aliquid quicuiconcedit, conceder videtur id quo res ipsa ease non protest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavoidable. Section does not confer any new power, but only declares that the High Court possess inherent powers for the purposes specified in the Section. As lacunae are some times found in procedural law, the Section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this Section are however required to be reserved, as far as possible, for extraordinary cases.

●

48. RAPE : Prosecutrix is not an acoomplice- her testimony is not required to be corroborated in material particulars
I.P.C., Section 376 (2) (g) & Evidence Act, Section 114 A
Dilip & Anr.Vs. State of M.P., 2002 (1) ANJ (SC) 94 :

Held :

(**NOTE :** Paragraphs 12 and 13 reproduced in toto)

The law is well-settled that prosecutrix in a sexual offence is not an accomplice and there is no rule of law that her testimony cannot be acted upon and made basis of conviction unless corroborated in material particulars. However, the rule about the admissibility of corroboration should be present in the mind of the judge. In State of ***H.P. v. Gian Chand (2001 (6) SCC 71)*** on a review of decisions of this Court, it was held that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc., if the same is found to be natural, trustworthy and worth being relied on. This Court further held :

> "If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation..."

13. In ***Madan Gopal Kakkad v. Naval Dubey and Anr. (1992 (3) SCC 204)*** this Court has held (vide para 33) that lack of oral corroboration to that of a prosecutrix does not come in the way of safe conviction being recorded provided the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, and that as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming.

●

49. CRIMINAL TRIAL : Murder- Evidence of Last Seen Together- What constituted?
I.P.C., Section 302
Subhash Chand Vs. State of Rajasthan, 2002 (1) ANJ (SC) 116 :

To constitute evidence of last seen together, the evidence must definitely permit an inference being drawn that the victim and the accused were seen together at a point of time in close proximity with the time and date of the commission of crime.

II. ALIBI-PLEA OF- MEANING OF :

Literal meaning of alibi is 'elsewhere'. In law this term is used to express that defence in a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime charged against him, offers evidence that he was in a different place at that time. The plea taken should be capable of meaning that having regard to the time and place when and where he is alleged to have committed the offence, he could not have been present. The plea of alibi postulates

the physical impossibility of presence of the accused at the scene of offence by reason of his presence at another place. (See : Law Lexicon, P. Ramnath Iyer, Second Edition p. 487). Denial by an accused or an assertion made by his employer that the accused was on leave or absence from duty on the date of offence does not, by any stretch of reasoning or logic, amount to pleading alibi.

●

50. CHEQUE/NEGOTIABLE INSTRUMENT : Presumption That It has been Drawn For Consideration- Burden to prove contrary on the accused-mere denial without leading any evidence- burden not discharged.
Negotiable Instruments Act, Sections 118, 138 and 139
K.N. Beena Vs. Muniyappan & Anr., 2002 (1) ANJ (SC) 175 :

Held :

Under Section 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus in complaints under section 138, the Court has to presume that the cheque had been issued for a debit or liability. This presumption is rebutable. However the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of ***Hiten P. Dalal vs. Bratindranath Banerjee reported in 2001 (6) SCC 16 : 2001 (2) ANJ SC 934*** has also taken an identical view.

●

51. CRIMINAL TRIAL :
F.I.R.- Object of insistence on its prompt lodging and sending its copy to local-Magistrate -
Thanedar Singh Vs. State of Madhya Pradesh, 2002 (1) ANJ (SC) 210 :

NOTE : The Apex Court quoted with approval following observations made in ***Meharaj Singh Vs. State of U.P. (1994) 5 SCC 188 :***

"FIR in criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earlier information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the part played by them, the weapons, if any, as also the names of the eyewitnesses, if any, Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR

was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate.

●

52. CRIMINAL COMPLAINT : Objection regarding maintainability- whether can be raised before framing of charges-'Yes'.
Cr.P.C., Sections 200, 202 and 204
M/s Kunstocom Electronics (I) Pvt. Ltd. Vs. Gilt Pack Ltd. & Anr., 2002 (1) ANJ (SC) 335 :

Held :

There is no hard and fast rule that the objection as to cognizability of offence and maintainability of the complaint should be allowed to be raised only at the time of framing the charge. In any case, we have the authority of the judgment of this Court in the case of **Ashok Chaturvedi and Ors. Vs. Shitual H. Chanchani** & Anr. (1998) 7 SCC 698 to hold that the determination of the question as regards the propriety of the order of the Magistrate taking cognizance and issuing process need not necessarily wait till the stage of framing the charge. G.B. Patnaik, J. speaking for the Court observed thus :

"This argument, however, does not appeal to as inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earlier (sic earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition.

●

53. JUVENILE : determination of and finding about age
Juvenile Justice Act, 1986
Rajinder Chandra Vs. State of Chhattisgarh & Anr. 2002 (1) ANJ (SC) :

While dealing with question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. **Amrit Das Vs. State of Bihar, (2002) 5 SCC 488** relied on.

●

54. CRIMINAL REVISION : disposal of by a non speaking order- not proper
Cr.P.C., 1979, Section 397,
Paul Gorge Vs. State, 2002 (1) ANJ (SC) 357 :

Held :

It is true that it may depend upon the nature of the matter which is being dealt with by the Court and the nature of jurisdiction being exercised as to in what manner the reasons may be recorded e.g. in an order of affirmance detailed reason or discussion may not be necessary but some brief indication by which application of mind may be traceable to affirm an order would certainly be required. Mere ritual of repeating the words or language used in the provisions, saying that no illegality, impropriety or jurisdictional error is found in the judgment under challenge without even a whisper of the merit of the matter or nature or pleas raised does not meet the requirement of decision of a case judicially.

●

55. DISHONOUR OF CHEQUE : Criminal Complaint- Appropriate- Sentence/ Fine/ Compensation :
Negotiable Instruments Act, 1881, Section 138 & Cr.P.C., Section 357 (3) Suganthi Suresh Kumar Vs. Jagdeeshan, 2002 (1) ANJ (SC) 363 :

Dishonour of cheques involving Rs. 4,50,000/- Trial Court convicting the accused u/s 138 N.I. Act and sentencing him to T.R.C. and fine of Rs. 5000/- each in two complaint cases Amount of cheques not paid by accused- No justification imposing flee-bite sentences- Magistrate can award reasonable compensation u/s 357 (3) Cr.P.C. may enforce order by imposing a sentence in default.

NOTE : The Apex Court in its elaborate judgment quoted with approval the following dictum of law laid down by it in the cases of ***K. Bhaskaran Vs. Sankaran Vaidhyan Balan, (1999) 7 SCC 510 :***

"If a Judicial Magistrate of the First Class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of rupees five thousand. But the Magistrate in such cases, can alleviate the grievance of the complainant by making resort to section 357 (3) Cr.P.C. The Supreme Court had emphasised the need for making liberal use of that provision. No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of a Magistrate of the first Class in respect of a cheque which covers an amount of Rs. 5,000/- the Court has power to award compensation to be paid to the complainant."

Following pronouncement made in **Hari Singh Vs. Sukhbir Singh, 1988 (4) SCC 551** was also referred with approval:

"The quantum of compensation may be determined by taking into account the nature of crime, the justness of the claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms

unless their capacity to pay varies considerably. The payment may also very depending upon the acts of each accused. Reasonable period of payment of compensation, if necessary by instalments may also be given. The court may enforce the order by imposing sentence in default."

Further held :

When this Court pronounced in **Hari Singh Vs. Sukhbir Singh** (supra) that a court may enforce an order to pay compensation "by imposing a sentence in default" it is open to all courts in India to follow the said course. The said legal position would continue to hold good until it is overruled by a larger bench of this Court.

In a case where the amount covered by the cheque remained unpaid it should be the look-out of the trial Magistrate that the sentence for the offence under section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter is the accused paid the amount atleast during the pendency of the case.

●

56. BAIL : Grant of Bail For Short Term for keeping watch on future conduct- not proper
Cr.P.C. Section 439 Cr.P.C. 1973
State of U.P. Vs. Atique Ahmad. 2002 (1) ANJ (SC) 495 :

Held :

If a case for release of the applicant on bail is not otherwise made out, he cannot be released on bail for a limited period, only for keeping watch over his future conduct and activities during the period.

●

57. CHEQUE TO REPAY DEBT ALLEGED TO BE TAKEN 4 YEARS BACK : Dishonour of For The Reason Account Closed : Maintainability of Criminal Complaint :
Negotiable Instruments Act, 1881, Sections 138, 139 and 118 Contract Act, Section 25 (3) :
A.V. Murthy Vs. B.S. Nagabasavanna, 2002 (1) ANJ (SC) 499 :

Held :

Under Section 118 of the Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. Even under Section 139 of the Act, it is specifically stated that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for discharge, in whole or part, of any debt or other liability. It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person to be

charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract.

II. ACKNOWLEDGMENT OF DEBT : amount shown in balance sheet is an acknowledgement

If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made.

●

58. CRUELTY : Mental torture, abnormal behaviour may amount to cruelty : I.P.C., Section 498-A
Gananath Pattnaik Vs. State of Orissa, 2002 (1) ANJ (SC) 506 :

Held :

The concept of cruelty and its effect varies from individual to individual also depending upon the social and economic status to which such person belong. "Cruelty" for the purpose of constituting the offence under the aforesaid section need not be physical. Even mental torture abnormal behaviour may amount to cruelty and harassment in a given case.

