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दृढ़ निश्चय

शरद से बसंत ऋतु तक यथा अक्टूबर से अप्रेल तक का मौसम, वातावरण सबसे ज्यादा सुखद अल्हाददायक, प्रसन्नचित्त करने वाला एवं उत्साह वर्धक रहता है। स्वाभाविक रूप से इस कारण कार्य दक्षता, क्षमता में भी नैसर्गिक रूप से वृद्धि हो जाती है। ऐसे सुवर्ण समय का उपयोग भी हम अपने न्यायिक एवं न्यायिकेतर कार्यों के लिए करते ही हैं। सकारात्मक रूप से गतिशीलता मार्ग संक्रमण में और अधिक स्फूर्ति, उत्प्रेरणा प्रदान करती है।

ऐसे ही वातावरण में एक दिन सुबह 'लीडरशिप' की पुस्तक, जो मानव मूल्यों के शिक्षण हेतु सत्य साईं बाबा द्वारा लिखी गई कृति को पढ़ रहा था। ब्रिटेन के तत्कालीन प्रधानमंत्री सर विंस्टन चर्चिल के विषय में पढ़ने को मिला अच्छा लगा। लगना भी चाहिए था। कुछ बातें अच्छी लगती हैं यदि व्यवहार में उतारने का कष्ट न हो। उस लेख के माध्यम से व्यवहारिक उपदेश दिया था। प्रभावित हुआ। व्यवहार में उतारना लगभग असंभव है यदि हमारा लक्ष्य भाग्य से मिली नौकरी की वैतरणी सुविधापूर्ण रूप से जैसे तैसे पार करना मात्र है। लेख में दृढ़ निश्चय की महत्ता की प्रस्तुती की गई है। द्वितीय विश्वयुद्ध में एक शिखर पुरुष के रूप में उनकी छवि विश्व के सामने उभर कर आई। युद्ध में विजय की सफलता का श्रेय उन्हें मिला। तेजस्विता युक्त उदात्त सफलता पर उन्हें एक पाठशाला में आमंत्रित किया गया। उक्त महाभाग के मुखार विंद से अनुभव श्रवण कर के नवयुवक उन्नति करें ऐसा स्वाभाविक आशय स्कूल के संचालकों का रहा था। सभागृह जन समुदाय से खचाखच भरा था। हर कोई दिल थामं कर उन्हें सुनना चाहता था कि इतनी महान सफलता के पीछे क्या भेद है, क्या राज है। औपचारिकताओं को आयोजकों ने पूर्ण करने के पश्चात वक्ता के रूप में चर्चिल का व्यासपीठ पर आगमन होना था ताकि वे अपनी शैली में विचारों को अभिव्यक्त कर सकें। वे उठे, व्यासपीठ पर पहुंचे एवं श्रोताओं से आमुख हुए। हर श्रोता आतुर था कि वे आज क्या बोलेंगे, क्या कहेंगे। हर कोई विस्मित था, चकित था। धीर गंभीर संवेदनशील मुद्रा में जब श्रोता थे तो सर विंस्टन चर्चिल ने उद्‌बोधन में कहा–

कभी नहीं, कभी नहीं, कभी नहीं, कभी नहीं त्यागो !

इतना कह कर मंथर गति से अपने आसन पर विराजमान हो गए। जन समुदाय एकदम अचंभित हो गया। लोग सोच रहे थे कि अच्छा खासा भाषण होगा लेकिन क्षण भर में ही उन्होंने अपने विचारों को विराम दे दिया था। चर्चिल ने अपने जीवन में काफी उतार–चढ़ाव देखे थे लेकिन उन्होंने कभी भी साहस नहीं खोया था।

दोस्तो यह सब संभव नहीं कि हम आप जैसे सर्वसामान्य जन आत्म विश्वास एवं साहस नहीं खोएंगे लेकिन प्रयत्न तो होता रहे इसी में सार्थकता है। यह बात भी सही है कि विश्वासहीनता के कारण उत्साह हीनता आती है। हम यथा संभव प्रयत्न करेंगे। सफल रहते हैं तो हम सभी कह सकेंगे कि कभी नहीं, कभी नहीं, हम कभी–भी प्रयत्न को नहीं त्यागेंगे। दृढ़ निश्चयी बनना है।

अपेक्षाएँ साकार हों

दिनांक 26-10-98 को अतिरिक्त जिला एवं सत्र न्यायाधीशों के लिए नया सत्र प्रारंभ हुआ। उक्त सत्र में 1997 में पदोन्नत व एक नवनियुक्त तथा 1998 में पदोन्नत कुछ अतिरिक्त जिला एवं सत्र न्यायाधीशगणों को आहुत किया गया था। उक्त सत्र का सत्रारंभ माननीय मुख्य न्यायाधिपति महोदय श्रीमान ए. के. माथुर साहेब के मंगलाचरणयुक्त आशीर्वचन से प्रारंभ हुआ। नव–नियुक्त न्यायिक अधिकारीगणों को शुभाशीष देते हुए माननीय महोदय ने विश्वास प्रगट किया कि इतने बड़े जिम्मेदार पद के कर्त्तव्यों का निर्वाह गरिमामयी व्यवहार एवं पूर्ण न्यायिक योग्यता से किया जाएगा। माननीय महोदय ने अपने विचारों को अभिव्यक्त करते हुए कहा कि कोई भी न्यायाधीश कभी भी पूर्णता प्राप्त नहीं कर सकता क्योंकि यह इतना विशाल कार्यक्षेत्र है कि जितना भी अधिक अध्ययन होता रहेगा कार्यक्षेत्र और भी अधिक बढ़ता जाएगा एवं ज्ञान में वृद्धि होती रहेगी। विश्व औद्योगिकरण की ओर बहुत तीव्र गति से बढ़ रहा है। वैज्ञानिक अनुसंधानों के कारण आवागमन एवं संचार माध्यमों के द्वारा विश्व की दूरी कम हो चुकी है। इस प्रकार बहुआयामी क्षेत्र के विशालता के कारण न्यायक्षेत्र के भी विविध पहलू सामने आ रहे हैं। अतः ज्ञान बढ़ाने की प्रक्रिया में न्यायिक अधिकारीगणों को और अधिक सक्रिय बनना है।

माननीय माथुर साहेब ने अपने संबोधन में आगे कहा कि न्यायालय में न्यायिक अधिकारी जब कार्य करते हैं तो किसी भी प्रकार से कोई धारणा बनाकर नहीं बैठना चाहिए अपितु खुले मन से दूसरे पक्षों द्वारा प्रस्तुत विचारों एवं तर्कों को अभिव्यक्ति एवं प्रासंगिकता को भी समझना चाहिए। उदाहरण देते हुए आपने यह भी कहा कि उच्च न्यायालयों एवं सर्वोच्च न्यायालय में समय–समय पर विचारों में परिवर्तन आता है व नए दृष्टिकोण को स्वीकार किया जाता है। अतः निःसंकोच रूप से भूलों को सुधारना है तथा हर तथ्य एवं विधि संबंधि प्रावधानों को सोच समझकर विचार में लेना है। न्यायाधीशों को मानवीय भावनाओं से कार्य करना है लेकिन इसका यह अर्थ नहीं है कि भावुकतावश गलत रूप से अयोग्य व्यक्ति पर न्यायिक अनुकंपा दर्शाना है।

माननीय माथुर महोदय ने न्यायिक प्रक्रिया के परिणामों की ओर ध्यान आकृष्ट करते हुए बताया कि न्यायाधीशगणों ने निर्णय अत्यन्त सोच समझ कर, समझदारी एवं न्यायिक विवेक से करना चाहिए क्योंकि न्यायालय द्वारा एक बार दिए निर्णय को समाप्त करना अत्येन्त कठिन हो जाता है। अतः सतत प्रयत्न होना चाहिए कि किसी

भी प्रकार से कोई अन्याय पक्षकारों के साथ न हो। हड़बड़ाहट न हो। गंभीर चिंतन, अनभिज्ञता, जाग्रतता जैसे गुण न्यायाधीश में होंगे तो न्यायिक चिंतन गुणात्मक रूप से हो सकेगा ऐसा भी आपने अभिव्यक्त किया।

न्यायिक अधिकारीगणों को गुणात्मक पक्ष का पथ प्रदर्शन करने के पश्चात श्रीमान माथुर साहेब ने न्यायिक अधिकारीगणों को प्रशासनिक रूप से सतर्क एवं चौकस करते हुए कहा कि न्यायालयीन मर्यादाओं का उल्लंघन नहीं होना चाहिये। न्यायिक कार्य का नियंत्रण न्यायाधीश के हाथों में हैं तथा समस्त न्यायिक कार्य पीठासीन अधिकारी के सामने न्यायपीठ पर होना है। ऐसा अवसर न आने देने के लिए सचेत करके कहा कि ऐसा न हो कि न्यायिक अधिकारी चेंबर में बैठा रहे व न्यायालय कक्ष में वकील व कर्मचारीगण के भरोसे कार्य चल रहा हो। ऐसा कृत्य नौकरी को खो देने की सीमा तक भी दंडनीय हो सकेगा। न्यायिक निष्ठा व ईमानदारी के मुद्दे के साथ अपने विचारों को इस सत्र के लिए विराम देते हुए माननीय मुख्य न्यायाधिपति श्रीमान माथुर महोदय ने यह अभिव्यक्त किया कि सर्वसाधारण व्यक्ति भी न्यायाधीश पर ध्यान केंद्रित किए रहता है व यह बात देखता रहता है कि उसका न्यायिक चरित्र एवं आचरण कैसा है। अतः न्यायिक अधिकारीणों का यह आव्हान किया कि वे सम्पूर्ण निष्ठा व लगन से कार्य करें। इस बात को विशेष रूप से अभिव्यक्त किया कि न्यायिक अधिकारी प्रसिद्धि उन्मुख न हो तथा अपने आप को प्रचार एवं चर्चा का विषय न बनाते हुए स्वयं को दूर रखें। उनका यह अभिप्राय था कि न्यायिक अधिकारीगणों का कर्म ही उनकी छवि होगी जो साकारता, रूपाकार युक्तता प्रदर्शित करेगी।

दिनांक 3-11-98 तक चले सत्र में माननीय पूर्व न्यायाधिपति श्रीमान के. के. वर्मा, फोरेन्सिक विभाग, सागर के विशेषज्ञ सर्वश्री अग्रवाल, शुक्ल, गौतम एवं सुभेदार, आर्थोपेडिक सर्जन डॉ. जितेन्द्र जामदार, डॉ. साकल्ले, रजिस्ट्रार जनरल श्री सी. एस. गुप्ता, विजिलेन्स रजिस्ट्रार श्री नारायण श्रीवास्तव एवं अतिरिक्त रजिस्ट्रार श्री के. सी. शर्मा, श्री टी. के. झा एवं श्री सी. व्ही. सिरपुरकर ने अपने विद्वतापूर्ण विचारों से प्रशिक्षणार्थियों का मार्गदर्शन दिया।

NOT IN THE CLAMOR OF THE CROUDED STREET,
NOT IN THE SHOUTS AND PLAUDITS OF THE THRONG,
BUT IN OURSELVES, ARE TRIUMPH AND DEFEAT.

- HENRY WADSWORTH
LONG FELLOW

व्यवहार न्यायालयों में कार्यपद्धति : एक व्यवहारिक पहलू

मांगीलाल कसानिया
जिला न्यायाधीश, शिवपुरी

1. हर न्यायिक प्रकरण में न्यायाधीश/मजिस्ट्रेट अपने हस्ताक्षर के नीचे अपना नाम लिखें या लिखवायें। इसके लिये "रबर स्टाम्प" का उपयोग किया जा सकता है। इसकी उपयोगिता यह है कि अपील या रिवीजन न्यायालय एवं निरीक्षणकर्ता प्राधिकारी को यह पता लग जाता है कि किस न्यायाधीश की आर्डर शीट है।
2. जब प्रकरण पंजीयन के बाद एक न्यायालय से दूसरे न्यायालय में अंतरित हो, तो जिस न्यायालय से प्रकरण अंतरित हो रहा हो, उसके पीठासीन अधिकारी को आर्डर शीट में यह लिखवाना चाहिए कि किस आदेश के अंतर्गत वह फाईल किस न्यायालय या किस न्यायाधीश/मजिस्ट्रेट के न्यायालय को निपटाने हेतु भेजी जावे।
3. उपर्युक्त प्रकरण जब अंतरण पर अन्य न्यायालय में पहुंचे तो उस न्यायालय की पहली आर्डरशीट में उपर्युक्त विवरण विशेषकर अंतरण के आदेश के विवरण तथा अभिलेख के पहुंचने की तारीख का उल्लेख अवश्य होना चाहिए। फिर उस प्रकरण को आंतरित न्यायालय में दर्ज करके नया नंबर दिया जाने का आदेश होना चाहिए। आंतरित न्यायालय में जिस रजिस्टर में प्रकरण का पंजीयन किया जाये, उसमें भी प्रकरण अंतरित किये जाने का विवरण, प्रकरण के मिलने की तारीख तथा प्रकरण दर्ज करने की तारीख का उल्लेख कैफियत के खाने में होना चाहिये। आर्डरशीट में पक्षकारों या अभिभाषकों के हस्ताक्षर मार्जिन में लिये जाने चाहिये।
4. न्यायालय के लिपिकों को दिये गये निर्देशों वाली आर्डरशीट की मार्जिन पर उन लिपिकों पर "नोटेड" लिखकर अपने हस्ताक्षर एवं तारीख सहित संक्षिप्त हस्ताक्षर करना चाहिये और अगली तारीख पेशी के पूर्व उसके नीचे अपने द्वारा कार्यपूर्ति किये जाने या न किये जाने बाबत संक्षिप्त हस्ताक्षर सहित टीप करनी चाहिए। (नोट : वास्तव में एक पुस्तिका "दैनिक निर्देश पुस्तिका" रखी जाना है जिसमें कर्मचारीगणों को निर्देश देना होता हैं व उसका पालन हो रहा है या नहीं यह देखना होता है।)

5. जिन प्रकरणों में न्यायालय के निर्देशों का पालन नहीं होता या देर से होता है, उसको ध्यान में रखते हुए न्यायालय मजिस्ट्रेट को अगली आर्डर शीट लिखना चाहिये। यदि त्रुटिकर्ता लिपिक ने स्पष्टीकरण न दिया हो तो स्पष्टीकरण लेकर उस पर उचित आदेश पारित करना चाहिए। यदि स्पष्टीकरण दिया गया तो उस पर मत लिखकर त्रुटिकर्ता लिपिक के हस्ताक्षर पुनः मार्जिन में लिये जाना चाहिये। (नोट : यह प्रशासनिक कार्यवाही अलग से करना है।)

6. हर आर्डर शीट लिखने के पहले पिछली आर्डर शीट या पिछली दो–तीन आर्डरशीटें अवश्य देख ली जानी चाहिए, ताकि पिछले दिये गये आदेशों का पालन हुआ है या नहीं, यह भी उनमें अंकित किया जा सके।

7. जिस कागज पर वाद प्रश्न बनाये जाते हैं, उस पर प्रकरण के पंजीयन क्रमांक के सामने उस प्रकरण की मूल दायरा तारीख (संस्थापन दिनांक) अंकित करना चाहिए। यह दायरा तारीख निर्णय एवं डिक्री में भी उपर्युक्त ढंग से ही लिखी जानी चाहिये। (नोट : यथा संभव जजमेंट पेपर पर वाद प्रश्न बनाएं ताकि एकदम दृष्टिगोचर हो सके।)

8. आपराधिक प्रकरणों में चार्ज के फार्म पर भी प्रकरण क्रमांक व दायरा तारीख तथा निर्णयों व जेल वारण्टों में भी प्रकरण के दायरा की आरंभिक तारीख अंकित होना चाहिये।

9. व्यवहार वादों में, वाद का क्षेत्राधिकार और न्याय शुल्क हेतु दिये गये मूल्यांकन को प्रदर्शित करना चाहिये। ऐसे प्रकरणों में अपील होने पर, अपील में पारित डिक्रियों में अपील के क्षेत्राधिकार व न्याय शुल्क का भी उल्लेख तो होना ही चाहिये और साथ में व्यवहार वाद के मूल्यांकन का भी उल्लेख होना चाहिये। इस तरह ही पद्धति विविध न्यायिक प्रकरणों, निष्पादन प्रकरणों और उनसे की गई अपीलों या निगरानियों में अंतिम आदेश में देनी चाहिये।

10. न्यायिक दैनंदिनी में प्रविष्टि करते समय म.प्र. रूल्स एण्ड आर्डर्स, सिविल (संक्षिप्त में नियम का संबोधन आगे किया जायेगा) के नियम 6 उल्लेखित अनुदेशों (हिदायतों) का पालन किया जावे।

11. नियम 7 अनुसार प्रकरण–सूची (कॉज–लिस्ट) आवश्यक रूप से बनाई जाये।

12. समस्त वाद–प्रतिवाद, अपील के ज्ञापन, याचना–पत्र, शपथ पत्र तथा इसी प्रकार के समस्त लेख, जो न्यायालय में प्रस्तुत होते हैं, लेखक अथवा टायपिस्ट द्वारा हस्ताक्षरित होना चाहिये, जो यह भी उल्लेख करेगा कि उसने किस हैसियत

से उसे लिखा अथवा टाईप किया है। यदि वह अनुमति–पत्र प्राप्त आवेदन पत्र लेखक है, तो वह अपनी मुद्रा (सील) उस पर लगायेगा तथा अपने रजिस्टर का उस लेख का अनुक्रम क्रमांक भी अंकित करेगा। पीठासीन न्यायाधीश इस हेतु आवश्यक निर्देश दे सकते हैं और इस तरह के लेख न्यायालय में प्रस्तुत होते समय आवश्यक आवश्यकता की पूर्ति करा सकते हैं।

13. विविध न्यायिक प्रकरण के रूप में दर्ज होने वाले के अतिरिक्त, अन्य प्रत्येक याचना–पत्र अथवा अंतरवर्ती आवेदन पत्र पर प्रस्तुतकार द्वारा उसके उस वाद या कार्यवाही में प्रस्तुत होने की तिथि क्रमानुसार अनुक्रम क्रमांक डाला जायेगा। इस क्रमांक की प्रविष्टि प्रार्थना–पत्र अथवा याचना पत्र के शीर्ष भाग पर "लाल स्याही" से निम्न प्रकार की जायेगी। किसी भी वाद या कार्यवाही में प्रथम अंतरवर्ती प्रार्थना पत्र या याचना पत्र पर "अंतरवर्ती आवेदन पत्र क्रमांक" तथा द्वितीय पर "द्वितीय अंतरवर्ती आवेदन पत्र क्रमांक 2" तथा इसी प्रकार आगे दिया जावेगा इस प्रकार दिया गया यह क्रमांक प्रस्तुतकार द्वारा आदेश लेख–पत्र (आर्डर शीट) के हाशिये में उस आवेदन पत्र अथवा याचना पत्र की प्रस्तुति संबंधी लेख के सम्मुख दर्ज किया जावेगा।

14. अकिंचन के रूप में वाद लाने की अनुमति के प्रार्थना पत्र की सूचना कलेक्टर को देना आवश्यक है। (नोट: इसी प्रकार धारा 35 कोर्ट फी अधिनियम के अंतर्गत वादी द्वारा कोर्ट फी से छूट चाही हो तो भी कलेक्टर को सूचित कर प्रतिवेदन भेजने हेतु लिखा जाना है क्योंकि सरकारी राजस्व का मामला है।)

15. इस बात का निर्धारण करने में कि क्या समंस का निर्वाह पर्याप्त एवं समुचित है, न्यायाधीश का ध्यान सि.प्र.स. की वैधानिक आवश्यकताओं के कड़ाई से पालन की आवश्यकता की ओर आकृष्ट किया जाता है। जब कभी आदेशिका आदेश 5 नियम 17 के अंतर्गत वापस की गई है तथा वापिसी का सत्यापन आदेशिका–वाहक ने शपथ पत्र द्वारा नहीं किया है, तब न्यायालय को यह अनिवार्य है कि वह आदेश 5 नियम 19, के अंतर्गत जांच करे तथा वह संतुष्ट हो, यथोचित निर्वाह की स्पष्ट घोषणा लेखबद्ध करे या उसे निर्वाह कराने का आदेश, जैसा कि वह उचित समझे, प्रदान करे।

16. उच्च न्यायालय द्वारा प्रचलित सूचना–पत्र आदि के निर्वाह के संबंध में नियम 74, 75 एवं 76 का आवश्यक रूप से पालन किया जावे। विधान में इसके विपरीत किसी प्रावधान के अधीन, सार्वजनिक तथा नगर पालिका के मूल अभिलेखों के मूल लेखों को नहीं मंगवाना चाहिये, जबकि उनकी उचित रीति से प्रमाणीकृत

एवं प्रमाणित प्रतिलिपियां साक्ष्य में ग्रहण की जाने योग्य हैं, तथा उनसे वह अभिप्राय, जिसके लिये उनकी आवश्कयता है, उद्देश्य पूर्ण हो जावेगा।

17. मूल वादों में, अवयस्क प्रतिवादी के लिये वादकालीन संरक्षक की नियुक्ति के विषय में, न्यायाधीश का ध्यान आदेश 32 के नियम 3, 4, 4(अ) जैसा कि उच्च न्यायालय द्वारा संशोधित किया गया है, की ओर आकृष्ट किया जाता है। वादकालीन संरक्षक, व्यवहार प्रक्रिया संहिता के आदेश 8 नियम 11 अनुसार वांछित अपना पंजीकृत पता प्रस्तुत करेगा।

18. न्यायाधीश का ध्यान आव्हानित व्यक्तियों की उपस्थिति हेतु दिनांक नियत करते समय सि.प्र.सं. के आदेश 5 के नियम 6 तथा आदेश 16 के नियम 9 की ओर दिलाया जाता है।

19. प्रत्येक मास में, माह के प्रथम कार्य दिवस से प्रारंभ होने वाला पर्याप्त संख्या में कार्य दिवसों का एक पूर्ण संवर्ग (अनब्रोकन ब्लाक) नियमित दावों के परीक्षण हेतु रखा जाना चाहिये। यह संवर्ग केवल साक्ष्य के प्रकरणों के लिये रखा जाना चाहिये, अतिरिक्त इसके कि कोई अमुख्य प्रकार का कार्य, जिसमें कि न्यायाधीश के अधिक समय तथा ध्यान की आवश्यकता न हो, वह साक्ष्य के प्रकरणों के साथ नियत किया जा सकता है।

