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MADHYA PRADESH STATE JUDICIAL ACADEMY

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

Joti Journal February – 2020

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EDITORIAL

The year 2020 has taken off on a positive note. The Colloquium for District Judges was organized on 10th & 11th January, 2020. It was made successful because of the zealous participation of all the District Judges who not only took part in this two days' Colloquium but powwowed in a pragmatic manner. It is with these conjoint efforts that we can make the judicial education and training a successful story. In addition to the assiduous efforts of the Academy, it is also imperative that the members of the State Judiciary too fervently partake in the activities of training. The Academy would, therefore like to express its gratitude to all the District Judges whose participation made this Colloquium successful.

The month of January also saw the new Civil Judges of 2019 batch come back for their Second Phase Induction Training. This batch of 107 Civil Judges inducted in 2019 continued their Induction Training which ran for four weeks, concluding with the valedictory ceremony in the month of February. The Valedictory ceremony was graced by the presence of Shri Justice Ajay Kumar Mittal, Hon'ble the Chief Justice and Patron of the Academy and also by Shri Justice Sanjay Yadav, Hon'ble the Administrative Judge and Judge In–charge, Judicial Education. On this occasion, Hon'ble the Chief Justice delivered heuristic speech that encompasses the ethics for a Judge. The text of the didactic speech of Hon'ble the Chief Justice is included in this Journal just to share with the esteemed readers especially to the neophytes. Hon'ble the Judge In–charge, Judicial Education also explained the traits of a good judge to the participants. The same is also included in the Journal for the guidance.

Apart from the regular training Course at Academy, few programmes were held at regional level; Workshop for Advocates at Guna, Specialized Educational Programmes at Medico Legal Institute, Bhopal and Forensic Science Laboratory, Sagar, respectively. Looking to the skewed sex ratio of births in the State of Madhya Pradesh, the Academy conducted a one day Specialized Educational Programme on – PC & PNDT Act. Selective abortion of female foetus which involves blatant misuse of scientific techniques is a refined edition of the old practice of female infanticide. Hence, I take a pause to appeal that we are not only members of the judiciary, but also a part and parcel of this society and therefore I solicit your fullest participation in this

perspective. In addition to that, the Academy organized a two week long Advance Course which will conclude in March, for the District Judges (Entry Level) who were promoted in the recent past.

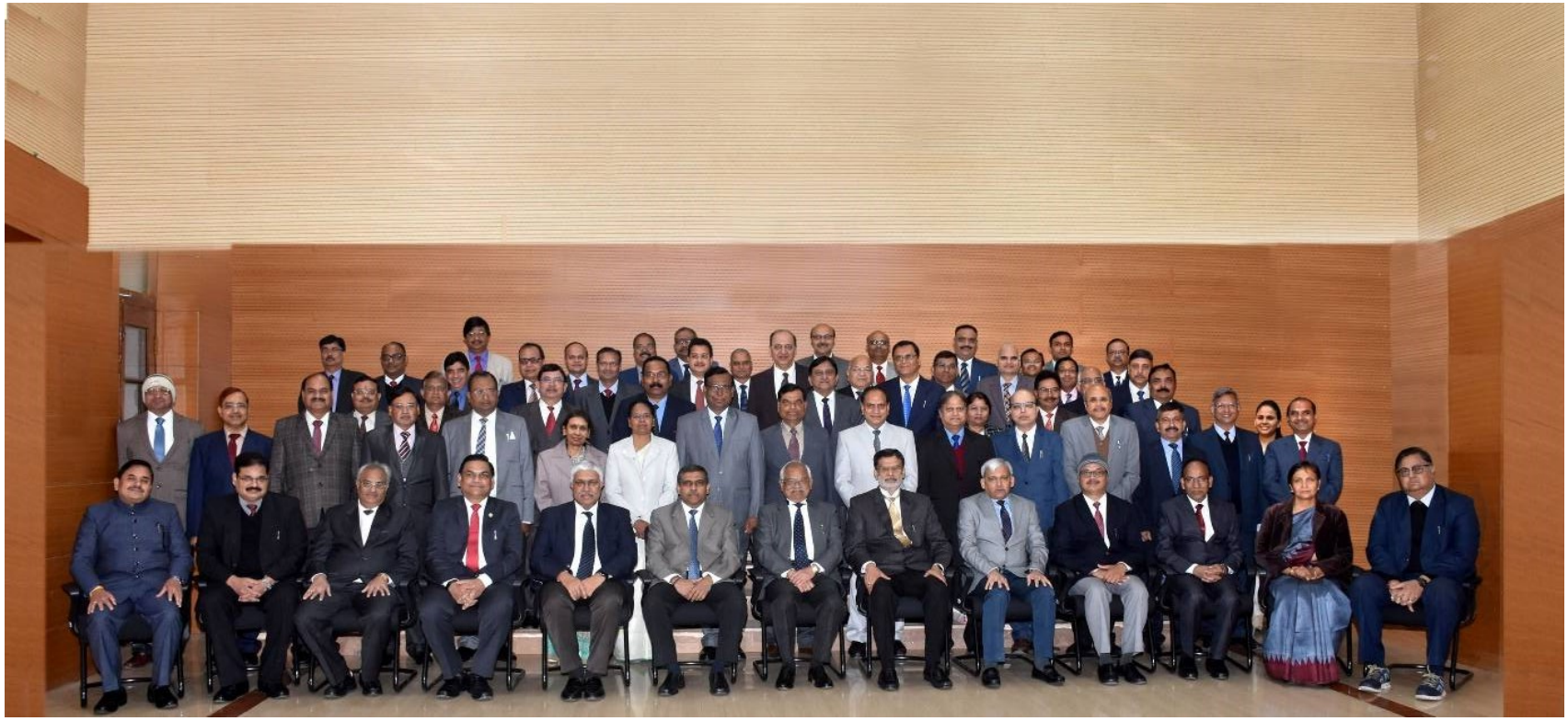
In this chain of events leading to the print of this edition, in a first of its kind, a contingent of 40 Judicial Officers of Bangladesh were imparted Phase II Special Training Course. The visit was organized under the programme of Ministry of External Affairs, Government of India wherein, the Judges of Bangladesh were to be imparted week long training, each at National Judicial Academy, Bhopal and State Judicial Academy. This is a huge milestone for the Academy which also shows the need of judicial education at global level. Since the procedural laws are almost similar to our country, our experience on procedural laws were shared with these Judges as well as some other legal topics alongwith the spirit of the Constitution of India which was the thematic approach of the training Course. The Academy is thankful to the Ministry of External Affairs, Government of India and National Judicial Academy, Bhopal for providing this opportunity.

As a permanent feature, this Journal includes decisions of Hon'ble the Supreme Court and High Court in order to keep abreast with the developments in law. It is with this pedantic study of judgments and legal articles, that we are able to put together a sagacious selection of judgments and articles in this journal. Few of them may be highlighted in this column. Hon'ble the Supreme Court in the case of ***Ravinder Kaur Grewal & ors. v. Manjit Kaur and ors., AIR 2019 SC 3827*** overruled its earlier decisions of ***Gurudwara Sahib v. Gram Panchayat Village Sirthala and another*** reported in ***(2014)1 SCC 669*** and established that adverse possession can not only be used as a shield but also as a sword meaning thereby a suit on the basis of adverse possession is maintainable. In another judgment of ***G.J. Raja v. Tejraj Surana*** reported in ***AIR 2019 SC 3817,*** the Supreme Court gives an important mandate on the prospective nature of Section 143–A of the Negotiable Instruments Act, 1881.

With persistent efforts and help, a better outcome in this field can be established. Therefore, I request for your valuable suggestions and inputs in improving the contents of this Journal.

Ramkumar Choubey
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGH COURT OF M.P., JABALPUR



Colloquium for District Judges
10.01.2020 & 11.01.2020

MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGH COURT OF M.P., JABALPUR

Second Phase Induction Course for newly appointed
Civil Judges Class – II from 2019 Batch, 13.01.2020 to 07.02.2020

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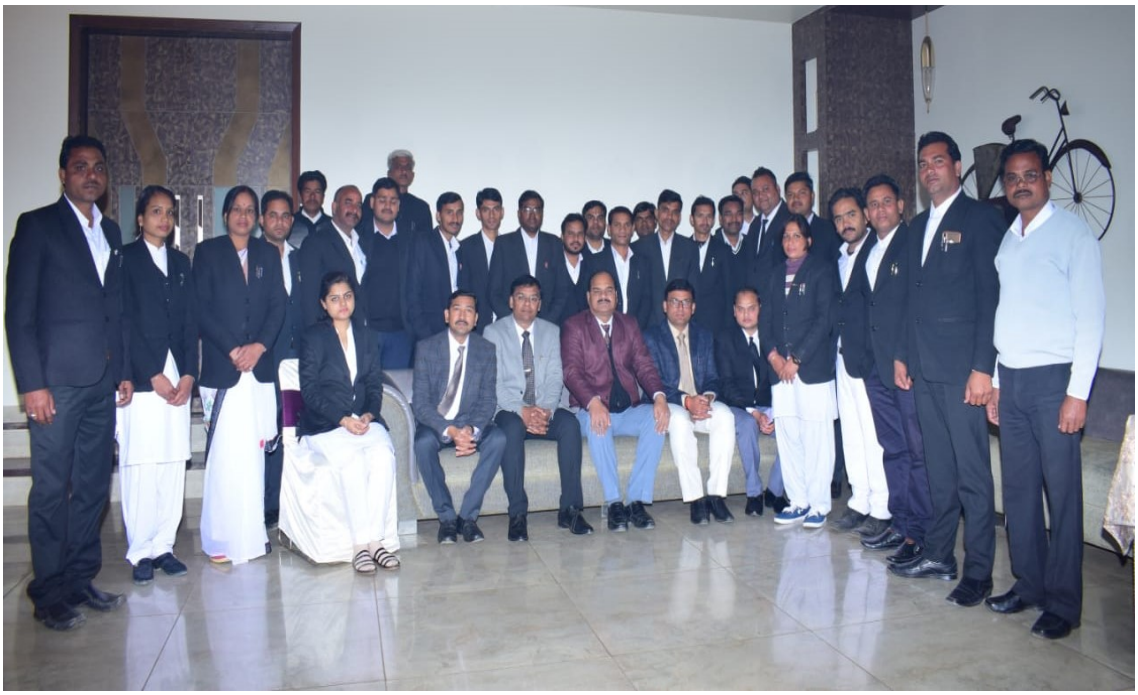
HIGH COURT OF M.P., JABALPUR

Training Programme for Panel Lawyers
17.01.2020 to 19.01.2020



Workshop for Advocates at Guna
03.02.2020 to 06.02.2020

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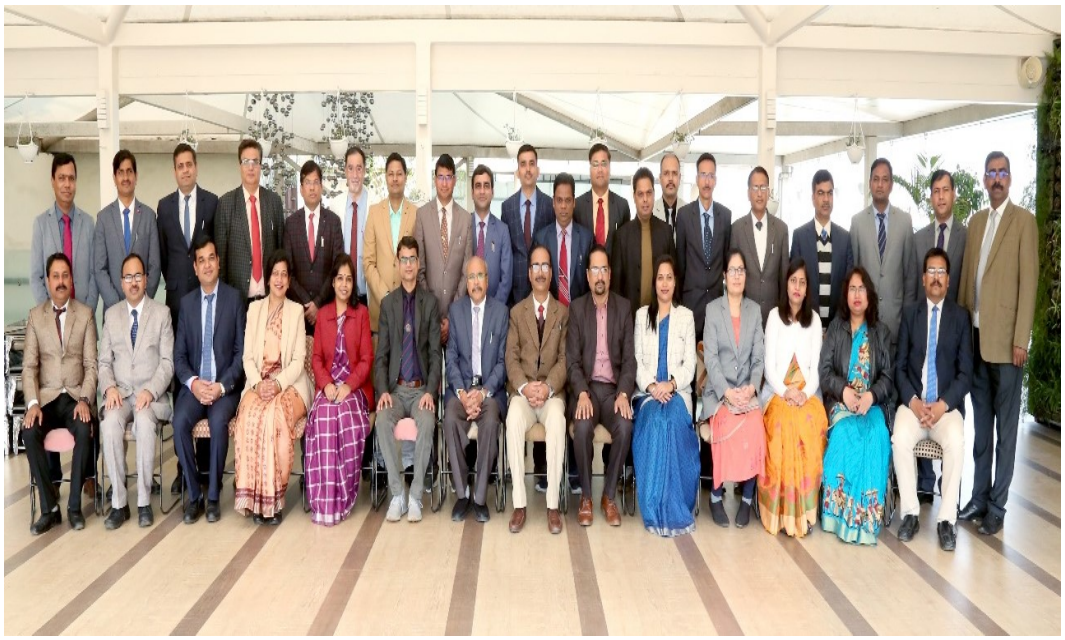
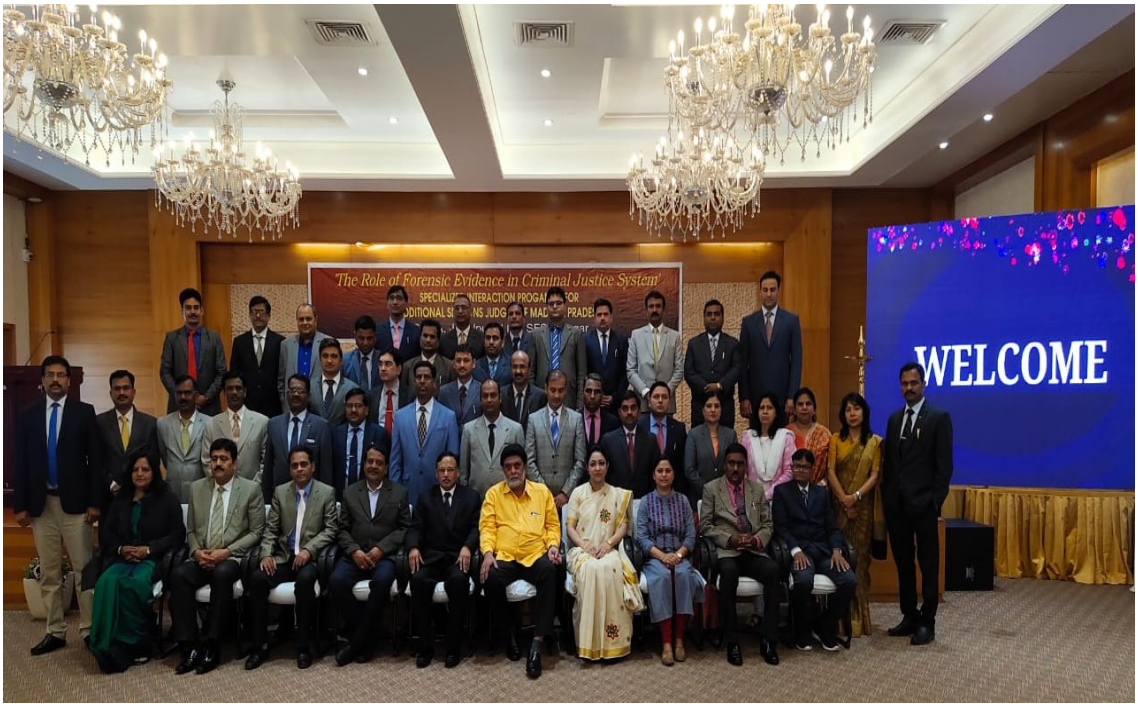
HIGH COURT OF M.P., JABALPUR