●

59. PRIVATE COMPLAINT : Inquiry : Scope of :
Cr.P.C., Section 200/202 :
2002 (1) M.P.L.J. 22
Kishor Singh Vs. Sudama Prasad and others :

It is the discretion of the complainant to produce witnesses of his choice. What is required under Proviso to Sub-section (2) of Section 202 of the Code is that the Magistrate, has, in fact, to call upon the complainant to produce all the evidence he wishes to produce and it is for the complainant to decide as to what evidence he would produce. The requirement under the proviso is that Magistrate has to examine the witnesses produced by the complainant or those whom he want to produce with the assistance of the Court in procuring their attendance. **2000 Cri. LJ 930** relied on.

●

60. DISPOSAL OF PROPERTY : Involved In Forest Offence :-
Cr.P.C., Section 457 and Forest Act, Sections 52-A, 52-B and 57-C :
2002 (1) M.P.L.J. 66
Manoj Kumar Jain Vs. State of M.P. :

Jeep carrying teakwood logs seized by the police- case under Section 379 IPC, Section 52 Indian Forest Act and under Section 15 of M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1986 registered- intimation under Section 52-C regarding initiation of confiscation proceedings sent to the Magistrate by Forest official - Effect :

NOTE : Paragraph 5 of the report is reproduced in toto :

It is true that initially, the police had seized the goods, in question, and, therefore, the jurisdiction of Magistrate was attracted. He was fully authorised to release the goods even in those cases where a forest offence was committed. If a forest authority has seized the property, in question, then there was no question of application of section 457 of the Code of Criminal Procedure because the forest authority is not entitled to prosecute and file a challan before a Magistrate. However, in this case, section 57-C of the Act became operative at the moment the Judicial Magistrate First Class was intimated that the proceedings under sections 52-A and 52-B of the forest Act are being taken up for confiscation of the property.

●

61. M.P. VINIRDISHTA BHRASHTA ACHARAN NIVARAN ADHINIYAM (36 OF 1982), SECTIONS 27 AND 29 : Omission of by Amending Act- Effect of : 2002 (1) M.P.L.J. 198
Ramchandra and others Vs. State of M.P. :

The legislature while omitting sections 27 and 29 from the M.P. Vinirdishta Bhrashta Acharan Nivaran Adhiniyam, 1982 with effect from 13-5-1998 did not provide for any saving clause to save the pending prosecutions. That being so, no prosecution under the aforesaid provisions could be launched or continued after 13-5-1998. **AIR 2000 SC 811** relied on.

●

62. DYING DECLARATION : Evidentry Value : Evidence Act, Section 32
2002 (1) M.P.L.J. 301
Phullibai Vs. State of M.P. :

The dying declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it is relevant under section 32 (1) of the Evidence Act, in a case, in which cause of that person's death is in question. It is an exception to the general rule of exclusion of hearsay evidence and the statement made by a person, written or verbal, of relevant fact after his death, is admissible in the evidence if it refers to the cause of his death or any circumstances of the transaction which resulted in his death. It is true that a dying declaration is not a deposition in a Court of law and it is neither made on oath, nor in the presence of the accused and hence, not tested by cross-examination on behalf of the accused. Admissibility of the dying declaration rests upon the principle that a sense of impending death produces in a man's mind the same feeling as that of a conscientious and virtuous man under oath, Nemo moriturus praesumitur mentire. Dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence on the principle of necessity.

It is well settled that the dying declaration, if found to be true and voluntary, can form the sole basis of conviction even without corroboration. As the proposition referred to above is too settled, we do not consider it expedient to discuss all the

authorities on this question then to reproduce what has been said by the Supreme Court in the case of **Chandra Narain Yadav Vs. Shibjee Yadav and others, (1999) 6 SCC 63** "it is too well settled that a dying declaration, if found to be true and voluntary, can form the sole basis of conviction even without any corroboration."

●

63. **COGNIZABLE OFFICE : F.I.R. In Respect of : has to be registered by police Cr.P.C. Section 154**
2002 (1) M.P.L.J. 596
Girdhari Lal Kanak Vs. State of M.P. and others :

Held :

Once an FIR is lodged meeting the requirements as enjoined under section 154 of the Criminal Procedure Code, the same has to be registered by the Officer Incharge of the Police Station or any other person in charge and thereafter, the investigating agency, if an offence is disclosed, investigate into the offence and may take such appropriate steps as per law enshrined under sections 157 and 173 of the Code. When an FIR is lodged and the conditions precedent are satisfied. the same has to be registered and a crime number has to be allotted.

●

64. **Criminal Trial :**
(i) INTERESTED OR PARTISAN EYE WITNESS : Testimony of-Appreciation of.
(ii) DELAY IN DISPATCH OF COPY OF F.I.R. TO MAGISTRATE- Effect-Delay itself no ground to throw out prosecution case.
(iii) F.I.R.- DELAY- Lodging of FIR after moving injured to hospital thereby causing delay of about 4 hrs.- held the conduct of informent not unnatural- no adverse inference to be drawn against prosecution.
(iv) WITNESS-CONDUCT OF DURING INCIDENT- Failure of father, who was unarmed at the time, to rescue her daughter (deceased) not unnatural.
Ashok Kumar Pandey Vs. State of Delhi, (2002) SCC 76 :

Held :

(i) .... It is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be credible.

(ii) In our view, even in cases where there is some delay in dispatch of the first information report to the court and its receipt by it, that alone can in no case be taken to be a ground for throwing out the prosecution case if otherwise the same is proved by unimpeachable evidence. However, in cases where the Court otherwise doubts the veracity of the prosecution case, this may be taken to be one of the grounds to discard the same.

(iii) It is natural conduct of a normal human being to rush with injured person to the

hospital more so when they are so near and dear ones like daughter and grandaughter instead of leaving them at the place of occurrence to die and go to the police station to give information about the occurrence. Therefore, no adverse inference can be drawn against the prosecution as the informant did not go to the police station to lodge the first information report rather rushed to the hospital with deceased persons to save their lives.

(iv) ..... it cannot be said to be unnatural if he (father) could not take any steps to save the life of his daughter as he being unarmed, as an ordinary normal human being, could not have taken risk of his life at the hands of the appellant, which was so imminent.

●

65. CRIMINAL TRIAL :

(i) Common Object- I.P.C., Section 149- Proof of :

(ii) F.I.R., Cr.P.C., Section 154 - Non- mention of the names of witnesses in F.I.R.- Effect?

Bhagwan Singh And Others Vs. State of M.P., (2002) 4 SCC 85 :

Held :

(i) Common object, as contemplated by Section 149 of the Indian Penal Code, does not require prior concert or meeting of minds before the attack. Generally no direct evidence is available regarding the existence of common object which, in each case, has to be ascertained from the attending facts and circumstances. When a concerted attack is made on the victim by a large number of persons armed with deadly weapons, it is often difficult to determine the actual part played by each offender and easy to hold that such persons who attacked the victim had the common object for an offence which was known to be likely to be committed in prosecution of such an object. It is true that a mere innocent person, in an assembly of persons or being a bystandar does not make such person a member of an unlawful assembly but where the persons forming the assembly are shown to be having identical interest in pursuance of which some of them come armed, others though not armed would, under the normal circumstances, be deemed to be the members of the unlawful assembly.

(ii) We also do not find any substance in the submission of the learned counsel for the appellants that statement of kiran (PW 7) should not be given any weight because her name is not mentioned in the FIR. There is no requirement of law for mentioning the names of all the witnesses in the FIR, the object of which is only to set the criminal law in motion.

●

66. CRIMINAL TRIAL : Affidavits of the prosecution witnesses obtained in advance by defence to dissuade them from deposing before the Court- practice depricated :

Rachapalli Abbulu And Others Vs. State of A.P. (2002) 4 SCC 208

Held :

The defence side examined DW 1, a notary public who gave evidence to the effect that PW 1 to PW 10 had visited his office and sworn to affidavits, the contents of which were read out by him to these witnesses and that those affidavits were filed before the Sessions Court. DW 2 was a Municipal Councellor, who claimed to have identified these witnesses before DW 1, DW 3 is a fingerprint expert who was examined to prove the thumb impression of these witnesses in the various affidavits filed before the court. In these affidavits, PW 1 to PW 10 had stated that they did not see the occurrence. However, when confronted with the affidavits, these witnesses denied them and chose to depose before the court. The practice adopted by the defence side in getting the affidavits of these witnesses in advance is to be depricated. That, in a way, amounts to an attempt aimed at dissuading the witnesses from speaking the truth before the court. the trial Judge as well as the High Court rightly rejected the defence contention. These witnesses appear to be illiterate persons. Their so-called affidavits must have been either cooked up or obtained by playing a fraud on them. This type of interference in criminal justice shall not be encouraged and is to be viewed seriously.

●

67. N.D.P.S. ACT 1985 : Sec. 41 and 42- Search And Seizure :

(i) Seizure memo not prepared on the spot but in the office of the customs- effect- held seizure memo may be prepared at a later stage if there are justifiable and reasonable grounds to do so.

(ii) Procedural illegality in conducting search or seizure- effect-evidence collected thereby not ipso-facto becomes inadmissible.