20. परीक्षण हेतु तिथि नियत करने के पूर्व परीक्षण संबंधी समस्त प्रारंभिक विषय तय कर दिये जाने चाहिये।

21. स्थगन देते समय सि.प्र.सं. के आदेश 17 नियम 1 तथा नियम 120, 121, 124, 133 का कड़ाई से पालन किया जाना चाहिये तथा साक्षीगण का परीक्षण दिन–प्रतिदिन जारी रखा जाना चाहिये।

22. साक्ष्य के समाप्त होते ही अविलंब तर्क सुने जाने चाहिये तथा जब तक कि प्रकरण लंबा तथा जटिल न हो, उसे नियमतः साक्ष्य समाप्त होने के पश्चात तर्क के लिये स्थगित नहीं करना चाहिये। यदि कोई स्थगन आवश्यक है तो पीठासीन न्यायाधीश द्वारा उसके कारण लेखबद्ध किये जाने चाहिये तथा वह बहुत अल्पावधि के तिथि के अतिरिक्त अन्य काल का नहीं होना चाहिये।

23. पीठासीन न्यायाधीशों का ध्यान आदेश 10 नियम 1 के प्रावधानों, जिनका कि पालन कभी–कभार किया जाता है, की ओर दिलाया जाता है। यदि वादपत्र या प्रतिवाद पत्र में तथ्य संबंधी अभिकथनों को अभिवचनों में स्पष्टतः या आवश्यक तात्पर्यों से स्वीकृत अथवा अस्वीकृत किया गया है तो न्यायालय को प्रथम सुनवाई पर पक्षकार अथवा उसके अभिभाषक से प्रश्न करने की कार्यवाही करना चाहिये

तथा उसकी उस अभिकथनों के संबंध में स्वीकृति अथवा अस्वीकृति सुस्पष्ट रूप से लेखबद्ध करना चाहिये। आदेश 10 नियम 2 के अंतर्गत पक्षकारों का परीक्षण वाद प्रश्नों के निश्चित करने में सुविधा हेतु अभिप्रेत है। इसकी आवश्यकता अभिवचनों में असंगत एवं अस्पष्ट अभिकथन आ जाने पर होती है।

24. सि.प्र.सं. के आदेश 11 के नियम 12 तथा 21 की ओर भी पीठासीन अधिकारी का ध्यान आकृष्ट किया जाता है। प्रकटीकरण का आदेश देने में न्यायालय को न्यायिक सिद्धांतों के आधार पर अपने विवेकाधिकार का प्रयोग करना चाहिये।

25. वाद विषयों की रचना करने में पीठासीन अधिकारी को नियम 145 में बताये निर्देशों का पालन करते हुए अग्रसर होना चाहिये। तथ्य के प्रत्येक वाद विषय की रचना इस प्रकार की जावे कि जिससे यह दर्शित हो कि प्रमाण भार किस पर पड़ता है तथा विधि के प्रत्येक वाद–निर्णय की रचना इस प्रकार की जावे, जिससे कि निर्णय योग्य विधि संबंधी प्रश्न स्पष्ट रूप में दर्शित होता हो। प्रत्येक वाद विषय में केवल एक ही प्रश्न होना चाहिए तथा जहां तक संभव हो, उसे विकल्प के रूप में नहीं रखा जाना चाहिये।

26. साक्ष्य का अभिलेखन करते समय कथन को असंदिग्ध बनाने का ध्यान रखा जाना चाहिये। एक की विषय तथा प्रलेख के संबंध में कथन में भिन्न–भिन्न शब्दों या वाक्यांशों का प्रयोग नहीं किया जाना चाहिये। किसी भी व्यक्ति का प्रसंग सुसंगत रीति में होना चाहिये, अर्थात उसका प्रसंग एक जगह उसके पारिवारिक नाम से व दूसरी जगह उसके व्यक्तिगत नाम से नहीं होना चाहिये। जब ऐसा शब्द, जिसका प्रयोग हिन्दी या अंग्रेजी भाषा में नहीं होता है, का प्रयोग अनिवार्य है, तब कथन की भाषा का निकटतम तत्सम् शब्द कोष्टक में लिखा जाना चाहिये, जिससे कि यह ज्ञात हो सके कि अधीनस्थ न्यायालय ने उसका किस अर्थ में प्रयोग किया है। इसी प्रकार जब कोई तिथि सामान्य रूप से ज्ञात पंचांग के अनुसार न हों तो उसकी तत्सम् राष्ट्रीय पंचांग की तिथि कोष्टक में लिखी जानी चाहिये।

27. निर्णय का लेखन तब तक प्रारंभ नहीं करना चाहिये, जब तक कि न्यायाधीश ने अपने मन में यह स्पष्ट न कर लिया हो कि क्या विषय उसे निराकृत करने का है, तथा उनका निराकरण उसे किस प्रकार व क्यों करना है। अति दीर्घ निर्णय सावधानी का सूचक नहीं है, बल्कि विषय को समझने की असमर्थता का द्योतक है। निर्णय को हस्ताक्षर करने के पूर्व तथा लिखे जाने के पश्चात्

न्यायाधीश उसें न पढ़े तथा जहां आवश्यक हो, वहां शुद्ध (करेक्ट) न करे, तो निर्णय के पूर्ण–रूप से स्पष्ट न होने की संभावना रहती है। अतः उसे दुबारा अवश्य पढ़े।

28. जब वाद विषय नकारात्मक में बनाये गये हैं, तो उनके निष्कर्ष सदा पूर्ण रूप से स्पष्ट रूप से लिखे जाने चाहिये। निर्णय में यह बात स्पष्ट रूप से उल्लेख की जानी चाहिये कि कोई या कितना, ब्याज (दावे के काल के ब्याज सहित) स्वीकृत किया गया है तथा क्या ब्याज केवल डिक्री के अंतर्गत वसूल किया जाने वाले धन पर लगाया जाना है या उस धन एवं वाद व्यय दोनों पर लगाया जाना है तथा किस दर से लगाया जाना है।

29. निर्णय तुरंत लिखा जाना एवं सुनाया जाना चाहिये। निर्णय के सुनाने में जितना ही विलंब किया जायेगा, उसके उतने ही कम महत्वपूर्ण होने की संभावना होती है। निर्णय सुनाये जाने हेतु कोई निश्चित तिथि नियत किये बिना निर्णय रक्षित करने की प्रथा आपत्तिजनक है तथा उसका आश्रय नहीं लिया जाना चाहिये।

30. आज्ञप्ति या आदेश निर्णय के अनुसार होना चाहिये तथा वह न केवल स्वतः पूर्ण होगा, जिससे कि उसके समझने एवं प्रवर्तन में किसी अन्य प्रलेख या पत्र को देखने की आवश्यकता न पड़े, बल्कि उसके निर्बन्ध (शर्तें) स्पष्ट एवं निश्चित होनी चाहिए। भूमि के संबंध में आज्ञप्ति बनाये जाने में न्यायाधीश का कर्त्तव्य होगा कि वह स्वयं इस बात का संतोष करे कि उसमें ऐसे विवरण दिये गये हैं, जिससे उस भूमि के क्षेत्रफल एवं चतुःसीमा तथा न्यायालय द्वारा निर्णीत स्वत्व के प्रकार के संबंध में कोई त्रुटि होना असंभव है।

31. जहां दावे का विषय अचल संपत्ति हो, तो अज्ञाप्ति से प्रभावित संपत्ति का स्वरूप आदेश 20 नियम 9 सि.प्र.सं. के अनुसार, वाद पत्र या अभिलेख के किसी अन्य भाग का संदर्भ दिए बगैर, स्पष्टतया बताया जावेगा।

32. मानचित्र जो न्यायालय के निर्देश से तैयार किये गये हों, या जो न्यायालय द्वारा स्वीकृत किये गये हों, तथा जो पारित आदेश के निर्देशों को स्पष्ट करेंगे या समझाने के लिए आवश्यक हों, वे आज्ञप्ति या आदेश के साथ संलग्न किये जाने चाहिये और उनका भाग माना जाना चाहिए तथा उन पर न्यायाधीश के हस्ताक्षर होंगे।

33. जहां पर श्रवणाधिकार एवं न्याय शुल्क के भुगतान हेतु दावे का भिन्न मूल्यांकन किया गया हो वहां पर दोनों मूल्य आज्ञप्ति या आदेश में लिखे जाना चाहिए। अंर्तलाभ धन के रूप में मांगा गया धन पृथक रूप से दिखाया जाना चाहिए।

अपील की आज्ञप्ति या आदेश की दशा में, प्रथम न्यायालय की आज्ञप्ति या आदेश में दिया गया मूल्य भी सन्निहित किया जाना चाहिए।

34. यदि आज्ञप्ति या आदेश अपील में पुष्ट किया जाता है तो उसके निर्देश उल्लेखित किये जावेंगे, जिससे कि अपील को आज्ञप्ति या आदेश अपने आप में पूर्ण हो। यदि आज्ञप्ति या आदेश परिवर्तित या संशोधित किया जाता है तो मूलतः स्वीकृत सहायता के स्थान पर या उसमें संशोधन सहित स्वीकृत सहायता पूर्ण एवं सम्यक रूप में लिखी जानी चाहिए। यदि आज्ञप्ति या आदेश पलटा जाता है तो सफल पक्ष के रूप में स्वीकृत सहायता भी उसी प्रकार लिखी जानी चाहिए।

35. प्रत्येक न्यायाधीश प्रत्येक आवेदन पत्र पर आदेश देते समय यह भी लिखेंगे कि उसका व्यय प्रकरण के परिणाम के अनुसार होगा या किसी दशा में वादी या प्रतिवादी के व्यय के रूप में होगा तथा आज्ञप्ति पर हस्ताक्षर करने के पूर्व अपने आपको इस बात से संतुष्ट करेंगे कि उन निर्देशों को वाद के व्यय की सूची में प्रभाव में लाया गया है।

36. आज्ञप्तियों एवं आदेशों के प्रवर्तन को उतना हीं ध्यान (महत्व) दिया जाना चाहिए, जितना कि मूल वादों या अपीलों को दिया जाता है। प्रत्येक पीठासीन न्यायाधीशों को यह देखना चाहिए कि विधि की प्रक्रिया का दुरुपयोग न हो, आवेदकों को आज्ञप्तियों तथा आदेशों के अंतर्गत प्राप्त सहायतायें उपलब्ध हो जावें तथा प्रकरण का निपटारा यथा–संभव शीघ्र हो जावे।

37. प्रवर्तन का कार्य नियमित अंतरावधियों (इंटरवल्स) पर लिया जाना चाहिए। संतोषजनक रीति यह है कि सप्ताह में एक या अधिक दिन जो प्रवर्तन के कार्य को निपटाने के लिए पर्याप्त हो, नियत किये जावें। यदि कार्य पूरे दिन के लिए पर्याप्त न हो तो दिन का कोई भाग दिया जाना चाहिए।

38. पीठासीन न्यायाधीश का ध्यान सि.प्र.सं. के आदेश 39 नियम 1 से 5 की ओर आकर्षित किया जाता है, जिनमें कि न्यायालयों की सामान्य शक्तियां तथा सामान्य परिस्थितियां जिनके अंतर्गत न्यायालय अस्थाई निषेधाज्ञा स्वीकार कर सकती है, का उल्लेख है। इस संबंध में नियम 270, 271 एवं 273 की ओर पीठासन अधिकारी का ध्यान आकर्षित किया जाता है।

39. निराकरण या अतिरिक्त साक्ष्य हेतु उच्च न्यायालय द्वारा वापिस किए गए प्रकरणों को, यदि अधीनस्थ न्यायालय द्वारा रिमांड के आदेश की दिनांक से तीन माह से अधिक काल के लिए रोका जाता है, तो विलम्ब के कारणों का स्पष्टीकरण उच्च न्यायालय को भेजा जाना चाहिए। न्यायालय जिसे कि प्रकरण आदेश 41

नियम 25 सि.प्र.सं. के अंतर्गत वाद विषय के परीक्षण के लिए भेजा गया है, अपने निष्कर्षों के साथ उसे भेजते समय, उसके नीचे पक्षकारों द्वारा पुनःपरीक्षण के समय किये गये व्ययों की राशि (व्यय की मदों का विस्तृत विवरण देते हुए) को प्रमाणित करेगी, जिससे कि जो आज्ञप्ति अपील के न्यायालय द्वारा अंत में दी जाने वाली हो, उसमें ऐसे व्ययों का प्रावधान किया जा सके।

40. वे आदेश, जिनके कारण विस्तारपूर्वक लिखे जाते हैं, आदेश पत्र में नहीं लिखे जाने चाहिए, केवल उस आदेश तथा उसके दिये जाने की तिथि का उल्लेख आदेश पत्र में किया जाना चाहिए। प्रार्थना–पत्र, प्रतिवेदनों आदि पर आदेशों के लिखने की प्रथा वर्जित है।

41. जैसे ही कोई प्रलेख साक्ष्य में स्वीकृत किया जाता है, उसी समय नियम 323 (2) में संदर्भित पृष्ठांकन पूर्ण किया जाना चाहिये तथा न्यायाधीश द्वारा हस्ताक्षरित किया जाना चाहिए। पूरे किये गये पृष्ठांकनों के नमूने के प्रारूप नियम 327 में बताये गये हैं।

42. यदि न्यायालय द्वारा कोई प्रलेख साक्ष्य में अग्राह्य होना पाया जाता है तो उसे अस्वीकृत किया जाना चाहिए तथा नियम 323 में संदर्भित पृष्ठांकन सहित नियम 331 में बताये नमूने के प्रारूप में पूर्ण किया जाना चाहिए।

43. जो प्रलेख साक्ष्य में प्रस्तुत हुये हों, परन्तु अस्वीकृत कर दिये गये हों, उन्हें प्रस्तुत करने वाले पक्षकारों को या तो तत्काल ही या परीक्षण की समाप्ति पर वापिस कर दिये जाने चाहिए।

44. निर्णय करने के पूर्व न्यायालय को अंतिम रूप से उस अभिलेख का पुनः परीक्षण करना चाहिए, जिस पर कि निर्णय आधारित किया गया है तथा यह देखना चाहिए कि वे समस्त प्रलेख जो साक्ष्य में स्वीकृत किये गये हैं, अभिलेख में हैं तथा ऐसे प्रलेख जो साक्ष्य में स्वीकृत नहीं हुये हैं, परन्तु अभी भी अभिलेख में हैं, उन्हें वापिस कर देना चाहिए।

45. किसी भी वाद या प्रकरण में पक्षकारों को दी गई आज्ञप्ति की प्रत्येक प्रतिलिपि के साथ, नियम 337 में उल्लेखित प्रकार का सूचना पत्र संलग्न किया जावेगा, जिसके द्वारा उनसे कहा जावेगा कि डिग्री के अंतिम होने के बाद वे अपने प्रदर्श वापस ले लें। वे प्रलेख जिनके जाली होने का संदेह हो, उन्हें सील किये हुये आवरण में नाजिर या नायब–नाजिर को अभिरक्षा में रखा जाना चाहिए।

46. प्रत्येक न्यायालय के न्यायाधीश को यह देखना चाहिए कि आदेशिका शुल्क संबंधी नियमों का पालन किया जा रहा है तथा यद्यपि वह समस्त अभिलेखों

की जांच करने में समर्थ नहीं हो सकता, फिर भी यह देखने की दृष्टि से कि उचित आदेशिका शुल्क मुद्रा लगाई गई है तथा उसे उचित रूप से रद्द किया गया है, उसे यह नियम बना लेना चाहिए कि वह समय–समय पर उनमें से कुछ की जांच करें।

47. न्यायाधीश को यदाकदा उन प्रलेखों की जांच जो विचाराधीन तथा निराकृत अभिलेखों में प्रस्तुत हुए हैं, यह निश्चित करने के लिए करना चाहिए कि उचित न्याय शुल्क वसूल किया गया है, मुद्रांकों को उचित रूप से पंच तथा विरूपित किया गया है तथा उन्हें प्रलेखों, जिन पर कि वे लगाये गये थे, पर से बाद में हटाया नहीं गया है।

48. पृथक–पृथक घोषणायें एवं निषेधाज्ञा का अनुतोष प्राप्त करने हेतु वाद फाईल होते हैं। पीठासीन अधिकारी को अधिकारिता के प्रयोजन के लिये यह देख लेना चाहिए कि क्या पृथक–पृथक घोषणायें तथा निषेधाज्ञा के अनुतोष के लिए पृथक–पृथक मूल्यांकन किया जाना आवश्यक है अथवा नहीं।

49. एक से अधिक वादी या प्रतिवादी होने की दशा में आर्डरशीट में स्पष्ट लिखा जाना चाहिए कि कौन सा वादी या प्रतिवादी प्रत्यक्षतः उपस्थित है और उनसे संबंधित अभिभाषक का नाम लिखा जाना चाहिए। (आर्डरशीट में) "पक्षकार पूर्ववत्" लिखे जाने की प्रवृत्ति को उचित नहीं कहा जा सकता।

50. न्यायाधीश/मजिस्ट्रेट को अपने अधीनस्थ कर्मचारियों के कार्य का निरीक्षण प्रतिमाह करना चाहिए।

51. न्यायाधीश को आर.डी.एम. (रिटर्न ऑफ डायेट मनी) की वापसी पर प्रत्येक त्रैमासिक पक्ष में निरीक्षण करना चाहिए।

आपराधिक कार्य के संबंध में

52. यदि किसी मजिस्ट्रेट को संक्षिप्त रूप से विचारण करने की शक्ति प्राप्त है तो संक्षिप्त रूप से विचारण योग्य मामलों में नियमित प्रक्रिया नहीं अपनाना चाहिए।

53. जब संहिता की धारा 161 के अंतर्गत अभिलिखित कथन संहिता की धारा 162 में बताये गये तरीकों से उपयोग में लाया जाता है, तब इस बात को देखने का ध्यान रखा जाना चाहिए कि वह कथन उचित रूप से सिद्ध किया गया है। ऐसे कथन को सिद्ध करने के पद्धति के लिये देखिये नियम 72 (2) तथा ***ए.आई. आर. 1959 एस.सी 1012 (तहसीलदार बनाम उ.प्र. राज्य) वाला मामला***।

54. जब पुलिस अन्वेषण अपूर्ण होने के कारण संहिता की धारा 167 के अधीन

अभियुक्त को मजिस्ट्रेट के समक्ष लाया जाता है, तब मजिस्ट्रेट को यह नोट करना चाहिए कि अभियुक्त को पुलिस द्वारा सर्वप्रथम कब बुलाया गया था तथा उसे न्यायालय में कब प्रस्तुत किया गया।

55. मजिस्ट्रेट को अन्वेषण पूर्ण होने के दौरान अभियुक्त को किसी भी अभिरक्षा के निरोध में रखने के लिए प्राधिकृत करने से पूर्व केस डायरी की प्रतिलिपि का अवलोकन करना चाहिए तथा यह सुनिश्चित करना चाहिए कि और निरोध क्यों आवश्यक है। उसे ऐसी आपत्ति जो कि अभियुक्त अपने निरोध के विरुद्ध उठाना चाहता हो भी सुनना चाहिए।

56. जांचों तथा विचारणों की कार्यवाही करने में पीठासीन अधिकारी को यह याद रखना चाहिए कि उनकी स्थिति व्यवहार न्यायालय के न्यायाधीशों की नहीं है, अभियोजन के भले ही प्रॉसीक्यूटर आदि पैरवी कर रहे हों लेकिन मजिस्ट्रेट को स्वयं यह देखना है कि अपराध के होने या न होने के तथ्यों के बारे में अभिनिश्चय करें और व्यक्ति दोषी पाया जाता है तो दंडित करें।

57. अभियुक्त का बचाव कथन यदि समुचित रूप से अभिलिखित किया जाए और बचाव के लिये जिन साक्षियों के नाम बताये गये हैं, वहां मजिस्ट्रेट को संतुष्ट होना चाहिए कि इनकी गवाही जरूरी है या नहीं, क्योंकि अभियोजन पक्ष को तंग किया जाना या विलम्ब करने के आशय से कभी–कभी अनावश्यक गवाहों में ऐसे नाम लिख दिये जाते हैं, जिनकी तामील ही मुश्किल से हो और केस टलता रहे, यद्यपि उनकी गवाही मामले में सारवान नहीं होती।

58. परिवादी की अनुपस्थिति के कारण मामले को खारिज करने के पूर्व मजिस्ट्रेट को यह विचार कर लेना चाहिए कि ऐसा आदेश न केवल वैधानिक है, बल्कि परिस्थितियों द्वारा न्याय–संगत है या नहीं।

59. अनुपस्थिति के कारण खारिजी के आदेशों के पुनरीक्षण के आवेदनों में अक्सर यह कहा जाता है कि मामले में पुकार नहीं हुई, यह कि मामला दिवस के प्रारंभ में ही बहुत ही शीघ्र खारिज कर दिया गया। अतः इन अनुदेशों का पालन किया जाना चाहिए कि यदि प्रथम बार में, जब मामले की पुकार होती है और परिवादी अनुपस्थित है, तो उस तथ्य को आदेश पत्र में नोट किया जाना चाहिए तथा बाद में भी पुकार लगाई जानी चाहिए। खारिजी का समय आवश्यक रूप से आदेश पत्र में प्रविष्ट किया जाना चाहिए।

60. भारतीय साक्ष्य अधिनियम की धारायें 5, 60, 64, 136 एवं 166 की आदेशात्मक भाषा यह संकेत करती है कि साक्ष्य के बारे में चाहे किसी पक्षकार ने आपत्ति

उठाई हो या न उठाई हो, न्यायालय को विधि के पालन के लिए बाध्य करना चाहिए। इस कारण पीठासीन अधिकारी का कर्त्तव्य है कि वह उचित समय पर साक्षी के कुछ प्रश्न पूछकर यह निश्चय करे कि क्या वह ऐसे विषयों की बात कर रहा है, जो उसके स्वयं के ज्ञान में है अथवा जो केवल दूसरों की सुन रखें हैं। पीठासीन अधिकारी संबंधित तथ्यों के उद्घाटन अथवा समुचित प्रमाण पाने के लिये साक्षी से किसी समय किसी तथ्य के बारे में संबद्ध या असंबद्ध प्रश्न करना चाहिए।

61. साक्षी के प्रतिपरीक्षण के समय पीठासीन अधिकारी को भारतीय साक्ष्य अधिनियम की धारा 136, 148, 151 तथा 152 के प्रावधानों से मार्गदर्शन लेना चाहिए।

62. निर्णय समुचित विस्तार के क्रमानुसार संख्याकित पदों में विभाजित होना चाहिए तथा प्रारंभ के पद में आरोप के कम या अधिक ब्यौरे देते हुए यह संक्षिप्त बताया जाना चाहिए कि कौन व्यक्ति क्या करने के लिए आरोप है, जिससे कि प्रारंभ से ही यह बात सहज में पता लग जाए कि निर्णय किस बारे में है।

63. न्यायाधीश/मजिस्ट्रेट का ध्यान द.प्र.सं. की धारा 357, जो कि प्रतिकर देने के आदेश से संबंधित है, की ओर आकर्षित किया जाता है। इसके अधीन प्रतिकर उपयुक्त मामलों में मुक्त रूप से और उदारता से प्रदान किया जाना चाहिए। सुप्रीम कोर्ट ने प्रतिकर का ऐसा आदेश देने का न्यायालय का कर्त्तव्य माना है। (देखिये ***हरिकिशन व अन्य बनाम सुखवीरसिंह व अन्य ए.आई.आर. 1998 एस.सी 2127***।) (नोट : उक्त धारा से संबंधित म.प्र. संशोधन का पालन होना चाहिए।)

64. द.प्र.सं. की धारा 428 का पालन किया जाना चाहिए, जिसमें कि अभियुक्त द्वारा भोगी गई निरोध की कालावधि का कारावास के दंडादेश के विरुद्ध मुजरा किये जाने का उपबन्ध है। देखने में यह आया है कि अधिकांश पीठासीन अधिकारी अभिरक्षा प्रमाण पत्र तैयार नहीं कर रहे हैं, यह बहुत ही आपत्तिजनक है, इसका कड़ाई से पालन किया जाना अत्यन्त आवश्यक है। पीठासीन अधिकारी के मार्गदर्शन हेतु उच्च न्यायालय, जबलपुर के ज्ञापन क्रमांक 4742 दिनांक 22.5.75 में बताये अनुसार अभियुक्त व्यक्ति का अभिरक्षा प्रमाण पत्र का प्रोफार्मा दिया जा रहा हैं। इस प्रारूप अनुसार अभिरक्षा प्रमाण पत्र तैयार किया जाना चाहिए तथा जिसकी एक प्रति अभिलेख में रखी जानी चाहिए और एक प्रति सजा वारंट के साथ संलग्न की जानीं चाहिए। प्रकरण के कमिट करते समय भी उक्त प्रारूप पर अभियुक्त का अभिरक्षा प्रमाण पत्र दिया जाना चाहिए।

प्रमाण-पत्र

(अंतर्गत धारा 428 द.प्र.सं.)