Specialized Educational Programme at Medico–Legal Institute, Bhopal
04.02.2020 to 06.02.2020



Specialized Educational Programme at Forensic Science Laboratory, Sagar
14.02.2020 to 16.02.2020

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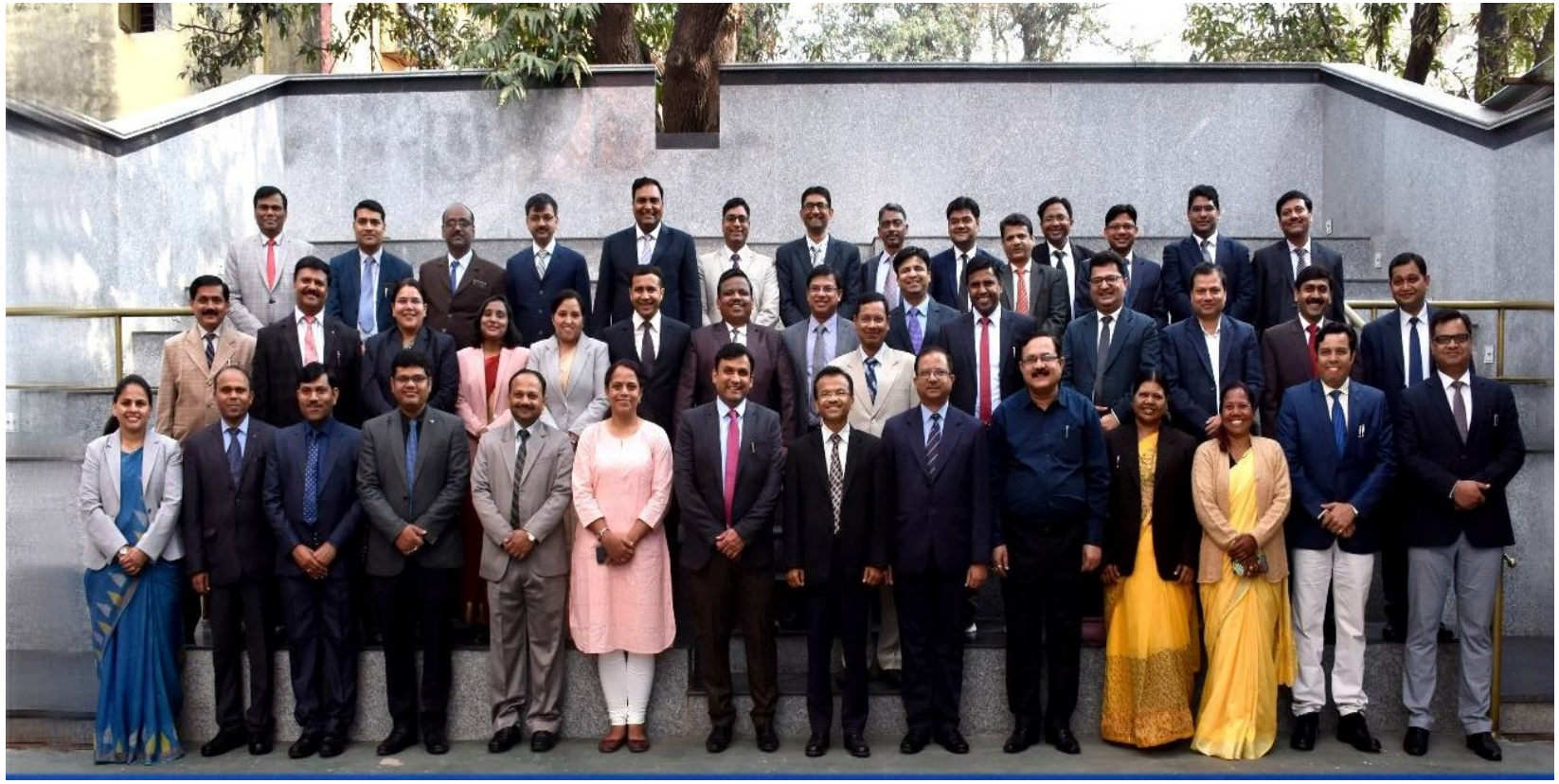
HIGH COURT OF M.P., JABALPUR



Specialized Educational Programme on – PC & PNDT Act
22.02.2020

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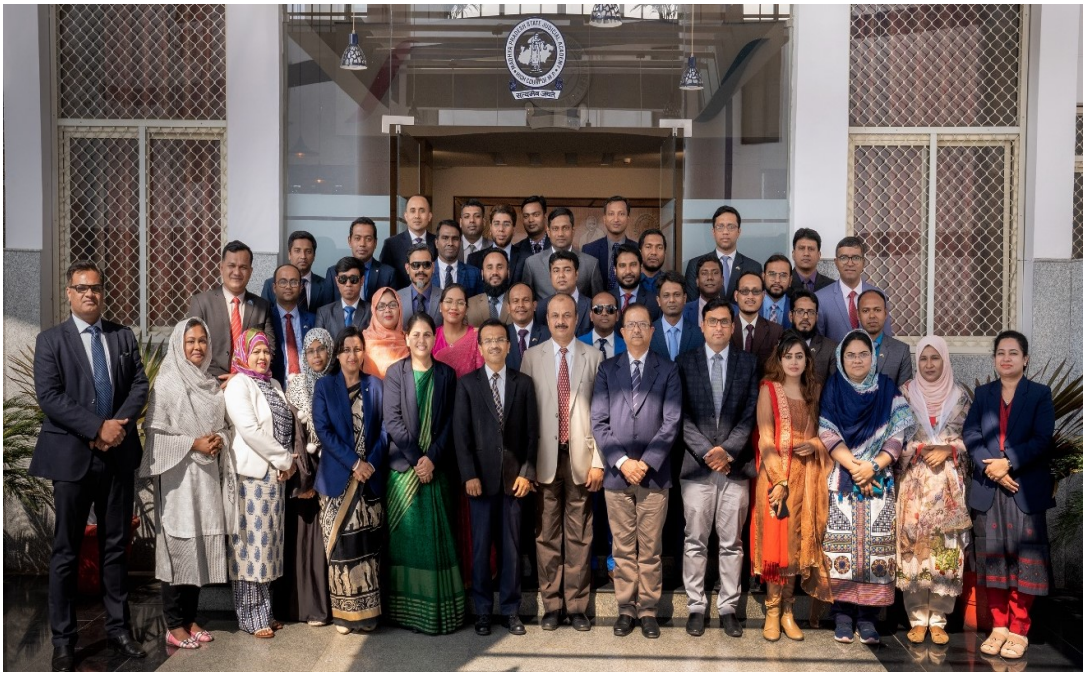
HIGH COURT OF M.P., JABALPUR



Special Training Programme for Judicial Officers of Bangladesh : Phase II
21.02.2020 to 28.02.2020

Excursion Trip of Judicial Officers of Bangladesh to the Kanha Tiger Reserve on 27.02.2020 during Special Training Programme : Phase II at MPSJA

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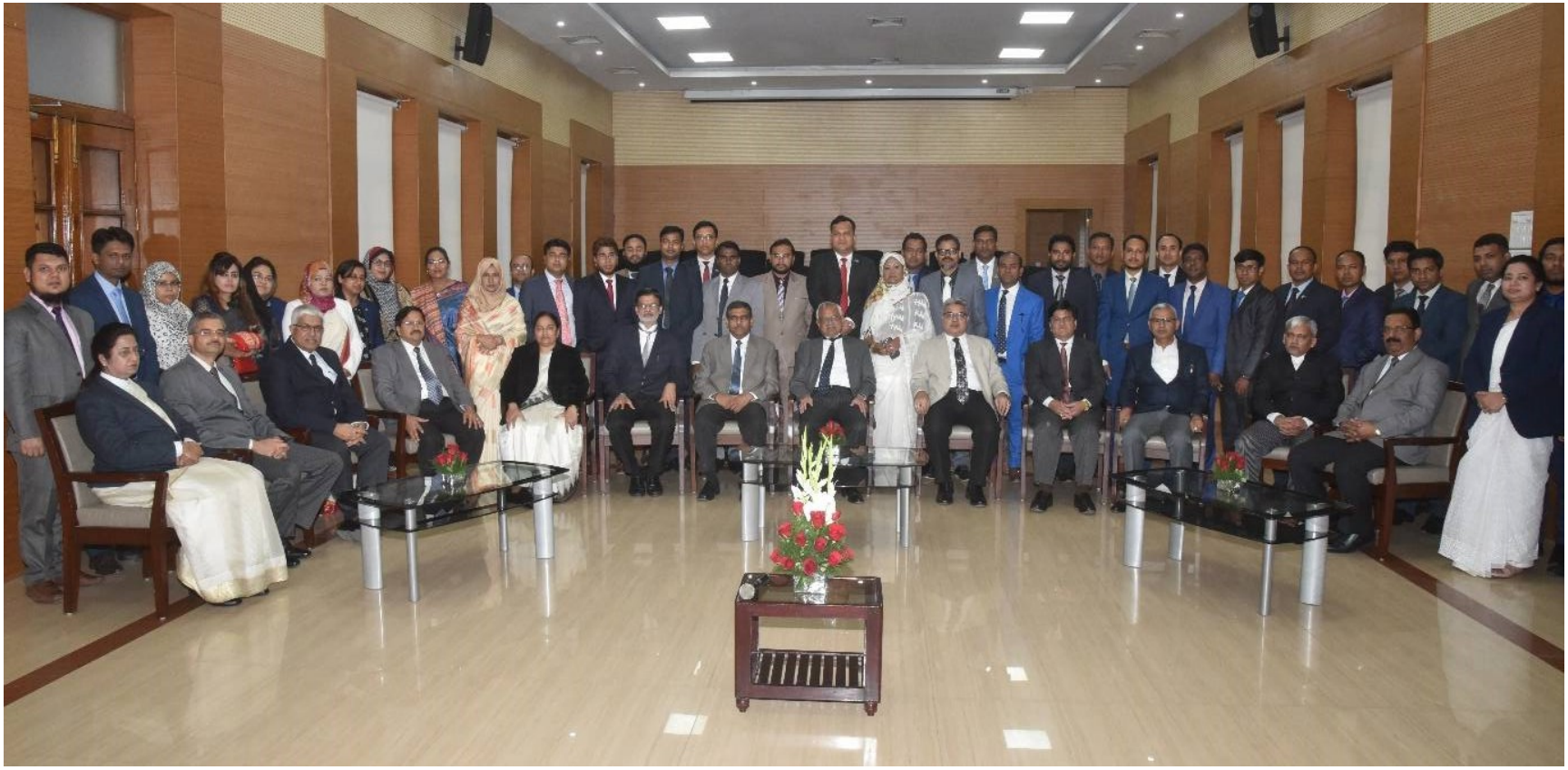
HIGH COURT OF M.P., JABALPUR



Visit of High Court of Madhya Pradesh by Judicial Officers of Bangladesh on 25.02.2020 during Special Training Programme : Phase II at MPSJA