Khet Singh Vs. Union of India, (2002) 4 SCC 380 :

Held :

(i) It is true that when a contraband article is seized during investigation or search, a seizure mahazar should be prepared at the spot in accordance with law. There may, however, be circumstances in which it would not have been possible for the officer to prepare the mahazar at the spot, as it may be a chance recovery and the officer may not have the facility to prepare a seizure mahazar at the spot itself. If the seizure is effected at the place where there are no witnesses and there is no facility for weighing the contraband article or other requisite facilities are lacking, the officer can prepare the seizure mahazar at a later stage as and when the facilities are available, provided there are justifiable and reasonable grounds to do so. In that event, where the seizure mahazar is prepared at a later stage, the officer should indicate his reasons as to why he had not prepared the mahazar at the spot of recovery.

(ii) Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. If the

search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that evidence is not liable to be admissible in evidence.

●

68. **ROBBERY : Articles of robbery recovered from the accused. Presumption regarding commission of robbery by accused :**
I.P.C., Section 392 :
George Vs. State of Kerala, (2002) 4 SCC 475 :

Held :

The possession of the articles which had been duly identified by the witnesses as belonging to the deceased were found in possession of the appellant within less than 24 hours of the incident. It wold lead to inference under section 114 (a) of the Evidence Act that the appellant has himself committed the robbery, an offence punishable under section 392 IPC.

●

69. **WILL : Interpretation of :**
The Brahma Vart Sanatan Dharm Mahamandal Vs. Kanhiyalal Bagla & Ors., 2002 (1) ANJ (SC) 34 :

In interpreting the Wills, it is settled law to get at the intention of the testator by reading the will as a whole; if possible such construction as would give to every expression some effect rather than that which would render any of the expression inoperative is to be accepted. Another rule which may be useful in context of the will is that the words occurring more than once in a will are to be presumed to be used always in the same sense unless contrary intention appears from the will. The Court may also consider the circumstances under which the testator makes his will such as the state of his property, or his family and the like. (Re : **Pearely Lal Vs. Rameshwar Das, 1963 Supp. 2 SCR 834.**

II. **RES- JUDICATA : Section 11 C.P.C.- "Directly and substantially in Issue" - "collaterally and incidentally in issue". What amount to :**

NOTE : Paragraphs 21 and 22 of the report are reproduced in toto

21. On the question of res judicata, we would only refer to the decision rendered by this Court in ***Sajjadanashin Sayed MD. B.E. EDR.* (D) by *LRs. v. Musa Dadabhai Ummer and Others*** **[2000 (3) SCC 350]** The Court in paragraph 12 observed a under :

> "It will be noticed that the words used in Section 11 CPC are "directly and substantially in issue". If the matter was in issue directly and substantially in a prior litigation and decided against a party then the decision would be res-judicata in a subsequent proceeding. Judicial decisions have however held that if a matter was only "collaterally or incidentally" in issue and decided in an earlier proceeding, the finding therein would not ordinaily

be res-judicata in a latter proceeding where the matter is directly and substantially in issue."

22. In paragraph 18, the Court has further considered in which case, it could be said that the issue was directly and substantially raised and decided and held as under :

> "In India, Mulla has referred to similar tests (Mulla, 15th Edn., p. 104). The learned author says : a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter "directly and substantially" in issue but it does not mean that if matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was "directly and substantially" in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? One test is that is the issue was "necessary" to be decided for adjudicating on the principal issue and was decided, it would have to be treated as "directly and substantially" in issue and if it clear that the judgment was in fact based upon that decision. then it would be res-judicata in a latter case (Mulla p. 104).

One has to examine the plaint the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue. ***Ishwer Singh Vs. Sarwan Singh (AIR 1965 SC 948)*** and ***Syed Mohd. Salic Labhai Vs. Mohd. Hanifa (1976) (4) SCC 780***. We are of the view that the above summary in Mulla is a correct statement of the rule of law.

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70. EXECUTION : Suit dismissed by trial Court- Ist appeal also dismissed- Second appeal allowed and relief of eviction, etc. granted. Execution application moved by decree holder- Appeal before the Apex Court-Execution proceeding stayed by the Apex Court-Subsequently appeal dismissed on merits-Whether fresh execution petition necessary- No.
C.P.C., O. 21 R. 11 (2) (d)
Krishan Gopal Chawla & Ors. Vs. State of U.P. & Anr., 2002 (1) ANJ (SC 132) :

NOTE : paragraph 16 of the report is reproduced in toto:

16. As is evident from the facts narrated above, the execution petition No. 179/80 filed in the executing court to execute the decree passed by the High Court, was pending. This Court had stayed the said execution proceedings pending disposal of the Civil Appeal No. 1365/80. After the disposal of the appeal, there was no impediment or bar to continue the execution proceedings on the application moved by the appellants to proceed with the execution. The High Court committed a manifest error in taking a view that a fresh execution petition should be filed after the dismissal of the appeal by this Court as the decree passed by the High Court had merged with the decree of this Court and the execution

petition filed earlier which was pending, was not maintainable, As already noticed above, this Court in appeal only confirmed the decree passed by the High Court without any alteration or modification. Even otherwise, in a pending execution case, amendment could be sought if it was needed after dismissal of the appeal by this Court. Under Order XXI Rule 11 (2) (d) CPC, in the execution application the particular as to whether any appeal has been preferred from the decree is to be mentioned. If an appeal has been preferred from a decree after disposal of the appeal, necessary information can be given by filing an application, if need be seeking an amendment. It is one thing to say that the earlier decree passed gets merged in the decree passed by the appellate court, yet it is different thing to say that an execution petition filed earlier is not maintainable and that there is a need to file a fresh application for execution after a decree is passed by the appellate Court, particularly in the present case, when this Court had stayed the execution proceedings filed earlier, it was obvious that the execution proceedings could be continued after dismissal of the appeal by this Court affirming the decree passed by the court without any alteration.

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71. **SUCCESSION : Property of female Hindu inherited by her from her mother as limited right- after coming into force of the Hindu Succession Act, 1956, Limited right converted into full right by virtue of Section 14 of the Act- Mode of succession?**
Hindu Succession Act, 1956, Sections 15 (1) (b), 15 (2) (a) and Sec. 14 : Bhagat Ram (D) by L.Rs. Vs. Teja Singh (D) by L.Rs., 2002 (1) ANJ (SC) 200 :

NOTE : Paragraphs 7 and 8 of the report reproduced in toto:

7. The learned senior Counsel for the respondents Mr. Jaspal Singh contended that Smt. Santi acquired property from her mother Smt. Kirpo who died on 25.12.1951 and at that time Smt. Santi had only a limited right over this property, but by virtue of Section 14 (1) of the Hindu Succession Act, she became the full owner of the property and, therefore, on her death, the property held by her would be inherited by her legal heirs as per the rule set out in Section 15 (1) of the Act. The learned Senior Counsel further contended that prior to the Hindu Succession Act, Smt. Santi had only a limited right but for section 14 (1) of the Act, it would have reverted to the reversioners and such a limited right became a full right and, therefore, the property is to be treated as her own property. He also contended that Section 15 of the Hindu Succession Act will have only prospective operation and, therefore, the words used in Section 15 (2) viz, "any property inherited by a female Hindu" are to be construed as property inherited by a female Hindu after the commencement of the Act.

8. We do not find any merit in the contention raised by the Counsel for the repondents. Admittedly, Smt. Santi inherited the property in question from her mother. If the property held by a female was inherited from her father or mother,

in the absence of any son or daughter of the deceased, including the children of any pre-deceased son or daughter, it would only devolve upon the heirs of the father and, in this case, her sister Smt. Indro was the only legal heir of her father. Deceased Smt. Santi admittedly inherited the property in question from her mother. It is not necessary that such inheritance should have been after the commencement of the Act. The intent of the Legislature is clear that the property, if originally belonged to the parents of the deceased female, should go the legal heirs of the father. So also under clause (b) of sub-section of Section 15, the property inherited by a female Hindu from her husband or her father-in-law, shall also under similar circumstances, devolve upon the heirs of the husband. It is ths source from which the property was inherited by the female, which is more important for the purpose of devolution of her property. We do not think that the fact that a female Hindu originally had a limited right and later, acquired the full right, in any way, would alter the rules of succession given in sub-Section 2 of Section 15.

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72. DESERTION : What Amounts To? Petition by husband on the ground of desertion- Wife residing with her parents- insisting that husband; the only son, should live seperately from his parents- making impution against father-in-law that he tried to molest her- nor returning to the husband's home even after death of her father-in-law-nothing to substantiate the allegations made by the wife- facts in entirety established desertion.
Hindu Marriage Act, 1955, Section 13 (1) (ib)
Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi, 2002 (1) ANJ (SC) 287 :

Held :

'Desertion' in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:

1. The factum of separation;
2. The intention to bring cohabitation permanently to an end-*animus deserendi;*
3. The element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period;

The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period of two years immediately preceding presentation of the petition. This clause is to be read with the Explanation. The explanation has widened the definition of desertion to include 'willful neglect' of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature in-

tended to give to the expression a wide import which includes willful neglect of the petitioner by the other party to the marriage. Therefore, for the offence of desertion. so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similary, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period.