मैं .....पद .....

.....म.प्र. उच्च न्यायालय जबलपुर के मैमो क्रमांक 4742 दिनांक 22–5–1975 के पालन में इस न्यायालय के आपराधिक प्रकरण क्रमांक ..... में दोषसिद्ध दिए गये अभियुक्त का निम्न प्रमाण पत्र प्रस्तुत करता हूं –

1. अभियुक्त का नाम
2. गिरफ्तारी का दिनांक
3. पुलिस रिमांड दिनांक .....से दिनांक .....तक, कुल .....दिन
4. न्यायिक अभिरक्षा में, दिनांक .....से दिनांक .....तक, कुल .....दिन
5. कुल दिनों की संख्या, जो उसने निरोध में (विचाराधीन कैदी), के रूप में बिताये और जो उसे दिये गये कारावास की सजा में से समायोजित किये जा सकेंगे : .....कुल दिन

स्थान — पीठासीन अधिकारी का नाम

दिनांक — व मुद्रा

न्यायालय की मुद्रा

(यदि अभियुक्त आजीवन कारावास के दण्ड से दंडित किया गया, तो अभिरक्षा प्रमाण पत्र पर निम्नानुसार नोट लगाया जाना चाहिए।)

नोट : उक्त अवधि का समायोजन दण्ड प्रक्रिया संहिता की धारा 433 (ए) के निर्बन्धनों के अनुसार होगा।

पीठासीन अधिकारी का नाम
व मुद्रा

65. प्रकरण के कमिट करने के पूर्व पीठासीन अधिकारी/मजिस्ट्रेट यह आवश्कय रूप से जांच कर ले कि कोई भी अभियुक्त 16 वर्ष की आयु के अन्दर का तो नहीं है। (नोटः यदि अभियुक्त महिला है तो 18 वर्ष की आयु से कम की तो नहीं है।)

66. यह देखा गया है कि जब भी न्यायालय का पीठासीन अधिकारी अवकाश पर जाता है तो उस न्यायालय का प्रस्तुतकार/प्रवर्तन लिपिक मामलों में लंबी पेशी दे देते हैं, जिससे प्रकरण के निराकरण में विलम्ब होता है। ऐसी सूरत में योग्य पीठासीन अधिकारी को अवकाश पर जाने से पूर्व संबंधित कर्मचारी को यह निर्देश देकर जाना चाहिए कि उनके अवकाश से लौटने के एक या दो दिन बाद वह प्रकरण उनके समक्ष आवश्यक रूप से आ जाये, ऐसी तारीख पक्षकारों को प्रदान करें। इस बावत् संबंधित न्यायालयों के पीठासीन अधिकारी आवश्यक निर्देश/आदेश जारी करें। (नोट : पीठासीन अधिकारीगणों ने इस संबंध में जागृत रहना चाहिए।)

67. यह भी देखा गया है कि जिन आपराधिक मामलों में योग्य मजिस्ट्रेट, अभियुक्त व्यक्तियों को कारावास की सजा से दंडित कर, अपीलीय न्यायालय से स्थगन आदेश लाने तक के लिए उचित प्रतिभूति पर मुक्त कर देता है, तब दंडित व्यक्ति के कारावास की सजा का सजा वारंट तैयार कर अभिलेख में नहीं लगाया जाता है, जो कारावास की सजा सुनाने के तुरन्त बाद तैयार कर अभिलेख में लगाया जाना आवश्कय है।

CIRCULARS : TELEPHONE DEPARTMENT
TELEPHONE CONNECTIONS FOR JUDICIAL OFFICERS

Copy of letter no. 2-01/96 dated, 12-2-98 Telecom Commission Sanchar Bhavan, 20 Ashoka Road, New Delhi. Addressed to All Copy, Teleocm.

Subject : Provision of telephone connections for Judicial Officers of all the Courts/Tribunals Policy reg.

It has been decided to register the demands of Judicial Officers for provision of official telephone connections at their chambers. residences under OYT Special category as is being done in case of officers of Central/State Government departments.

It has further been decided that the demand for telephone connections at the residences of Judicial Officers of all Courts i.e. Supreme Court/ High Courts/District & Subordinate Courts/Tribunal etc. in their private capacity shall be registered under Non-OYT-Special Category provided they do not have any telephone connection in their name at their residence on the date of application for telephone connections at pay with Advocates as per instructions issued vide No. 2813/96-PHA dated 17.06.1996.

This issues with immediated effect.

Kindly acknowledge receipt of this letter.

Asst. Director General (PHA)

SUCCESSFUL MEDIATION :
THE DO'S AND DONT'S

The parties' commitment to relsove a dispute and maintain control over the settlement is a cornerstone of a successful mediation. This, coupled with a knowledge of the following "do's and dont's" of mediation, written with the advocate in mind, creates an environment where the parties are most likely to see the mediation end with a mutually satisfactory resolution.

1. Do Not Make a Non-Negotiable Demand in the Joint Session and Walk Out (or Threaten to) if Your Needs are Not Met.

Mediation is a structured negotiation. It permits the parties to vent, allows a neutral to give the parties some reality checks, and ultimately leads to a resolution which the parties control and accept. The non-negotiable "I want my way or I hit the highway" is totally inconsistent with the reason for mediating. The take it or leave it approach may be a good negotiating tactic in some situations; however, especially at the beginning of a mediation, it will very rarely facilitate a dialogue leading to a resolution. You may draw a line at some point. Drawing it at the outset when the expectations of the parties is a day of give and take leading to a deal will help ensure failure.

2. Do not Insult the Opposing Advocate in the Joint Session.

Remember, we are all human. We all are capable of hardening our position and becoming defiant when attacked and insulted. Putting aside any ethical constraints on an attorney insulting his opponent, you serve your client poorly by adopting a style that will rile your opponent to want to bludgeon you, rather than settle. The two are, after all, inconsistent. Even if the insults are true and deserved, they will not promote a resolution.

If you want your mediation to succeed, do not point out that your adversary has deliberately lied in his or her opening, that he or she has been sleazy throughout the litigation prior to referral, that he or she has lied about everything, has never filed papers on time, has withheld documents, and has cost your client a small or large fortune in legal fees. Calling your opponent a jerk, a shylock, or a witness tamper cannot possibly help your case.

3. Do Not Insult Your Opposing Party.

Attacking your opponent leaves but a thin reed of hope that you can still successfully mediate. While an attoney may be able to swallow hard and ignore your bad manners and offensive remarks, you will be less likely to persuade your opposing party to meet you halfway if you attack him in an offensive manner.

In securities mediations, I have seen attorneys attack everyone in the industry during their opening. "This case is about the greed that pervades Wall Street". "All the firm cared about was commissions : they never gave a damn for poor widow Jones." "The branch manager let the broker sell crap to my client so he could win the Rolex watch contest. He has no ethics at all". Such speeches, haughtily delivered, create a deep resentment against doing anything for you or your client. Facts are facts, and you should argue them strongly, but do it in a way that might influence the other party, not inflame it.

4. Prepare

Some lawyers feel no great need to prepare for a mediation. They are either lazy, or "reason" that mediation is non-binding and they don't have to agree to anything, so why spend a lot of effort on it? If the other side is reasonable, the case will settle and if they aren't, it won't settle.

The problem with this "que sera, sera" approach is that it makes settlement unlikely. If you are not prepared, you probably have not thoroughly valued your case and you may reject a reasonable offer. Even worse, you may be persuaded to accept a resolution where you pay too much or receive too little.

5. Bring Crucial Documents

You may know your case, but you need to be prepared to give the mediator the ammunition he or she needs to persuade the other side of its weaknesses. That ammunition frequently is in the form of documents, which are key to the disputed issues. Without the documents, the mediator's ability to get the parties to resolve the matter will, accordingly, be severely handicapped. Conversely, if the mediator is armed with the crucial documents admitting or establishing liability, then the mediator can encourage the defendant to be more realistic. Exculpatory documents may have the opposite effect on the mediator.

6. Provide Legal Support

Mediation is really a mini-trial,, a laying of cards on the table, and an effort by the parties, with the assistance of the mediator to evaluate the risks and strengths of their case. Frequently, legal issues will be argued. Can attorney's fees be awarded ? What is the statute of limitations ? Which law is controlling? What is the effect of contributory negligence ?

You can greatly help your mediation by being prepared to address the legal issues. Give the mediator a case that will enable him or her to resolve a divisive issue instead of continuing to advance arguments supported only by your logic, while your opponent does the same. If you continue to argue in the abstract, you enhance your chances for an impasse and, therefore, a failed mediation.

7. Bring a Businessperson With Authority to Settle

In my view, the ultimate virtue of mediation is that if provides an opportunity for business people to sit in a room together and try to work out a resolution. If is this aspect of mediation that really gives the parties the opportunity to craft their own settlement. In litigation, it is usually the lawyers who reach a settlement. The lawyers may get into a settlement mode because of their own evaluation of cases, because the client is unhappy about delays or litigation cost because a judge or magistrate pressures them, or because the trial date is fast approaching. The resolution is negotiated between each attorney and their respective clients, or between and among an attorney, in-house counsel, and in-house counsel's client. We all know how a child fights when told how to wear, eat or do; The child in all of us, including our clients, does not like to do what others tell us to do. Naturally, then, when lawyers tell (strongly recommend) their clients to settle, they may obey, but they rarely like it and seldom understand why settlement is in their best interest.

In a well-run mediation, these problems can be avoided. The businessperson can be a participant and decision-maker, and is much more likely to view the

settlement he or she helped to achieve as fair and reasonable. The scenario frequently plays out as follows : a senior executive, hopefully a little above the fray, attends the mediation. She gets to make her own evaluation of the facts, arguments, emotions, witnesses, and attorneys. She is put into a room with a skilled mediator who has questions for which she realizes she may not have ideal answers. She may even meet privately with the other party and the mediator, but without lawyers. She may begin to truly understand the litigation risks and the benefits of a settlement. Moreover being achievement oriented, once a businessperson spends time and effort working toward as resolution of a dispuste, she will want to meet the objective of achieving a resolution of the dispute. Having been empowered to participate in resolving the dispute, the businessperson will not feel that "the lawyers" forced a resolution on her and she will feel that the result she achieved was a good one for her company.

8. Factor in Other Benefits Which May Result Form a Settlement

A mediation typically results in a settlement and, typically, that settlement involves a payment or receipt of funds.

Skilled participants in a mediation are quite cognizant of the many benefits that can result from a successful mediation. One of the most important benefits, frequently, is the avoidance of future legal fees. There are numerous litigations in in which the adversaries spend more than the case is worth. In a mediation, a $ 1 million settlement of a $ 1.5 million claim may appear to the outsider to be a surrender. But if the party paying the $ 1 million estimates its cost through trial at $600,000, the settlement is really only "costing" $400,000. Put another way, the net dollars equate to an adverse judgement of $400,000, which could well be viewed as a favourable result for the defendant. Since $600,000 is already subtracted from the bottom line, the settlement at $ 1 million is much more palatable. The plaintiff who accepts the $1 million has the same type of issue - why spend $500,000 to try a case where I might win $ 1.5 million if I can settle today for $ 1 million ?

Of course, many litigators justify the litigation process by contending that if it is the process itself that beats the other side down, lets them know your side is tough, and exposes weaknesses in the other side's case. Sophisticated counsel, however, can frequently sit down with a sophisticated mediator sooner rather than later and, factoring in defence costs and litigation risks, put the matter to bed without destroying a few more forests in the great paper wars of our litigation system. Before you say "no" to a proposed settlement, think about the future costs.

In many cases, executives have to devote a significant amount of time to the matter, either as witnesses or as the client representatives. While not easy to quantity in dollar terms, tying up a CEO or a top salesman for five days of deposition testimony does have a cost. In a case where dozens of corporate officers will be deposed, that cost spirals.

The costs of a loss may be more than fees incurred and monies paid out. A defendant may face negative publicity, negative customer reactions to that publicity, bad morale among employees, and governmental enquiries if a case is tries and lost. In addition, a loss may have collateral estoppel or other negative effects.

For the plaintiff and for plaintiff's counsel, turning down a reasonable mediated settlement means the anxiety and preoccupation with the suit will continue, costs will keep accruing, and a judgement that is less favourable than was available in settlement may result, which not only is disappointing economically, but may be emotionally unsettling and keep the matter alive for the individual involved.

A mediation sometimes can create, expand or maintain a business relationship, adding value to both sides. Mediation is particularly helpful in achieving such side benefits.

To sum up, by focusing your attention on factors other than the dollar amount being paid, you will gain the maximum benefit from your mediation.

9. Trust the Mediator

To help your mediation succeed, you must not : constantly question the mediator; assume his or her bias in favour of the other side; or imagine his or her desire to force you to resolve your dispute on unfavourable terms.

In order to avoid a failed mediation, it is extremely helpful if the mediator selected by the parties is viewed by them as possessing expertise, having good analytical skills, and being reasonably straightforward. Whether the mediator is evaluative or facilitative, or somewhere in between, unltimately some level of trust is important in making everyone feel like they're getting a good deal and that the process is fair. While some mediators can be manipulative and controlling, a healthy level of confidence in the mediator is usually essential to success.

10. Stop, Look, and Listen.

While basic safety rules encourage people to stop, look, and listen, it is amazing how safety is thrown to the wind in litigations and mediations. Supposedly, intelligent people "lock and load" early on in a case and find it nearly impossible to adjust in the face of new facts or new developments.

In a mediation, failure is sure to come the way of those who do not heed the warning signals. As the mediator presents the other side's case, including documents and case law, as the witnesses on the opposing side show themselves to have winning smiles and convincing explanations, the participants or advocate who is capable of ignoring all this will usually be faced with a failed mediation. Mediation is not for those who know it all.

While anyone entering a mediation should have a goal for setting the matter at hand, the success of a mediation frequently depends on flexibility. An attorney's asessment of the case should adjust in the face of new facts, be they good or bad. Sometimes, seeing the plaintiff in the flesh may cause an attorney to rethink his or her position. For example, the vibrant 70-year old stock trader plaintiff one expects to see at the mediation may turn out to be the wheel-chair bound, disoriented claimant against whom success may be far less likely.

COURTESY

Dispute Resolution Journal : American Arbitration Association through Shri Padma Kumar Jain Advocate Guna M.P. who made the literature available.

जागते रहो !

उपेक्षा घातक होगी

अभिजनो। पूर्व अंक में प्रकाशित जागते रहो स्तम्भ के अंतर्गत लेख विशेष चर्चा का रहा है। वास्तविकता यही है कि हम एक निश्चित लीक, प्रचलित वृत्ति शैली या चलन से मुक्त होकर कार्य ही नहीं करना चाहते होंगे। दिनांक 26-10-98 से 03-11-98 के मध्य प्रशिक्षण हेतु आए अतिरिक्त जिला न्यायाधीशों के कार्य के अवलोकन पश्चात ऐसी ही अनुभूति हुई। ये ही प्रशिक्षार्थी पूर्व में भी मुख्य न्यायिक दंडाधिकारी के रूप में प्रशिक्षण हेतु आए थे। तब भी विभिन्न विषयों पर आद्यतन विचार, प्रासंगिकता तथा विधि–सम्मत प्रक्रिया के आधार पर बहुत सी बातें बताई गई थीं। लेकिन जब इन प्रशिक्षणार्थीगणों के लगभग 100-125 निर्णय आदेश पढ़े तो ऐसा लगा कि जो कुछ बताया जा रहा है वह श्रवण किया जा रहा होगा लेकिन व्यवहार में लाकर स्वयं में सुधार करने की प्रवृत्ति नहीं है।

कुछ न्यायिक अधिकारीगणों से इस विषय पर पूछा तो कहने लगे कि अतिरिक्त जिला न्यायाधीश बनें तो रिकार्ड रूम से पुराना रिकार्ड देखा व उसी अनुरूप निर्णय आदेश दे रहे हैं। महत्वपूर्ण पहलू ये है कि व्यवहार न्यायाधीश वर्ग–2 के पद से ही हमें वरिष्ठ न्यायालयों द्वारा पारित उन निर्णयों की प्रतिलिपियां प्राप्त होती हैं जो उन्होंने विचारण न्यायालय के निर्णयों के विरुद्ध अपील रिवीजन में सुना है। उन्हें भी हम ने कभी भी भूल से पढ़ने का प्रयत्न नहीं किया होगा। पिछले तीन वर्षो से संस्था की मुखपत्रिका प्रकाशित हो रही है उसमें भी तो बहुत सी बातें मार्गदर्शन हेतु बताई हैं तो उसका क्या उपयोग किया? प्रशिक्षण हेतु आये अधिकांश अतिरिक्त जिला न्यायाधीश लगभग इस पद पर 11 माह पूर्व पदोन्नत हुए हैं पर उन्होंने आदेश 41 व्यवहार प्रक्रिया संहिता तथा दंडप्रक्रिया संहिता के अपील तथा रिवीजन के प्रावधान तक नहीं पढ़े थे। बार बार अलग अलग पद्धति से उन्हें प्रशिक्षित करने का प्रयत्न किया गया। यदि विमानचालक, ट्रेन का इंजन चालक, बस ट्रक का चालक ठीक से वाहन नहीं चलाता है व ठीक से ज्ञान प्राप्त नहीं किया व प्रशिक्षण नहीं लिया है एवं वह वाहन चलाकर दुर्घटना कारित कर देता है व हमं ही दुर्घटना के चपेट में आ जाएँ तो हमारी क्या प्रतिक्रिया होगी।

हम जब न्यायिक अधिकारी के रूप में कार्य कर रहे हैं तो क्या हमारे से सर्वसाधारण जन तथा वरिष्ठ जन यह अपेक्षा नहीं करेंगे कि हम जिस पद

को विभूषित कर रहे हैं उस विषय में औसत सामान्य ज्ञान तो हो ? हम ऐसा क्यों नहीं कर पा रहे है।

कुछ दिन पूर्व पुनः एक माननीय न्यायाधिपति महोदय ने बुलाया। मैं गया। मन में स्वाभाविक रूप से भय उत्पन्न हुआ, कि अब क्या हुआ, क्यों बुलाया, क्या गलती हुई ऐसे विभिन्न प्रश्न उपस्थित होना स्वाभाविक था। हाथ जोड़कर खड़े हो गए। माननीय महोदय ने चश्में के किनारे से देखा तो और भय लगा। खैर हिम्मत बांध के खड़ा था। दो फाइलों में से निर्णय दिखाए, कहा पढ़ो। क्रियाशील भाग पढ़ा। उच्चन्यायिक सेवा के हम अधिकारीगणों की फाईलें थी। एक महाशय ने धारा 394 भा.द.वि. में पांच वर्ष की दंडाज्ञा दी तथा अपराध की गंभीरता को देखते धारा 397 भा.द.वि. में भी पांच वर्ष की सजा दी। दूसरे न्यायिक अधिकारी ने उसके प्रकरण की गंभीरता को और भी ज्यादा गंभीरता से लिया तथा धारा 395 भा.द.वि. में भी दस वर्ष की सजा ठोक दी तथा धारा 397 भा.द.वि. में पृथक से 10 वर्ष का क़ारावास ठोक दिया। माननीय महोदय ने पूछने पर बताया कि प्रकरणों की गंभीरता के जंगल में कानूनी प्रक्रिया कहीं छुप गई है। माननीय महोदय पहले ही गंभीर थे और भी गंभीर होकर कहने लगे कि मैं आपके यहां की पत्रिका को नियमित एवं समग्ररूप से पढ़ता हूँ व एक से अधिक बार पत्रिका के माध्यम से यह बताया गया है कि धारा 397-398 भा.द.वि. के अपराध पृथक अपराध नहीं होकर उक्त धाराओं के अंतर्गत भी तत्व सिद्ध हो जाते हैं तो न्यूनतम सजा का प्रावधान मात्र है। माननीय महोदय ने कहा कि आपकी संस्था की पत्रिका का उपयोग क्या है? सविनय कहा कि प्रयत्न तो यही रहता है कि पत्रिका का उपयोग दूर दराज स्थित न्यायालयों में भी सर्वाधिक हो जहां विधि पत्रिकाएं न्यायालयों एवं अधिवक्तागणों के पास न पहुंचती हो।

उनकी प्रतिक्रिया बहुत स्पष्ट थी। उनको यह अनुभूति हो रही थी कि न्यायिक अधिकारीगणों ने जोरदार पठन–पाठन (Vigorous Reading & Study) को तिलांजली दे दी है तथा सामने आया हुआ कार्य जैसे जैसे सरसरी रूप से करके खिसकाने की प्रवृत्ति बढ़ गई है।

मैं अपने आपे पर शर्मिन्दा हूँ। यही सोच रहा हूँ कि इस शर्मिंदगी भरे चेहरे पर पुनः आत्म विश्वास कैसे लौटा पाऊंगा। साथियो क्या हम समवेत स्वर से यह कह पाएंगे कि अब ऐसा नहीं होगा।

NEVER LAUGH AT OTHER PEOPLE'S FAULTS.
OUR OWN FAULTS MAY BE A HUGE JOKE TO OTHERS.