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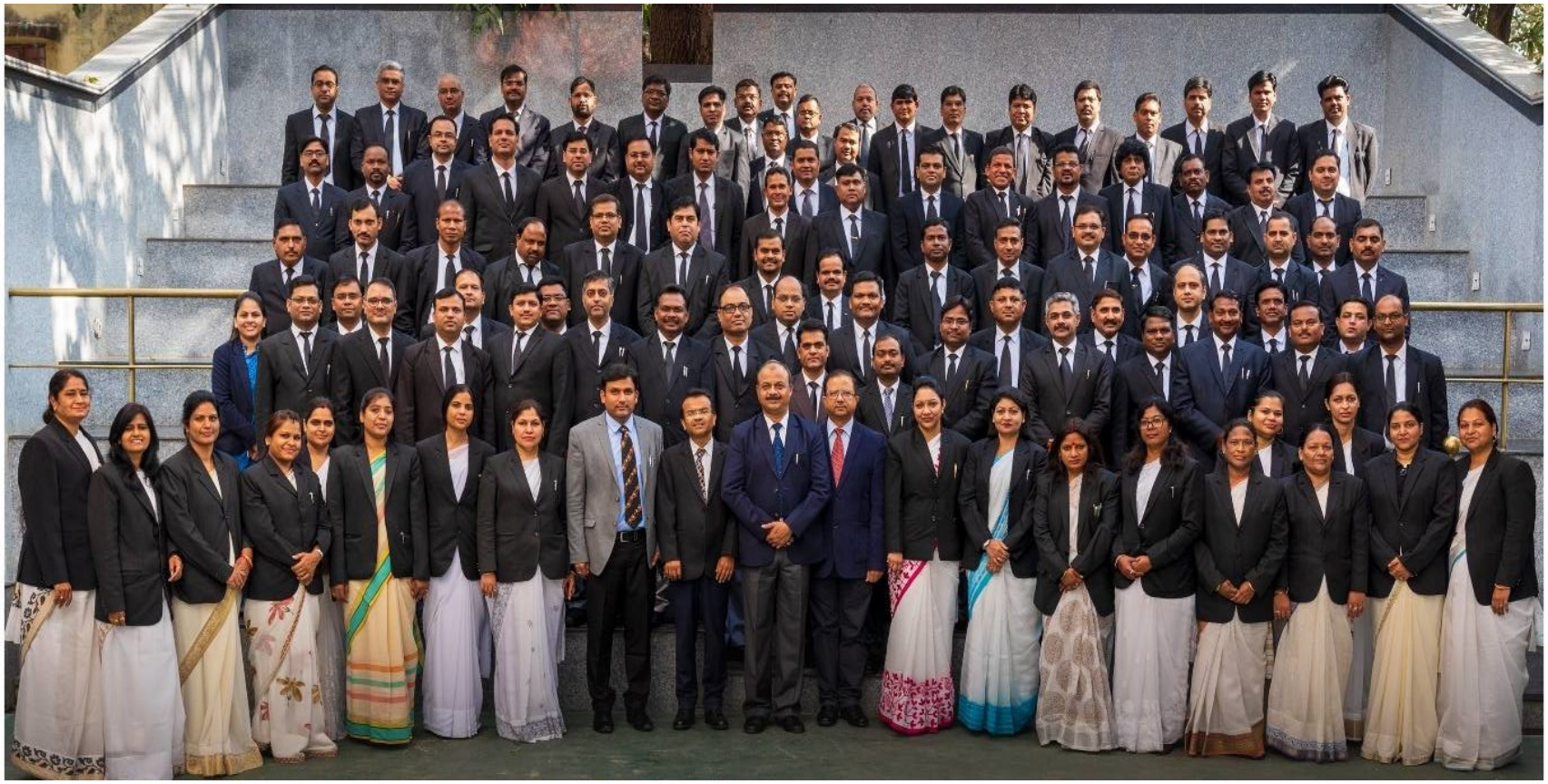
HIGH COURT OF M.P., JABALPUR



Advance Course for District Judges (Entry Level) promoted in the year 2019
24.02.2020 to 06.03.2020

PART - I

TIPS FOR GOOD JUDGING*

Justice Ajay Kumar Mittal
Chief Justice
High Court of Madhya Pradesh

Esteemed brother Justice Sanjay Yadav, Registrar General R. K. Vani, Director of the Academy Ramkumar Choubey, Faculty Members of the Academy and dear trainee Civil Judges. A very good morning to all of you.

Today, I am extremely glad to be amongst you and congratulate all of you for choosing this profession and successfully completing four weeks second phase Induction Course. You all have been imparted this four weeks second phase Institutional Training which includes several legal topics and various aspect of court craft. As you all are at the nascent stage of your career, I would like to share my experience and give few tips which may benefit you in your career as judge.

1. A person owes his position or existence as on today to the
   a) parents
   b) Institution (not of mortar and cement but its faculty)
   c) friends and the society.

   Firstly, the role of the parents whose efforts, sincerity and dedication have inspired you to reach at the place where you all are today is unexceptionable. One should not forget the relentless and selfless sacrifices your parents have made in an endeavour to see you at the present heights and many more mile stones which are in store for you in future.
2. The role of faculty of your Academy is equally important. It is an axiomatic truth that the teachers are the builders of the nation. Though every individual is a learner and remains so till the end but learning, as a matter of fact, mainly routes through teachers. Teachers are at a pedestal where no one can reach and you owe your success to them. The role of your friends and the society in your endeavour to accomplish the desired goal is also well recognized.
3. Certain Dos and Don'ts are very essential to be followed and kept in mind when one enters new phase in life, particularly when one who has onerous responsibility of dispensation of justice. The exhaustive list would be very long but few of them are:–
   i. One must be courteous and polite with the colleagues, friends, employees of the Institution and respectful to the mentors and seniors;

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* Text of the Addres of Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice of High Court of Madhya Pradesh in the Valedictory Session of the Second Phase Induction Course for the newly appointed Civil Judges (Entry level) of 2019 Batch on 07.02.2020 at MPSJA, Jabalpur.

ii. Punctuality should be maintained, as adherence to time schedule is the hall–mark of success. A person who does not value time cannot succeed in life;
iii. Integrity is another trait which is required to be imbibed. No allurement or greed should over–power impulses and deviate from path of truth;
iv. One must not be arrogant in his or her behaviour in dealing with various people in life.

Few of the qualities and traits one is required to follow in life are:–

i. There should not be ego in anybody. One should not feel proud as pride is a sign of immaturity;
ii. Develop strength of mind and body;
iii. One should have attitude of sacrifices if situation so commands;
iv. Negativity should be kept at bay and there should be positive attitude in life and take whatever happens is for the better;
v. Money should not become your master;
vi. Be open to new ideas and thoughts;
vii. Nothing is impossible. The concept of 'not possible' should be alien and not in your dictionary;
viii. Polite words have lot of strength in them. No weakness should be there but be firm and fair at the same time;
ix. The bliss of being contended;
x. Do not let revengeful thoughts enter your mind;
xi. Face the problems, do not avoid them;
xii. Patience should be embraced;
xiii. Set and follow standards of excellence. If one is mediocre, the same is directly proportional to compromise and leads to weakness and failures.

While discharging duties as a Judge, certain things are to be kept in mind, which may be considered as characteristics of a good Judge. I would like to highlight some of those.

ATTRIBUTES OF A JUDGE:

- *Punctuality should be adhered to.*

  The business rules for courts i.e. Civil Court Rules and Rules and Orders (Criminal) provide for the timing of the Court working. Therefore, every Judge is supposed to sit on the dais on time and leave in time. Not only in the Court, but also in any other place where you are expected to be present on a particular time, you must adhere to punctuality.
- *Judicial Officer should be courteous, respectful and humble in Court but it should not be taken as a weakness and he/she should be firm in his/her decision.*

Behaviour of a Judge is one of the essentials. Judge must be well–behaved, courteous and polite and must be respectful and humble in the court room. However, sometimes humbleness and politeness may be taken as a weakness of a presiding judge by any lawyer or litigant but in such situations, Judge must be firm in taking decision.

- *Latest case law should be known and journals should be read regularly.*
  Knowledge of law and procedure is the main tool for a Judge. Every Judge is supposed to be updated with new laws. This can only be possible by regular reading of journals and latest pronouncements of the Apex Court as well as High Court. Judges should also cultivate the habit of reading articles from legal field which are being published in news papers and news magazines.

JUDGMENT AND ORDER WRITING; CAUTIONS:

- *Judgments/zimini orders should be read carefully before signing:*
  In civil matters, Order 20 CPC and in criminal matters, Section 353 Cr.P.C. provides for judgment. Order 20 Rule 3 CPC says judgment to be signed. Similarly, Section 353 (2) Cr.P.C. provides for signing of judgments. Once judgment is signed, except for any clerical or arithmetical error, it cannot be altered. Therefore, it is necessary that the judgments and orders should be read carefully before signing the same.
- *Catch words from the judgments of the Supreme Court or the High Courts should not be quoted as they are never part of the judgment.*
  While relying upon the judgments of the Supreme Court or the High Courts, you must understand the ratio and the law laid down on which you want to rely on. Since, your concern is only related to the ratio and law laid down in any such judgment, any catch words from such judgments which are not the part of the judgment should not be reproduced in your judgment/order. At the same time you should also be aware of the law of precedents.
- *Handwritten orders should be legible.*
  In all cases, the Courts are supposed to maintain record of proceedings which is a compilation of various order–sheets and short orders written by a Presiding Judge. If such order–sheets or orders are handwritten, the handwriting must be neat, clean and legible.
- *The year of enactment should be mentioned wherever there is reference to a particular Act & ensure that correct provisions are incorporated in the judgment. Sometimes, instead of capital 'A', small 'a' is written.*
  Writing of judgments and orders should be in accordance with the rules pertained thereto. While writing judgment and orders, whenever reference of enactments or reproduction of provisions of law occasions, the nomenclature of the enactment should be correct and its year of enactment should also be mentioned in bracket. Similarly, while reproducing any

provision of law from any Act, the Article or section, its caption and text should be reproduced correctly as it is made in the statute book.

- *Abbreviation should be used only after it has been explained in the earlier part of the body of the order or judgment.*

  Many a times, it is observed that Presiding Judges use abbreviation without explaining the same anywhere in the judgment or order. It would be appropriate and necessary that it must be explained at the very first instance or earlier part of the judgment/order and only after that abbreviation should be used.

- *There should not be repetition of expression like 'argued' every time. It can be contended, submitted, further argued and different form like relying upon……the termination was assailed.*

  Writing of judgment and order is an art. Not only the facts and laws mentioned in a judgment but its language also is important to make it effective and impressive. There should not be repetition of one expression every time in the same manner. The expression can be used in a different style. Synonyms can also be used.

- *Original proceedings in some cases are held up because of entertaining of superfluous applications at the stage when the case is ripe. It should be avoided or application should be disposed of promptly.*

  In civil and criminal matters; both, lawyers or litigants are filing various interlocutory applications which should be decided at the earliest. However, sometimes when case is at the last stage of hearing, even at times when trial is concluded and case is fixed for pronouncement of judgment, superfluous applications are filed for either causing delay or for some other ulterior motive. Judges must be able to control such abuse of the process of the Court and any such application should be disposed of promptly so that ripened case can be disposed of at the earliest.

Speedy Trial; Few Measures:

- *Priority should be given to old cases beyond three to five years, senior citizens, personal necessity, custody cases, heinous crimes and Section 138 of Negotiable Instruments Act, 1881 and also to execution proceedings.*

  As Justice delayed is justice denied, old pending cases should be taken up for trial on priority basis and same should be disposed of without further delay. Similarly, cases in which old age persons like senior citizens are involved or cases pertaining to personal necessity and cases in which accused is in custody, should also be given priority. Cases relating to offence of dishonor of cheque are being instituted in numerous number, as summary trial procedure is also provided for such cases, therefore, such cases should also be disposed of expeditiously. In civil matters, execution proceedings are pending for years together which makes the decree futile. The real

fruit for successful party is not a decree but its execution, therefore, all execution proceedings should be concluded as early as possible.

- *How to deal with proclaimed offenders cases under sections 82 and 83 Cr.P.C. – Attachment of Property etc. especially in the cases of Negotiable Instruments Act.*

  Chapter VI, Part–C Sections 82 to 90 Cr.P.C. provides for proclamation and attachment. Absence of accused in criminal matters is one of the main causes for delay. Therefore, proceedings of proclamation and attachment of property as per the said provisions should be dealt with seriously to secure presence of accused/offender. The same procedure should also be applied in cases of dishonor of cheque punishable under section 138 of the Negotiable Instruments Act, 1881.

- *Section 138 of Negotiable Instruments Act, 1881 where respondents are not served or do not appear. Details of other bank accounts should be sought and attachment of accounts of debtor where the accused is avoiding service of summons.*

  As we all are aware of the fact that at the Judicial Magistrate level, cases under Section 138 of the Negotiable Instruments Act, 1881 is one of the main causes of docket explosion. Most of such cases are not being disposed of for the reason that accused or respondents are not served or they do not appear even after service of summons. Therefore, it needs some extra care and attention to be taken. To secure presence of such accused, details of other bank accounts of such accused can be sought and same can be attached.

- *Maintenance applications under Section 125 Cr.P.C. be expedited.*

  Normally, the claim of maintenance is a litigation of civil nature but the legislature in its wisdom has provided the scheme for maintenance of wife, children and parents in Chapter IX Sections 125–128 Cr.P.C. itself reveals that the idea behind this scheme is to provide summary and expeditious procedure for seeking maintenance by a person who is in urgent need of the same. Therefore, it is obligatory on the Judicial Magistrate in entertaining application under Section 125 Cr.P.C. to conclude such proceedings without delay.

I would not like to take much time and end my address by once again expressing my best wishes to all the trainee Judicial Officers that they may succeed in life and rise to such heights for which the institution may feel proud. God bless you.

Thank you very much once again.

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TRAITS OF A GOOD JUDGE*

– By **Justice Sanjay Yadav**
Judge In–charge, Judicial Education,
High Court of Madhya Pradesh

Hon'ble Chief Justice, Registrar General, Director, State Judicial Academy, Members of the Faculty, Judicial Officers.

With the completion of Second Phase Induction Course, your new inning as full fledged Civil Judge takes a start.

Armed with the lessons learnt in these days, i am sure that you will make mark in your career as Judge, dispensing justice.

Now begins the time when you will come across very many facets of judgeship. There will be moments of satisfaction. There will be challenges also. However, if you keep attached to certain basics, these challenges will turn into opportunities and stepping stone for betterment.

Commitment is the first and foremost factor which will keep you going. Unless there is dedication towards the work, you will be lacking in your attainment.

The next is integrity and honesty not only at personal level but also towards the institution. Avoid allurement of any kind, howsoever big it may be.

Your conduct must be such which imbibes confidence not only of the advocate but also the litigants in our judicial system. Please ensure that you are not rude or discourteous with the litigating parties or the advocates.

Remember that the litigants come from different walks of life and are by and large layman not understanding the procedure, so please have patience, which will help in creating friendly environment. The time management is another factor which must be adhered to, if you are not able to meet the day's target, then it is the time when you have to cut short of your one hour's sleep. Be punctual. The punctuality should be observed strictly. If you do not sit on time, on the ground that you will be sitting late in the evening, is not justified. As by doing so, you are unnecessarily putting the advocates and the litigants to inconvenience. If you sit on time and arrange your court diary, accordingly, lawyers will also be able to match with your timings. In that case, you would not be required to unnecessarily wait for the advocates.

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* Text of the Addres of Hon'ble Shri Justice Sanjay Yadav, Judge In-Charge, Judicial Education, High Court of Madhya Pradesh in the Valedictory Session of the Second Phase Induction Course for the newly appointed Civil Judges (Entry level) of 2019 Batch on 07.02.2020 at MPSJA, Jabalpur.