The Apex Court referring to the case of **Bipin Chandra Jaishinghbhai Shah Vs. Prabhawati, 1956 SCR 838** quoted from it that :

Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi, The offence of desertion commences when the fact of separation and the animus deserendi co-exist. But it is not necessary that they should commence at the same time. The defacto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time, for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. The law in England has prescribed a three years period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decides to came back to the deserted spouse by a bona-fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses to offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such condition as may be reasonable.

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73. WILL : Uneven distribution of assets- by itself not a suspicious circumstance:
Indian Succession Act, 1925
'S. Sundaresa Pai & Ors. Vs. Mrs. Sumangala T. Pai & Ors. :
2002 (1) Anj (SC) 321

Held :

The uneven distribution of assets amongst children, by itself, cannot be taken as a circumstance causing suspicion surrounding the execution of the will.

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74. TORTS : Doctrine of Strict Liability : Whether 'act of stranger' is an exception - No- Electrouction- Claim for compensation by dependants of the deceased- Supplier (MPEB) held liabile : LAW regarding strict liability in such cases discussed.

M.P. Electricity Board Vs. Shall Kumari & Ors. 2002 (1) ANJ (SC) 327 :

NOTE : Paragraphs 7, 8, 9 and 11 of the report reproduced in toto

7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions.

9. The doctrine of strict liability has its origin in English Common law when it was propounded in the celebrated case of Rylands v. Fletcher [1968 Law Reports

(3) HL 330]. Blackburn J., the author of the said rule had observed thus in the said decision

> "The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril; and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape."

There are seven exceptions formulated by means of case law to the doctrine of strict liability. It is unnecessary to enumerate those exceptions barring one which is this. "Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply. "(vide Page 535 Winfield on Tort, 15th Edn.)

11. In M.C. Mehta v. Union of India, [1987 (1) SCC 395] this Court has gone even beyond the rule of strict liability by holding that "where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident; such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Rylands v. Fletcher".

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75. REFERENCE UNDERTHE LAND ACQUISITION ACT : cannot be dismissed in default :
Land Acquisition Act, 1894 ; Sections 18, and 26 :-
Khazan Singh (Dead) by LRs. Vs. Union of India, 2002 (1) Anj (SC) 348 :

Note : Para 6 of the report is reproduced in toto:

6. Section 18 of the Act empowers a person interested in the land to move by a written application to the Collector requiring that the matter be referred for determination of the court, whether his objection be to the measurement of the land, the amount of compensation. the person to whom it is payable, or the apportionment of the compensation among the persons interested. If the application for reference is in order the Collector is bound to made a reference of it to the court. Section 20 of the Act enjoins on the court to "proceed to determine the objection". The Court shall after holding such inquiry as may be necessary pass an award. Section 26 of the Act reads thus.

> 26. *Form of Awards:* (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-Section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-Section, together with the grounds of awarding each of the said amounts.
>
> (2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, clause (2) and section 2, clause (1), respectively, of the Code of Civil Procedure, 1908."

The provisions above subsumed would thus make it clear that the civil court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the civil court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default.

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76. ADVERSE POSSESSION - Possession of co-sharer-not adverse unless there has been an ouster;
Darshan Singh & Ors. Vs. Gujjar Singh (DEAD) by LRs. and Ors., 2002 (1) ANJ (SC) 370 :

Held :

Possession of a property belonging to several co-sharers by one- co- sharer shall be deemed that he possess the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue record in the name of one co-sharer would not amount to ouster unless there is a clear declaration that title of the other co-sharers was denied.

II. DEATH- PRESUMPTION OF : no presumption of exact date of death

INDIAN EVIDENCE ACT, SECTION 108

There is no presumption of exact time of death under section 108 of the Evidence Act and the date of death has to be established on evidence by person who claim a right for establishment of which that fact is essential.

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77. EVICTION : Tenancy of Statutory Tenant : Termination of :
II. Evition by Title Paramount :
Vashu Deo Vs. Bal Kishan, 2002 (1) ANJ (SC) 411 :

Held :

Where the tenancy premises are governed by rent control law, merely on termination of tenancy the tenant cannot be evicted: the tenant is entitled to continue in possession enjoying status almost at per with a person whose contractual tenancy still subsists. He cannot be evicted unless a ground for eviction under the relevant provision of rent control law is made out. He is not a tenant holding over because his tenancy is not continuing by volition or by act of the parties. Such continuance is attributable to the protection conferred by statute and therefore, he is called a statutory tenant and his tenancy a statutory tenancy (See : **Smt. Gian Devi Anand Vs. Jeevan Kumar & Ors. AIR 1985 SC 79** and **Demadilal & Ors. Vs. Paranshram & Ors., A.I.R. 1976 SC 2229**). The tenancy would determine only on decree for eviction being passed against him. In **Smt. Chander Kali Bai & Ors. Vs. Jagdish Singh Thakur and another, AIR 1977 SC 2262**, this Court has held that a person continu-

ing in possession of his contractual tenancy is yet a tenant within the meaning of the relevant rent control legislation and on such termination, his possession does not become wrongful until and unless a decree for eviction is made against him. If he continues to be in possession after the passing of the decree then he is in wrongful occupation of the premises. In spite of the termination of contract or under the general law (other than rent control law), the tenant continues to be tenant liable to pay rent and is not unauthorized or wrongful until the passing of decree of eviction.

II. EVICTION BY TITLE PARAMOUNT : transfer of properth act : sec. 108

Held :

Under Section 108 clause (q) of the Transfer of Property Act in the absence of contract or local usage to the contrary, it is an obligation of the tenant to put his lessor into possession of the property on the termination of the lease. Section 116 of the Evidence Act, which codifies the common law rule of estoppel between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a titile to such immovable property. The rule of estoppel so enacted has three main feature. (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord : (iii) Section 116 of the Evidence Act is not the whole law of estoppel between landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case. Rule of estoppel which governs an owner of an immovable property and his tenant would also mutatis-mutandis govern a tenant and his subtenant in their relationship inter se. As held by the ***Privy Council in Currimbhoy & Co. Ltd. vs. L.A. Creet & Ors. A.I.R. 1933 P.C. 29, Mt. Bilas Kunwar vs. Desraj Ranjit Singh & Ors. A.I.R. 1915 PC 96***, the estoppel continues to operate so long as the tenant has not openly restored possession by surrender to his landlord. It follows that the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by his landlord's eviction by a paramount title holder. Eviction by paramount title holder is a good defence bringing to an end the obligation of the tenant to put the lessor in possession of the property under Section 108 (q) of the Transfer of Property Act. The burden of proving eviction by title paramount lies on the party who sets up such defence.

To constitute eviction by title paramount so as to discharge the obligation of the tenant to put his lessor into possession of the leased premises three conditions must be satisfied : (i) party evicting must have a good and present title to the property; (ii) the tenant must have quitted or directly attorned to the paramount title holder against his will; (iii) either the landlord must be willing or be a consenting party to such direct attornment by his tenant to the paramount title holder or there must be an event,

such as a change in law or passing of decree by competent court, which would dispense with the need of consent or willingness on the part of the landlord and so bind him as would enable the tenant handing over possession or attorning in favour of the paramount title holder directly; or, in other words, the paramount title holder must be armed with such legal process for eviction as cannot be lawfully resisted.

The burden of raising such a plea and substantiating the same, so as to make out a clear case of eviction by paramount title holder, lies on the party relying on such defence.

NOTE : Judges are requested to go through full report of the judgment.

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78. MOTOR ACCIDENT CLAIM : Policy of insurance- when commences; Motor Vehicles Act, 1988
J. Kalaivani & Ors. Vs. K. Sivashankar & Anr. 2002 (1) ANJ (SC) 438 :

NOTE :- Paragraphs 4, 5 and 6 of the report are reproduced in toto :

4. The question posed before us is whether the policy issued by the insurance company on 8.2.1996 can be regarded as renewel of the earlier policy.

5. Three decisions have been placed before us. In ***New India Assurance Co. Ltd. vs. Ram Dayal and Ors. (J.T. 1990 (2) S.C. 164)*** it was held that in the absence of any specific time mentioned in that behalf, the contract of insurance would be operative from the midnight of the day by operation of the provisions of the General Clauses Act, 1897, ***In National Insurance Co. Ltd. vs. Jijubhai Nathuji Dabhi (Smt.) & Ors. [1997 (1) S.C.C. 66]***, a three judge bench of this Court approved the legal position adopted in the said decision. However, learaned judges observed thus:

> "But in view of the special contract mentioned in the insurance policy, namely it would be operative from 4.00 p.m. on 25.10.1983 and the accident had occurred earlier thereto, the insurance coverage would not enable the claimant to seek recovery of the amount from the appellant company.

This question was again considered by another three judge bench of this Court in ***New India Assurance vs. Bhagwati Devi [1998 (8) S.C.C. 534]*** and after following the dictum in the earlier decision that bench has stated thus.

> ".... The principle deduced is thus clear that should there be no contract to contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following. However, in case there is mention of a specific time for its purchase then a special contract to the contrary comes into being and the policy would be effective from the mentioned time. The law on this aspect has been put to rest by this Court. There is, thus, nothing further for us to deliberate upon".