HOW TO WRITE JUDGMENTS/ORDERS ETC. ETC.

P.V. NAMJOSHI

Rules and Orders Civil and Criminal provide for writing judgments/orders, framing of charges etc. We as Judicial Officers should not ignore the procedure laid down in Civil Procedure Code and Criminal Procedure Code. Rules and Orders are meant for guidance to the Judicial Officers. They should be strictly followed. Writing of judgments and orders should not be taken as a job in a trifling or trivial manner. It is also not palter or dawdle job. It is not a gewgaw or gimcrack job nor it is a niff natt work.

It is also requested that instead of writing "I decide the issue accordingly" it is always better to write "this court decides the issue accordingly" because we as Judicial Officers represent the Court and the Court is deciding the case, Therefore, once we start to write "this Court decides the issue accordingly" it will help to keep ourselves aloof from personal element.

Charlotte Bronte says, "Prejudices, are most difficult to eradicate from the heart whose soil has never been loosened or fertilised by education; they grow there, firm as weeds among stones".

We have to autograph our work with excellence. Following are the points given for writing judgments/orders etc.

CRIMINAL CASES

ARRAY

1. Name of the presiding officer and the Court.
2. State of M.P. through SHO, PS.....
3. Full name of the accused, residence, P.S. Area.
4. Name of the Court from where case committed.

SUBJECT MATTER

1. First para only description of charges and Sections.
2. Admitted facts if any.
3. Case of prosecution with reference to documents and exhibits.
4. Case of defence with description of D.Ws. if examined and statement of Defence and documents exhibited.
5. Points for determination. In brief add one point as "conviction and sentence" if any.
6. Marshalling, discussion of evidence, citations, principle laid down, law applicable to the case, your finding.
7. Finding must be specific. No ambiguity findings on each head and subject matter.

OPERATIVE PORTION

1. Section 235 (2) and 248 (2) Cr. P.C. Probation, give reasons.
2. Consideration of Ss. 360-361-428 Cr.P.C. In trials and appeals also. Statement relating to Section 428 should form the part of the judgment.

3. Disposal of property. Order relating to disposal of property should be very specific. Firstly it should be ordered that the property should remain in Nazir's custody. However, it should further be ordered that the property should be disposed off (according to the direction of the Court) and such order shall take effect in case of appeal or revision as the case may be according to the decision in such appeal or revision. If the property is to be returned to a particular person, then his full name, address including the police station, tehsil and district should be mentioned. So that this description will be covered in the property memo and only by referring to the property memo Nazir will be able to return the property to a particular person. Otherwise Nazir has to send for the record and will have to verify from the judgment and record to whom the property is to be returned and this will take sufficient time. Therefore the Court should be very much specific. Please refer to S. 452 (4) Cr.P.C. also.

4. Discharge of bail bonds.

5. Conclusions specific. Sentences specific. The Court should be very specific in drawing the conclusions. Therefore, any finding or question determined should be written in specific, clear manner. There should be no ambiguity. The sentences passed should also be specific, i.e. to say whether it is rigorous or simple imprisonment ? Whether fine is imposed ? If imposed then what should be the sentence in default of payment? Whether the sentences are to run consecutively or concurrently should also be mentioned.

6. Mention name of the accused his father's name whom convicted or acquitted.

7. Open book before you sentence. See that whether jail sentence is compulsory. For example under Section 325 or 380 I.P.C. Whether jail sentence is not compulsory, for example under Sections 323, 324, 379 I.P.C. Whether sentence of fine should be imposed or not? It is the choice of the Judicial Officers to impose sentence of fine even where jail sentence is compulsory. Please refer to 'JOTI JOURNAL' Vol. II Part V October 1996 issue page 10.

CIVIL SUIT

ARRAY

Name of the Court and the Presiding officer should be there. Case number should be mentioned on the right side.

SUBJECT MATTER

Para 1 Nature of Suit
Para 2 Admitted facts if any
Para 3 Case of the plaintiff
Para 4 Case of the defendant
Para 5 Issues including issue relating to Relief and Cost also.
Para 6 Reasons for findings.

Para 7 No 'negative' or 'positive' findings. Have specific findings.

Para 8 Relief and Costs specific. Proper para phrasing.

Para 9 Costs, Advocates fee. Specify how you want to award and why ? Give reasons.

Para 10 Preliminary decree and final decree. Reasons. Decree should be self contained. If there is map one copy should form the part of the judgment.

FORMAT

REVISION	CIVIL APPEAL	CR. APPEAL
1. Name of the Court from which it arises	Name of the Court from which it arises	Name of the Court from which it arises.
2. Subject matter of the case	Subject matter of the case	Subject matter of the case with sentence.
3. Case of the party	Case of the party	Case of the party
4. Case of the opposite pary	Case of the opposite Party	Case of the opposite party
5. What the Trial Court decided	What the trial Court decided	What the trial Court decided
6. Case in Revision	Case in Appeal	Case in Appeal
7. What opp. party wants to say	What opp. party wants to say	What opp. party wants to say
8. Points for determination	Points for determination as per memo & arguments	Points for determination as per memo of appeal and arguments
9. Discussion	Discussion	Discussion
10. Finding (Specific)	Finding (Specific)	Finding (Specific)
11. Operative Order, costs	Judgment/order costs specific direction	Judgment/order costs specific direction. Chart u/s 428 Cr.P.C.
12. Directions to appear in lower court if necessary	Directions to appear in lower court if necessary	Directions to appear in lower court if necessary

NOTE In case the proceedings are pending in the Trial Court and the record was sent for by the Appellate Court or Revisional Court then the appellate or revisional Court should invariably direct through the judgment or order, the date on which the parties have to appear in the trial Court. It will again curtail time in proceedings, see that the records are sent back to the trial Court without any delay. See O-41, Rs 26A CPC.

SANCTION FOR PROSECUTION

Full text of the judgment in criminal appeal No. 36/93 Vishwanath vs. State of M.P. delivered by hon'ble Shri Justice V.K. Agarwal, M.P. High Court at Jabalpur main seat on 18.9.1998 is reproduced here for the convenience of the judicial officers as the judgment relates to sanction for prosecution and is of general importance.

JUDGMENT

1. The accused /appellant has been convicted u/s.5(1) (d) r/w.sec.5(2) of the Prevention of Corruption Act (hereinafter referred to as 'the Act' for short) and u/s.161 of the I.P.C. and has been sentenced to undergo R.I. for 1 year and to pay fine of Rs.500/- by judgment dated 31.12.1992 in Special Case No.32/1986 by Special Judge, Jabalpur.

2. The case of the prosecution, stated in brief, is that the accused/appellant Vishwanath Prasad Dubey, at the time of incident, i.e., on 20.4.1985 was posted as A.S.I., at P.S. Kotwali, Jabalpur. An offence (Crime No.193/85) u/s.341 r/w.sec.34 of the I.P.C. was registered against the complainant of this case Madan Mohan (P.W.6) at Police Station Kotwali, Jabalpur. The accused/appellant was entrusted with the investigation of the said crime. The accused/appellant went to the house of complainant Madan Mohan on 19.4.1985 and told him that he would be arrested and taken into custody and asked Madan Mohan to pay him Rs.500/-, if the former wished to be released on bail. The complainant' Madan Mohan did not pay the above amount to the accused/appellant, whereupon the appellant told Madan Mohan that he would be coming again in the evening and by then the amount as above should be arranged, otherwise he would be arrested.

3. The complainant Madan Mohan thereafter approached the Superintendent of Special Police Establishment, Lokayukt, Jabalpur and submitted an application (Ex.P/6) to him about the incident and the demand as above. The trap was arranged by Special Police Establishment and the accused/ appellant was handed over 5 currency notes of Rs.100/- each, which were smeared with Phenolphelein powder. Preliminary Panchnma (Ex.P/7) was prepared. As per plan for the trap, the above currency notes were handed over by the complainant Madan Mohan to appellant and he thereafter gave the pre-arranged signal to the trap party. The trap party arrived on the spot and apprehended the accused/appellant, who was found in possession of the currency notes which were seized from him. Panchnma of trap proceedings (Ex.P/12), was prepared. Other usual formalities of investigation were concluded and after obtaining sanction (Ex.P/5), the charge-sheet was filed against the accused/appellant.

4. The learned trial Court framed charges u/s.161 of the I.P.C. &u/s.5(1)(d) read with sec.5(2) of 'the Act' against the accused/appellant. He abjured guilt. By the impugned-judgment, the charges framed as above held to be

proved, beyond reasonable doubt. The accused/appellant was accordingly convicted and sentenced as has been mentioned above.

5. The learned counsel for the accused/appellant has not challenged the finding regarding demand by the appellant and payment of the tainted money to him by the complainant as also the trap proceedings, but he has submitted that sanction for prosecution has not been duly proved in the case. It has been urged in the above context that document (Ex.P/5) cannot constitute sanction in as much as, the same is not the original order of sanction but is only a copy thereof. Therefore, it has been urged that as primary evidence of sanction has not been produced in the case, the secondary evidence regarding sanction cannot be taken into consideration. Therefore, the prosecution case cannot succeed in the absence of proper proof of sanction.

6. Section-6 of the Prevention of Corruption Act, 1947 provides that no court shall take cognisance of an offence u/ss.161,164,165 of the IPC of u/s:5(2) and 5(3)(a) of the Prevention of Corruption Act against a Public Servant without the previous sanction either from the State or the Central Government or the authority competent to remove the Public Servant from his office as the case may be.

7. Thus, in view of provision as above of section-6 of 'the Act', cognisance of offences mentioned in that section, can only be taken by a court, when sanction for prosecution has been obtained. However, section-6 of 'the Act' does not provide that the sanction should be obtained in any particular form or that it should necessarily be in writing. In ***Biswabhusan Naik vs. The State of Orissa*** (Air 1954 SC 359), which was also a case under Prevention of Corruption Act that it should be in any particular form or should be in writing or that it should set out fact in respect of which it was given.

8. Therefore, in the instant case, it has to be considered whether it has been proved by satisfactory and reliable evidence that proper sanction for prosecution of appellant, as per requirement of section-6 of 'the Act', was duly obtained?

9. Prosecution, in the above context, has examined Mahesh Chandra Soni (P.W.3), L.D.C. in the Home Department of the Government of Madhya Pradesh. He has stated that the order of sanction (Ex.P/5) bears the signature of S.R. Gupta, Special Secretary. He has also stated that he had been working under Shri S.R. Gupta and is conversant with his signatures. He has stated that Shri S.R. Gupta signed the sanction order (EX.P/5) on 3rd January, 1986 when he was posted in the Home Department. He has further stated that he had brought the office copy of the sanction-order alongwith him from the office, and that document (Ex.P/5) is its copy.

10. On perusal of document (Ex.P/5), it would appear that the sanction for prosecution of the accused/appellant was thereby given and it is the copy of the original order, which is endorsed to Director, Special Police Establishment, Lokayukt, Jabalpur for information and necessary action

and the endorsement as above is again signed by Special Secretary, Shri S.R. Gupta.

11. The submission of learned counsel for the accused/appellant is that the document (Ex.P/5) is not the original order of sanction and no evidence has been adduced as to why the original sanction-order was not produced. It was, therefore, submitted by the learned counsel that in the absence primary evidence of sanction, i.e., the original order of sanction (Ex.P/5), which is the copy thereof, cannot be read in evidence. It has, therefore, been urged that prosecution has failed to prove that sanction for prosecution of the appellant was duly obtained.

12. As noticed earlier, the statement of Mahesh Chandra Soni (P.W.3) would indicate that he had brought with him the office copy of the sanction. It may also be noticed that the endorsement on the document (Ex.P/5) is also signed Special Secretary, Shri S.R. Gupta himself, who had accorded sanction. Those signatures have been identified by Mahesh chandra Soni (P.W.3). It is common practice in the offices to prepare carbon copies of orders, memos, etc. and Ex.P/5 is also a carbon copy of the order of sanction, which appears to have been prepared alongwith the original order and signed simultaneously by the authority competent to grant sanction. Since the sanction-order (Ex.P/5) as above also bears the signature of the sanctioning authority, there appears to be no doubt that the sanction for prosecution of the accused/appellant was granted, as has been mentioned therein. The statement of Mahesh Chandra Soni (P.W.3) that he has brought the office copy with him and which is in accordance with Ex.P/5 has not been challenged in cross-examination by the defence. Therefore, it cannot be doubted that sanction as mentioned in Ex.P/5 was accorded.

13. ***In Tulsiram & Others v. State of U.P.***

(AIR 1963 SC 666), the question as to whether proper sanction was granted came up for consideration of the apex Court. In that case, the prosecution had produced a letter written by Under Secretary to the Government of U.P., Home Department addressed to the District Magistrate, Kanpur informing him that the Governor has been pleased to grant sanction to the initiation of proceedings against the person mentioned in that order. It was urged in that case that a valid sanction must be a written order signed by the sanctioning authority and that no one can function as a substitute for the sanctioning authority and that, therefore, the communication by letter as above cannot be treated either as a valid sanction or its equivalent. Repelling the above contention, the apex Court observed as below:-

> "Though that document is not the original order made by the Governor or even its copy, it recites a fact and that fact is that the Governor has been pleased to grant sanction to the prosecution of the appellants for certain offences as required by Section 196-A of the Code of Criminal Procedure. The document is an official communication emanating from the Home Department and addressed to the District Magistrate

at Kanpur. A presumption would, therefore, arise that sanction to which reference has been made in the document, had in fact been accorded. Further, since the communication is an official one, a presumption would also arise that the official act to which reference has been made in the document was regularly performed."

It was accordingly held that the letter, which was placed on record meets the requirement of section 196-A of the Code of Criminal Procedure.

14. Similarly, in ***State of Rajasthan v. Tara Chand Jain*** (AIR1973 SC 2131), the sanction by the Chief Minister was not produced and a witness was examined, who stated that the C.M. had signed the sanction. It was urged in that case that formal order of sanction having not been produced, the prosecution case could not succeed. It was held in that case that sanction for prosecution by the Chief Minister was necessary. It was observed that prosecution has led positive evidence as above that the sanction for prosecution was accorded by the Chief Minister.

15. In the instant case, as noticed earlier, not only the copy of the order of sanction (Ex.P/5) is placed on record, but the same bears the signature of the sanctioning authority on the endorsement thereof. The signatures have been duly proved. The order clearly appears to have been passed after considering the facts relating to the grant of sanction as detailed in the sanction-order itself. In the circumstances, it is clear from the above order as well as from the statement of Mahesh Chandra Soni (P.W.3) that sanction was granted by the competent authority after due consideration of facts. Morever, as copy of order of sanction (Ex.P/5) placed on record has beren endorsed by Shri S.R. Gupta, Special Secretary in the usual ofcourse of discharge of his official duties; hence the sanction accorded as above, shall have to be treated as proper sanction. Therefore, the case of the prosecution would not suffer simply because the 'Original' order of sanction was not produced.

16. It may also be mentioned in the above context that the objection as above regarding non-production of original order of sanction does not appear to have been taken in the trial Court and is raised in this court for the first time during the hearing of appeal. Since the sanction as above has been duly proved and no prejudice to the accused/appellant has been caused on account of non-production of the original order of sanction, he cannot take advantage of such a plea raised in this Court, for the first time. Accordingly, the contention as above of the learned counsel for the accused/appellant that the prosecution has failed to prove that due sanction was accorded, cannot be accepted.

17. The only other contention raised on behalf of the accused/appellant in this appeal is that in view of the old pendency of the trial and appeal, consideration in the matter of sentence should be shown to him. It has been urged in this connection that the trap in the case was laid on 20.4..1985. Charge-sheet in the trial Court was filed on 13.6.1986 and the impugned-judgment was delivered after about 6½ years thereafter on 31.12.1992 and the appeal is pending for about 5 years. It has also been

urged that the appellant was aged about 56 years, at the time charge-sheet was filed and is now aged about 70 years and has been out of service for a long period.

Relying on ***Fatte and others v. State of M.P. (AIR 1979 SC 1504),*** it has been submitted by the learned counsel for the appellant that it would not be just and proper to send the appellant to custody.

18. It may be noted in the above connection that under the prevention of Corruption Act, minimum sentence of imprisonment for one year has been provided. Though, it is true that there is a long lapse of time after the appellant was trapped, but that by itself would not entitle him to be released, after a token imprisonment till rising of the Court, as has been submitted by his learned counsel. It may be noted that in ***A.Wati Ao v. State of Manipur*** [(1995)6 SCC 488] in which the appellant/accused was an I.A.S. Officer and was convicted under section-5(1) (d) of the Prevention of corruption Act, 1947 r/w.sec.120-B of the I.P.C., in which a similar argument was raised. It was observed in that case that the considerations that he was a senior I.A.S. Officer or that he had number of dependants and that he was going to lose his job were irrelevant considerations because in every such case of a public servant, he is bound to lose his job. It was held that delay in trial was of some relevance, but it was also observed that the nature of such a case and the large number of witnesses to be examined makes the trial prolonged and, therefore, the delay in trial for about 5 years was held not a good ground for awarding sentence of imprisonment till rising of the Court and it was held that such a sentence would make a mockery of the whole exercise. In the facts and circumstances of the case, especially the length of time, which elapsed in the trial till the disposal of the case by the apex Court, a sentence of imprisonment for six months was awarded to the accused/appellant of that case.

19. Similarly, in ***Satpal Kapoor v. State of Punjab*** (AIR 1996 SC 107), the accused/appellant of that case was convicted u/s.5(2) of the Prevention of corruption Act. It was found that the accused was an angina patient and was suffering from coronary disease, requiring medical attention and was aged about 60 years. A sentence of 4 month's simple imprisonment with sentence of fine was imposed.

20. In the instant case, the accused/appellant was a Police Officer. He asked for and accepted gratification for not arresting the complainant. Though, it is true that he is aged about 70 years and the trap was laid on 20.4.1985, i.e., more than 13 years back, but the above consideration of long lapse of time, by itself would not justify awarding a token sentence of imprisonment till rising of the Court. Considering the age of the accused/appellant, the time which has elapsed since the incident of his trap, as also the fact that he has since retired from service, the accused/appellant is sentenced to undergo simple imprisonment for 4(four) months and to pay fine of Rs.5,000/- (Rupees Five Thousand), in default of which, he shall suffer further simple imprisonment for 2(two)months.

STAR FARMAMENT :

EXTRACT OF THE ORDER IN M.CR.C. NO. 5591 OF 1998 IN RE N.D.P.S. ACT 1985 PASSED BY HON'BLE JUSTICE SHRI S.P. KHARE ON 14-10-98

This matter has been placed on the Judicial side by order of Hon'ble the Chief Justice.

Nine special courts were constituted under the Narcotic Drugs and Psychotropic Substances Act. 1985 (hereinafter to be referred to as the Act) by the State Governemnt notification dated 13-2-1997 at Indore, Ujjain, Gwalior, Rewa, Bhopal, Raipur, Mandsaur, Jabalpur and Sagar for the areas mentioned therein. The area of each special court included some four of five neighbouring districts. These special courts were established for the purpose of providing speedy trial of the offences under the Act. After some-time it was felt that this step was causing inconvenience to the parties, the witnesses and the investigating officers who were required to travel long distances to attend the hearing of the cases. Therefore, by the notification dated 6.6.1998 special courts have been constituted in all the 45 districts of Madhya Pradesh as existing on at date. The question arose whether the cases under the Act which are pending before the nine special courts should be transferred to the districts where new special courts have been established.

Advocates were heard on the aforesaid question. They are of unanious view that transfer of cases to the newly established Special Courts for the area for which these have been constituted would tend to the general convenience of the parties and world be expedient for the ends of justice. This Court is also of the same view. Justice will be closer to the door steps of the parties and the witnesses. The power to transfer these cases can be exercised suo-motu by this Court in the interest of Justice. Legally speaking the nine special Courts countinue to have the jurisdiction and the power to decide cases of which they had taken cognizance as per earlier notification these are being transferred to the newly created special courts keeping in view the convenience of the parties and the witnesses.

It is, therefore, directed that the cases pending before the nine special courts in respect of the areas of the newly coastituted special courts shall be transferred to those districts. The special courts shall take up the cases under the Act on priority so that the object of the creation of the special courts-speedy trial- is fulfilled.

NOTIFICATION

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाजन

भोपाल, दिनांक 24 सितम्बर, 98

अधिसूचना

फा. क्र. 1-12/98/21 ब (एक), पारसी विवाह और विवाह विच्छेद अधिनियम 1936 (1936 का सं. 3) की धारा – 20 द्वारा प्रदत्त शक्तियां का प्रयोग करते हुए तथा इस विषय पर जारी की गई समस्त पूर्व अधिसूचनाओं को अतिष्ठित करते हुए, राज्य सरकार, एतद् द्वारा यह घोषित करती है कि जिला न्यायाधीश इन्दौर का न्यायालय उक्त अधिनियम के अधीन पारसी जिला वैवाहिक न्यायालय होगा तथा पारसी जिला वैवाहिक न्यायालय की सीमा में मध्यप्रदेश राज्य के समस्त जिले सम्मिलत होंगे।

F.No. 1-12/98/XXI-B(I) In exercise of the powers conferred by section 20 of the Parsi Marriage and Divorce Act, 1936, (No. 3 of 1936) and in supersession of all previous Notifications issued on this subject, the State Government hereby declare that the Court of District Judge Indore shall be the Parsi District Matrimonial Court under the said Act, and the limit of the Parsi Districts Matrimonial Court Shall include all districts of the State of Madhya Pradesh.