Another aspect of the matter is whenever any witness is present, then every endeavour should be made to get his evidence recorded so that he may be discharged on the same day. As it is, even for the litigants, it is difficult to come to court, then you can well imagine the plight of witnesses who are required to come to give evidence at the behest of litigants.

While writing orders or judgments, let the same not reflect or display any judicial dishonesty. Whatever the arguments have been advanced by both the parties must be narrated in short in the order or judgment and whenever citations have been given in support of their respective contentions, the same may also be mentioned in it. If, according to your opinion, the judgments which have been relied upon, are not applicable to the case, then the reasons may be assigned in this regard. The orders should be short, crisp and reasoned.

Please always keep in mind that judgments and orders should be pronounced on the same day when they have been fixed for the said purpose. It is desirable that too much delay in pronouncing the judgments and orders is not good for the institution as one starts to get feeling that may be other party has already approached the learned Judge, even though it may not be true at all. Why there should be any chance given to a litigant to come to an unreasonable conclusion.

Last, but not the least, judiciary is considered as the last interpreter of the Constitution and is thus *sentinel et qui vive* to defend the constitutional essentials, promises and aspirations of we, the people. i end with what former Chief Justice of India Mr. Justice R.C. Lahoti once stated:

> "The seekers of justice approach the Courts of justice with pain and anguish in their hearts on having faced legal problems and having suffered physically and psychologically. They do not take law into their own hands as they believe that they would get justice from the Courts …. we owe an obligation to them to deliver quick and inexpensive justice shorn of the complexities of procedure."

Thank you

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TRIAL OF OFFENCES UNDER SPECIAL LAW AND/OR UNDER GENERAL LAW

– By **Gautam Kumar Choudhary**
Director, Judicial Academy,
Jharkhand, Ranchi

The maxims *ex specialis derogat legi generali* and *generalia specialibus non derogant,* meaning that a special Act excludes the general law is a legal proposition fraught with some degree of misunderstanding with regard to its actual import. In criminal law, whether a special Act excludes the general law in its penal provisions or in its procedural provisions or whether it excludes both, is a question that stares a trial judge? Where an act is made an offence under both the general and special law, whether the accused can be tried under both the penal statutes or can be tried only under either? If found guilty, can he be sentenced under both the enactments or under only one of them? These are the legal quandaries with which the trial court judges at times wrestle with. In order to fully appreciate the nuances of law on this subject matter, it will be desirable to refer to the legal maxim of interpretation which provides that in case of special law, the general law is excluded. This principle of law does not have a sweeping application as far as criminal law is concerned unless and until the statutes are silent or the exclusion has not been made expressly by the repealing clause of the subsequent legislation. Where the subsequent special Act expressly repeals specific provisions of the general Act, there can be little room for any doubt. For instance, the Prevention of Corruption Act, 1988 repealed the coterminous provisions of the IPC from Sections 161 to 165. So, now the provisions of the Prevention of Corruption Act cover these fields excluding the provisions of the IPC. There may be practical situations where the special Act does not repeal similar provisions in the general law. The question which assumes significance post *Shreya Singhal* case[1] after the Section 66A of the Information Technology Act was held unconstitutional, is whether such acts are still punishable under the provisions of the IPC? Where an act like theft of forest produce constitutes an offence under the Forest Act or the Mining Act, can the accused be additionally charged under provisions of the IPC?

It is also a general rule of interpretation which is suggested by the maxim *leges posteriores priores contrarias abrogant* by which the later laws abrogate the earlier contrary laws. What is important to note here is that all these principles

[1] *Shreya Singhal v. Union of India, AIR 2015 SC 1523.*

of interpretation are applicable only where there is a conflict between two laws and not in cases where two laws can harmoniously co–exist.[2] The Legislature is completely aware of the existence of the previous or general laws existing in the country on a given subject matter and, therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation.[3] In the absence of such an express provision of repeal, an inference of repeal by necessary implication of general or existing law by a special law through the application of the aforementioned principles is permissible only in cases where the two Acts are so inconsistent or repugnant that the two cannot exist together in a given situation.[4]

In criminal cases, the principles of *ex specialis derogat legi generali* and *generalia specialibus non derogant* are applicable only in cases of procedures, which is evident from Section 4(2)[5] of the CrPC. Thus, where special procedures have been laid down by special Act, the general provisions of the CrPC are excluded. For instance, the Narcotic Drugs and Psychotropic Substances Act, 1985 lays down a definite procedure in which a search and seizure is to be made and naturally in terms of Section 4, the general provisions of search and seizure under CrPC stand excluded. It has been held in ***Moti Lal v. CBI, AIR 2002 SC 1691*** that cases of offences under Wildlife Protection Act shall be tried as per the provisions of the CrPC as there is no specific provision contrary to the Act. Further, in ***State of H.P. v. Satya Dev Sharma and others, 2002 (10) SCC 601****,* which involved a criminal conspiracy hatched by the timber merchants and private land owners with the Government officials for the purpose of felling and misappropriating the trees standing on government lands, the officials of the State Government along with private persons were put on trial under Sections 120B IPC read with Sections 218, 379, 419, 467, 468, 471 of the IPC besides Section 33 of the Indian Forest Act and Section 5(2) of the Prevention of Corruption Act, 1947. In ***Murari Singh v. State of Jharkhand, (2019) 2 JLJR 446,*** following the Apex Court Judgment in ***State v. Sanjay, (2014) 9 SCC 772,*** it has

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2 *Kishorebhai Khamanchand Goyal v. State of Gujarat, (2003) 12 SCC 274.* See also, Ajoy *Kumar v. Union of India, (1984) 3 SCC 127.*

3 *M. N. Rao and Amita Dhanda, N.S. Bindra's Interpretation of Statutes,* (10th Ed., 2007) 960.

4 Ibid.

5 Section 4–Trial of offences under the Indian Penal Code and other laws.
(1) … (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

been held that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State are different. The latter is a distinct offence under Section 379 of the IPC and hence for this offence, the magistrate can take cognizance on the receipt of a police report without awaiting the receipt of the complaint of the authorized officer for violation of provisions of the MMDR Act.

Similarly, in ***State of Arunachal Pradesh v. Ramchandra Ravidas, (2019) 4 East CriCase 333 (SC),*** it has been held that there is no conflict between the provisions of the IPC and the MV Act as offences thereunder are independent and distinct from each other and the principle that the special law should prevail has no application in cases of prosecution of offenders in road accident cases under the IPC and the MV Act.

The only prohibition in criminal cases where an offence falls under two or more provisions of the IPC or of the IPC and a special Act is that the accused shall not be punished twice for the same offence. There is no prohibition of trial and conviction in such cases, notwithstanding the offences under the different provisions are distinct or not. In cases of distinct offences, even the prohibition related to punishment under the different provisions does not exist.

In ***Gaya Prasad Pal @ Mukesh v. State, 2016 SCC OnLine Del 6214,*** it has been held that in terms of Section 220(3) and Section 221 of the CrPC, it is permissible to put an accused for trial under both IPC, offence for rape and that for offence under POCSO Act, and the accused can be convicted for offences under both the Acts and in terms of Section 71 of the IPC and Section 42 of the POCSO Act, he can be sentenced only under any one of the Acts, which is greater in degree.

With regard to punishment of offences, an act may fall within the definitions of two or more provisions of the IPC or under the provisions of the IPC and a special enactment. In such cases, the accused can be set–up for trial for offences under both general and special Act in light of the provisions contained under Section 220(3) of the CrPC. The provisions of the CrPC are emphatic on this point and they permit the trial of the accused under both the enactments and he can be convicted under both the provisions. The interdict as contained under Section 220(5) of the CrPC read with Section 71 of the IPC is against punishment for offences falling within two or more separate definitions of law in force.

The trial of an offence commences from the framing of the charge as provided under Chapter XVII of the CrPC. Section 218 of the CrPC states that for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately. Two offences would be distinct if they are in no way interrelated.[6] Sections 219, 220, 221 and 223 contain some exceptions to the general rule laid down in Section 218 and provide for the joinder of charges and of trials. However, there is no mandatory provision of the law laying down that, where separate trials can be held under the general rule, the Court must hold a joint trial, if the case falls under within one of the provisions that permit the holding of a joint trial.[7]

Section 220 of the CrPC is one of the exceptions to the general rule contained in Section 218. Sub–section 3 provides for the trial of more than one offences and the relevant provisions related to the framing of charges and trial of **an offence** falling within two or more **separate definitions** of **any law** in force for the time being and reads as follows :–

> ‘‘220. **Trial for more than one offence. –**
> ... (3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. ...’’

According to Sub–section 3 of Section 220, if the acts alleged constitute an offence falling within two or more separate definitions of **any law in force for the time being** by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. This provision contemplates offences falling under the definitions of separate provisions of IPC or under the provisions of a Special Act or a Local Act or under the provisions of both IPC as well as a Special Act or a Local Act or both. Therefore, by virtue of Section 220(3) of the CrPC, the trial of **an offence** falling within two or more **separate definitions** of **any law** in force for the time being is permitted.

Under such circumstances, the question which arises is:–

Whether, after the joint trial for an act constituting an offence under a Special Act and also under the IPC, the accused person can be convicted and sentenced under both the enactments?

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6 *Banwarilal v. Union of India, AIR 1963 SC 1620.*

7 *Chhutanni v. State of UP, AIR 1956 SC 407.*

To answer this question, it is pertinent to look at the provisions contained in **Section 26** of the General Clauses Act Section 26 of the General Clauses Act reads as follows:–

> "**26. Provision as to offences punishable under two or more enactments.–** Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

The only fair and proper construction of Section 26 is that an accused person should not be made to suffer punishment more than once for the *"same offence"* and not for the *"act or omission"* which may constitute **separate (which may be similar)** or **distinct offences** under different enactments.

Punishment for separate but similar offences under two separate Enactments:

As discussed earlier, the trial of **an accused** for an offence falling within two or more **separate definitions** of **any law** in force for the time being is permitted under Section 220(3) of the CrPC.

The separate definitions may result into two situations, *firstly*, when the two offences under the separate definitions are distinct and *secondly*, when the two offences under the separate enactments are separate but similar, like in the case of an offence u/s 4 of the POCSO and the offence u/s 376 of the IPC.

In the first case, there can be joint trial, separate convictions and separate sentences which is evident from the principles enshrined in the provisions of the CrPC and the judgments of the Hon'ble Supreme Court.[8]

However, in the second situation, when the offences under two separate definitions under separate enactments are similar, Section 26 of the General Clauses Act and Section 71 of the IPC read with Section 31 of the CrPC come into play.

As far as the issue of punishment in the situation mentioned hereinabove is concerned, it is pertinent to discuss the provisions contained in Section 71 of the IPC along with the provisions of Section 26 of the General Clauses Act. The relevant Section 71 of the IPC reads as follows :–

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[8] *State of Rajasthan v. Hat Singh and Others, (2003) 2 SCC 152.* See also, *The Institute of Chartered Accountants of India v. Vimal Kumar Surana, (2011) 1 SCC 534; Hussain Umar Kochra v. K.S. Dalipsinghji, AIR 1970 SC 545.*

> **"71. Limit of punishment of offence made up of several offences.—**
>
> ... Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or... the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

Where an act or omission constitutes similar offences under two or more laws, the person committing that act, or omitting to do that, as the case may be, can be prosecuted under both the laws and can also be convicted for such offences. However, as per the restrictions u/s 26 of the General Clauses Act and Section 71 of the IPC, there can be only one sentence and not separate sentences. Section 71 of the IPC deals with what may be compendiously be called "separable offences" as distinguished from "distinct offences" and lays down the limits of the punishment to which the offender can be sentenced in such cases.[9] Section 71, in such cases, permits the Court to impose the more severe punishment available under any of the enactments. The principle of Section 71 has been expressly incorporated u/s 42 of the POCSO Act, which reads as under:–

> **42. Alternative punishment:**
>
> Where an act or omission constitutes an offence punishable under this Act and also under section 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

In normal criminal cases where an offence falls under different provisions of two enactments, the Court, u/s 71 of the IPC, has the discretion to award sentence under either of the provision, though the conviction can be under both of them. Section 42 of the POCSO Act merely takes away this discretion of the Court and makes it mandatory for the Court to award a sentence which is more severe. Such a provision is based on the presumption that an offence can fall under the provisions of both the IPC as well as the POCSO Act and the offender can be tried and even convicted under both the provisions but only one sentence can be imposed.

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9 *Behari and Others v. The State, AIR 1953 All 510.*

The principle discussed in relation to the trial of two similar offences under separate enactments *vis–à–vis* Section 71 of the IPC and Section 26 of the General Clauses Act has been discussed in the following cases:–

1. ***Ramanaya v. The State of Bihar, 1977 Cri LJ 467***

   5. … Section 71 of the Indian Penal Code as well as Section 26 of the Central General Clauses Act talk of punishment and not of conviction. From the language of Section 35 of the Code of Criminal Procedure, 1898 (equivalent to Section 31 of the Code of Criminal Procedure, 1973), it is manifest that punishment means sentence only and not conviction. It is also manifest from language of Section 235 of the Code of Criminal Procedure, 1898, specially from the various illustrations given in that section. There are many decisions of the Supreme Court, which need not be referred to here, where convictions for two offences for the same act have been upheld. Of course on the question of punishment, i.e. the sentence, the provisions of Section 71 of the Indian Penal Code and Section 26 of the Central General Clauses Act are relevant. It cannot, therefore, be held that the conviction of the petitioner for one of the offences must be held bad.

2. ***T.S. Baliah v. T.S. Ranghachari, AIR 1969 SC 701***

   6… A plain reading of the section shows that there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence. We accordingly reject the argument of the appellant on this aspect of the case.

3. ***Municipal Corporation of Delhi v. Shiv Shankar, AIR 1971 SC 815***

   9… Even if they happen to some extent to overlap, Section 26 of the General Clauses Act fully protects the guilty parties against double jeopardy or double penalty. This section lays down that where an act or omission constitutes an offence under two or more enactments then the offender shall be liable

to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence. If, therefore, the provisions of the Adulteration Act and those of Fruit Order happen to constitute offences covering the same acts or omissions then it would be open to the prosecuting authorities to punish the offender under either of them subject to the only condition that a guilty person should not be punished twice over.