6. Therefore, the position has become now well neigh settled. The court has to look into the contract of insurance to discern whether any particular time has

been specified for commencement or expiry, as the case may be, of the policy of insurance. The copies of the erstwhile policy as well as the present policy have been produced for our perusal, the authenticity of which has not been questioned before us. The erstwhile policy shows that it expired by midnight of 7.2.1996 by specific terms incorporated in the policy. The next policy has clearly indicated that it had commenced only at 10.00 a.m. on 8.2.1996. The interregnum created the void in respect of the vehicle vis-a-vis the insurance company. The unavoidable consequence of it is that the insurance company cannot now be mulcted with the liability in respect of the award granted by the tribunal.

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79. EVICTION : Jurisdiction of civil court vis-a-vis Rent Controlling Authority: M.P. Accommodation Control Act, 1961, Ss. 12(1), 23-A, 23-J. 11A and 45 Ashok Kumar Gupta Vs. Vijay Kumar Agrawal 2002 ANJ (SC) 472 :

Held :

9. By Act 27 of 1983 Chapter III-A was inserted in the Act with effect from August 16, 1983. That chapter had nine sections- Sections 23-A to 23-I as originally enacted. Section 23-J to which reference will be made presently, was inserted in 1985. The ground of eviction for bona fide requirement contained in Section 23-A has two limbs; clause (a) applies when the accommodation is let for residential purpose and clause (b) applies when the purpose of letting is non residential. Section 23-A also opens with a non-obstante clause and says that notwithstanding anything contained in any other law for the time being in force or contract to the contrary a landlord may submit an application to the Rent Controlling Authority on one or more of the grounds contained in clauses (a) and (b) referred to above. It is provided that the accommodation let out for residential purposes, if required, bona-fide by a landlord for occupation as residence for himself or for any member of his family or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable accommodation for his occupation in the same city or town, the application seeking eviction of the accommodation has to be made by the landlord to the Rent Controlling Authority. In other words, the jurisdiction to pass order of eviction on the ground mentioned in Section 23-A was conferred on the Rent Controlling Authority and the Civil Court's jurisdiction was ousted impliedly in that behalf. But that position remained in existence only for a short period till January 16, 1985 when by Act 7 of 1985 Section 11-A was inserted in Chapter III and Section 23-J was inserted in Chapter III-A. Section 11A says that the provisions of Chapter III so far as they relate to the matter specially provided in Chapter III-A shall not apply to the landlord defined in Section 23-J. Section 23-J enumerates five categories of landlords. They are as under :

(i) a retired servant of any Government or a retired member of defence services;

(ii) a retired servant of a company owned by any Government;

(iii) a widow or a divorced wife;

(iv) Physically handicapped persons; and

(v) A Government servant etc. not entitled to Government accommodation.

10. The position after January 16, 1985 is tht only in respect of the aforementioned categories of the landlords the Rent Controlling Authority has jurisdiction to order eviction of a tenant on gorunds of bona-fide requirement under Section 23-A. A conjoint reading of Section 11-A, 12, 23-A, 23-J and Section 45 would show that in regard to the bond-fide personal requirement of the landlord who does not fall with the specified catagories in 23-J, the Civil Court has jurisdiction to entertain a suit and pass decree under clause (e) of sub-section (1) of section 12 of the Act. It follows that the Civil Court rightly entertained counter claim under section 12(1)(a) of the Act so the decree passed by it is not vitiated for want of jurisdiction.

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80. MOTOR ACCIDENT CLAIM : Collission Between taxi and passenger Train Maintainability of claim for damages against railway administration. Motor Vehicles Act, 1939, Sections 110 A and 110 (1) Union of India Vs. Bhagwati Prasad (D) & Ors., 2002 (1) ANJ (SC) 515 :

A combined reading of Section 110, 110-A, which deal with the Constitution of one or more Motor Accidents Claims Tribunal and application for compensation arising out of an accident, as specified in sub-section (1) of Section 110 unequivocally indicates that Claims Tribunal would have the jurisdiction to entertain application for compensation both by the persons injured or legal representatives of the deceased when the accident arose out of the use of Motor Vehicle. The crucial expression conferring jurisdiction upon the Claims Tribunal constituted under the Motor Vehicles Act is the accident arising out of use of Motor Vehicle, and therefore, if there has been a collision between the Motor Vehicle and Railway train then all those persons injured or died could make application for compensation before the Claims Tribunal not only against the owner, driver or insurer of the Motor Vehicle but also against the Railway Administration. Once such an application, if in course of enquiry the Tribunal comes to a finding that it is the other joint tortfeasor connected with the accident who was responsible and not the owner or driver of the Motor Vehicle then the Tribunal cannot be held to be denuded of its jurisdiction which it had initially. In other words, in such a case also the Motor Vehicle Claims Tribunal would be entitled to award compensation against the other joint tortfeasor, and in the case in hand, it would be fully justified to award compensation against the Railway Administration if ultimately it is held that it was the sole negligence on the part of the Railway Administration. To denude the Tribunal of its jurisdiction on a finding that the driver of the Motor Vehicle was not negligent, would cause undue hardship to every claimant and we see no justification to interpret the provisions of the Act in that manner. The jurisdiction of the Tribunal to entertain application for compensation flows from the provisions contained in Section 110-A read with sub-section (1) of Section 110. Once

the jurisdiction is invoked and is exercised the said jurisdiction cannot be divested of on any subsequent finding about the negligence of the tortfeasor concerned. It would be immaterial if the finding is arrived at that it is only other joint tortfeasor who was negligent in causing accident and not the driver of the Motor Vehicle. In our considered opinion the jurisdiction of the Tribunal to entertain application for claim of compensation in respect of an accident arising out of the use of Motor Vehicle depends essentially on the fact whether there had been any use of Motor Vehicle and once that is established the Tribunal's Jurisdiction cannot be held to be ousted on a finding being arriaved at a later point of time that it is the negligence of the other joint tortfeasor and not the negligence of the Motor Vehicle in question. (Contra view expressed in **UNION OF INDIA Vs. UNITED INDIA INSURANCE Co. Ltd. (1997) 8 SCC 683 OVERRULED**).

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81. DISCLALIMER OF TENANCY : What Amounts To :
M.P. Accommodation Control Act, 1961, Section 12 (1), (c), (f) and (h)
Sheela & Ors. Vs. Firm Prahland Rai Prem Prakash, 2002 (1) Anj (SC) 525:

Held :

17. In our opinion, denial of landlord's title or disclaimer of tenancy by tenant is an act which is likely to affect adversely and sub-stantially the interest of the landlord and hence is a ground for eviction of tenant within the meaning of clause (c) of sub-section (1) of Section 12 of M.P. Accommodation Control Act, 1961. To amount to such denial or disclaimer, as would entail forfeiture of tenancy rights and incur the liability to be evicted, the tenant should have renounced his character as tenant and in clear and unequivocal terms set up title of the landlord in himself or in a third party. A tenant bona-fide calling upon the landlord to prove his ownership or putting the landlord to proof of his title so as to protect himself (i.e. the tenant) or to earn a protection made available to him by Rent Control Law but without disowning his character of possession over the tenancy premises as tenent cannot be said to have denied the title of landlord or disclaimed the tenancy. Such an act of the tenant does not attract applicability of Section 12 (1) (c) abovesaid. It is the intention of the tenant, as culled out from the nature of the plea raised by him, which is determinative of its vulnerability.

NOTE : Readers are requested to go through full report of the judgment.

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82. TORT : Negligence :
Duty of The Electricity Board To Take Steps To Avoid Any Accident In Transmission And Regulation of Electric Supply - Negligence on Its Part Is Actionable In Torts- Onus is on The Electricity Board To Prove That it had Taken All Steps to Prevent Accidents :
2002 (1) M.P.L.J. 531
Shail Kumari and another Vs. M.P. Electricity Board, Bhopal and another :

Held :

The M.P. Electricity Board is a statutory authority under the Electricity Act, 1910 read with the Electricity Supply Act, 1948. It has the duty to transmit electric energy and regulate the supply. Therefore, it is the responsibility of M.P.E.B. to take all possible steps to avoid any accident in the transmission and regulation of electric supply and any negligence on its part is actionable at the instance of the person who has suffered any damage to person or property. Claimant has to point out certain instances indicating negligence on the part of M.P. Electricity Board. But, that onus is not that strong which lies on M.P. Electricity Board to prove that it had taken all steps to prevent such occurrence and in performance of this duty it had not committed any kind of negligence.

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83. CRIMINAL TRIAL :

Right to speedy trial- No outer limit can be prescribed for criminal proceedings- Directions given in Common Cause Judgment and Raj Deo Sharma Case- held no longer good law.