नोट : उच्च न्यायालय पृष्ठांकन क्र. सी/7208/ तीन -6-3/86 दिनांक 8-11-98.

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाजन

भोपाल, दिनांक 24 सितम्बर, 98

अधिसूचना

फा. क्रमांक 1-12-/98/21- ब (एक) पारसी विवाह और विवाह विच्छेद अधिनियम 1936 (1936 का सं. 3) की धारा 24 की उपधारा (1) द्वारा प्रदत्त शक्तियों जो प्रयोग में लाते हुए तथा इस विषय पर पूर्व में जारी की गई सभी अधिसूचनाओं को अतिष्ठित करते हुए राज्य सरकार एतद् द्वारा मध्यप्रदेश अल्प संख्यक आयोग की राय को ध्यान में रखते हुए नीचे दी गई अनुसूची के कालम (2) में विनिर्दिष्ट व्यक्तियों को जिनके पते उक्त अनुसूची के कालम (3) में दिए गए हैं, उक्त अधिनियम के अधीन उद्‌भूत होने वाले मामलों में न्याय निर्णयन में सहायता करने के लिए नियुक्त करती है, अर्थात–

अनुसूची

अनु.	नाम	पता
1	2	3
1.	श्री नोशिर गोदरेज	"आदिल विला" 2, रेसकोर्स रोड इंदौर 452 203

2.	श्रीमती दीनू इलाविया	401, जैमिनी हाउस, 18/3, मनोरमा गंज, इन्दौर 452 001
3.	श्री फिरोज कामा	"वेलेनसिया", 2 साकेत कॉलोनी, इन्दौर 452 001
4.	श्री बोमी हीरजी	जी–1, एच.आई.जी. कालोनी रविशंकर शुक्ला नगर, इन्दौर 452 001
5.	श्रीमती जीनी पोहावाला	103, रायल पार्क, 19/3, न्यू पलासिया, इन्दौर 452 001
6.	श्री फिरोज मदान	एन/73, अनूप नगर इन्दौर 452 008
7.	डॉ (मिस) रतन मार्फतिया	9/7, पारसी मोहल्ला, इन्दौर 452 001
8.	विंग कमाण्डर (रिटायर्ड) दारिस ईरानी	117, साकेत नगर, इन्दौर 452 001
9.	श्रीमती मोहता पटेल इन्दौर	40, पालीवाल नगर, मनीशपुरी के पीछे,
10.	श्री आसपी ईरानी	31, रेसकोर्स रोड, उत्तर तुकोगंज, इन्दौर 452 003
11.	ब्रिगेडियर (सेवानिवृत्त) एफ.एफ.सी बलसारा	3, मण्डलेश्वर मार्ग, महू 453 442
12.	डॉ. बहराम मसानी	120, सिमरोल रोड, महू 453 441
13.	श्री फिरोज इल्वा	बंगला 143, सिगरोल रोड, महू 453 441
14.	श्री झाल कांसवजी	114, पोस्ट ऑफिस रोड, महू 453 441
15.	श्रीमती बानू मर्चेन्ट	991, सेन्टर स्ट्रीट महू 453 441
16.	श्री खुशरू आर. दस्तूर	कैनाज विला डा. आर.पी. मार्ग, रतलाम 457 001
17.	गोदरेज एफ. कबीर	स्टेशन रोड, रतलाम
18.	श्री टेहमटान एस. अंकलेसरिया	न्यू रोड, पोस्ट बॉक्स नं. 1 रतलाम 457 001
19.	श्री रोहिन एस. गांधी भोपाल 462 016	ई–8/25, अरेरा कालोनी, बंसत कुंज,
20.	श्री जेव एम. धनजी भाई	36, सेक्टर 1, शान्ति निकेतन कालोनी, भोपाल 462 023

NOTIFICATIONS :

PREVENTION OF FOOD ADULTERATION ACT, 1954

(1).Ministry of Health & Family Welfare (Department of Health) Notification No. G.S.R. 64 (E) dated the 3rd February, 1998. Published in Gazette of India (Extraordinary) Part II Section 3(i) dated 3-2-98 Page 5 [S. No. 33].

In exercise of the powers conferred by sub-section (1) read with sub-section (1A) of section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954),** the Central Government, after consultation with the Central Committee for Food Standards, hereby makes the following rules further to **amend the Prevention of Food Adulteration Rules, 1955,** namely :-

1. (1) These rules may be called the Prevention of Food Adulteration (1st Amendment) Rules, 1998.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Prevention of Food Adulteration Rules, 1955 in rule 22, after item number 37 and the entries relating thereto, the following item number and entries shall be added, namely :-

"38. Mineral Water 3000 ml. in original sealed condition."

[2] Ministry of Health & Family Welfare (Department of Health) Notification No. G.S.R. 178 (E) dated the 6th April, 1998. Published in Gazette of India (Extraordinary) Part II Section 3(i) dated 6-4-98 Page 5 [S. No. 118].

In exercise of the powers conferred by section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954),** the Central Government, after consultation with the Central Committee for Food Standards, hereby makes the following rules further to **amend the Prevention of Food Adulteration Rules, 1955,** namely :-

1. (1) These rules may be called the Prevention of Food Adulteration (2nd Amendment) Rules, 1998.

(2) They shall come into force after a period of six months from the date of their publication in the Official Gazette.

2. In the Prevention of Food Adulteration Rules, 1955, in Appendix "B", in item A 11.02.17,

(i) For the word "Khoya" the following words shall be substituted, namely :-

"Khoya by whatever variety of names it is sold such as Pindi, Danedar, Dhap, Mawa and Kava".

(ii) For the figures and words, "20 percent" the following words and figures shall be substituted, namely :

"30 percent on dry weight basis";

(iii) the following shall be added at the end, namely ;

"It shall be free from added starch, added sugar and added colouring matter".

[3] Ministry of Health & Family Welfare (Department of Health) Notification No. G.S.R. 177 (E) dated the 6th April, 1998. Published in Gazette of India (Extraordinary) Part II Section 3(i) dated 6-4-98 Pages 5-6 [S. No. 117]

In exercise of the powers conferred by sub-section (1) of section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954)** the Central Government, after consultation with the Central Committee for Food Standards, hereby makes the following rules further to **amend the Prevention of Food Adulteration Rules, 1955,** namely ;

RULES

1. (1) These rules may be called the **Prevention of Food Adulteration (3rd Amendment) Rules, 1998.**

(2) They shall come into force on the date of their publication in the Official Gazette except rules 2 and 4 which shall come into force after six months from the date of their publication.

2. In sub-rule (1) of rule 47 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the principal rules), in the Table in the proviso at the end, for the words, brackets, figures, and letters "and may contain carrier or filler articles with label declaration as provided in sub-clauses (1) and (2) of Sub-rule (ZZZ) of rule 42", the following shall be substituted, namely :

1. Dextrose
2. Lactose
3. Maltodextrin
4. Mannitol
5. Sucrose
6. Isomalt
7. Citric acid
8. Calcium silicate
9. Carboxymethyl Cellulose
10. Cream of Tartar, IP
11. Cross Carmellose sodium
12. Colloidal silicone dioxide
13. Glycine
14. L-leucine
15. Magnesium stearate IP
16. Purified Talc
17. Poly vinyl pyrrolidone
18. Providone
19. Sodium hydrogen carbonate
20. Starch
21. Tartaric acid

3. In rule 55 of the principal rules :

(a) against serial 29, relating to flour confectionery, in coulumn (2), for the entry the following shall be substituted, namely :

"Sorbic acid including Sodium, Potassium, and Calcium salts (calculated as Sorbic acid)"

(b) after serial No. 41, and the entries relating thereto, the following shall be inserted, namely :

1	2	3
"42. Prunes	Potassium Sorbate (Calculated as Sorbic acid)	1000"

4. In rule 57 of the principal rules, in the Table, after serial No.8 and the entries relating therto, the following shall be inserted, namely :

(1)	(2)	(3)
"9. Chromium	Refined Sugar	20 ppb"

5. After rule 61 D of the principal rules, the following shall be inserted, namely :-

"61E-Use of Xanthan Gum-Xanthan Gum may be used in food articles upto a maximum extent of 0.5 percent by weight."

6. In appendix B of the principal rules, in item A.11.02.18.02 relating to Milk Cereal Based Weaning Foods, in the first paragraph, for the words "It may also contain fruit and vegetables", the following shall be substituted, namely :-

"It may also contain fungal-alfa-amylase upto a maximum extent of 0.025 percent, by weight, fruits, vegetables, egg or egg products."

[4] Ministry of Health & Family Welfare (Department of Health) Notification No. G.S.R. 175(E) dated the 6th April, 1998. Published in Gazette of India (Extraordinary) Part II Section 3(i) dated 6-4-98 Page 5 [S.No. 115]

In exercise of the powers conferred by section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954)**, the Central Government, after consultation with the Central Committee for Food standards, hereby makes the following rules further to **amend the Prevention of Food Adulteration Rules, 1995**, namely :-

1. These rules may be called the Prevention of Food Adulteration (4th Amendment) Rules, 1998.

2. In the Prevention of Food Adulteration Rules, 1955 in rule 6, in sub-rule (2), in second proviso, in clause (ii), in sub-clause (b), for the figures "31-3-97", the figures, letters and word "31st March, 1999" shall be substituted.

[5] Ministry of Health & Family Welfare (Department of Health) Notification No. G.S.R. 172(E) dated the 6th April, 1998. Published in Gazette of India (Extraordinary) Part II Section 3(i) dated 6-4-98 page 5 [S. No. 112].

In exercise of the powers conferred by sub-section (1) read with sub-section(1A) of section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954)**, the Central Government, after consultation with the Central Committee for Food Standards, hereby makes the following rules further to **amend the Prevention of Food Adulteration Rules, 1955**, namely :-

1. (1) These rules may be called the Prevention of Food Adulteration (5th Amendment) Rules, 1998.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Prevention of Food Adulteration Rules, 1955, in rule 74, in sub-rule (2), in the Table, after serial number 3 and the entries relating thereto, the following shall be inserted, namely :-

Sl.No.	Name of Foods	Dose of Irradiation (KGY)		
		Minimum	Maximim	Overall average
"4.	Rice	0.25	1.0	0.62
5.	Somolina (Sooji or Rawa), Wheat, atta and Maida	0.25	1.0	0.62
6.	Mango	0.25	0.75	0.50
7.	Raisins, Figs and Dried Dates	0.25	0.75	0.50
8.	Ginger, Garlic and Shallots (Small Onions)	0.03	0.15	0.09
9.	Meat and Meat Products including Chicken	2.5	4.0	3.25"

[6] Ministry of Health & Family Welfare (Department of Health) Notification No. G.S.R. 176(E) dated the 6th April, 1998. Published in Gazette of India (Extraordinary) Part II Section 3(i) dated 6-4-98 Page 5 [S.No. 116].

In exercise of the powers conferred by sub-section (1A) of section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954)**, the Central Government, after consultation with the Central Committee for Food Standards, hereby makes the following rules further to **amend the Prevention of Food Adulteration Rules, 1955**, namely :-

1. (1) These rules may be called the Prevention of Food Adulteration (6th Amendment) Rules, 1998.

(2) They Shall come into force on the date of their publication in the Official Gazette.

2. In the Prevention of Food Adulteration Rules, 1955 in Appendix-B, in item A. 16.16 :

(i) in sub-item (i) for the words "Pickles shall be free from added salts of copper, alum and mineral acids", the following shall be substituted namely :

"Pickles shall be free from copper, alum and mineral acids";

(ii) in sub-item (ii), for the words "The Pickle shall be free from added copper, alum and mineral acid", the following shall be substituted, namely :

"Pickle shall be free from copper, alum and mineral acid";

(iii) in sub-item (iii), for the words "the Pickle shall be free from added copper, mineral acid, alum or added coaltar colours", the following shall be substituted, namely :

"Pickle shall be free from copper, mineral acid, alum, synthetic colours".

7. Ministry of Health & Family Welfare (Department of Health) Notification No. G.S.R. 179 (E) dated the 6th April, 1998. Published in Gazette of India (Extraordinary) Part II Section 3 (i) dated 6-4-98 Pages 5-6 (S.No. 119).

In exercise of the powers conferred by Sub-section (1) read with Sub-section (1A) of Section 23 of the **Prevention of Food Adulteration Act, 1954 (37 of 1954)**, the Central Government, after consultation with the Central Committee for Food Standards, hereby makes the following rules further to **amend the prevention of food Adulteration Rules, 1955,** namely :

1. (1) These rules may be called the **Prevention of Food Adulteration (7th Amendment) Rules, 1998.**

(2) The shall come into force on the date of their publication in the Official Gazette except rules 2 and sub-rule (c) of rule 3 which shall come into force after six months from the date of their publication.

2. In the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the principal rules), in rule 49, in sub-rule (16) for the words, "and partly skimmed milk powder", the words "partly skimmed milk powder and partly skimmed sweetened condensed milk" shall be substituted.

3. In Appended 'B' to the principal rules,

(a) in item a. 07.01.01 in clause (b), for the words "Sucrose", the word and brackets, "Total sugar (called, known or expressed as Sucrose) shall be substituted;

(b) in item A. 10.06, for the portion beginning with "Cocoa butter-" and ending with "(on moisture and fat free)", the following shall be substituted, namely :

"Cocoa butter-"

(i) for low fat..... Not less than 10.0 percent. (on moisture free basis

(ii) for high fat..... Not less than 20.0 percent. (on moisture free basis

(c) after item A.11.02.13, the following item shall be inserted, namely

A 11.02.13.01- "Partly skimmed sweetened condensed milk" means the product obtained from partly skimmed cow or buffalo milk or combination thereof by the partial removal of water and after addition of cane sugar. It may contain added refined lactose, calcium chloride citric acid, sodium citrate, sodium salts or ortho phosphoric acid and poly phosphoric acid (as linear phosphate) not exceeding 0.3 per cent by weight of the furnished product. Such addition need not be declared

on the label. Partly skimmed sweetended condensed milk shall contain not less than 28.p percent of total milk solids and not less than 40.0 percent cane sugar. The fat content shall not be less than 3.0 percent and more than 9.0 percent by weight".

(d) In item A. 14, in clause (c), for the words and letters, "Ash insoluble in HCL", the words "Ash insoluble in dilute hydrochloric acid" shall be substituted;

(e) in item A. 15 and in item A. 15.01, for the words "free from visible contamination", the words "free from contamination" shall be substituted;

(f) in item A. 18.02, for the word and brackets "Maida (wheat flour) means", the words "Maida means" shall be substitued;

(g) in item, A. 18-04, in clause (b), for the words and letter "Ash insoluble in HCL", the words "Ash insoluble in dilute hydrochloric acid, shall be substituted;

(h) in item A. 18.06.04, in clause (iii), the brackets and words "(excluding discoloured tip)" shall be omitted.

8. Ministry of health & Family Welfare (Department of Health) Notification No. G.S.R. 174 (E) dated the 6th April, 1998 Published in Gazette of India (Extraordinary) Part II, Section 3 (i) dated 6-4-98 Pages 7-9 (S.No. 114).

In exercise of the powers conferred by section 23 of the **Prevention of Food Adulteration Act, 1954** (37 of 1954) the Central Government after consultation with the Central Committee for food Standards, hereby makes the following rules furhter to **amend the Preventioln of Food Adulteration Rules, 1955,** namely :

1. (i) These rules may be called the **Prevention of Food Adulteration (9th Amendment) Rules 1998.**

(ii) They shall come into force on the date of their publication in the Official Gazette.

(2) In Prevention of Food Adulteration Rules, 1955, in rule 65, in sub-rule (2), in the Table.

(a) against serial No. 1,-

(i) in column (3), after entry "Eggs", the entry "Fish" shall be added;

(ii) in column (4), after entry "0.1 (on a shell-free basis)", the entry "0.2" shall be added;

(b) against serial No. 2,-

(i) in column (3), after entry "Maize cob (Kernels)", the following entries shall be added, namely :-

"Maize

Rice

Chillies";

(ii) in column (4), after entry "1.0", the following entries shall be added, namely :-

"0.50

2.50

5.00";

(c) against serial No. 9,-

(i) in column (3), after entry "Cotton Seed Oil (crude)", the following entries shall be added, namely :-

"Bengalgram

Pigeon pea

Fish";

(ii) in column (4) after entry "0.2", the following entries shall be added namely :-

"0.20

0.10

0.20";

(d) against serial No. 14, in column (3), for the words "Dried Fruits and Spices" and their corresponding entries in column (4), the following shall be substituted, namely :-

Sl.No.	Name of Insecticide	Food	Tolerance Limit mg/kg (ppm)
(1)	(2)	(3)	(4)
		"Dried Fruits	30.00
		Spices	400.00"

(e) against serial No. 15,-

(i) against entry "(a) Alfa (a) isomer" in column (2), in column (3) after the entry "Milk (whole)" and its corresponding entry ir column (4), the following shall respectively be inserted, namely :

Sl.No.	Name of Insecticide	Food	Tolerance Limit mg/kg (ppm
(1)	(2)	(3)	(4)
		"Fruits and Vegetable	1.00
		Fish	0.25";

(ii) against entry "(b) Beta(B) isomer", in column (2), in column (3) after the entry "Milk (whole)" and its corresponding entry i

column (4), the following shall respectively be inserted, namely :-

Sl.No.	Name of Insecticide	Food	Tolerance Limit mg/kg (ppm)
(1)	(2)	(3)	(4)
		"Fruits and Vegetable	1.00
		Fish	0.25";

(iii) against entry "(c) Gamma (γ) isomer" known as Landane in column (2), in column (3), for entry "Fruits and Vegetable" and its corresponding entry in column (4), the following shall be substituted, namely :-

Sl.No.	Name of Insecticide	Food	Tolerance Limit mg/kg (ppm)
(1)	(2)	(3)	(4)
		"Fruits and Vegetable	1.00
		Fish	0.25";

(iv) against entry "(d) Delta (d) isomer", in column (2), in column (3), after the entry "Milk (whole)" and its corresponding entry in column (4), the following shall be added, namely :-

Sl.No.	Name of Insecticide	Food	Tolerance Limit mg/kg (ppm)
(1)	(2)	(3)	(4)
		"Fruits and Vegetable	1.00
		Fish	0.25";

(f) after serial number 50 and the entries relating thereto in columns (2), (3) and (4), the following shall be added, namely :-

(1)	(2)	(3)	(4)
51.	Alachlor	Cotton Seed	0.05
		Groundnut	0.05
		Maize	0.10
		Soyabeans	0.10
52.	Alfa Nephthyl Acetic Acid (A.N.A.)	Pine-Apple	0.50
53.	Bitertanol	Wheat	0.05
		Groundnut	0.10
54.	Captafol	Tomato	5.00
55.	Cartaphydrochloride	Rice	0.50
56.	Chlormequatchloride	Grape	1.00

		Cotton Seed	1.00
57.	Chlorothalonil	Groundnut	0.10
		potato	0.10
58.	Diflubenzuron	Cotton Seed	0.20
59.	Dodine	Apple	5.00
60.	Diuron	Cotton Seed	1.00
		Banana	0.10
		Maize	0.50
		Citrus (Sweet Orange)	1.00
		Grapes	1.00
61.	Ethephon	Pine Apple	0.10
		Coffee	2.00
		Tomato	2.00
		Mango	2.00
62.	Fluchloralin	Cotton Seed	0.05
		Soya beans	0.05
63.	Malic Hydrazide	Onion	15.00
		Potato	50.00
64.	Metalyxyl	Bajra	0.05
		Maize	0.05
		Sorghum	0.05
65.	Methomyl	Cotton Seed	0.10
66.	Methyl Chloro-phenoxyacetic Acid (M.C.P.A.)	Rice	0.05
		Wheat	0.05
67.	Oxadiazon	Rice	0.03
68.	Oxydemeton methyl	Food-grains	0.02
69.	Permethrin	Cucumber	0.50
		Cotton Seed	0.50
		Soya Beans	0.05
		Sunflower Seed	1.00
70.	Quinolphos	Rice	0.01
		Pigeonpea	0.01
		Cardamom	0.01
		Tea	0.01
		Fish	0.01
71.	Thiophantemethyl	Apple	5.00
		Papaya	7.00

1. **O. 6 RR. 14 & 15 VERIFICATION OF PLEADINGS :**
A.I.R. 1998 DELHI 332
DELHI LOTTERIES VS. RAJESH AGRAWAL AND OTHERS

Sales Manager of a Corporation which was a proprietary concern can institute suit on behalf of Corporation who was acquainted with facts and case and duly authorised to verify and sign plaint. The proprietor of Corporation had also executed power of attorney in favour of Sales Manager and subsequently ratified all such acts done by him including filing of suit.

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2. **O. 6 R. 17 WITHDRAWAL OF ADMISSIONS :-**
A.I.R. 1998 RAJASTHAN 227
VAIDHYA SHYAM SUNDER JOSHI VS. JAIN VISHWA BHARTI LADNU

It was held that the plaintiff cannot be allowed to amend his plaint by withdrawing the admission made in the plaint so as to displace the defendants completely from the admissions made in the plaint.

Following cases were referred to in the judgment :-

1) ***Modi Spinning and Weaving Mills Co. Ltd. Vs. Ram and Co., A.I.R. 1977 SC 680.***

2) ***Panchdev Vs. Km. Jyoti Sahay, A.I.R. 1983 SC 462.***

3) ***Akshaya Restaurant Vs. P. Anjanappa, A.I.R. 1995 SC 1498.*** (As per para 9 of this judgment, plaintiff has been declared per incuriam by their Lorsdhips of the Supreme Court in ***Hiralal vs. Kalyanmal, A.I.R. 1998 SCW 219.***

NOTE : Please also refer 1998 (2) JLJ, Page 89, ***Hirabai Vs. Ramprasad.***

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3. **SS. 3 AND 115 C.P.C. AND SECTION 11 (6) ARBITRATION AND CONCILIATION ACT :-**
A.I.R. 1998 RAJASTHAN 240
UNION OF INDIA VS. GIRIDHARI LAL

Court sub-ordinate to High Court. District Judge appointed by Chief Justice to discharge judicial function under sub-section (6) of Section 11 Arbitration and Conciliation Act. He is a person of designata. Does not come under definition of Court. Orders passed by him are not revisible by High Court.