4. ***Gaya Prasad Pal @ Mukesh v. State, 2016 SCC OnLine Del 6214***

"76. The learned trial judge also seems to have overlooked the basic precept of criminal law that a person may not be punished twice over for the same set of acts of commission or omission which collectively constitute an offence covered by two different provisions of law. Though the law permits trial on alternative charge to be held for both the offences, the punishment may be awarded only for one of them, the one which is graver in nature. Section 71 IPC, quoted earlier, concludes with the command that the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences. The charge under the corresponding provision of POCSO Act (Section 4) on which the appellant has been found guilty is in addition to his conviction for the offence under Section 376 IPC. Since the circumstances attendant on the acts committed by the appellant attract Section 376(2) IPC, the punishment under the corresponding (alternative) offence under Section 4 of POCSO Act, 2002 would be rendered lesser in degree in as much as, unlike the latter provision, the former – 376(2) IPC – prescribes punishment which may extend to "imprisonment for life" which shall mean imprisonment for the remainder of such person's "natural life" and "shall also be liable to fine". In these facts and circumstances, Section 42 of POCSO Act would kick in and the court is duty bound to punish the offender for the offence under Section 376(2)(f)(i) and (k) of IPC; which is greater in degree in comparison to the offence under Section 4 of POCSO Act."

This brings us to the issue of cases involving transmission of offensive messages in electronic forms in the virtual world which has defamatory content

and/or intentional insult with intent to provoke breach of peace or to insult the religion of any class of persons. The intriguing question post *Shreya Singhal* case is whether a person can be proceeded against for IPC offences u/s 500–502, 504, 295, 295A of the IPC?

In light of the principles of criminal law stated above and the judgments of the Hon'ble Supreme Court cited above, it can be stated that there is no legal impediment in criminal prosecution for the offences cited above merely for the reason that the content have been transmitted in electronic form. In criminal prosecution under the IPC what has been excluded and held unconstitutional is the provision of the special Act namely Section 66A of the Information Technology Act but this *ipso facto* does not eclipse the provisions of the general law under the IPC. Further, it is a salutary principle of stare decisis that in criminal matters, it is only the ratio of law that applies and not of facts. The Hon'ble Apex Court in ***Sharat Babu Digumarti v. Government (NCT of Delhi), (2017) 2 SCC 18*** was dealing with an entirely different matter regarding the liability of a service provider where the platforms of its software are used for the transmission of malicious content. It was against this factual matrix that the Hon'ble Apex Court struck down the prosecution u/s 292 of the IPC where the accused had been discharged u/s 67 of the Information Technology Act. The ratio of this case to our humble understanding does not stone wall prosecution of persons who use electronic medium to disseminate offensive messages which constitute distinct IPC offences discussed above.

From the discussions made hereinabove, it can be concluded that when the offences are not distinct, the provisions of Section 220 permit the framing of charges for both the offences and the trial therefor. However, the limitations specified u/s 26 of the General Clauses Act and Section 71 of the IPC would be imposed and the Court, in such cases, would be empowered to impose only one sentence for both the offences. In cases where one of the enactments is a special Act and the other is a general Act like IPC, the special Act would prevail if the special Act exhaustively deals with the offence and/or provides for a more severe punishment. A general presumption that a special Act shall always prevail over the provisions of the IPC and that if an offence is covered by the provisions of the former, the offence shall not be covered by the IPC would essentially mean that the special enactment has repealed the provisions of the IPC. Such an inference is *non est* in law.

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PART - II

NOTES ON IMPORTANT JUDGMENTS

1. **ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 12 (1) (b) Eviction of tenant – Ground of sub–letting – Sub–tenancy cannot be proved by direct evidence – Inference is drawn from the evidence on record – Original tenant/defendant admitted that he was doing business somewhere else while suit shops were occupied by his brother – He also admitted that his brother is doing business independently – He further admitted that rent receipts are being issued in his name – Defendant took plea of joint family business – Held, there is a presumption of joint Hindu family, but there cannot be a presumption of joint family business – There was no document regarding registration of firm or tax returns proving existence of joint family business – Admission clearly shows independent business by brother of defendant in suit shops – Held, sub–tenancy proved.**

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धारा 12 (1) (ख)

किराएदार का निष्कासन – उप–किराएदारी का आधार – उप–किराएदारी प्रत्यक्ष साक्ष्य से साबित नहीं की जा सकती है – अभिलेख पर उपलब्ध साक्ष्य के आधार पर अनुमान निकाला जाता है – मूल किराएदार/प्रतिवादी ने स्वीकार किया कि वह कहीं अन्यत्र व्यवसाय कर रहा था जबकि वादग्रस्त दुकानें उसके भाई के अधिभोग में थीं – उसने यह भी स्वीकार किया कि उसका भाई व्यवसाय को स्वतंत्र रूप से संचालित कर रहा है – उसने आगे यह भी स्वीकार किया कि किराए की रसीदें उसके नाम पर जारी की जा रही हैं – प्रतिवादी ने संयुक्त पारिवारिक व्यवसाय होने का अभिवाक् लिया – अभिनिर्धारित, संयुक्त हिन्दू परिवार होने के संबंध में तो उपधारणा की जा सकती है परन्तु संयुक्त पारिवारिक व्यवसाय की उपधारणा नहीं हो सकती – संयुक्त पारिवारिक व्यवसाय के अस्तित्व को साबित करने के लिये फर्म के पंजीयन या आयकर विवरणी से संबंधित कोई दस्तावेज नहीं था – स्वीकृति स्पष्टतया दर्शित करती है कि वादग्रस्त दुकान में प्रतिवादी के भाई का स्वतंत्र व्यवसाय है – उप–किराएदारी प्रमाणित पाई गई।

Surajbhan v. Ramnarayan through L.Rs. & ors.

Judgment dated 23.04.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 344 of 2007, reported in 2019 (3) MPLJ 495

Relevant extracts from the judgment:

The sole defence of the appellant defendant is that Sohanlal and Surajbhan had a joint Hindu family and also had joint business in Mathura city. Admittedly, there is a presumption of joint Hindu family, but there cannot be a presumption

of joint family business. No material has been produced before the trial court as well as before this court to establish that the defendant and his brother had a joint business and the suit shops were taken on rent by both of them to do the joint family business. Not a single document in respect of registration of firm, joint business, tax and tax returns was submitted by the defendant to prove joint family business. Therefore, the first appellate court has rightly came to the conclusion that the defendant has parted the possession of the shop in question to his brother and rightly decreed the suit under Section 12(1)(b) of the Act of 1961 and I do not find any perversity in it also. The admission is best evidence as held by the Apex court in the case of ***United India Insurance Co. Ltd. v. Sameerchandra Choudhary, (2005) 5 SCC 784,*** wherein the defendant has admitted that he is doing the business in the premises 69, Bada Sarafa and his brother Sohanlal is running the business in House No.73 and 74 and he is residing in the first floor over the shop therefore, the plaintiff is not required to prove any other facts by way of evidence. The defendant has also admitted that since 1972, Sohanlal is doing business independently and he requested for change of rent deed but the plaintiff has declined it. He has also admitted that till filing of the suit, the rent receipt is being issued in his name.

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***2. CEILING ON AGRICULTURAL HOLDINGS ACT, 1960 (M.P.) – Sections 7, 11, 41, 42 and 46**

Whether the Civil Court has jurisdiction to decide a suit challenging order of surplus land of the Competent Authority under the Act? Held, No.

कृषकजोत उच्चतम सीमा अधिनियम, 1960 (म.प्र.) – धाराएं 7, 11, 41, 42 एवं 46

क्या सिविल न्यायालय, अधिनियम के अंतर्गत सक्षम प्राधिकारी के अधिशेष भूमि संबंधी आदेश को आक्षेपित करने वाले वाद की सुनवाई का क्षेत्राधिकार रखता है – अभिनिर्धारित, नहीं।

State of Madhya Pradesh and another v. Dungaji (dead) Represented by Legal Representatives and anr.

Judgment dated 16.07.2019 passed by the Supreme Court in Civil Appeal No. 11326 of 2011, reported in (2019) 7 SCC 465

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***3. CIVIL PROCEDURE CODE, 1908 – Section 11 and Order 7 Rule 11(d)**
SPECIFIC RELIEF ACT, 1963 – Sections 31 and 38
LIMITATION ACT, 1963 – Article 59

(i) Rejection of plaint – Suit for cancellation of sale deed – Limitation period for challenging registered sale deed is three years – Suit filed after eight years of execution of sale deed is barred by law of limitation – Plaint liable to be rejected.

(ii) Rejection of plaint – Application for – Suit for cancellation of sale deed – Plaintiff neither valued suit property nor paid proper court fees on plaint – Suit barred by law – Plaint liable to be rejected.

(iii) Rejection of plaint – Suit for cancellation of sale deed, possession and permanent injunction – Title over suit property already decided in earlier litigation between parties – Suit is barred by principle of *res judicata* – Furthermore, suit being filed against dead person is a nullity – Plaint liable to be rejected.

सिविल प्रक्रिया संहिता, 1908 – धारा 11 एवं आदेश 7 नियम 11 (घ)

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 31 एवं 38

परिसीमा अधिनियम, 1963 – अनुच्छेद 59

(i) वादपत्र का नामंजूर किया जाना – विक्रय विलेख को निरस्त करवाने के लिये वाद – पंजीकृत विक्रय विलेख को चुनौती देने के लिये परिसीमा अवधि तीन वर्ष है – विक्रय विलेख के निष्पादन के आठ वर्ष पश्चात् प्रस्तुत वाद, परिसीमा विधि द्वारा वर्जित है – वादपत्र नामंजूर किये जाने योग्य है।

(ii) वादपत्र को नामंजूर किये जाने के लिए आवेदन – विक्रय विलेख के निरस्तीकरण के लिये वाद – वादी ने ना तो वादग्रस्त संपत्ति का उचित मूल्यांकन किया और ना ही वादपत्र पर पर्याप्त न्यायालय शुल्क अदा किया – वाद विधि द्वारा वर्जित – वादपत्र नामंजूर किये जाने योग्य है।

(iii) वादपत्र का नामंजूर किया जाना – विक्रय विलेख के निरस्तीकरण, आधिपत्य प्राप्ति और स्थाई निषेधाज्ञा के लिए वाद – पक्षकारों के बीच पूर्व मुकदमेबाजी में वादोक्त संपत्ति पर स्वत्व पूर्व से ही निराकृत – प्रांगन्याय के सिद्धांत द्वारा वाद वर्जित है – इसके अतिरिक्त मृत व्यक्ति के विरूद्ध प्रस्तुत किया गया वाद शून्य है – वादपत्र नामंजूर किये जाने योग्य है।

Sudhirdas v. United Church of D Canada India, Dhar Beneficiary and ors.

Judgment dated 18.06.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 41 of 2019, reported in AIR 2019 MP 165

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***4. CIVIL PROCEDURE CODE, 1908 – Sections 151 and 152**

(i) Interlocutory order – The order rejecting an application for correction in the decree preferred u/s 151 and 152 of the Code, cannot be held to be an interlocutory order, as it decides the said question finally.

(ii) Correction of accidental slip or omission in judgment – Validity of a decree – Section 152 of the Code provides that a clerical or arithmetical mistake in judgments, decree or orders or errors arising therein from any accidental slip or omission may

at any time be corrected by the Court either on its own motion or on the application of any of the parties, but validity of a decree cannot be examined.

सिविल प्रक्रिया संहिता, 1908 – धाराएं 151 एवं 152

(i) अंतर्वर्ती आदेश – सिविल प्रक्रिया संहिता की धारा 151 और 152 के अंतर्गत आज्ञप्ति में शुद्धि के लिए प्रस्तुत आवेदन को अस्वीकार करने वाला आदेश अंतर्वर्ती आदेश अभिनिर्धारित नहीं किया जा सकता है, क्योंकि ऐसा आदेश उक्त प्रश्न को अंतिमतः निराकृत करता है।

(ii) निर्णय में आकस्मिक चूक या लोप का सुधार – आज्ञप्ति की वैधता – सिविल प्रक्रिया संहिता की धारा 152, निर्णयों, आज्ञप्ति या आदेशों में लिपिकीय या अंकगणितीय त्रुटियों या उनमें आकस्मिक चूक या लोप से प्रोद्भूत त्रुटियों को न्यायालय द्वारा कभी भी स्वप्रेरणा पर अथवा किसी भी पक्षकार के आवेदन पर शुद्ध करने का प्रावधान करती है, परन्तु आज्ञप्ति की वैधता की जाँच नहीं की जा सकती है।

Mastram v. Karelal through L.Rs.

Order dated 16.01.2019 passed by the High Court of Madhya Pradesh in Civil Revision No. 84 of 2011, reported in 2019 (3) MPLJ 688

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5. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10

Impleadment of party – Suit for specific performance of contract – Third party or stranger to contract – Not necessary parties and cannot be added in suit for specific performance of contract to sell to find out who is in possession of the contracted property. [*Kasturi v. Iyyamperumal, AIR 2005 SC 2813*, relied on]

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 10

पक्षकार का संयोजन – संविदा के विनिर्दिष्ट पालन के लिये वाद – तृतीय पक्षकार या संविदा में पर–व्यक्ति – आवश्यक पक्षकार नहीं है और यह पता लगाने के लिये कि, संविदाकृत संपत्ति के आधिपत्य में कौन है, विक्रय की संविदा के विनिर्दिष्ट पालन के वाद में नहीं जोड़ा जा सकता है। [*कस्तूरी विरूद्ध अय्यामपेरूमल, एआईआर 2005 एससी 2813*, अवलंबित]

Gurmit Singh Bhatia v. Kiran Kant Robinson and ors.

Judgment dated 17.07.2019 passed by the Supreme Court in Civil Appeal No. 5522 of 2019, reported in AIR 2019 SC 3577

Relevant extracts from the judgment:

The short question which is posed for consideration before this Court is, whether the plaintiffs can be compelled to implead a person in the suit for specific performance, against his wish and more particularly with respect to a person against whom no relief has been claimed by him?