P. Ramchandra Rao Vs. State of Karnataka, (Cr. Appeal No. 535/2000 Judgment dated 16-4-2001) :

NOTE : The Apex Court in **Common Cause Vs. Union of India, (1996) 4 SCC 33 (Common Cause-I) and Common Cause Vs. Union of India, (1996) 6 SCC 775 (Common Cause-II), Raj Deo Sharma Vs. State of Bihar, (1998) 7 SCC 507 (Raj Deo Sharma-I) and Raj Deo Sharma Vs. State of Bihar (1999) 7 SCC 604 (Raj Deo Sharma-II)** issued certain directions/clarifications prescribing outer time limits for conclusion of various criminal trials. This point was reconsidered by the Constitution Bench of the Supreme Court in ***Criminal Appeal No. 535 of 2000 (P. Ramachandra Rao Vs. State of Karnataka)*** and other connected 7 appeals in the background of its earlier decision in the case of ***A.R. Antulay & Others Vs. R.S. Nayak & Anr. (1992) 1 SCC 225.***

The constitution Bench held that the time limits or bars of limitation prescribed in the several directions could not have been so prescribed and are not good law. The conclusive portion of the judgment (dt. 16.4.2002) is reproduced hereunder :-

For all the foregoing reasons we are of the opinion that in ***Common Cause case (I)*** (as modified in Common Cause (II) and ***Raj Deo Sharma (I) and (II)*** the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold :

(1) The dictum in ***A.R. Antulay's case*** is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in ***A.R. Antulay's case,*** adequately take care of right to speedy trial We uphold and re-affirm the said propositions.

(3) The guidelines laid down in ***A.R. Antulay's case*** are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a straitjacket formula. Their applicability would depend in the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in ***Common cause (I), Raj Deo Sharma (I)*** *and* ***Raj Deo Sharma (II)*** could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in ***Common Cause Case (I) Raj Deo Sharma case (I)*** *and* ***(II).*** At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The Criminal Courts should exercise their available powers. such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.c. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable circulations.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary-quantitatively and qualitatively- by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated September 19, 2000 and April 26, 2001 in the abovesaid terms.

The appeals are allowed. The impugned judgments of the High Court are set aside. As the High Court could not have condoned the delay in filing of the appeals and then allowed the appeals without noticing the respective accused-respondents before the High Court, now the High Court shall hear and decide the appeals afresh after noticing the accused-respondent before it in each of the appeals and consistently with the principles of law laid down hereinabove.

Before we may part, we would like to make certain observations ex abundanti cautela :

Firstly, we have dealt with the directions made by this Court in ***Common Cause Case-I and II*** *and* ***Raj Deo Sharma Case I and II*** regarding trial of cases. The directions made in those cases regarding enlargement of accused persons on bail are not subject matter of this reference or these appeals and we have consciously abstained from dealing with legality, propriety or otherwise of directions in regard to bail. This is because different considerations arise before the criminal courts while dealing with termination of a trial or proceedings and while dealing with right of accused to be enlarged on bail.

Secondly. though we are deleting the directions made respectively by two and three-Judge Benches of this Court in the cases under reference, for reasons which we have already stated, we should not, even for a moment, be considered as having made a departure from the law as to speedy trial and speedy conclusion of criminal proceedings of whatever nature and at whichever stage before any authority or the court. It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the Preamble of the Constitution as also from the Directive Principles of State Policy. It is high time that the Union of India and the various States realize their constitutional obligation and do something concrete in the direction of strengthening the justice delivery system. We need to remind all concerned of what was said by this Court in ***Hussainara Khatoon (IV)*** 1980 (1) SCC 98, "The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, the law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty, or administrative inability".

Thirdly, we are deleting the bars of limitation on the twin grounds that it amounts to judicial legislation, which is not permissible, and because they run counter to the doctrine of binding precedents. The larger question of powers of this court to pass orders and issue directions in public interest or in social action litigations specially by reference to Articles 32, 141, 142 and 144 of the Constitution, is not the subject matter of reference before us and this judgment should not be read as an interpretation of those Articles of the Constitution and laying down, defining or limiting the scope of the powers exercisable thereunder by this Court.

And lastly, it is clarified that this decision shall not be a ground for re-opening a case or proceeding by setting aside any such acquittal or discharge as is based on the authority of ***'Common Cause'*** *and* ***'Raj Deo Sharma'*** cases and which has already achieved finality and re-open the trial against the accused therein.

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84. CRIMINAL TRIAL : Injury to Accused- Non Explanation of Effect :- In Criminal Appeal No. 907/93 (Mukesh Vs. State of M.P.) vide judgmen dated 14-5-2002. Hon'ble the High Court of M.P. laid down as under :

11. Failure to explain minor or insignificant injuries on the persons of the accused is not fatal to the prosecution case. Similarly, where on a consideration of the entire evidence it is found that the accused party was the aggressor the non-explanation of the injuries of the accused does not adversely affect the prosecution case. The same result would follow if the prosecution has proved all the ingredients of the offence beyond reasonable doubt by cogent, clear and reliable evidence. A fortiori if the injuries sustained by the accused persons are of serious nature which were sustained in the same incident then it is expected that the prosecution must explain those injuries. It is seen sometimes that the injuries of the accused are more in number and far more serious then the prosecution is obliged to explain those injuries because failure to do so might tender the competing defence version more reasonable and probable. The genesis and origin of the incident may be left in doubt in such a case and that in turn may render the prosecution case as a whole reasonably doubtful. The plea of self-defence of the accused persons may get probablised if it is not shown by the prosecution how they received those injuries in the same incident. The preponderance of probability may tilt in favour of the defence and that may create a reasonable doubt in the prosecution case. It is well settled where the right of private defence is pleaded by the accused and the evidence is adduced to support such plea or the material is brought on record in the cross-examination of the prosecution witnesses which may not be sufficient to establish the right of private defence positively on the touchstone of "preponderance of probability" but which may create a reasonable doubt about the existence of an essential ingredient of the offence in such a case the prosecution cannot be said so have proved the offence beyond reasonable doubt or with reasonable certainty.

HON'BLE THE HIGH COURT HAS ALSO REFERRED FOLLOWING CASES IN ITS JUDGMENT :

1. **Takhaji Hiraji Vs. Thakore Kubersingh Chamansing, (2001) 6 SCC 145.**
2. **Ayodhya Ram Vs. State of Bihar, (1999) 9 SCC 139.**
3. **Padam Singh Vs. State of U.P., (2000) 1 SCC 621,**
4. **Rajender Singh Vs. State of Bihar, (2000) 4 SCC 298,**
5. **Kashiram Vs. State of M.P. AIR 2001 SC 2902.**

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PART - III

CIRCULARS/NOTIFICATIONS

1. M.P. FAMILY COURT RULES 2002

NOTE: Family Court Rules framed by the M.P. State Government under Section 23 of the Family Courts Act, 1984, have been published in M.P. State Gazette (Extraordinary), dated 20th June, 2002. The Rules are reproduced hereunder:-

F-4-1-02-XXI-B (1).- In exercise of the powers conferred by Section 23 of the Family Courts Act, 1984 (No. 66 of 1984) the State Government, in consultation with the High Court of Madhya Pradesh, hereby makes the following rules, namely :-

RULES

1. **Short Title and commencement.-** (1) These rules may be called the Madhya Pradesh Family Court Rules, 2002,

(2) They shall come into force with effect from the date of their publication in the "Madhya Pradesh Gazette".

2. **Definitions.-** In these rules, unless the context otherwise requires.-

(a) 'Act' means the Family Courts Act, 1984 (No 66 of 1984).

(b) "Family Court" means the Court established under Section 3 of the Act;

(c) "Government" means the Government of Madhya Pradesh;

(d) "High Court" means the High Court of Madhya Pradesh;

(e) "Judge" means the Judge appointed under Sub-section (1) of Section 4 of the Act and includes a Principal Judge or Additional Principal Judge of the Family Court;

(f) All other words and expressions not defined in these rules shall have the same meanings as assigned to them in the Act.

3. **Service conditions of the Judge of Family Court.-** (1) The term of the office of the Judge of Family, Court shall be five years from the date he assumes office; or till he attains the age of sixty two years, subject to the prior approval of the High Court.

(2) The Judge of the Family Court shall be under the administrative and disciplinary control of the High Court.

(3) A Judge of a Family Court shall be entitled to pay and allowances including travelling allowance, dearness allowances as admissible to a District Judge, who is drawing supertime pay scale :

Provided that the pay and allowances of a Judge who is a member of the Madhya Pradesh Higher Judicial Service shall not be less than the presumptive pay and allowances as would have been admissible to him.

(4) A serving member of the Madhya Pradesh Judicial Service appointed as a Judge or Principal Judge or Additional Principal Judge of a Court being superan-

nuated on attaining the age of superannuation during his tenure as such Judge shall receive pay and allowances which he last drawn minus pension, if any.

(5) A retired member of the Madhya Pradesh Higher Judicial Service appointed as a Judge or Principal Judge or Additional Principal Judge of a Court shall receive the pay and allowances which he last drawn as a member of the said service minus pension, if any.

(6) Any other person appointed as Judge or Principal Judge or Additional Principal Judge of a Court shall be entitled to such pay, allowances and other benefits as may be admissible to a member of the Madhya Pradesh Higher Judicial Service in the supertime scale of pay from time to time.

4. **Association of Social Welfare agencies.-** (1) Every Principal Judge of the Family Court shall for the association with it, in consultation with the High Court and State Government maintain in respect of its area a register or registers and record therein the name of :-

(i) institutions and organisations engaged in Social Welfare in family matrimonial and allied matters and the representatives thereof;

(ii) persons professionally engaged in promoting the welfare of families; and

(iii) persons working in the field of social welfare.

(2) Subject to sub-rule (1), the Principal Judge of the Family Court may record such names after obtaining the written consent of the institution, organisation or person, as the case may be, on its own motion or its/his application.