It was held that :

Looking to the entire scheme of the New Act as well as the scheme framed by the Chief Justice of Rajasthan High Court for appointment of Arbitrators, that the District Judge and other judicial officers designated by the Chief Justice under sub-section (6) of Section 11 are 'persona designata' and they do not come under the definition of Court subordinate to High Court. Thus their orders are not revisible under Section 115, CPC by the High Court.

The District Judge designated by the Chief Justice as authority to discharge

the judicial function is a 'person' as provided in sub-section (6) of Section 11 of the New Act. The District Judge is an authority other than a regular court of justice. It is not necessary for him to follow the procedure prescribed for the Courts. The District Judge is thus an adjudicating authority's other than a court. From the legislative intent it is evident that 'person' appointed by the Chief Justice under sub-section (6) of Section 11 is not the Court. In clause (3) of the Scheme for appointment of Arbitrators by the Chief Justice of the Rajasthan High Court; the word 'authority' has been used. The request under sub-section (4) or sub-section (5) or sub-section (6) of Section 11 has to be made to the 'authority" and not to the 'court'. According to clause (3), the District Judge, Additional District Judge and Civil Judge (Senior Division) come within the purview of authority designed by the Chief Justice.

In addition to other cases following case was also referred :- ***Associated Cement Company vs. P.N. Sharma, AIR 1965 SC 1595.***

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4. SECTION 16 CONTRACT ACT; UNDUE INFLUENCE :-
A.I.R. 1998 KERALA 280
MARCI VS. REINI

Party executing settlement deed in favour of defendants was ill and totally dependant on them for existence. Person having no right over suit property getting right of residence under said document. Facts showing that defendant obtained unfair advantage under it. Document would be vitiated by undue influence.

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5. SECTION 72 CONTRACT ACT AND SECTION 10 CARRIERS ACT:-
A.I.R. 1998 GUJRAT 178
SAURASHTRA CERAMIC VS. SADHANA TRANSPORT

The learned counsel for the appellant urged that both the courts below found that it was a case of mis-delivery. Hence, it would amount to non-delivery. However, in the instant case it is established and admitted case of the parties that the consignment was delivered by the carrier to the consignee, viz. Binod steel Ltd., Indore. Even plaintiff's case is that the consignment was delivered to Binod steels Ltd., Indore. The only grievance is that the consignment was delivered against the written instruction of the consignor that without obtaining lorry receipt the defendant should not have delivered the consignment and since this was done against the written instruction of the consignor it amounted to breach of contract, hence damage could be awarded against the defendant. It is not the case of recovery of damage on the ground of breach of contract. At the most it can be said to be negligence of the Carrier in not obtaining lorry receipt before giving delivery to the consignee. But it is nobody's case that the consignment was delivered to any party other than Binod Steels Ltd. On the other hand, admitted case is that the consignment was delivered to Binod Steels Ltd., Indore. In these circumstances it is neither a case of mis-delivery nor non-delivery of the goods. If it is so then the liability of the carrier cannot be enforced in favour of the appellant. The defendant being the carrier cannot

be held guilty of unjust enrichment. The carrier has not misappropriated the goods nor has delivered it to some one else and misappropriated the price thereof. On the other hand, the consignment was received by the consignee who appropriated it. Consequently the doctrine of "unjust enrichment" can be applied against Binod Steels Ltd., Indore and not against the respondent.

SECTION 10 CARRIERS ACT :-

The learned counsel for the applant contended that non-delivery may be of two kinds. In one case non-delivery is consequence of loss, destruction, damage or deterioration to the consignments, In other case there may be non-delivery for other reasons other than the loss, destruction, damages or deterioration and in second category of cases notice is not required either under Section 77 of the Indian Railways Act or under Section 10 of the Carriers Act. It may, however, be mentioned that Section 10 of the Carriers Act does not incorporate the word non-delivery so far. On the other hand loss or injury to the goods only are covered under S. 10 of the Carriers Act. Hence the cause of non-delivery of consignment by common carriers under Section 10 of the Carriers Act is not material. It is not the function of the Court to regulate while interpreting a particular section. On the other hand, the Court should find out the real intention of the legislature. Since there is no ambiguity in Section 10 of the word 'non-delivery' cannot be introduced by implication in the process of interpretation.

It cannot be said that the legislature was unconscious and accidentally omitted to mention the word non-delivery in Section 10. The intention of the legislature is clear from Section 9 of the Carriers Act as the words loss, damage or non-delivery are used therein. It is therefore, clear that while enacting Section 9 of Carriers Act the legislature was aware, to introduce the word non-delivery, but at the same time while enacting S. 10 it did not think it proper to introduce the word non-delivery in this Section. In this view of the matter notice under Section 10 of the Carriers Act in a case of non-delivery or misdelivery of consignment is not necessary.

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6. SECTION 110-B M.V. ACT (4TH OF 1939) :-

A.I.R. 1998 M.P. 233

UDARIYA VS. M/S. SHUBH WAREHOUSING COMPANY

The counsel for the appellant urged before the High Court that the compensation of Rs. 40,000/- awarded to the appellant is less than the minimum amount which is being considered to be awardable in view of the present amendment in the Motor Vehicle Act (1988). The accident took place on 25.3.1987. The age of the deceased was 5 years. The counsel for the appellant stated that minimum amount awardable as compensation should have been Rs. 50,000/-. The High Court held that accident occured prior to amendment providing for minimum awardable compensation to victim. Therefore the principle cannot be applied to the accidents which are prior to the amendment. In addition to that the age of the deceased has to be considered. As he happen to be a lad living in village, he would have been exposed to

various hazards of the life which are commonly acquainted with villag dwellers. This fact cannot also be ignored. Therefore the issue for enhanceme of compensation amount of appellant was dismissed.

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7. SECTION 2 (26) MOTOR VEHICLES ACT AND SECTION 14 M.V.A. (1988) :-
A.I.R. 1998 PUNJAB & HARYANA 184
NATIONAL INSURANCE COMPANY VS. SHINDER KAUR

Tractor is not included in the definition of Motor car. The driver had licence to drive scooter and motor car. As motor car does not include tracto Insured is nost liable for payment of compensation.

NOTE : Please go through para 4A of the judgment in which it is said th the tractor is included in the definition of 2 (21) of Motor Vehicles Act which rur as under :-

"Light Motor Vehicle" means a transport vehicle or omnibus the gros vehicle weight of either or which of a motor car or tractor or road-roller th unladen weight of any of which, does not exceed (7,500) kilograms".

It is further requested to go through the definitions under sub-claus (24,26,27) of Section 2 of the Motor Vehicle Act, and other definitions too.

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8. HINDU MARRIAGE ACT. SECTION 24 :-
A.I.R. 1998 A.P. 296
SMT. S. VIJAYA LAXMI VS. S. BHEEM REDDY

Question of assessment of the quantum of permanent alimony to be pa to the wife by the husband; the last drawn gross salary of the husband prior his suspension was Rs. 6,780/- per month and he is aged 45 years by now ar the wife is aged about 37 years by now. Though the wife has claimed an amou of Rs. 3,00,000/- as permanent alimony, the Supreme Court was of the vie that the husband could be directed to pay an amount ofRs. 1,50,000/- towar permanent alimony to the wife. The minor female child aged about 8 years in the company of mother. The Supreme Court felt that the father shall pay a amount of Rs. 800/- per month separately towards maintenance amount to th daughter.

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9. SECTION 13 HINDU MARRIAGE ACT : DIVORCE
A. I. R. 1998 GAUHATI 107
BASUDEV NATH VS. SMT. DIPTIKONA NATH

Earlier petition under Sections 9 and 13, 13-B of Hindu Marriage Act wa dismissed on sole ground that alleged desertion was not two years immediate preceeding the presentation of petition. Subsequent petition was filed after years for the same relief. By that time period of 2 years completed and elapse Dismissal of petition simply by saying that no new cause of action has arise and by applying principle of res judicata is not proper.

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10. SECTION 5 LIMITATION ACT AND SECTION 96 CPC : EQUITABLE GROUNDS
A.I.R. 1998 SC 2276
P.K. RAMACHANDRAN VS. STATE OF KERALA

The Government gave an explanation that at the relevent time Advocate General's office was fed up with so many arbitration matters pending consideration. The reason can hardly be said to be reasonable, satisfactory or even proper explanation of delay. The law of Limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds. The Court has to record satisfaction that the explanation for the delay was either reasonable or satisfactory. It is essential pre-requisite to condonation of delay. In the present case the Court had not recorded such reasons.

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11. SECTIONS 191, 192 AND 193 I. P. C. :-
A. I. R. 1998 DELHI 332
DELHI LOTTERIES VS. RAJESH AGRAWAL AND OTHERS

Plea that affidavit filed in case tantamount to false evidence. Affidavit filed by party suo motu and not under direction from the Court. The affidavit cannot be treated as evidence. Action under Penal Code cannot be taken against deponent.

NOTE : Kindly go through A. I. R. 1954 Nagpur 260 (D. B.).

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12. SECTIONS 300, 304 PART II. I.P.C. :
A. I. R. 1998 SC 2211
PRAKASH VS. STATE OF MAHARASHTRA

In para 3 of the judgment it was held that the evidence of the eye-witnesses was trustworthy. The appellant had given as many as 10 blows with a knife to the deceased who was unarmed merely because there was some grappling between the accused and the deceased possibly because the deceased tried to save himself from blows did not hit him. It cannot be said that the accused was entitled to give those blows in exercise of right of private defence and was entitled to any other exception. As the injuries caused by the accused to the deceased was intentional and they were found to be sufficient in the ordinarly course of nature to cause death. The appellant was rightly held guilty under Section 302 I.P.C. The High Court was, therefore, justified in altering the conviction of the appellant from under Section 304 Part II, I.P.C. to Section 302 I.P.C. This appeal is therefore, dismissed.

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13. M. P. CEILING ON AGRICULTURAL HOLDINGS ACT : SECTIONS 11 (4), 11 (5) AND 46 :-
A. I. R. 1998 M. P. 234
BHAIYA LAL VS. STATE OF M. P.

Referring to Jagat Singh vs. State, 1982 Jabalpur Law Journal 609 it was held that :

The objections as to ownership were raised and after those petitions were decided then a suit was filed. The above is not the situation in the present case. The plaintiffs never filed any objections. They did not raise any objecion which may said to be covered by section 11 (4) of the Act, and therefore, the applicability of Section 11 (5), would not arise. The Civil Court would have no jurisdiction in view of the proceedings contained in Section 46 of the Act. Therefore, the objection raised by the State was upheld.

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14. SECTION 100 T. P. ACT : CHARGE
A. I. R. 1998 KERALA 257
BAL KRISHAN VS. P.V. MOHANAN

Where the vendor sold his bus to the vendee and filed suit for realisation of money along with an application for attachment before judgment of the said bus and obtained an order and the plaintiff, a third party, owner of the plaint schedule property on request of vendee, offered plaint schedule property as security for releasing bus from order of attachment and they furnished a draft bond to the Court and thereafter vendor and vendee in collusion entered into a compromise to realise the amount due from property offered as security and created a charge on the plaint schedule property and the bus was released to vendee without consent of plaintiff, the creation of charge by vendor and vendee over plaintiff's property for realisation of the amount due would be illegal. Therefore, the decree creating a charge over plaint schedule property would not be binding on plaintiff and as such plaintiff would be entitled to a decree declaring his right over said property.

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15. STATUS QUO ANTE (TO RESTORE THE POSSESSION WHICH STANDS ON THE DATE OF THE CANCELLATION OF THE SUIT) :
1998 (2) JLJ 208
KAILASH VS. RUKAM SINGH

The defendant was served with the order of injunction. During the pendency of the case plaintiff dispossessed the defendant from one room out of the disputed property. The Court under inherent powers may order restoration of possession taken in breach of injunction.

NOTE : In addition to other citations, 1980 (1) MPWN 196 was relied on and ***Municipal Council Mandleshwar Vs. Ramesh 1984 MPLJ 633*** was distinguished.

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16. O 21 R 97 CPC
1998 (2) JLJ 187 (SC)
SHREENATH VS. RAJESH

Person resisting execution as a tenant or as claimant of on his own right, executing Court alone has to adjudicate such claim. There is no difference in old and new provision. Such person could resist execution, his claim ought to have been decided before he is dispossessed even under the old provisions.

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17. SECTION 25 GENERAL CLAUSES ACT 1957 (M.P.)
1998 (2) JLJ 183
SHIVDHARI VS. JADUMAN

Rules not framed under new Act. Rules framed under repealed Act shall continue until new rules are framed.

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18. SECTION 27 GENERAL CALUSES ACT 1879
1998 (2) JLJ 152
PUSHPENDRA SINGH VS. COMMERCIAL AUTOMOBILES.

Summonses sent through registered acknowledgment undelivered due to non availablity of addressee. Services will be deemed to have been duly affected. ***M/s. Madan vs. Vazeer, AIR 1989 630*** relied.

(Please go through the article "Notice ; under section 138 N.I. Act" published in Vol. IV Part II April, 1998 at page 6).

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19. SECTION 29 (2) AND SECTION 3 TO 24 OF LIMITATION ACT
1998 (2) JLJ 196
KARTIK RAM VS. STATE INDUSTRIAL COURT

In para 14 of Judgment High Court held as under :-

As would be evident from the language of section 29(2) that the provision of Limitation Act including those contained in sections 3, 4 to 24 of the Limitation Act are attracted only in a case where any special or local law prescribes period of limitation different from the period prescribed in the Limitation Act. The provisions of Limitation Act cannot, therefore, be made applicable in a case where special or local law does not prescribe for any period of limitation. As has been found in the provisions of the Act and the Rules, there is no express provision for making application for restoration and no period of limitation is prescribed. The provision of section 29 of the Limitation Act and through it the provisions of section 3 and section 4 to 24 of Limitation Act, therefore are not applicable to proceedings in the Labour or Industrial Court. I rely in the case of ***Brij Bhukan Kalwar and other Vs. S.D.O. Siwan and others, AIR 1955 Patna 1.***

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20. SECTIONS 4, 5, 79 & 80 N.I. ACT.
1998 (2) JLJ 205
GHISALAL VS. RATANLAL

In para 5 of the judgment it was held that if the rate of interest was specified in the document, the certainty of sum payable would not be affected as it would be still ascertainable by a calculation. But a document failed to specify the rate of interest it could not be treated to be a promissory note under Section 4 of the Act, In para 11 it was held that :

"Viewed thus, we hold that even though the payment of a certain sum was an essential attribute of a Promissory Note under Section 4, provision of interest at a specified rate in it would not make the sum any less uncertain as

it could involve the process of calculation to ascertain the sum payable and thus would not dilute its nature or invalidate it. Likewise it is incorrect to suggest that section 79 only provided for th date from which the interest was to be calculated. On the contrary, this by itself allowed provision of interest in a Promissory Note. The other issue that if the amount of interest contained in an instrument was not paid by a certain date, it would make the undertaking conditional, appears to us wholly hypothetical. 1993 MPLJ 137 approved and ***AIR 1960 Rajasthan 20 Raghunath Vs. Mangilal, AIR 1946 Nagpur 1981 Balamukund Vs. Ambada, AIR 1929 Patna 139 Laxminat Vs. Benaras Bank*** relied on.

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21. SECTIONS 53-A & 44 TRANSFER OF PROPERTY ACT
1998 (2) JLJ 177
HAZARILAL VS. JUGAL KISHORE

The appellant was not signatory of agreement to sale nor a consenting party to it. The doctrine does not bind him. Purchaser of a share in joint property has to seek general partition for ascertaining the share of his vendor. He has also to seek specific allotment for obtaining possession.

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22. HINDU LAW : JOINT HINDU FAMILY PROPERTY AND SECTION 8 HINDU MINORITY AND GUARDIANSHIP ACT, 1956 :-
1998 (2) JLJ 177
HAZARILAL VS. JUGAL KISHORE

Section 8 will not apply where minor possessing joint interest in the family property. ***1969 JLJ 227 Suggabai vs. Heeralal*** and ***Gullu vs. Bhag Chand 1982 Weekly Note 68*** were relied on.

If major son is in existence mother alone cannot execute agreement for sale and bind the whole property and shares. ***A.I.R. 1964 SC 1385 Balamukund vs. Komalwati*** was relied on. Reference was made to Section 243-A of "The principles of Hindu Law" by Mulla. If the property is alienated and if it is joint property the recital of legal necessity is not individual. It provides only corroborative evidence such recitals should be proved as a fact, ***A.I.R. 1971 SC 1028 Smt. Rani and Others vs. Smt. Shanta Bala*** and ***1978 JLJ 450 Ram Krishna vs. Vittal Rao.***

TRANSFER OF HINDU JOINT FAMILY PROPERTY :-

Transferee has to prove that the transfer is for actual legal necessity or for the benefit of the estate. Transferee has also to prove that he made bonafide enquiry to the above need etc. ***1978 Part II MPWN 180 Teja Singh vs. Sodan Singh.***

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23. HINDU LAW : RIGHT OF MAINTENANCE OF WIFE
1998 (2) JLJ 235 (SC)
RAGHUVIR SINGH VS. GULAB SINGH

Wife has a right to be maintained out of the property of husband during his life time and after his death as well till remains chest. Hindu Law by Mulla, 14th Edn. and Mayne's Hindu Law 11th Edn. relied on.

Hindu woman's right to maintenance is a pre-existing right which existed in Hindu woman's Right to property Act 1937 and in Hindu married woman's Right to separate Maintenance and Residence Act 1946. The case law of (1977) 3 SCC 99 relied on.

SECTION 14 HINDU SUCCESSION ACT, 1956 :-

The Section should be liberally construed to advance object of the Act. Object is "to enlarge the limited interest of Hindu widow in consonance with changing temper of times". Widow's limited interest in the property gets automatically enlarged into an absolute right. It is notwithstanding any restriction placed under document or instrument, Sub section (2) applies to instruments, decree, awards, gifts etc. which create independent or a new title in favour of female for the first time. Testator retaining full ownership and control for himself and for his wife. Later on property to devolve on third person. Testator dying. Widow's interest becomes absolute under sales of her cannot be challenged. If a document not creating any new or independent title in favour of female provision has no application.

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24. M.P. ACCOMMODATION CONTROL ACT : MEANING OF STANDARD RENT :
1998 (2) JLJ 141
RAM NATH SINGH VS. SANJAY AND OTHER

Referring to ***Ridhkaran Patni vs. Jagdish Prasad, 1998 JLJ 359 = 1998 MPLJ 750*** the High Court held that" agreed or admitted rate is standard rate for this purpose". It means the rent agreed between the parties.

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25. ADMINISTRATIVE ACTION: LEGALITY OF JUDGMENT NOT CHALLENGED:-
1998 (2) JLJ 98
PRABHU DAYAL VS. M.P. STATE AGRICULTURAL MARKETING BOARD

In para 11 it was held as under:-

"The plea based on alleged want of educational qualifications of the two petitioners is not available to the Board after such long lapse of time. An illegal action or decision is not for ever so. Even a void decision will become valid unless it is challenged or set aside within a prescribed time limit or reasonable period. By inaction or consequent action, an illegal or void decision matures into validity. Once the decision matures into 'validity' as it were, acts already done in execution of it also mature into legality. Administrative decisions are expected to be taken reasonably and within a reasonable time. Where the administrative authorities do not take action within a reasonable time, even the illegal acts, by lapse of time and as a result of consequent action thereupon, mature into validity. That is the distinction between a void and voidable action. Nothing is void in the absolute sense. A void action is also required to be declared so by a competent forum in proceedings which should have taken within limitation

prescribed, if any, or within a reasonable time. The Court will refuse to declare an action void or illegal to which challenge is not made within a reasonable period. The petitioners were appointed in the Board in the year 1990. They were promoted in the year 1991. They are absorbed and their lien was terminated in April 1991. After six years, in 1997, the Board's action to treat the appointments as illegal cannot be sustained."

Even a void or illegal decision will become valid if not challenged within reasonable time.

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26. EASEMENT ACT : SECTION 15 AND CPC O 6 R 17 :-
1998 (2) JLJ 89
HIRA BAI VS. RAM PRASAD

Words "as an easement and as of right" clearly indicate that it is a restriction in favour of the owner or occupier of immovable property of the right of ownership of the immovable property of another owner. Restriction cannot be build up or asserted without consciousness of the rights which are restricted.

Prescriptive acquisition of easementary right: Claimant has to prove that use was not permissive. He ***was exercising that right on the property treating it as some one else's property. Chapsibhai Dhanjubhai Dand vs. Purushottam AIR 1971 SC 1878*** followed.

Claim of prescriptive easement and adverse possession. Both are hostile origin. In case of adverse possession claimant should assert ownership while in case of easement limited right of user. ***Raychand Vanmalidas vs. Manekiai Mansukhbhai AIR 1946 Bombay 266 (F.B.)*** relied on.

Section 15 limitation Act, 1963 - section 25 : Claim of easementary right by prescription. Claimant should prove exercise of that right continuously for 20 years without interruption within the knowledge of the owner, etc.

Essential ingredient not pleaded. No decree for right of prescriptive easement can be asked for.. ***Phoduram vs. Bhagwandas, 1974 MPLJ Note 4*** relied on.

Amendment pleading may be allowed at second appellate stage. Where a new case is set up requiring a fresh trial and prejudicing opposite party. Amendment cannot be allowed.

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27. SECTION 74 CONTRACT ACT AND HIRE PURCHASE AGREEMENT:-
1998 (2) JLJ 152
PUSHPENDRA SINGH VS. COMMERCIAL AUTOMOBILES

The provisons of Section 74 are applicable to hire purchase agreements, damages and compensation by way of penalty cannot be awarded by arbitrator. ***K.P. Subbarmna Sastri vs. K.S. Raghavan AIR 1987 SC 1257*** and ***Patehchand vs. Balkishan AIR 1963 SC 1405*** were followed.