An identical question came to be considered before this Court in the case of ***Kasturi v. Iyyamperumal, AIR 2005 SC 2813*** and applying the principle that the plaintiff is the *dominus litis*, in the similar facts and circumstances of the case, this Court observed and held that the question of jurisdiction of the court to invoke Order 1 Rule 10 CPC to add a party who is not made a party in the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the controversy involved in the suit. It is further observed and held by this Court that two tests are to be satisfied for determining the question who is a necessary party. The tests are & (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. It is further observed and held that in a suit for specific performance the first test can be formulated is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract to sell. It is further observed and held by this Court that in a suit for specific performance of the contract, a proper party is a party whose presence is necessary to adjudicate the controversy involved in the suit. It is further observed and held that the parties claiming an independent title and possession adverse to the title of the vendor and not on the basis of the contract, are not proper parties and if such party is impleaded in the suit, the scope of the suit for specific performance shall be enlarged to a suit for title and possession, which is impermissible.

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6. CIVIL PROCEDURE CODE, 1908 – Order 17 Rule 1
EVIDENCE ACT, 1872 – Section 45

(i) Adjournment – Duties of the members of the Bar – Delineated – Seeking adjournments for no reason amount to professional misconduct – Pendency of old matters is not a ground to adjourn new matters – If Bar refuses to co–operate with Courts, then Courts would be left with no option but to decide the matters at its own.

(ii) Handwriting expert – Right to get a document examined – Application of one of the parties was allowed and report of expert was placed on record – Held, the opposite party must be allowed to rebut the report by filing report of handwriting expert of his choice.

सिविल प्रक्रिया संहिता, 1908 – **आदेश** 17 **नियम** 1

साक्ष्य अधिनियम, 1872 – **धारा** 45

(i) स्थगन – अभिभाषक संघ के सदस्यों के कर्तव्य – उद्धरित किए गए – बिना किसी कारण के स्थगनों की मांग करना वृत्तिक कदाचार की श्रेणी में आता है – पुराने मामलों का लंबित होना नए मामलों के स्थगन का आधार नहीं होता है

– यदि अभिभाषक संघ न्यायालय का सहयोग करने से इंकार करते हैं तो न्यायालय के पास स्वतः मामले का विनिश्चय करने के अतिरिक्त कोई विकल्प शेष नहीं रहेगा।

(ii) हस्तलेख विशेषज्ञ – किसी दस्तावेज को परीक्षित कराने का अधिकार – पक्षकारों में से एक का आवेदन अनुज्ञात किया गया तथा विशेषज्ञ का प्रतिवेदन अभिलेख पर लिया गया – अभिनिर्धारित, विरोधी पक्षकार को उसकी पसंद के हस्तलेख विशेषज्ञ का प्रतिवेदन प्रस्तुत कर, पूर्व प्रतिवेदन को खण्डित करने की अनुमति दी जानी चाहिए।

Nandu @ Gandharva Singh v. Ratiram Yadav and ors.

Order dated 09.01.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 1887 of 2017, reported in 2019 (3) MPLJ 296

Relevant extracts from the judgment:

As observed by the Supreme Court, that adjournments are growing like a cancer, which is eroding the system. A time has come, where the Bar has to raise its standard and must fulfill the expectations of the litigating parties, for early disposal of the cases. Justice delayed justice denied. The Bar must not try to create hurdles in the justice dispensation system, by unnecessarily seeking adjournments and above all, must not try to pinch the Court, by saying that since, the adjournment has been refused, therefore, under compulsion, they are arguing the matters. Once, the lawyer has accepted the brief, then it is his bounden duty towards the institution. They have a duty towards their client, they have a duty to prepare the case and present the case properly without suppressing any fact, so that they can effectively assist the Court. Seeking adjournments for no reason does amount to professional misconduct and the Bar Councils must also rise to the occasion either by issuing necessary instructions to the Advocates on its roll or by taking disciplinary action against the Advocate, if any complaint with regard to seeking unnecessary adjournments by the Advocate is made. The Advocates are not the mouth piece of their clients for the purpose of delaying the Court proceedings, nor they should avoid hearing but being the officers of the Court, they have sacrosanct duty towards the Court. Once, the case is listed in the Cause list, then any Advocate cannot refuse to argue the matter on the ground that older matters are also pending, therefore, the comparatively new matter should be adjourned, and should not be heard unless and until it becomes old. It is the duty of the Courts to decide the matters as early as possible, and if the lawyers refuse to co–operate with the Courts, then a time has come, where the Court would be left with no other option but to decide the matters on its own, by going through the record, and this situation would never help the litigating party and the lawyers must understand that when they have been engaged by their clients with a hope and belief, that their Counsel would place their case before the Court, in a most effective manner, then after

having accepted the brief, it is the duty of the lawyer to live upto the expectation of his client, so that the faith and belief of the client on his lawyer may continue.

It is undisputed fact that the application filed by the respondent no.1 for getting thumb impression on the agreement examined from the handwriting expert was allowed by the trial court and accordingly, the report of the handwriting expert has been placed on record. Under these circumstances, this Court is of the considered opinion that the trial court cannot take away the right of the petitioner/defendant to produce the report of the handwriting expert in rebuttal of the report of the handwriting expert filed by the respondent no.1/plaintiff. Thus, in the light of the judgment passed by the Division Bench of this Court in the case of ***Usha Sharma (Smt.) v. Maharaj Kishan Raina and another, 2010 (1) MPJR SN 22,*** this Court is of the considered opinion that the order dated 6.12.2017, so far as it relates to rejection of application under Section 151 of CPC, is hereby set aside. Accordingly, the application filed by the petitioner under Section 151 of CPC for producing his report of the handwriting expert in rebuttal of the report of the handwriting expert filed by the respondent no.1/plaintiff is allowed.

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7. CIVIL PROCEDURE CODE, 1908 – Order 20 Rule 12 (1) (c) (iii)
Recovery of mesne profit – Relief of mesne profit should be limited to three years period – Mesne profit cannot be recovered for more than three years from the date of decree.

सिविल प्रक्रिया संहिता, 1908 – आदेश 20 नियम 12 (1) (ग) (iii)

अंतःकालीन लाभ की वसूली – अन्तःकालीन लाभ की सहायता को तीन वर्ष की अवधि तक सीमित किया जाना चाहिए – आज्ञप्ति दिनांक से तीन वर्ष से अधिक अवधि का अन्तःकालीन लाभ वसूल नहीं किया जा सकता है।

Bajranglal (dead) through L.Rs. Draupadi and others v. Gajanand and anr.

Order dated 19.07.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Civil Revision No. 673 of 2017, reported in 2019 (3) MPLJ 614

Relevant extracts from the order:

The question for consideration is as to whether the mesne profit can be awarded under Order 20 Rule 12 of CPC?

Order 20 Rule 12 CPC omitting the unnecessary portions runs as under:–

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree xx xx xx

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until – (i) the delivery of possession to the decree–holder, (ii) the relinquishment of possession by the judgment

debtor with notice to the decree–holder through the Court, or (iii) the expiration of three years from the date of the decree, whichever event first occurs."

This is the only provision, in the Code which allows mesne profits from the date of the institution of the suit up to the time of delivery.

The aforesaid provision has been the subject of judicial interpretation in many cases, such as, ***Girish Chunder Lahiri v. Shoshi Shikhareswar Roy, ILR 27 Cal 951,*** wherein, the decree, after declaring the plaintiffs' right to the property in dispute, recited that "he do get from the defendants khas possession of the same and mesne profits for the period of dispossession etc." No doubt, the expression used was mesne profits, for the period of dispossession, indisputably, that tantamount to mesne profits upto the date of possession. Their Lordships of the Privy Council rules that as this was more than three years from the date of the decree and to the extent of the excess, it was unauthorised by section 211 of the old Code. It is plain that the relief should be limited to three years notwithstanding the express terms of the decree that the plaintiff should get profits, until delivery of possession. This is clear authority in favour of the view that mesne profits could not be recovered for more than three years from the date of the decree. It is true that this decision was rendered under Section 211 of the old Code (Civil Procedure Code, 1882), which is the predecessor of Order 20 Rule 12(c), CPC. However, the position is the same even under the new Code.

Section 211 of Civil Procedure Code, 1882 reads as follows:

"When the suit is for the recovery of possession of immovable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or might the expiration of three years from the date of the decree (whichever event first occurs) with interest thereupon at such rate as the Court thinks fit."

A decree providing for the ascertainment of mesne profits until delivery of possession of property should be so construed as to harmonise with the provisions of Order 20 Rule 12 (c)(iii). The Court, which made the decree, could not have contemplated that the date of recovery of possession would pass the statutory period of three years laid down by Rule 12 (c)(iii). Such decree should not be interpreted in a manner that would bring it into conflict with the statutory limitation imposed by the rule. It is to be read in the light of Order 20 Rule 12, CPC. If it is not within the competence of the Court to allow mesne profit for a longer period by reason of Order 20 Rule 12 CPC, then there is no justification in allowing the mesne profit for the period exceeding three years. While

empowering a Court to determine mesne profits in interlocutory proceedings, without the necessity of filing a fresh suit, under Order 20 Rule 12 CPC, the Code has also placed a limitation on that power with regard to the period for which a decree for future profits could be given and so it is not competent for a Court to allow profits for a term exceeding three years. That being the real position, a Judge is expected not to act in disregard of the statutory provision contemplated under Order 20 Rule 12 CPC.

The mesne profit can only be awarded for the term of three years.

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***8. CIVIL PROCEDURE CODE, 1908 – Order 20 Rule 18 and Order 22 Rule 5**
REGISTRATION ACT, 1908 – Section 17 (1) (b)

(i) Partition suit – Amendment in preliminary decree – In appropriate circumstances, the preliminary decree can be amended at the stage of final decree and even another preliminary decree re–determining the rights and interest of parties can be passed.

(ii) *Res Judicata* – Legal Representative – Under Order 22 Rule 5 of the Code, limited question relating to the L.R. is decided only for the purpose of bringing the L.Rs. on record which does not operate as *resjudicata* and the *inter se* dispute between the rival L.Rs. has to be independently tried and decided in appropriate proceedings.

(iii) Admissibility of compulsorily registrable document – If unregistered, it is inadmissible in evidence for primary purpose and in a suit for partition, such an un–stamped instrument is inadmissible in evidence even for collateral purpose until the same is impounded.

सिविल प्रक्रिया संहिता, 1908 – आदेश 20 नियम 18 एवं आदेश 22 नियम 5
रजिस्ट्रीकरण अधिनियम, 1908 – धारा 17 (1) (ख)

(i) विभाजन का दावा – प्रारंभिक आज्ञप्ति में संशोधन – अंतिम आज्ञप्ति के स्तर पर उपयुक्त परिस्थितियों में प्रारंभिक आज्ञप्ति में संशोधन किया जा सकता है और यहाँ तक कि पक्षकारों के अधिकारों और हितों को पुनःनिर्धारित करने वाली प्रारंभिक आज्ञप्ति भी पारित की जा सकती है।

(ii) प्रांगन्याय– विधिक प्रतिनिधि – संहिता के आदेश 22 नियम 5 के अंतर्गत विधिक प्रतिनिधियों को अभिलेख पर लाने के उद्देश्य मात्र से विधिक प्रतिनिधि से संबंधित सीमित प्रश्न का निर्धारण किया जाता है, जो कि प्रांगन्याय का प्रभाव नहीं रखता है और प्रतिद्वंदी विधिक प्रतिनिधियों के मध्य के परस्पर विवाद उचित कार्यवाही में स्वतंत्र रूप से विचारित और निराकृत किए जाने चाहिए।

(iii) अनिवार्य रूप से पंजीयन योग्य दस्तावेजों की ग्राह्यता – यदि अपंजीकृत है तो मूल उद्देश्य के लिए साक्ष्य में अग्राह्य है और विभाजन के लिए प्रस्तुत वाद में ऐसा अस्टाम्पित दस्तावेज संपार्श्विक उद्देश्य के लिए भी साक्ष्य में अग्राह्य है, जब तक कि उसे परिबद्ध नहीं किया जाता है।

Mahendra Kumar v. Lalchand and anr.

Judgment dated 11.03.2019 passed by the High Court ofMadhya Pradesh (Indore Bench) in First Appeal No. 69 of 1997, reported in 2019 (3) MPLJ 580

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9. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 3 and Order 43 Rule 1–A

(i) Compromise decree – Appeal – Against a compromise decree, appeal is maintainable.

(ii) Re–call of compromise decree – Whether an application can be filed for recall/review of compromise decree? Held, Yes.

सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 3 एवं आदेश 43 नियम 1–क

(i) समझौता डिक्री – अपील – समझौता डिक्री के विरूद्ध अपील संधारणीय है।

(ii) समझौता डिक्री को वापस लेना – क्या समझौता डिक्री को वापस लेने या पुनर्विलोकन के लिए आवेदन प्रस्तुत किया जा सकता है, अभिनिर्धारित, हाँ।

Shiv Singh v. Vandana

Order dated 06.02.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Civil Revision No. 644 of 2017, reported in 2019 (3) MPLJ 638

Relevant extracts from the order:

Where a compromise decree has been passed, a party to the litigation will have a remedy of filing an appeal as per Order 43 Rule 1–A (2) of C.P.C. which reads as under:

> *''1–A. Right to challenge non–appealable orders in appeal against decrees* – (1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.
>
> (2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.

2. Procedure – The rules of Order XLI shall apply, so far as may be, to appeals from orders.''

Thus, it is clear that against a compromise decree, an appeal is maintainable.

Now the moot question for determination is that whether an application can be filed for recall/review of the compromise decree?

The question involved in the present case is no more *res integra*.

The Supreme Court in the case of ***Banwari Lal v. Chando Devi, (1993) 1 SCC 581*** has held as under:

> *'*'The court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful. The learned Subordinate Judge was perfectly justified in entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the court could have recorded such agreement or compromise on February 27, 1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order."

The Supreme Court in the case of ***Y. Sleebachen v. State of T.N., (2015) 5 SCC 747*** has held as under:–

> *'*'It is also pertinent to point out that here also, no application was filed by the respondents before the District Court immediately after the passing of decrees in compromise terms, or even thereafter, for recall of the compromise order with the plea that such a compromise was unacceptable as the Government Pleader was not authorised to enter into any such settlement. Instead appeals were filed before the High Court. We are of the opinion that the respondents should have approached the trial court in the first instance as it is the trial Judge before whom the compromise was recorded and as he was privy to events that led to the compromise order, he was in a better position to deal with this aspect.''