5. **Counselling Centre.-** (1) There shall be attached to the Family Court in each city a counselling centre to be known as The Family Court Counselling Centre.

(2) The Counselling Centre shall be located in the Family Court premises or at such other place as the High Court may direct.

6. **Appointment of Counsellors** - The Counsellors shall be appointed by the State Government from the Panel of Counsellors prepared by the Principal Judge of the Family Court and approved by the High Court.

Provided that no Counsellor shall continue after he attains the age of 65 years.

7. **Number of Counsellors.-** (1) The number and categories of Counsellor in each Counselling Centre shall be such as may be determined by the Government in consultation with the High Court, from time to time.

(2) Where more than one Counsellors are appointed in Counselling Centre, one of them may be designated as Principal Counsellor by the High Court.

8. **Qualification for Counsellors.-** (1) Any person having a degree of a recognised University preferably with Social Science or psychology as one of the subjects, and minimum experience or two years in social work, child psychiatry or family counselling, shall be eligible for appointment as a counsellor:

Provided that the minimum academic qualifications may be relaxed in exceptional circumstances:

Provided further that preference may be given to women having the requisite qualification:

Provided also that person shall be eligible for appointment on the post of Counsellor unless he attained the age of 35 years and is below 60 years of age;

(2) A Candidate who-

(a) has been a judge, or

(b) has experience of Counselling in family matters shall, other things being equal, be given preference in the matter of appointment.

9. **Payment of Honorarium/fee to Counsellors.-** (1) The Honorarium or fee admissible to persons employed as counsellor shall be such as may be determined by the State Government from time to time.

(2) The Counsellor shall be entitled to the payment of Honorarium or fee at the minimum rate of Rs. 75/- (Rupees Seventy Five) per case per sitting for reconciliation. The number of sitting restricted for each case should not be more than four. In any case, the total Honorarium or fee of a counsellors shall not exceed Rs. 300/- (Rupees Three Hundred) per day.

10. **Function of Counsellor.-** (1) The Counsellor, entrusted with any petition, shall -

(i) attend the Court as and when required by the Judge of the Family Court;

(ii) aid and advise the parties regarding settlement of the subject matter of dispute or any other part thereof;

(iii) help the parties in reconciliation;

(iv) submit report or interim report, as the case may be fixed by the Court;

(v) perform such other functions as may be assigned to him by the Family Court from time to time;

(2) In performing his functions under sub-rule (1) the Counsellor shall be guided by such general or special directions may be given by the Family Court from time to time.

11. **Conditions or service of employees of a Family Court.-** The qualifications, procedure for recruitment, pay and other conditions of service of the employees of a Family Court shall be the same as of the employees of similar category in the Courts under the control of District Judge and the rules relating thereto shall, *mutates mutandis,* apply.

12. **Assistance of medical experts, welfare experts.-** (1) Where the Family Court decides to secure the services of any expert or other person referred to in Section 12 of the Act, the Courts shall indicate the exact point or points on which and manner in which the service required is to be rendered.

(2) The expert or other person referred to in sub-rule (1), shall render the service and submit its report within such time as may be indicated in the order of the Family Court or within such extended time as may be given by the Court.

(3) The Family Court shall permit the parties to file objections against such report.

(4) The court shall consider the report in deciding the dispute but shall not be bound to accept anything contained therein.

13. **Travelling and other expenses payable to medical and other experts.-** Where in the opinion of the Family Court, the assistance of an expert or other person referred to in Section 12 of the Act is necessary, but the party needing such assistance does not have means to pay his fees and travelling and other expenses, it may, suo motu or on the application of the party, direct the payment of such fees and expenses, out of the revenue of the State as specified below :-

1	2
(a) If the expert is Government servant	Travelling expenses at the rates as admissible to him in the service of the State Government.
(b) If the expert is not a Government servant	Travelling expenses at the rates as admissible to class-I officer of the State Government plus Rs. 500/- as fees per day.

14. **Permission for representation by a lawyer.-** The Court may permit the parties to be represented by a lawyer in Court. Such permission may be granted if the case involves complicated question of law or fact and if the Court is of the view that the party in person is not in a position to conduct his or her case adequately or for any other reasons. The reason for granting permission shall be recorded in the order. Permission so granted may be revoked by the Court at any stage of the proceedings if the Court considers it just and necessary.

15. **Time for making application.-** An application by a party for being represented by a lawyer in court shall be made by such party to the court after notice to the other side. Such an application shall be made not less than two weeks prior to the date fixed for hearing of the petition.

16. **Application not to be entertained during the hearing.-** An application under rule 15 shall not be entertained after the petition is placed for hearing on the daily board of the court unless there are exceptional circumstances justifying such late application.

17. **Independent legal representation of a minor.-** The Court may appoint a lawyer to represent independently any minor affected by litigation before the court. The court may give suitable directions regarding fees to be paid to such a lawyer.

18. **Amicus Curiae.-** (1) The Family Court shall maintain a panel of legal experts, including legal practitioners, willing to be appointed as amicus curiae.

(2) Where it appears to the Family Court that the assistance of a legal expert as amicus curiae is necessary in the interest of justice, the court may engage a legal expert from the said panel.

(3) The amicus curiae, engaged under sub-rule (2), may be paid by the Family Court out of the revenues of the State, fees and expenses at the rates of Rupees Five Hundred per case or proceeding.

19. **Termination of appointment of Counsellor.-** The appointment of a counsellor may be terminated at any time before the expiry of his term on the recommendation of the Judge of the Family Court.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार
एन.के. गुप्ता, अतिरिक्त सचिव,

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2. NOTIFICATION REGARDING ESTABLISHMENT OF SEVEN FAMILY COURTS AT SPECIAL PLACES PUBLISHED IN M.P. RAJPATRA (ASADHARAN) DATED 15.3.2002 PAGE 140.

Notification No. F.-4-1-2002-XXI-B (I) dated the 4th March, 2002.- In exercise of the powers conferred by Section 3 of the **Family Courts Act, 1984 (No. 66 of 1984)**, the State Government hereby after consultation with the High Court, establish, with effect from 8th March 2002, the Family Courts specified in column (2) of the Schedule below, at the headquarters specified in the corresponding entries in column (3), for the areas specified in column (4), of the said Schedule:

SCHEDULE

S.No. (1)	Name of the Court (2)	Head quarters (3)	Jurisdiction (4)
1.	Family court, Indore	Indore	Limits of Municipal Corporation. Indore including Cantonment area if any.
2.	Family Court, Ujjain	Ujjain	Limits of Municipal Corporation, Ujjain including Cantonment area if any.
3.	Family Court, Gwalior	Gwalior	Limits of Municipal Corporation, Gwalior including Cantonment area if any.
4.	Family Court, Rewa	Rewa	Limits of Municipal Corporation, Rewa including Cantonment area if any.
5.	Family Court, Sagar	Sager	Limits of Municipal Corporation, Sagar including Cantonment area if any.
6.	Family Court, Jabalpur	Jabalpur	Limits of Municipal Corporation, Jabalpur including Cantonment area if any.
7.	Family Court, Bhopal	Bhopal	Limits of Municipal Corporation, Bhopal including Cantonment area if any.

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3. NOTIFICATION ISSUED BY THE CENTRAL GOVERNMENT REGARDING ENFORCEMENT OF CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 1999 AND THE CODE OF CIVIL PROCEDURE (AMENDMENT) ACT, 2002.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

NOTIFICATION

New Delhi, the 6th June, 2002

S.O. 603 (E)- In exercise of the powers conferred by Sub-section (2) of Section 1 of the **Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999)**, the Central Government hereby appoints the **1st the July, 2002**, as the date on which all provisions [except clause (iii) of section 16, clause (iii) of section 18 so far as it relates to rules 9 and 10 of Order VIII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) and section 30] of the said Act shall come into force.

NOTIFICATION

New Delhi, the 6th June. 2002

S.O. 604 (E)- In exercise of the powers conferred by Sub-section (2) of Section 1 of the **Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002)**, the Central Government hereby appoints the **1st day of July, 2002**, as the date on which the provisions of the said Act shall come into force.

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4. NOTIFICATION ISSUED BY THE CENTRAL GOVERNMENT REGARDING ENFORCEMENT OF N.D.P.S. (AMENDMENT) ACT, 2001 PUBLISHED IN GAZETTE OF INDIA EXTRAORDINARY DATED 27.9.2001, PART II, SECTION 3 (ii) PAGE 702.

Narcotic Drugs and Psychotropic Substances (Amendment) Act (9 of 2001), S.1 (2)- Coming into force of the Act on 2-10-2001- In exercise of the powers conferred by sub-section (2) of section 1 of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (9 of 2001), the Central Government hereby appoints the 2nd day of October, 2001 as the date on which the said Act shall come into force in the whole of India.