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28. **N.D.P.S. ACT SECTIONS 8/18 AND 50 & 55 :-**
1998 (2) JLJ 116
SABBIR VS. STATE

Compliance of Section 50 may be proved by reliable evidence of policeman. No further corroboration is necessary. ***Ali Mustaffa vs. State of Kerala AIR 1995 SC 244, State vs. Balbir AIR 1994 SC 1872*** and ***Hazarilal vs. State AIR 1980 SC 873*** were followed.

If seizure of opium is validly proved the infirmity in evidence as to the place of weighment is immaterial. Provision under Section 55 of the N.D.P.S. Act regarding immediate deposit of seized article not by itself mandatory. Accused will have establish prejudice.

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29. **SECTIONS 3(2),7,8, AND SECTION 10(7) M.P. ACCOMMODATION CONTROL ACT:-**
1998 (2) JLJ 110
MOHD. NASIR VS. JAMA MASZID COMMITTEE

Fixation of standrd rent where accommodation is exempted from the operation of said Act. No order fixing standard rent can be passed in pending cases also. Authority should have jurisdiction on date of order. **1994 (1) MPWN 231 (SC)** followed.

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30. **MUNICIPAL CORPORATION ACT 1956 (M.P.) ; SECTIONS 307 & 323 :**
1998 (2) JLJ 134
JANKI PANDEY (SMT) VS. STATE

Encroachment on public street can be removed without notice if encroachment is recent one. If it is old one reasonable individual notice should be given. ***Ahmedabad Municipal Corporation vs. Nawab Khan AIR 1997 SC 152*** followed.

If the construction is on private land not with permission or against permission or rules/by laws may be removed by Commissioner.

NOTE : Readers are requested to go through the whole judgment.

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31. **TELEGRAPH ACT SECTION 7 AND TELEGRAPH RULS 421 AND 443 :**
1998 (2) JLJ 130
VIKAS DWIVEDI VS. UNION OF INDIA

Mother and son both independent subscribers of their respective telephones. Default of mother in payment of telephone charges cannot result in disconnection of telephone belonging to son. If the subscriber of the telephone bills in his name may be disconnected. ***Chand Datta vs. Union of India 1997 (1) JLJ 312, Kailash Prasad Modi vs. Chief General Manager AIR 1944 Orissa 98, M/s Mahalaxmi vs. Asst. General Manager 1995 (5) AIHC 4866 and Prithvi Kumar vs. General Manager, AIR 1983 AP 131*** relied on. One more judgment which was relied on was ***Dr. B.V. Manek vs. Mahanagar telephone Nigam AIR 1996 Bombay 53.***

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32. SECTION 11 CPC EX-PARTE DECREE AND RESJUDICATA :-
1998 (2) MPLJ 299
GOTOLEY LAL VS. MATHURA PRASAD

The appellant/defendant remained ex-parte in the original suit in the trial court. There was an ex-parte decree for specific performance. the suit for declaration the agreement of sale of house to defendant was null and void having been obtained by fraud. Rejection of plaintiff's application under O 9 R 13 (in previous suit) appeal challenging the order of dismissal, Ex-parte passed against plaintiff in earlier suit therefore shall be treated as passed on merits and would operate as resjudicata. ***Mahboob Sahab vs. Sayyed Ismail AIR 1995 SC 1205*** relied on.

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33. O 37 R 2 (3) R 3 (7) AND SECTION 115 CPC :-
1998 (2) MPLJ S.N. 21
LAXMI KANTH VS. ASHOK KUMAR

Sub-rule (3) read with Rule 2 of Order 37 of the Civil Procedure Code is a complete code in itself and it requires that the defendant must appear within ten days of service of summons upon him in Form No. 4 of Appendix B or in other form which may be prescribed. In such a case, it would be advisable that the trial Judge should also fix the date for appearance of the defendant. However, it has been found that the trial Court often does not fix the same date as the date of hearing. The date of hearing is extended and usually the date of hearing is also mentioned in the summons. Ordinary litigants are, therefore misled into thinking that they are required to appear on the date fixed by the Court and not on the date mentioned in the text of summons. However, the effect of sub-rule (3) of Rule 2 of Order 37 of the Civil Procedure Code is mandatory and drastic because it has been provided that it the event of not entering appearance the contents made in the plaint shall be deemed to be admitted and the decree shall immediately follow. Sub-rule (3) of Rule 2 of Order 37 of the Civil Procedure Code has used the words "enter appearance". These words mean that the defendant should appear before the court and get his appearance recorded.

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34. SECTION 18 (3) M.P. ACCOMMODATION CONTROL ACT AND O 17 R 3 CPC :-
1998 (2) MPLJ 315
PRATAP SINGH VS. SHARAD CHAND

There was an eviction suit, Trial Court proceeded ex-parte. Plea of defendants that they should be given a fresh option under Section 18 of the Act for re-entry after the rebuilding of the house as time given has expired. **"Right of re-entry is forfeited when tenant does not deliver possession on fixed date.** ***Ghanshyam vs. Nathmal 1975 MPLJ 509*** referred to.

In eviction suit inspite of several opportunities and warnings given by trial Court, defendants committed default and failed to adduce evidence. Defendants made all attempts to procrastinate proceedings and there was contumacious

conduct on their part. The trial Court was justified in proceeding under Order 17 Rule 3 CPC. ***Kailash Chandra vs. Vinod 1993 MPLJ 961*** referred.

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35. SECTION 138 N.I. ACT : JURISDICTION OF THE COURT :
1998 (2) MPLJ 325
HINDUSTAN MILLS VS. KEDIA CASTLE DELAN INDUSTRIES

The goods were supplied on credit. The complainant/creditor had its registered office at Raipur and transaction with regard to goods had taken place at Raipur though cheque was issued by debtor at Bhilai. It was dishonoured at the Bank of Bhilai and information with regard to such dishounour was received by complainant at Bhilai. Obligation to make payment is at the palce where creditor resides or where office of creditor is situate. In view of this position, Court at Raipur had jurisdiction.

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36. CR.P.C. SECTION 203, 397 AND 401
(PLEASE ALSO SEE S. 398 CR.P.C.)
1998 (2) MPLJ 321
RATANLAL VS. KAILASH NARAYAN

When a revision is filed challenging the order refusing to take cognizance the accused has no locus standi to contest. He is not a necessary party. The determination is to be made by the Court to find out the approach of the Court below and to scrutinise the justifiability of the order refusing to take cognizance. this being the position of law.disposal of revision by the revisional Court without issuing notice to the non-applicant is not infirm or pregnable. Once it has been held that the accused persons have no role to play before process is issued, the revision at their instance challenging the order of the revisional Court directing the Magistrate to reconsider the matter is not tenable as they cannot raise grievance in regard to the same as there was no direction for issuance of process. ***Chandra Deo Singh Vs. Prakash Chandra Bose alies Chabi Bose, AIR 1963 SC 1430, Smt. Nagawwa Vs. Veeranna Shivallingappa, AIR 1976 SC 1947, Keshab Jean Vs. Pradipta Kishore Das, (1989) 2 O.C.R. 34, Bhagyalaxmin alias Laxmi Chundi Vs. Patal Krushna, 1991 (1) CLR 59 and M. Thulasidas Vs. K. Govindaraju, 1995 Cri.L.J. 1960.***

Please also refer to following citations :

1. Case of Kedar, 1952 Cr.L.J. 1196 (V.P.)
2. Thanik Chanala, AIR 1947 Madras 389.
3. Shisa, A.I.R. 1958 A.P. 595.

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37. SECTIONS 13 & 23 (1) (A) HINDU MARRIAGE ACT :
1998 (2) MPLJ 312
SANT KUMAR VS. CHITRALEKHA

Clause (a) of sub-section (1) of section 23 of the Hindu Marriage Act enunciates a provision that a decree cannot be passed when the wrong was

committed by the petitioner himself which is based on the principle that th wrong doer should not be permitted to take advantage of his own wrong an should not be granted any relief under the Act, on the basis of such a wrongfu act on his part. Where the wife of the petitioner had obtained decree for judici separation on the ground that the petitioner was living in adultery, the act of th petitioner wrong doer had resulted in the other spouse leaving him and to sta away and therefore the petitioner cannot be allowed to take advantage of suc a wrong on his part and he cannot be allowed to request the Court to perpetuat it by granting a decree for divorce by dissolution of marriage between th parties.

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38. SECTION 24 HINDU MARRIAGE ACT : NORMS TO BE CONSIDERE WHILE DEALING WITH APPLICATION UNDER SECTION 24 : 1998 (2) MPLJ 339 .

MUNNIBAI VS. JAGDISH

In paras 26 to 31 it was held as under :

"In any view of the matter, it seems to me that for determining the claim fc maintenance pendent lite and the expenses of proceedings as contemplate under section 24 of the Act, what ought to be kept in mind is that in case th applicant has no independent means he or she is always entitled to th maintenance and expenses, unless good cause for depriving an applicant fc the maintenance and expenses of the proceedings could be the availability c an assured independent income derived from the property, service occupatio or other sources which may satisfy the genuine needs providing support to hi or her keeping in view the status of the family to which he or she belongs an not the income of the wife's parents or other relations which cannot be take into account so as to constitute good cause for not granting interim maintenanc and expenses of the proceedings.

I must hasten to add here that there may be cases where the character an gravity of the conduct is much which may be found repugnant to the concep and the institution of marriage and it may be wholly unjust to ignore them whil considering the question of releasing or withholding the benefit contemplate under section 24 of the Act, but it all depends on the facts of each case an cogent reasons have to be recorded for withholding the grant of the benef secured under section 24 of the Act.

A wife has right to be maintained by her husband and the fact that her fathe is supporting her could never be a ground for depriving her the maintenance a contemplated under section 24 of the Act, which clearly stipulates that wher the wife has no independent income sufficient for her support and to meet th necessary expenses of the proceedings, she may maintain an applicatio under this provision. If the object of the Legislature had been to deprive th wives who were being maintained by there parents for the maintenance an expenses the word 'independent' would not have been used in the aforesai provision.

It may further be emphasised that while considering the application for granting or withholding a relief claimed for interim maintenance and expenses of the proceedings as contemplated under section 24 of the Act, the only relevant consideration should be whether the party applying for the relief is possessed of sufficient independent means or not to maintain herself. The rejection of an application on the ground that the wife was disentitled to any relief under Section 24 of the Act, for the reason that she was unwilling to live with her husband cannot be taken to be a relevant consideration at all at the stage of the suit as it would amount to prejudging the issue which is required to be decided at the final disposal of the suit after considering the evidence and the materials brought on the record. In the circumstances, the wife's refusal to live with the husband could not be taken to be a good cause for rejecting the application of the wife seeking relief under section 24 of the Act.

In fact, it seems to me that the proceedings under section 24 of the Act, provide neither the occasion not the stage for the court to enquire into to veracity or the wright to be attached to the allegations and the counter allegations of the parties in the pleadings relating to the merits of the claim regarding the decree sought for under section 9 or 13 of the Act, by the plaintiff, and to go into such allegatios would clearly introduce extraneous considerations and will clearly amount to prejudging the main issue as indicated hereinabove.

The trial Court, therefore, clearly fell in error in rejecting the application of the defendant/wife on the assumption that her conduct of refusing to live with her husband was such which could not justify the grant of any relief under section 24 of the Act. In fact, the conduct in question of the wife was wholly irrelevant and immaterial for the disposal of the application for the relief contemplated under the aforesaid provision on the facts and circumstances of the present case."

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39. SECTION 23-A, 23-B AND 23-C (ALSO REFER TO SECTION 12 (1) (E) AND (F) M.P. ACCOMMODATION CONTROL ACT) : NATURE OF ACCOMMODATION HOW TO DETERMINE : 1998 (2) MPLJ 333
PRESIDENT, TRANSPORT CO-OPERATIVE BANK VS. SMT. CHANDRAPRABHA

While determining that nature of accommodation i.e., whether it is residential or non-residential it has to be seen what was the purpose of letting at the initial stage. The second test for determining the nature of accommodation would be to look to its structural design.

Structural design and original letting was for residential purpose and the landlord also resided in that house for sometime and, therefore, merely because the Bank has been allowed to be run will not make it an accommodation wholly for residential purpose. ***1963 JLJ Note 282, Niranjan Singh Vs. Shri Krishna and 1981 MPRCJ Note 80, Bhagwandas Vs. Sureshchandra.*** referred.

In case of composite tenancy if it is established that the landlord required non residential part of the accommodation or residential part of the accommodation, a decree for eviction of the tenant from the entire premises can be passed.

Consistent view of this High Court has been that in case of composite tenancy if it is established that the landlord required non-residential part of the accommodation or residential part of the accommodation a decree for eviction of the tenant from the entire premises can be passed. Reference may be made to a D.B. decision, as reported in ***1982 JLJ 319, Jagdish Kumar Vs. Jagdish Chandra and 1985 MPWN 405, Ram Swarup Vs. Sitaram Mathur.***

Please also refer to 'JOTI JOURNAL' Vol. IV Part IV August 1998, Page 54.

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40. GROVE : MEANING OF : NO VESTING IN STATE? MADHYA BHARAT ZAMINDARI ABOLITION ACT :
1998 (2) MPLJ 359
VIJAY KUMAR VS. STATE OF M.P.

The word "grove" conveys compactness or at any rate substantial compactness to be recognised as a unit by itself which must consist of a group of trees in sufficient number to preclude the land on which they stand from being primarily used for a purpose, such as cultivation, other than as a grove-land. On a small piece of land measuring 17 biswas three mango trees and some babul trees were standing. Therefore, this land would answer the description of the term "grove" and would attract the provisions of section 5 (f) of the Madhya Bharat Zamindari Abolition Act, Samvat 2008 (13 of 1951). Rights in 17 biswas of land on which mango and babul trees were standing remained intact and never vested in the State. ***Chandrojirao Angre Vs. State of M.P., 1968 MPLJ 279 = 1968 RN 270*** rel.

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41. COURT FEES ; SECTION 8 AND SCHEDULE 1 ARTICLE 1A READ WITH SECTION 11 REQUISITIONING AND ACQUTSITION OF IMMOVABLE PROPERTY ACT :
1998 (2) JLJ 310 (F.B.)
UNION OF INDIA VS. SMT. KANTI SHARMA

The full text of paragraphs 2, 4 and 5 of the judgment is given under so that the Judicial Officers may grasp the principle relating to court-fees.

"The brief facts giving rise to this reference are that an appeal was preferred under section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (here in after rferrred to as the 'Act of 1952') and in that an objection was raised by the learned counsel for the respondent that on the memorandum of appeal against order determining the compensation payable in respect of the property of the respondent requisitioned, the advalorem court-fee has not been paid; therefore, the appeal preferred by the Government of India is liable to be dismissed.

It may be relevant to mention here that there is a direct decision of Hon. Supreme Court in the case of C.G. Ghanshamdas (supra) wherein this question was answered. That case arose under the Tamil Nadu Court-fees and Suits Valuation Act, 1955, for appeals arising under Requisitioning and Acquisition of Immovable Property Act, 1952 and in that connection, their Lordships observed :

"The Court-fee payable on a memorandum of appeal filed under Section 11 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (Requisition Act) against the order determining compensation payable in respect of the property requisitioned has to be computed in accordance with section 51 of the T.N. Court-fees and Suits Valuation Act, 1955".

Section 51 and Section 8 of the Court-fees & Suit Valuation Act as adopted by the State of M.P. with amendment in its application to the State of M.P. is parimateria. A similar question also came up before the Full Bench of this Court in the case of ***State of M.P. Vs. Seth Gowardhandas, 1993 JLJ 280 = AIR MP 70*** and it was held :

"Court-fees Act (7 of 1870) Sch. 1, Art 1A, Sch. 2, Art. 11 - Award of Civil Court made in land acquisition cases- is a decree in view of amended provisions of section 26 (2) of Land Acquisition Act, 1894- Memorandum of appeal (including cross-objection) against it- advalorem court-fee under Art. 1A of Sc. 1 and not fixed court-fee under Art. 11 of Sch. 2 would be payable."

Their Lordships relied on the decision given by the Hon. Supreme Court in the case of C.G. Ghanshyamdas (supra). This judgment was affirmed by their Lordships of the Hon. Supreme Court in the case of ***Indore Development Authority Vs. Tarak Sing. 1995 JLJ 724 = AIR 1995 SC 1828,*** paras 3 & 4 and it was observed in para 3 of the judgment :

"This High Court has relied upon its Full Bench decision reported in ***State of M.P. Vs. Govardhandas, 1993 JLJ 280 = AIR 1993 MP 70.*** The principal contention of Shri V.R. Reddy, the learned Additional Solicitor General, is that the appellant is not a claimant. Section 8 of the M.P. court fees Act, 1870 (for short the 'Act') has no application to the facts in this case. Article II of Schedule II of the Act is applicable and that, therefore, they are required to pay only the fixed court-fee prescribed thereunder. He also seeks to canvass the correctness of the judgment of the Full Bench in that behalf."

It was also observed in para 4 of the said judgment :

"Having considered the respective contentions, we are of the view that the Full Bench of the High Court of M.P. has laid down the law correctly. Section 3 (d) of the Central Act defines the 'Court' to mean a principal Civil Court of original jurisdictioin. Section 19 of the Central Act gives right to the claimant or the owner of the land for seeking reference. The collector is enjoined to make a reference for the determination of the objection raised by the claimant regarding either the measurement of the land or the amount of compensation. Thereafter, the Collector is obligated to make the statement to the Court in the

manner prescribed under S. 19. On receipt thereof, under Section 20, the Court is to cause a notice served as mentioned therein. Under S. 22, the Court conducts the proceedings as a civil Court. Sub-section (2) of S. 2 of the CPC defines the decree and S. 2 (14) of the Act defines 'order'. Their Lordship also referred the earlier decision of Hon. Supreme Court in Ghanshyamdas (supra). In this view of the matter, we are of the the opinion that the view taken by the Division Bench of this Court in Mukund Das Maheshwari (supra) is no more a good law."

Before parting with this case, we may however, observe the decision given in the case of ***Diwan Brothers Vs. Central Bank, Bombay, AIR 1976 SC 1503*** which was followed in Mukund Das Maheshwari's case (supra), was a case under Displaced Persons (Debts Adjustment) Act whereas all the cases pertaining to acquisition and requisition squarely fall under section 8 of the Act which specifically relates to the compensation for acquisition of land for public pupose; therefore, that case which arose under the Displaces Persons (Debts Adjustment) Act, has no relevance so far as the present line of cases which deals with payment for acquisition and requisition of land for public purposes. Section 8 of the Court-fees Act, 1870 reads as under :

"S. 8 Fee on memorandum of appeal against order relating to compensation- The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the appellant."

This has also been expalined by their Lordships of Hon. Supreme Court in Indore Development Authority (Supra) in para 8. Their Lordships have also categorically laid down that Diwan Brother's case (supra) has no application to the facts of this line of the cases and it was observed that the special Tribunal was constituted and an application was to be made to the Tribunal for determination of disputes. It was also observed that in view of the specific language, this Court held that the criterial prescribed under sub-section (2) of section 2 of the CPC has not been satisfied. Therefore, the order is not a decree and the application is not a plaint as required by CPC. Therefore, the Lordships distinguished that case- Diwan Brothers (supra) and specifically held that it is not applicable to these line of cases. Hence, we answer this reference that the view taken in Mukund Das Maheshwari's case (supra) is not a good law."

Accordingly Advalerom Court-fees has to be paid. The judgment in Case No. ***MCA 165/1985 Mukund Das Maheshwari Vs. Union of India*** decided on 3.9.1985 was overruled.

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42. SECTION 12 (1) (F) M.P. ACCOMMODATION CONTROL ACT AND SECTION 4 PARTNERSHIP ACT :
1998 (2) JLJ 287
GOVIND JANGDE VS. ARUN KUMAR SINGH

Active partner of the partnership firm can obtain eviction decree against the

tenant for starting or enhancing the partnership business. Case of ***D.N. Sanghavi Vs. Ambalal, AIR 1974 SC 1026*** distinguished: ***Krishnan Nair Vs. Ghouse Basha, AIR 1987 SC 2199, Bhanwarlal Vs. T.K.A. Abdul Karim, AIR 1992 SC 2166*** and ***Fazal Bhai Vs. Vijay Kumar Kaushal, 1972 MPLJ SN 140*** relied on.

43. CHEAP PUBLICITY :

1998 (2) JLJ 296

UNION OF INDIA VS. S.P. ANAND

Deprecating the growing tendency to make use of the Court as forum to seek some cheap publicity, this Court has said :

"We regret to say that seeking one's name in newspapers everyday had lately become the worst intoxicant and the number of people who have become victims of it is increasing day by day." (See : ***Mithilesh Kumar Vs. R. Venkataraman & Others, 1988 (1) SCR 525 = JT 1987 (4) SC 111***).

NOTE : Kindly see the address given by Hon'ble the Chief Justice of M.P. Shri A.K. Mathur to the Judicial Officers in class room under the head Institutional Report in this Issue.

44. SECTION 407, 408 & 409 CR.P.C. ; POWERS OF THE SESSIONS JUDGE TO WITHDRAW A CASE AND TRANSFER OF A CASE:-

1998 (2) JLJ 293

DEEPCHAND VS. STATE

Paragraphs 7,8 and 9 are reproduced here and Judicial Officers are requested to go through the whole judgment.

"In ***State of M.P. v. Raja (1994 (II) MPWN 18)*** this Court while considering a transfer application made directly to this Court under section 407 Cr.P.C., touched the point projected in this revision and observed;

"It seems that the Sessions Judge stood divested of the jurisdiction in view of section 409 Cr.P.C. as the trial had commenced. It is pointed out that the proviso as reproduced hereunder, of section 407 (2) of Cr.P.C. provided no fetters in view of the position envisaged by section 409 Cr.P.C."

In the aforesaid case, this Court was clearly of the view that in the matter of transfer of case from one Additional Sessions Judge to another Addl. Sessions Judge in the same sessions division, the Sessions Judge has to resort to section 409 (2) and not to section 408 and if such an application is barred in view of the clog contained under sub-section (2), then the party may approach to High Court directly and in such a situation the proviso to sub-section (2) of section 407 would not be attracted.

Similar view is taken by the High Court of Calcutta and reported in 1988 (III) Crime 408; and 1982 Criminal Law Journal 336.

Accordingly the High Court held that the Sessions Judge in the present case stood divested of the jurisdiction in view of the bar contained under Section 409 (2) Cr.P.C. as the trial of the case has commenced.