The Kolkata High Court in the case of ***Ashim Kumar Dey v. Calcutta Wholesale Medicine Market Area Committee of Bengal Chemists and Druggists Association and others, 2006 SCC OnLine Cal 221*** has held as under:–

> ''In our opinion, the aforesaid contention of Mr. Tandon is a misconceived one. According to Order 23 Rule 3A of the Code of Civil Procedure, a fresh suit at the instance of the parties to compromise on the basis of which decree was passed is barred and if any of the parties to the alleged compromise is of the view that such compromise was effected by practising fraud or otherwise not lawful, it is his duty to apply before the same Court and the Court should decide whether such compromise should be recorded.
>
> It is now well settled law that even after passing of a decree on the basis of compromise, the affected party can apply for recalling the decree on the ground that the compromise was not lawful and if such application is filed, it is the duty of the Trial Court to decide such objection. [See paragraph 13 of the judgment in the case of ***Banwari Lal***(supra)]''

The Counsel for the applicant has also relied upon the judgment passed by the Madras High Court in the case of ***Chinnapaiya @ Chinnathambi v.A. Mohamed Yusuf passed on 29.07.2013 in C.R.P. (NPD) No. 2553 of 2009*** and submitted that the only option available with the respondent is to file an appeal and the application for recall is not maintainable.

In the case of ***Chinnapaiya*** (supra) it has been held as under:

> ''Thus, I am of the view that the petitioners have to only file an appeal under Order 43 Rule 1–A(2) of CPC and not by filing an application under Order 23 Rule 3 CPC. As I have already pointed out that such exercise is contemplated under the proviso to Order 23 Rule 3 only on the day when the compromise was recorded by the Court without any adjournment or on the adjourned day, if the Court is satisfied that such adjournment is necessary.''

The judgment passed in the case of ***Chinnapaiya*** (supra) does not lay down the good law as it is contrary to the *dictum* of the Supreme Court in the case of ***Banwari Lal***(supra) and ***Y. Sleebachen***(supra).

Considering the facts and circumstances of the case, this Court is of the considered opinion, that where the wife has alleged that the applicant has obtained the compromise decree by playing fraud on her, then instead of filing an appeal, the respondent has rightly approached the Trial Court for recall of the compromise decree.

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10. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 3A, Order 41 Rules 1A and 22

CIVIL PRACTICE:

(i) Compromise decree; challenge to – Whether separate suit assailing compromise decree is maintainable? Held, Yes – If person challenging compromise decree was not party to the previous suit, such suit on his behalf is maintainable.

(ii) Civil Practice – Modification of decree in appeal – In absence of a cross–appeal or cross–objection, Appellate Court should not reduce the appellants to a situation worse than what they would have been had they not appealed,

(iii) Appeal – Challenge to findings of decree by respondents – Generally, respondent is not required to file cross–objection to attack adverse findings recorded against him – But respondent should file atleast Memo of Objection in writing so that appellant is not surprised at the time of final hearing.

सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 3ए, आदेश 41 नियम 1ए एवं 22

सिविल प्रथाः

(i) समझौता आज्ञप्ति – चुनौती दिया जाना – क्या समझौता आज्ञप्ति को चुनौती देने वाला पृथक वाद पोषणीय है? अभिनिर्धारित, हाँ – यदि समझौता आज्ञप्ति को चुनौती देने वाला व्यक्ति पूर्व वाद का पक्षकार नहीं था, तो उसकी ओर से ऐसा वाद पोषणीय है।

(ii) सिविल प्रथा – अपील में आज्ञप्ति का परिवर्तन/संशोधन – प्रति अपील अथवा प्रत्याक्षेप के अभाव में अपीलीय न्यायालय को अपीलार्थी को उस स्थिति से बदतर स्थिति में नहीं डालना चाहिए जिस स्थिति में वे होते, यदि उनके द्वारा अपील नहीं की गई होती।

(iii) अपील – प्रत्यर्थी द्वारा आज्ञप्ति के निष्कर्ष को चुनौती दिया जाना – सामान्यतः प्रत्यर्थी को उसके विरूद्ध अभिलिखित प्रतिकूल निष्कर्ष को चुनौती देने के लिए प्रत्याक्षेप संस्थित करने की आवश्यकता नहीं है – परन्तु प्रत्यर्थी को कम से कम आक्षेप का लिखित ज्ञापन प्रस्तुत करना चाहिए जिससे कि अपीलार्थी अंतिम सुनवाई पर अचंभित न हो।

Jagdish Chandra Gupta v. Madanlal and ors.

Judgment dated 26.11.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in First Appeal No. 407 of 1999, reported in 2019 (3) MPLJ 353

Relevant extracts from the judgment:

The provisions of Order 23 Rule 3–A and Order 41 Rule 1–A (2) are applicable to those persons only who are party in the suit as well as to the

compromise. Admittedly in the present case appellant was not party to the compromise certainly can institute a suit seeking declaration that the decree passed in C.S.No.739–A/1996 is void and not binding on him, therefore, the findings recorded by the trial Court on this issue are liable to be set aside.

In case of ***Banarsi & others v. Ram Phal, (2003) 9 SCC 606,*** the Apex Court has held that the first appellate Court ought not to have while dismissing the appeal filed by the defendant–appellant before it, modified the decree in favour of the respondent before it in the absence of cross–appeal or cross–objection. The interference by the first appellate Court has reduced the appellants to a situation worse than in what they would have been if they had not appealed.

It is clear from the aforesaid judgment that the respondents in order to attack the adverse findings recorded against him by the Court below is not required to file cross–objection, but keeping in view peculiar facts of this case it was necessary for him to disclose at the time of admission of the appeal that he is going to challenge the adverse findings at the time of final hearing of the appeal. Normally, the appeal once admitted comes for final hearing after 5/10/15 years and after such long period if the respondent starts arguing against the findings recorded in favour of plaintiff then it would be a surprise for the appellant to give response to those arguments, therefore, if the respondent is interested in challenging the findings recorded against him, he is required to file at least his memo of objection in writing which may not be in the form of cross–objection or having status of appeal which is required to be filed only when any part of the decree is under challenge by the respondents.

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11. CIVIL PROCEDURE CODE, 1908 – Order 39 Rule 2–A

Breach of injunction – Willful disobedience – Allegations of being in nature of criminal liability – Has to be proved to the satisfaction of Court that disobedience was not mere "disobedience" but a "willful disobedience".

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 2–क

व्यादेश का भंग – जानबूझकर अवज्ञा – अभिकथन दाण्डिक दायित्व की प्रकृति के होते है – न्यायालय की संतुष्टि के स्तर तक यह साबित किया जाना चाहिए कि अवज्ञा मात्र "अवज्ञा" नहीं थी बल्कि एक "जानबूझकर की गई अवज्ञा" थी।

U. C. Surendranath v. Mambally's Bakery

Judgment dated 22.07.2019 passed by the Supreme Court in Civil Appeal No. 5775 of 2019, reported in AIR 2019 SC 3799

Relevant extracts from the judgment:

For finding a person guilty of willful disobedience of the order under XXXIX Rule 2–A Code of Civil Procedure there has to be not mere "disobedience" but it should be a "willful disobedience". The allegation of willful disobedience being in the nature of criminal liability, the same has to be proved to the satisfaction of

the court that the disobedience was not mere "disobedience" but a "willful disobedience".

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***12. CONSTITUTION OF INDIA – Article 21**

Undertrial prisoners – Medical treatment – An undertrial prisoner should not be kept in hospital for sake of his convenience – Health issues should not be made a tool for staying outside the jail.

भारत का संविधान – अनुच्छेद 21

विचाराधीन बंदी – चिकित्सीय उपचार – एक विचाराधीन बंदी को उसकी सुविधा की दृष्टि से चिकित्सालय में नहीं रखा जाना चाहिए – स्वास्थ्य कारणों को जेल से बाहर रहने का साधन नहीं बनाया जाना चाहिए।

Ramkrishan Sharma v. State of M.P. and ors.

Order dated 28.01.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 1751 of 2019, reported in 2019 (3) MPLJ 474

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13. COURT FEES ACT, 1870 – Sections 12 and 35

CIVILPROCEDURECODE,1908 – Orders 7, 21 & 41 and Sections 5 & 11

(i) Stage when court fees is payable – As per the scheme of Court Fees Act, the court fees is payable at the time of filing of the suit as well as first appeal/second appeal, as the case may be – Therefore, payment of court fees cannot be avoided on the ground that the issue in respect of valuation and court fees is pending before the Court – If the plaintiff succeeds in the suit as well as in appeal, the Court is having ample power to pass a decree with costs which includes court fees.

(ii) Determination of court fees – Preliminary issue – Issue of court fees is always liable to be decided as a preliminary issue.

(iii) Application of Order 7 Rule 11 CPC in appeal – If the suit can be dismissed or rejected under Order 7 Rule 11, then the appeal which is in continuation of the suit can also be decided or rejected under Order 7 Rule 11 of CPC (specially on the issue of court fees and valuation of appeal) – The provisions of CPC which are applicable to the suit, are also applicable to first appeal.

(iv) Execution of decree – If Appellate Court has not stayed the execution of decree, it is executable.

न्यायालय शुल्क अधिनियम, 1870 – धाराएं 12 एवं 35

सिविल प्रक्रिया संहिता, 1908 – आदेश 7, 21 और 41 एवं धाराएं 5 और 11

(i) स्तर जब न्यायालय शुल्क देय होता है – न्यायालय शुल्क अधिनियम की योजना के अनुसार न्यायालय शुल्क वाद संस्थित करने के समय के साथ–साथ प्रथम अपील/द्वितीय अपील, जैसा भी मामला हो के संस्थापन के समय देय होता है – इसलिए न्यायालय शुल्क के संदाय से इस आधार पर नहीं बचा जा सकता है कि मूल्यांकन और न्यायालय शुल्क अदायगी का विवाद्यक न्यायालय के समक्ष लंबित है – यदि वादी दावे के साथ–साथ अपील में सफल होता है, तो न्यायालय के पास न्यायालय शुल्क को सम्मिलित करते हुये परिव्यय के साथ आज्ञप्ति पारित करने का पर्याप्त प्राधिकार है।

(ii) न्यायालय शुल्क का निर्धारण – प्रारंभिक विवाद्यक – न्यायालय शुल्क का विवाद्यक सदैव प्रारंभिक विवाद्यक के रूप में निर्धारित किया जाना चाहिए।

(iii) अपील में आदेश 7 नियम 11 का लागू होना – यदि आदेश 7 नियम 11 के अंतर्गत वाद खारिज या नामंजूर किया जा सकता है, तो अपील, जो कि वाद का ही विस्तार है, वह भी आदेश 7 नियम 11 के अंतर्गत खारिज या नामंजूर की जा सकती है (विशेष रूप से न्यायालय शुल्क और मूल्यांकन के आधार पर) – सिविल प्रक्रिया संहिता के जो प्रावधान वाद पर लागू होते हैं, वे प्रथम अपील पर भी लागू होते हैं।

(iv) डिक्री का निष्पादन – यदि अपीलीय न्यायालय द्वारा डिक्री के निष्पादन को स्थगित नहीं किया गया है, तो वह निष्पादन योग्य है।

Badrilal (deceased) through L.Rs. Nirmala and others v. Akash and anr.

Order dated 25.02.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 5417 of 2018, reported in 2019 (3) MPLJ 738

Relevant extracts from the order:

In every suit filed by the plaintiff, if issues of valuation and court fees are there, the plaintiff may easily avoid the payment of court fees in the suit as well as in first appeal/second appeal on the ground that the issue is pending before the Court. As per scheme of Court Fees Act, the court fees is payable at the time of filing of the suit as well as first appeal/second appeal, as the case may be. Therefore, payment of court fees cannot be avoided on the ground that the issue in respect of valuation and court fees is pending before the Court. If the plaintiff succeeds in the suit as well as in appeal, the Court is having ample power to pass a decree with costs which includes court fees.

In the present case, learned trial Court after giving finding on all the issues has held that the plaintiffs are liable to pay the court fees, otherwise, the plaintiffs were liable to pay the court fees at the time of filing of the suit itself. The issue of payment of court fees is a part of the decree and the plaintiffs have not filed any application under Order 41 Rule 5 of the C.P.C. for stay of the judgment

and decree and the said part of the decree has not been stayed by the first appellate Court, hence, the same is executable.

So far as applicability of Order 7 Rule 11 of C.P.C. in the appeal is concerned, learned counsel for the petitioner submits that power can be invoked only in the pending suit because the first appellate Court either decides the suit finally or remand the case.

Under Section 12 of the Court Fees Act, the Court requires determination of the amount of fee chargeable on the plaint or memorandum of appeal by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be finalised as between the parties to the suit. Under sub–section (ii), whenever any such suit comes before a Court of appeal, reference or revision and the Court finds that the issue of court fees has wrongly been decided, which is causing loss to the revenue, it shall require the party to pay additional fee as would have been payable had the question been rightly decided. Therefore, the first appellate Court u/s 12 is competent to adjudicate the issue in respect of amount of fee payable in appeal as well as in the suit u/s 107(1) of the C.P.C., the appellate Court is required to decide the appeal on merit, but the C.P.C. is a procedural law and the Court Fees Act is a substantive law in respect of payment of court fees, therefore, substantive law will prevail over the procedural law, hence u/s 12 of the Court Fees Act, the first appellate Court has rightly decided the issue in respect of court fees.

The issue of court fees is always liable to be decided as a preliminary issue because the court fees is payable at the time of filing of the suit and appeal. In the Court Fees Act, there is a provision of refund of court fees paid on the suit as well as on memo of appeal, but there is no provision for payment of court fees after adjudication of the suit and the appeal. The court fees can be exempted to an indigent person or u/s 35 of the Court Fees Act for some special categories of plaintiffs, but in all circumstances, the fee is payable in advance and thereafter, the issue of valuation of the suit and payment of court fees should be decided as preliminary issue.