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गुस्सा एक प्रकार का क्षणिक पागलपन है।

- महात्मा गांधी

जो सच्चाई पर निर्भर है, वह किसी से घृणा नहीं करता।

- नेपोलियन

PART - IV

LATEST IMPORTANT AMENDMENTS IN CENTRAL/STATE ACTS

1. C.P.C. (AMENDMENT) ACT 2002

NOTE : To avoid delay at various levels in civil proceedings, the Code of Civil Procedure 1908 was exhaustively amended by the Code of Civil Procedure (Amendment) Act, 1999 (Refer : M.P. Law Times 2000, Part V page 1). Before the amended provisions could come into force, the Code of Civil Procedure, 1908 was again amended by the Code of Civil Procedure (Amendment) Act 2002. These amendments were brought into force from 1st July, 2002 vide Notification dated 6th June, 2002 issued by the Central Government. (Please refer Part III Page 6 of this Journal)

The Code of Civil Procedure (Amendment) Act, 2002 is being reproduced here for your benefit :

1. **Short title and commencement.-** (1) This Act may be called THE CODE of CIVIL PROCEDURE (AMENDMENT) ACT, 2002.

(2) It Shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof.

2. **Amendment of section 39.-** In section 39 of the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), after sub-section (3), the following sub-section shall be inserted, namely :-

"(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.".

3. **Amendment of section 64. -** Section 64 of the principal Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely :-

"(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment".

4. **Substitution of new section for section 100- A**- For section 100-A of the principle Act (as substituted by section 10 of the Code of Civil Procedure (Amendment) Act, 1999), the following section shall be substituted, namely :-

"100-A. No further appeal in certain cases.- Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

5. **Substitution of new section for section 102.-** For section 102 of the principal Act (as substituted by section 11 of the Code of Civil Procedure (Amendment) Act, 1999), the following section shall be substituted, namely :-

"102. No second appeal in certain cases.- No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees."

6. **Amendment of order V.-** In the First Schedule to the principle Act (hereinafter referred to as the First Schedule), in Order V,-

(i) In rule 1, for sub-rule (1) [as substituted by clause (i) of section 15 of the Code of Civil Procedure (Amendment) Act, 1999], the following sub-rule shall be substituted, namely :-

"(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant :

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.";

(ii) for rule 9 (as substituted by clause (v) of section 15 of the Code of Civil Procedure (Amendment) Act, 1999), the following rules shall be substituted, namely:-

"(9) Delivery of summons by Court.- (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court.

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant.

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).

9A. Summons given to the plaintiff for service.- (1) The Court may, in addition to the service of summons under rule 9, on the application of the plaintiff for the issue of a summons for the appearance of the defendant, permit such plaintiff to effect service of such summons on such defendant and shall, in such a case, deliver the summons to such plaintiff for service.

(2) The service of such summons shall be effected by or on behalf of such plaintiff by delivering or tendering to the defendant personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court or by such mode of service as is referred to in sub-rule (3) of rule 9.

(3) The provisions of rules 16 and 18 shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant."

7. **Amendment of Order VI.-** In the First Schedule, in Order VI, for rules 17 and 18 [as they stood immediately before their omission by clause (iii) of section 16 of the Code of Civil Procedure (Amendment) Act, 1999], the following rules shall be substituted, namely :-

"17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

18. Failure to amend after order.- If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.".

8. **Amendment of Order VII.-** In the First Schedule, in Order VII,-

(i) for rule 9 [as substituted by clause (i) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:-

"9. Procedure on admitting plaint.- Where the Court orders that the summons be served on the defendants in the manner provided in rule 9 of Order V, it will direct the plaintiff to present as many copies of the plaint on plain paper as there are defendants within seven days from the date of such order alongwith requisite fee for service of summons on the defendants.";

(ii) in rule 11, for sub-clauses (f) and (g) [as inserted by clause (ii) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], the following sub-clause shall be substituted, namely :-

"(f) where the plaintiff fails to comply with the provisions of rule 9.";

(iii) in rule 14 [as substituted by clause (iii) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999], for sub-rule (3), the following sub-rule shall be substituted, namely :-

"(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.";

(iv) rule 18 [as amended by clause (v) of section 17 of the Code of Civil Procedure (Amendment) Act, 1999] shall be omitted.

9. **Amendment of Order VIII.-** In the First Schedule, in Order VIII,-

(i) for rule 1 [as substituted by clause (i) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:-

"1. Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence :

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.";

(ii) in rule 1A [as inserted by clause (ii) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], for sub-rule (3), the following sub-rule shall be substituted, namely :-

"(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.";

(iii) for rules 9 and 10 [as they stood immediately before their omission by clause (iii) of section 18 of the Code of Civil Procedure (Amendment) Act, 1999], the following rules shall be substituted, namely :-

"9. Subsequent pleadings- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.".

10. **Amendment of Order IX.-** In the First Schedule, in Order IX, for rule 2 [as substituted by clause (i) of section 19 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely :-

"2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.- Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges, if any, chargeable for such service, or failure to present copies of the plaint as required by rule 9 of Order VII, the Court may make an order that the suit be dismissed :

Provided that no such order shall be made, if notwithstanding such failure, the defendant attends in person or by agent when he is allowed to appear by agent on the day fixed for him to appear and answer."

11. **Amendment of Order XIV.-** In the First Schedule, in Order XIV, for rule 5 [as it stood immediately before its omission by clause (ii) of section 24 of the Code of Civil Procedure (Amendment) Act, 1999], the following rule shall be substituted, namely:-

"5. Power to amend and strike out issues.- (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.".

12. **Amendment of Order XVIII.-** In the First Schedule, in Order XVIII,-

(a) in rule 2, after sub-rule (3), the following sub-rules shall be inserted, namely:-

"(3-A) Any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3-B) A copy of such written arguments shall be simultaneously furnished to the opposite party.

(3-C) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3-D) The Court shall fix such time-limits for the oral arguments by either of the parties in a case, as it thinks fit.";

(b) for rule 4 [as substituted by clause (ii) of section 27 of the Code of Civil procedure (Amendment) Act, 1991], the following rule shall be substituted, namely:-

"4. Recording of evidence.- (1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence :

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed alongwith affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this subrule, consider taking into account such relevant factors as it thinks fit:

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination :

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the commission within sixty days from the date of issue of the commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such commission under this rule.".

13. **Amendment of Order XX.-** In the First Schedule, in Order XX, in rule 1, for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders :

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders."

14. **Amendment of Order XXI.-** In the First Schedule, in Order XXI,-

(a) in rule 32, in sub-rule (5), the following Explanation shall be inserted, namely:-

"Explanation.- For the removal of doubts, it is hereby declared that the expression "the act required to be done" covers prohibitory as well as mandatory injunctions.";

(b) in rule 92, in sub-rule (2),-

(i) for the words "thirty days", the words "sixty days" shall be substituted;

(ii) after the first proviso, the following proviso shall be inserted, namely :-

"Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002."

15. **Amendment of the Code of Civil Procedure (Amendment) Act, 1999.-** In the Code of Civil Procedure (Amendment) Act, 1999,-

(a) section 30 shall be omitted;

(b) in section 32 in sub-section (2),-

(i) clauses (g) and (h) shall be omitted;

(ii) for clause (j), the following clause shall be substituted, namely :-

"(j) the provisions of rules 1, 2, 6, 7, 9, 9-A, 19-A, 21, 24 and 25 of Order V of the First Schedule as amended or, as the case may, be substituted or omitted by section 15 of this Act, and by section 6 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to in respect of any proceedings pending before the commencement of section 15 of this Act and section 6 of the Code of Civil Procedure (Amendment) Act, 2002;";

(iii) for clause (k), the following clause shall be substituted, namely:-

"(k) the provisions of rules 9, 11, 14, 15, and 18 of Order VII of the First Schedule as amended or, as the case may be, substituted or omitted by, section 17 of this Act and by section 8 of the Code of Civil Procedure (Amendment) Act, 2002, shall

not apply to in respect of any proceedings pending before the commencement of section 17 of this Act and section 8 of the Code of Civil Procedure (Amendment) Act, 2002;";

(iv) for clause (l), the following clause shall be substituted, namely :-

"(l) the provisions of rules 1, 1-A, 8-A, 9 and 10 of Order VIII of the First Schedule as substituted or, as the case may be, inserted or omitted by section 18 of this Act and by section 9 of the Code of Civil Procedure (Amendment) Act, 2002, shall not apply to a written statement filed and presented before the commencement of section 18 of this Act and section 9 of the Code of Civil Procedure (Amendment) Act, 2002;";

(v) for clause (q), the following clause shall be substituted, namely :-

"(q) the provisions of rules 4 and 5 of Order XIV of the First Schedule as amended or, as the case may be, substituted by section 24 of this Act and section 11 of the Code of Civil Procedure (Amendment) Act, 2002, shall not affect any order made by the Court adjourning the framing of the issues and amending and striking out issues before the commencement of secton 24 of this Act and section 11 of the Code of Civil Procedure (Amendment) Act, 2002;".

(vi) in clause (s) for the figures "25" at both the places, the figures "26" shall be substituted;

(vii) clause (u) shall be omitted.

16. **Repeal and savings.-** (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature of High Court before the commencement of this Act shall, except in so far as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,-

(a) the provisions of section 102 of the principal Act as substituted by section 5 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 5; and every such appeal shall be disposed of as if section 5 had not come into force;

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the Code Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and section 7 of this Act;

(c) the provisions of rule 1 of Order XX of the First Schedule as amended by section 13 of this Act shall not apply to a case where the hearing of the case had concluded before the commencement of section 13 of this Act.

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बड़े से बड़ा अधिकार सेवा और त्याग से मिलता है।

- प्रेमचंद