(About 9 witnesses were already examined by the concerned Additiona Sessions Judge).

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45. SECTIONS 154 &157 CR.P.C. AND SECTION 32 EVIDENCE ACT:-
1998 (2) JLJ 259
BHAGWAN DAS VS. STATE OF M.P.

Compliance of sending copy of F.I.R. under Section 157 Cr.P.C. to the Magistrate **DISPROVED. DEHATI NALISHI** of such F.I.R. cannot be treated as dying declaration.

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46. DOCUMENT : INTERPRETATION OF :
1998 (2) JLJ 250
PREM NARAIN VS. STATE TRANSPORT APPELLATE TRIBUNAL

Interpreting a document. Nothing can be added or substracted language has to be read as it stands.

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47. INTERPRETATION OF STATUTES :
1998 (2) JLJ 267
RAM CHARAN AHIRWAR VS. S.D.O., JATARA

Omission or addition of words cannot be done unless there is compelling circumstances; "Principle of Statutory Interpretation" by Justice G.P. Singh 6th Edition at page 51 is relied on.

The quotation from the paragraph 9 of the judgment is reproduced here:-

"Where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words. A departure from the rule of literal construction may be legitimate so as to avoid any part of the statute becoming meaningless. Words may also be read to give effect to the intention of the Legislature which is apparent from the Act read as a whole. Application of the mischief rule of purposive construction may also enable reading of words by implication when there is no doubt about the purpose which the Parliament intended to achieve. But before any words are read to repair an omission in the Act; it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law.

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48. INTERPRETATION OF STATUTES:
1998 (2) MPLJ 422 (SC)
SADANANDAN VS. MADHAVAN SUNIL KUMAR

Court always presumes that Legislature inserted every part thereof for a purpose. Legislative intention is that every part should have effect.

Para 9 of the Supreme court judgment runs as under:-

"The other impediment to the acceptance of the concept of successive causes of action is that it will make the period of limitation under clause (b) of section 142 otiose, for, a payee who failed to file his complaint within one month and thereby forfeited his right to prosecute the drawer, can circumvent the above limitative clause by filing a complaint on the basis of a fresh presentation of the cheque and its dishonour. Since in the interpretation of statutes the Court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that the every part should have effect the above conclusion cannot be drawn for, that will make the provision for limiting the period of making the complaint nugatory."

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49. NEGOTIABLE INSTURMENTS ACT, Ss. 138, 138 PROVISO (C) AND 142 : 1998 (2) MPLJ 422 (SC)

SADANANDAN VS. MADHAVAN SUNIL KUMAR

Cause of action to file complaint under section 142 (b) arises only once when notice under clause (c) of the proviso section 138 is given.

Paragraphs 7 and 8 of the judgment run as under :

"In a generic and wide sense (as in section 20 of the Civil Procedure Code, 1908) 'Cause of action' means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to successfully prosecute the drawer for an offence under section 138 of the Act :

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

If we were to proceed on the basis of the generic meaning of the term 'Cause of action' certainly each of the above facts would constitute a part of the cause of action but then it is significant to note that clause (b) of section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the falure to make the payment within 15 days from the date of the receipt of the notice. The reason behind giving such a restrictive meaning is not far to seek. Consequent upon the failure of the drawer to pay the money within the period of 15 days envisaged under clause (c) of the proviso to section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one for filing the compalint under section 142 is to be reckoned accordingly. The combined reading of the above two section of the act leaves no room for doubt that cause of action within the meaning of section 142 (b) arises- and can arise- only once.

Besides the language of sections 138 and 142 which clearly postulates only one cause of action there are other formidable impediments which negates the concept of successive causes of action. One of them is that for dishounour of one cheque there can be only one offence and such offence is committed by the drawer immediately on his failure to make the payment within fifteen days of the receipt of the notice served in accordance with clause (b) of provisio to section 138. That necessarily means that for similar failure after service of fresh notice on subesquent dishonour the drawer cannot be liable for any offence nor can the first offence be treated as **non est** as to give the payee a right to fill a complaint treating the second offence as the first one. At that stage it will not be a question of waiver of the right of the payee to prosecute the drawer but of absolution of the drawer of an offence, which stands already committed by him and which cannot be committed by him again.

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50. SECTION 308 CR.P.C. : CERTIFICATE OF THE PUBLIC PROSECUTOR: 1998 (2) MPLJ 469

GUNWANTA BAI VS. STATE

The requirements of section 308 of the Criminal Procedure Code are mendatory. In case of non-compliance of requirement of sub-sections (1),(4) and (5) of section 308, compliance of the mandatory provisions of section 308, Criminal Procedure Code in the absence of certificate by the Public Procecutor.

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51. EMPLOYEES PROVIDENT FUND SCHEME 1952: PARAS (G) (I) 61 AND 70 AND INDIAN SUCCESSION ACT.- 1998 (2) MPLJ 522

PUSHPA VS: JIYABAI

The mother nominated as by the deceased. Widow claiming exclusive entitlement. Mother is member of family under the Scheme and is entitled to receive amount of provident fund along with the widow of deceased.

The mother had been nominated as nominee by the deceased member of the Employees' Provident Fund Scheme. Under the provisions of para 70 read with para 61 Of the Employees' Provident Fund Scheme, 1952 the nominee is the person authorised to receive the amount of provident fund of a member. However, mere nomination does not negative the rights of other successor. The nominee is only entitled to receive the amount but he cannot claim absolute right. An application for succession certificate was made by the widow of the deceased in respect of deposits under the Employee' Provident Fund Scheme. The deceased had under para 61 nominated his mother to receive the amount. The order of the Additional District Judge granting succession certificate to the widow and mother of the deceased was challenged in appeal by the widow claiming the whole amount.

Held, that the nominee cannot claim the absolute right to that amount excluding the rights of the heirs which the heirs may have according to the law of succession governing them. The mother and the daughter-in-law do have

their shares and accordingly the 1st Additional District Judge had granted the succession certificate. Appeal dismissed. ***B.L. Singh vs. R.P.F. Commissioner, 1992 (64) FLR 206*** and ***Smt. Sarbati Devi vs. Smt. Usha Devi, AIR 1984 SC 346*** relied on.

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52. SUCCESSION ACT; SECTION 63 AND EVIDENCE ACT SECTION 68:-
1998 (2) MPLJ 453
NAGULAPATI LAKSHMAMMA VS. MUPPARAJU SUBBAIAH

Attestation of Will. Attesting witness should either sign or affix his thumb impression or mark himself. Attesting witness cannot delegate that function to some other person.

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53. EVIDENCE ACT SECTION 27; DISCOVERY:-
1998 (2) MPLJ 431
LAXMAN BALRAM VS. STATE

If a particular disclosure is treated as evidence under section 27 of the Evidence Act, it must be established that such disclosure was made by the accused and it resulted in discovery of fact. Mere statement of a witness that a disclosure statement was made and it was recorded is not proof of what was stated by the accused.

The dead body of deceased taken out of the well, was having some injuries on the head and on the back of the body and also strangulation of the neck with a piece of the elastic which appeared to be torn off from some underwear. The accused was interrogated by police and he made disclosure statement before a witness 'P' recorded in memorandum. This memorandum contained disclosure about underwear and also disclosure of a thread and also about money. the witness did not speak in Court about the underwear.

Held, that the evidence of 'P' could not be taken as positive proof about disclosure of Janghiya (underwear). The Investigation Officer also did not say that the accused disclosed about the concealment or whereabout of his Janghiya. So, even his narration that the disclosure were recorded cannot be accepted as evidence of disclosure of underwear.

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54. SECTION 34 AND SECTION 3 EVIDENCE ACT : ENTRIES IN ACCOUNT BOOKS : MODE OF PROOF :
1998 (2) MPLJ 390
GANESH AND CO. VS. MAYA STEEL SUPPLIERS

Entries proved. By itself they would not be sufficient to charge person with liability. Plaintiff is required to adduce evidence which would make prudent person to consider its existence so probable man would act upon the supposition that such obligation exists.

Please refer to ***Chandradhar vs. Gauhati Bank, AIR 1967 SC 1058.***

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55. EVIDENCE ACT SECTION 3 AND 114 : APPRECIATION OF EVIDENCE & M.P. ACCOMMODATION CONTROL ACT : ADVERSE INFERENCE :- 1998 (2) MPLJ 410
VIRENDRA VS. SMT. RAMKATORIDEVI

Eviction suit by landlady. Suffered brain haemorage resulting in physical disability. Could not appear as witness. Her son, holding power of attorney was examined. Exemption was granted by the rent controller proper. No adverse inference against her could be drawn.

NOTE: Please refer to ***AIR 1998 Rajasthan 185 Ram Prasad vs Hari Narayan*** in which it was held in para 8 as under :-

"On the other hand Mr. Kanta Prasad Sharma learned counsel for the defendants placed reliance on ***Shambhu Dutt Shastri vs. State of Rajasthan, (1986) 2f WLN 713,*** where this Court (Hon'ble Dinker Lal Mehta, J. as he then was in para No. 23 of the judgment propounded as under :-

"A general power-of-attorney holder can appear, plead and act on behalf of the party, but he cannot become a witness on behalf of the party. He can only appear in his capacity. No one can delegate the power to appear in witness-box on behalf of himself. To appear in a witness-box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff. "

O.6 Rule 17 CPC : Application be tenant for amendment in written statement to bring on record alleged partition deed between landlords. Deed was not registered. Deed showed that the premises in dispute fall in the share of the son of the landlady. Her right to receive rent continued under the document. The document was inconsequential in proceedings for eviction. Rejection of application for amendment was justified by the Court. Landlady was accepted by the tenant as one of the co-landlords.

Section 23-A(b) M.P.A.C.A. : It is only an enabling provision for filing application for eviction. Landlady is not required to plead and prove her title. Tenant was paying rent to the landlady. The alleged partition deed produced by the tenant also showed her right to receive rent. Tenant cannot challenged title to property in eviction suit.

NOTE: Judicial Officers are requested to go through the whole judgment so as to know about the principle of law laid down in the case.

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56. M.P.L.R.C. SECTION 170-B (2) : 1998 (2) MPLJ 478
BALDEO VS. SUKKA

The expression "shall be presumed" under Section 170-B (2) cannot be equated with a statutory fiction or conclusive proof. Person in possession of agricultural land can lead evidence to rebutt the presumption.

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57. I.P.C. SECTIONS 498-A, 306 AND EVIDENCE ACT SECTION 113-A : 1998 (2) MPLJ 405
DHOBILAL VS. STATE

In order to have recourse to Section 113-A, Evidence Act it must be shown that she was subjected to cruelty by the husband and her relatives.

NOTE: Section 113-A refers to 'may presume'.

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58. MOTOR VEHICLE ACT (1939) SECTION 110-A :
1998 (2) MPLJ 503
SUJAN PAL VS. CHANDAN SINGH

The appellants filed an application for compensation of an amount of Rs. 4,50,600/- on account of their minor son aged about 10 years but died as result of a motor accident. According to the appellants the minor son Monu was a brilliant and precious child. The claimants had 5 daughters and the only son. Appellants had high expectations from Monu. It was claimed that in case Monu had not met with an accident he would lived for a long period and would have become an officer in the Indian Administrative Services. The Tribunal awarded only Rs. 48,000. The High Court held as under :-

"In determining compensation in case of the death of a child, the family background, academic and other activities and expectancy of parents from the child have to be taken into cosideration. The earning or contributing to the support of claimants at or before death need not be proved. Parents are entitled to recover the present cash value of prospective service and pecuniary benefits of the deceased but when the prospect is very uncertain and nature and quality of assistnace is also very uncertain, the Court must exclude all considerations of matter which rest in speculation of fancy though conjecture to some extent is inevitable. There was nothing on record to indicate that parents of deceased were well placed in life, that they could have afforded him a good education, which would have enabled him to provide financial assistance to his parents. Evidence to indicate family background, capacity of parents to provide necessary assistance to their son to attain his object was lacking. The amount of compensation awarded by Tribunal was just and did not warrant any interference in appeal.

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59. MOTOR VEHICLE ACT SECTION 3 AND EVIDENCE ACT SECTION 74 (1) (III) ; DRIVING LICENCE :-
1998 (2) MPLJ SN 33
ORIENTAL INSURANCE CO. LTD. VS. SMT. MULAYAM BAI

Certificate issued by the Licensing Authority to the effect that no licence exists in the record in the name of driver of vehicle. Such certificate is admissible in evidence as a public document under section 74 (1) (iii) of the Evidence Act.

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60. MOTOR VEHICLE ACT SECTION 166 :
1998 (2) MPLJ 442
RAMJI HIRALAL VS. PREMBAI PATEL

Motor accident. Burden of proving that accident took place due to mechanical defect is on the owner.

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61. MOTOR VEHICLES ACT SECTION 168 :
1998 (2) MPLJ SN 36
RAJEEV VS. JITENDRA

A mopedist dashed by the bus. Multiple several injuries on his person resulting in vehicle. Permanent disability of hundred percent (Traumatic Paraplegia). Amount of compensation enhanced from Rs. 1,70,000/-to Rs. 6,00,000/-.

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62. SERVICES: TEMPORARY APPOINTMENT :
1998 (2) MPLJ 528
PREM BABU VS. MATSYA KRISHAK VIKAS ADHIKARAN

The petitioner was appointed as peon only for one year on temporary basis. Non-continuation in service beyond one year was not arbitrary or discriminatory. Petition under Article 226 of the constitution filed challenging the dismissal. Held that it was not arbitrary or discriminatory.

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63. M.P. LOK DHAN (SHODHYA RASHIYON KI VASULI) ADHINIYAM (1 OF 1998) SS. 3 (2) AND 4 (2) (B) :
1998 (2) MPLJ 517
BANK OF INDIA VS. M/S KALPTARU

The recovery Authority in proceedings for recovery under the M.P. Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987, has to take effective measures to sell the mortgaged property first. It is only in case, after exhausting the mortgaged property, it comes to the conclusion that the amount fetched is not sufficient to discharge the liability that it has to take recourse to other methods including the method to proceed against the guarantor to recover the balance amount remaining due.

Recovery proceedings against partnership firm. Recovery authority can proceed against property belonging to partners and guarantor if liability of firm could not be discharged by sale of properties standing in the name of firm.

Recovery authority cannot go behind Recovery Certificate and find fault with inherent lack of jurisdiction to proceed against property sought to be utilised for discharge of liability.

NOTE : Judicial Officers are requested to go through Order 34 CPC also.

TRANSFER OF PROPERTY ACT SECTION 55 (4) (A) :- ENTITLEMENT TO RENT FOR PERIOD PRIOR TO THE SALE :-

Where the agreement to sell was entered into on 26.6.1978 which inter alia provided for induction of the tenant on rent and the sale deed was executed on 12.2.1981 on the question whether the purchaser was entitled to rent for the period prior to 12.2.1981.

Held, that the agreement to sell was entered into on 26.6.1978

which inter alia provided for induction of the tenant on rent. There being specific contract between the plaintiffs and their vendor, plaintiff shall be entitled to rent for period prior to 12.2.1981.

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64. C.P.C. Ss. 122 AND 107 (1) (D) O. 41 Rr. 27 & 28 AND O. 8 R. 8 & 9 : (1998) 6 SCC 686

MOHAN SINGH VS. LATE AMAR SINGH THROUGH THE LRS.

In absence of any rule regarding procedure for filing rejoinder by tenant it must be held; A rule should be made that papers intended to be filed in court in matters in which the other side has entered appearance should be served on the opposite party under acknowledgment endorsed thereon. A rule should be made that any paper served on the counsel for the opposite side must bear the endorsement that it is a true copy of the original field in the court and it should be signed by the counsel or the party. The Presiding Officer should take care to see that any paper filed in court bears the date stamp clearly on every page and he should put his initials and date on each page clearly. Such a procedure would ensure to some extent that papers filed in court are not tampered with.

As regards filing of application by tenant for additional evidence; it would have been better if the application had been given a separate number and an order had been passed thereon separately. But that is not a matter of grave concern. It is absolutely necessary that every application for permission to file additional evidence should contain a list of documents giving full particulars thereof such as date, parties thereto and description. Apart from that, each document should also bear a certificate of endorsement made by the counsel or the party that the said document was the one referred to in the affidavit or application of the party. The application must also specify the number of pages of each document filed therewith. Whenever such applications are filed in pending matters, the copies thereof and the copies of the documents sought to be filed as additional evidence should be served on the other side after being duly certified as true copies by the applicant or his counsel. Appropriate rules have to be framed in this regard also.

Apart from the above, there are serveral other matters relating to practice and procedure which require proper attention. In so far as the Act is concerned, Section 56 enables the Central Government to make rules. Rule 23 of the Rules framed under the Act provides that the Controller and the Rent Control Tribunal are as far as possible to be guided by the provisions contained in the Code of Civil Procedure, 1908. It is absolutely necessary for the Controller and the Rent Control Tribunal to see that the provisions of the statute, rules and the Code of Civil Procedure are strictly complied within all the proceedings before them.

It has been brought to notice that even for the civil courts in the Union Territory of Delhi, no rules of practice have been framed by the High Court, It is a sad state of affairs that the High Court of Delhi has not given its thought in this regard. It is high time that the High Court framed appropriate rules of practice to be observed by all the courts in the territory subordinate to it. The Registry is directed to send copies of this judgment to the department concerned of the Central Governemnt as well as the High Court of Delhi so that appropriate rules may be made by them respectively with regard to the proceedings under the Delhi Rent Control Act and the proceedings in the regular civil courts. The High Court is requested to give its immediate attention

to this matter and also cause periodic inspection of the Courts subordinate to it and issue such circulars as may be necessary in order to plug the loopholes then and there.

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65. O. 2 R. 2 CPC
1998 (6) SCC 748
RAM PRASAD VS. NAND KUMAR & BROS.

Suit for eviction of tenant first filed under general law on grounds of non-payment of rent and bonafide personal requirement. Suit as well as appeal dismissed. During pendency of second appeal, second suit filed under Bihar Buildings (Lease, Rent and Eviction) Act on ground of bonafide requirement for personal occupation. Second appeal was latter on withdrawn. It was held that second suit for eviction was not barred under O.2 R. 2 CPC. Cause of action in the second suit was clearly different from the cause of action in the earlier suit and there is no chance of O.2 R. 2 CPC barring the second suit.

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66. CR.P.C. SECTION 173 (2) :
1998 (6) SCC 551
STATE (THROUGH CBI) VS. RAJ KUMAR

Please refer to Rr. 101 and 102 regarding Sanctioning Final Report (FR) of Expunging Report (ER) and also please refer to Section 190 and 191 Cr.P.C.

Some parts of the judgment are reproduced here, so as to enable the Judicial Officers to grasp the idea behind the judgment :

On 11-5-1998 the Central Bureau of Investigation (CBI), the appellant before us, registered a case against the respondent, who was then a Junior Engineer in the New Delhi Municipal Corporation, under Section 5 (2) read with Section 5 (1) (e) of the Prevention of Corruption Act, 1947 ("Act" for short) on the allegation that he was in possession of assets disproportionate to his known sources of income. In the investigation that followed, CBI found that the allegations made against the respondent could not be substantiated and, accordingly, it submitted its report under Section 173 (2) Cr.P.C. before the Special Judge, Delhi praying for closure of the case.

The Special Judge declined to accept the report on the ground that after the investigation was complete, the CBI was required to place the materials collected during investigation before the sanctioning authority and it was for that authority to grant or refuse sanction. According to the Special Judge, it was only with the opinion of the sanctioning authority that the CBI could submit its report under section 173(2) Cr.P.C. With the above observations, the Special Judge, issued the following directions :-

> "It is directed that further investigation should be conducted and in the first instance, the prosecution/Investigation Officer must approach the sanctioning authority concerned before coming to the Court to find out if the said authority would grant permission to prosecute the accused or not."

Aggrieved by the above directions, CBI moved the High Court by filing a revision petition which was dismissed with a finding that the directions issued by the Special Judge were proper and legal. Hence this appeal.

From a plain reading of the Sction 6 (1) it is evidently clear that a cannot take cognizance of the offences mentioned therein without sancti the appropriate authority. In enacting the above section, the legislature th ug of providing a reasonable protection to public servants in the discharge of the official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary prosecutions. Viewed in that context, the CBI had found on investigation that a prima facie case was made out against the respondent to place him on trial and accordingly prepared a charge-sheet (challan) against him, then only the question of obtaining sanction of the authority under Section 6 (1) of the Act would have arisen for without that the Court would not be competent to take cognizance of the charge-sheet. It must, therefore, be said that both the Special Judge and the High Court were patently wrong in observing that the CBI was required to obtain sanction from the prosecuting authority before approaching the Court for accepting the report under Section 173 (2) Cr.P.C. for discharge of the respondent.

As regards the direction for further investigation, it is, of course, true that the Special Judge has power to so direct if he finds, on consideration of the police report, that the opinion formed by the Investigation Officer seeking discharge of the respondent is not based on full and complete investigation, as observed by this Court in ***Abhinandan Jha Vs. Dinesh Mishra, AIR 1968 SC 117 : (1967) 3 SCR 668.*** Unfortunately, however, in issuing the above direction, the Special Judge has not given any reason whatsoever which prompted him to direct further investigation nor does it appear that he has gone through the police report and its accompaniments.

SS. 211, 215, 464 & 465 CR.P.C. : ERRORS AND OMMISSION IN FRAMING OF CHARGE AND CHARGE UNDER SECTION 148 I.P.C. :-

Allegation that the accused were members of unlawful assembly but common object of the assembly not mentioned in the charge. Beside charge under S. 302 IPC simpliciter framed against all the accused persons but convicted with the aid of S. 149. Point shall not raised up to High Court, however, in their examination under S. 313 the accused persons specifically told to their having committed offences under Ss. 148 and 302,149 IPC. It was held that under the present circumstance no prejudice was caused to the accused and therefore, the trial was not vitiated.

Judicial Officers are requested to please go through the following Rulings also :-

1. ***(1989) 1SCC 437 : 1989 SCC (Cri) 211, Lalji Vs. State of U.P.***
2. ***AIR 1965 SC 202 : (1964) 8 SCR 133, Masalti Vs. State of U.P.***
3. ***AIR 1956 SC 116 : (1955) 2 SCR 1140, Willie (William) Slaney Vs. State of M.P.***
4. ***AIR 1956 SC 181 : 1956 Cri LJ 345, Baldin Vs. State of U.P.***