As per sub–section (2) of Section 107 of C.P.C., the appellate Court shall have same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. In the present case, the respondent/defendant filed an application under Order 7 Rule 11 read with Section 107 of C.P.C. If the suit can be dismissed or rejected under Order 7 Rule 11, then the appeal which is in continuation of the suit can also be decided or rejected under Order 7 Rule 11 of C.P.C. (specially on the issue of court fees and valuation of appeal). The provisions of Civil Procedure Code which are applicable to the suit, are also applicable to first appeal. Therefore, in the considered opinion of this Court, learned first appellate Court did not commit any error of law while passing the impugned order dated 9.10.2018.

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14. CRIMINAL PROCEDURE CODE, 1973 – Sections 53, 53–A and 311–A [inserted by (Amendment) Act 25 of 2005]
IDENTIFICATION OF PRISONERS ACT, 1920 – Section 5
CONSTITUTION OF INDIA – Articles 20 (3) and 142
Voice sample of accused for investigation – Recording of – Permissibility – Until explicit provisions are engrafted in Cr.P.C. by Parliament, Judicial Magistrate must be conceded power to order a person to give his voice sample for purpose of investigation of a crime.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 53, 53–क एवं 311–क [2005 के 25 (संशोधन) अधिनियम द्वारा अंतःस्थापित]

बंदियों की पहचान अधिनियम, 1920 – धारा 5

भारत का संविधान – अनुच्छेद 20 (3) एवं 142

अन्वेषण के लिये अभियुक्त की आवाज के नमूने का अभिलेखन – अनुज्ञेयता – संसद द्वारा द.प्र.सं. में अभिव्यक्त प्रावधान किये जाने तक, न्यायिक मजिस्ट्रेट को अपराध का अन्वेषण किये जाने के प्रयोजन के लिये किसी व्यक्ति को उसका आवाज का नमूना देने का आदेश देने की शक्तियाँ मानी जानी चाहिये।

Ritesh Sinha v. State of Uttar Pradesh and anr.
Judgment dated 02.08.2019 passed by the Supreme Court in Criminal Appeal No. 2003 of 2012, reported in AIR 2019 SC 3592

Relevant extracts from the judgment:

Amendments in Sections 53, 53–A & 311–A does not specifically authorize or empower a magistrate to direct an accused person or any other person to give his/her voice sample for the purposes of an inquiry or investigation under the Code.

In the present case, the view that the law on the point should emanate from the Legislature and not from the Court, as expressed in the judgment of this Court from which the reference has emanated is founded on two main reasons, viz., (i) the compulsion to give voice sample does in some way involve an invasion of the rights of the individual and to bring it within the ambit of the existing law would require more than reasonable bending and stretching of the principles of interpretation and (ii) if the legislature, even while making amendments in the Criminal Procedure Code (Act No. 25 of 2005), is oblivious and despite express reminders chooses not to include voice sample either in the newly introduced explanation to Section 53 or in Section 53–A and 311–A of Cr.P.C., then it may even be contended that in the larger scheme of things the legislature is able to see something which perhaps the Court is missing.

What may appear to be legislative inaction to fill in the gaps in the Statute could be on account of justified legislative concern and exercise of care and caution. However, when a yawning gap in the Statute, in the considered view of

the Court, calls for temporary patchwork of filling up to make the Statute effective and workable and to sub–serve societal interests a process of judicial interpretation would become inevitable. The exercise of jurisdiction by Constitutional Courts must be guided by contemporaneous realities/existing realities on the ground. Judicial power should not be allowed to be entrapped within inflexible parameters or guided by rigid principles. True, the judicial function is not to legislate but in a situation where the call of justice and that too of a large number who are not parties to the *lis* before the Court, demands expression of an opinion on a silent aspect of the Statute, such void must be filled up not only on the principle of *ejusdem generis* but on the principle of imminent necessity with a call to the Legislature to act promptly in the matter.

In the light of the above discussions, until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime. Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in Supreme Court under Article 142 of the Constitution of India.

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15. CRIMINAL PROCEDURE CODE, 1973 – Sections 53 and 54–A

DNA test – When can be ordered? Held, DNA test should not be ordered to conduct roving and fishing enquiry on a person – It may be ordered only after substantial investigation and collection of satisfying material.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 53 एवं 54–ए

डी.एन.ए. परीक्षण – कब आदेशित किया जा सकता है? अभिनिर्धारित, डी.एन.ए. परीक्षण का आदेश किसी व्यक्ति पर अतिगामी जांच संचालित करने हेतु नहीं दिया जाना चाहिये – यह केवल संतोषप्रद तथ्यों के संकलन एवं सारभूत अन्वेषण के उपरांत ही आदेशित किया जाना चाहिए।

Kathi David Raju v. State of Andhra Pradesh and another

Judgment dated 05.08.2019 passed by the Supreme Court in Criminal Appeal No. 1186 of 2019, reported in (2019) 7 SCC 769

Relevant extracts from the judgment:

There can be no dispute to the right of police authorities to seek permission of the Court for conducting DNA test in an appropriate case. In the present case, FIR alleges obtaining false caste certificate by the appellant by changing his name and parentage. The order impugned itself notices that investigation is not yet completed and material evidence are yet to be collected. The police authorities without being satisfied on material collected or conducting substantial investigation have requested for DNA test which is nothing but a step towards roving and fishing enquiry on a person, his mother and brothers. It is a serious matter which should not be lightly resorted to without there being appropriate satisfaction for requirement of such test.

It is the submission of learned counsel for the respondent that Section 53 Cr.P.C empowers the police authorities to request a medical practitioner to conduct examination of a person. There cannot be any dispute to the provision empowering police authorities to make such a request. Present is a case where without carrying out any substantial investigation, the police authorities had jumped on the conclusion that DNA test should be obtained. It was too early to request for conduct of DNA test without carrying out substantial investigation by the police authorities. The Additional Junior Civil Judge also failed to notice that in the investigation conducted by the Investigating Authority no such materials have been brought on the basis of which it could have been opined that conducting DNA test is necessary for the appellant on his mother and two brothers.

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16. CRIMINAL PROCEDURE CODE, 1973 – Section 125

Maintenance – Whether a wife, who has been divorced by the husband, on the ground that the wife has deserted him, is entitled to claim maintenance? Held – Yes.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125

भरण–पोषण – क्या एक पत्नी, जिसे पति का परित्याग किए जाने के आधार पर तलाक दिया गया है, भरण–पोषण प्राप्त करने की अधिकारी है? अधिनिर्धारित – हाँ।

Dr. Swapan Kumar Banerjee v. State of West Bengal and anr.

Judgment dated 19.09.2019 passed by the Supreme Court of India in Criminal Appeal No. 232 of 2015, reported in 2019 (2) ANJ (SC) (Suppl.) 97

Relevant extracts from the judgment:

The short question raised in these appeals is whether a wife, who has been divorced by the husband, on the ground that the wife has deserted him, is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure, 1973 (Cr.P.C.). We may refer to the relevant portion of Section 125 of the Code of Criminal Procedure:–

"125. Order for maintenance of wives, children and parents.–

(1) If any person having sufficient means neglects or refuses to maintain –

(a) his wife, unable to maintain herself, or

x x x x

Explanation.– For the purposes of this Chapter,–

x x x x

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) x x xx
(3) x x xx
(4) No Wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

x x x

It is the contention of the learned Counsel for the appellant that in terms of sub–section (4), no wife, who has deserted her husband can claim maintenance under Section 125 of the Cr.P.C. His further submission is that since in terms of the explanation wife includes a divorced woman, therefore, even a wife who has been divorced on the ground of desertion would not be entitled to maintenance in view of sub–section (4). The Learned Counsel has very candidly placed before us three judgments of this Court which take a view contrary to the one being canvassed by learned Counsel for the appellant before us. In ***Vanamala v. H.M. Ranganatha Bhatta, (1995) 5 SCC 2992*** dealt with a similar issue and held as follows:

> Section 125 of the Code makes provision for the grant of maintenance to wives, children and parents. Sub–section (1) of Section 125 *inter alia* says that if any person having sufficient means neglects or refuses to maintain his wife unable to maintain herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife not exceeding ₹ 500/– in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. Clause (i) of the Explanation to the sub–section defines the expression 'wife' to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. In the instant case it is not contended by the respondent that the appellant has remarried after the decree of divorce was obtained under Section 13–B of the Hindu Marriage Act.

It is also not in dispute that the appellant was the legally wedded wife of the respondent prior to the passing of the decree of divorce. By virtue of the definition referred to above she would, therefore, be entitled to maintenance if she could show that the respondent had neglected or refused to maintain her. Counsel for the respondent, however, invited our attention to sub–section (4) ofSection 125. …

This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the woman to live with her husband? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, sub–section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. In our view, therefore, this contention is not well founded.

Thereafter, in ***Rohtash Singh v. Ramendri & ors., (2000) 3 SCC 180*** this Court took a similar view:

> "Learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125 (4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her."

This view, which was taken by two–Judge Benches has been confirmed in ***Manoj Kumar v. Champa Devi, (2018) 12 SCC 748*** by a three judge bench, though, no specific reasons have been recorded in the judgment. The learned Counsel for the appellant urged that the matter requires reconsideration. We are not in agreement with him for two reasons. Firstly, the view taken in the first two judgments has been confirmed by a three–judges Bench and, therefore, we cannot refer it to a larger Bench. Even otherwise, this view has been consistently taken by this Court and the said view is in line with both the letter and spirit of the Cr.P.C. No doubt, as urged by the learned Counsel for appellant, Explanation II to Section 125 of the Cr.P.C. by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 of the Cr.P.C. The question is how we should read the provisions of sub–section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband.

Once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex–husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of the learned Counsel for appellant. Coming to the merits of the case, the matrimonial dispute started with the husband filing a petition of judicial separation in 1992, though, it was alleged that since 1987 the wife had deserted him.

In 1997 a petition for divorce was filed and the divorce was granted in 2000. During this period from 1987 to 2000 when the wife was living separately from her husband she did not file any petition for grant of maintenance. Even during the divorce proceedings though an application under Section 24 of the Hindu Marriage Act, 1955 was filed but it seems that the same was either dismissed for non–prosecution or was not pressed. It was not decided on merits in any event.

After the divorce was granted, according to the appellant he got remarried after a year and it was only thereafter that the wife filed a petition for grant of maintenance. That, according to us, will make no difference because it is for the wife to decide when she wants to file a petition for maintenance. She may have felt comfortable with whatever earnings she had upto that time or may be she did not want to precipitate matters till she was contesting the divorce petition by filing a claim for maintenance. Whatever be the reason, the mere fact that the wife did not file a petition for grant of maintenance during the pendency of the matrimonial proceedings, is no ground to hold that she is not entitled to file such a petition later on.

The next issue raised was that the wife being a qualified architect from a reputed university i.e. Jadavpur University, Calcutta would be presumed to have sufficient income. It is pertinent to mention that as far as the husband is concerned, his income through taxable returns has been brought on record which shows that he was earning a substantial amount of ₹ 13,16,585/– per year and on that basis ₹ 10,000/– per month has been awarded as monthly maintenance to the wife. No evidence has been led to show what is the income of the wife or where the wife is working. It was for the husband to lead such evidence. In the absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself. In this view of the matter, we find no merit in the appeals, which are accordingly dismissed. Pending application(s), if any, stands disposed of.

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17. CRIMINAL PROCEDURE CODE, 1973 – Section 125 (3)

Whether imprisonment exceeding for a period of one month can be imposed for arrears of maintenance for more than a month? Held, Yes.

दंड प्रक्रिया संहिता, 1973 – धारा 125 (3)

क्या एक माह से अधिक भरण–पोषण के बकाया के लिए एक माह से अधिक कारावास अधिरोपित किया जा सकता है? अभिनिर्धारित, हाँ।

Amar Singh v. Kamla @ Sapna Panthi and ors.

Order dated 28.03.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 5630 of 2018, reported in 2019 (3) MPLJ 200 (DB)

Relevant extracts from the order:

Single Bench presided over by Hon'ble Shri Justice Sheel Nagu in Criminal Revision No. 5630/2018 having expressed difference of opinion with the opinion expressed by Hon'ble Shri Justice Gurpal Singh Ahluwalia in ***Criminal Revision No. 1257/2018, Rajesh Dubey v. Smt. Rachna Tiwari and another, 2018 (2) MPLJ 269 = 2018 (1) MPLJ(Cri.) 477 decided on 21/03/2018*** on the issue of sentencing under Sub–section (3) of Section 125 of Code of Criminal Procedure, 1973 (hereinafter referred as to "Cr.P.C."), the matter has been referred to the Division Bench.

In the case at hand, the relevant fact is not in dispute that the husband having failed to abide by the order passed by the Court to pay an amount of ₹ 1,000/– per month to each of three children as ordered on 15/06/2016 under Sub–section (1) of Section 125 of Cr.P.C., led the Court direct the husband to suffer civil jail for a period of 11 months in exercise of its jurisdiction under Sub–section (3) of Section 125 of Cr.P.C.

Similar fact situation has arisen in ***Rajesh Dubey*** (supra) wherein relying on the decision by the Supreme Court in ***Poongodi and another v. Thangavel, (2013) 10 SCC 618,*** the order of sentencing for more than one month has been upheld. Whereas, in the case at hand, learned Single Judge has expressed his reservation for the said view on the basis of another decision by the Supreme Court in ***Shahada Khatoon and others v. Amjad Ali and others, (1999) 5 SCC (Cri) 1029***.

Pertinent it is to note that the provisions contained in Section 128 of Cr.P.C. only lays down the mode of enforcing recovery of maintenance allowance, stipulating therein that the order of maintenance may be enforced by any Magistrate in any place where the person against whom it is made may be. In case if the order of maintenance put to enforcement is not complied with, Section 128 Cr.P.C. has no answer as to how the order be actually effected. The answer lays in Sub–section (3) of Section 125 of Cr.P.C.

In ***Poongodi*** (supra), Their Lordships were pleased to take note of slightly different context in which ***Shahada Khatoon*** (supra) was decided which may be noticed from the argument advanced by learned counsel in the said case [i.e.

Shahada Khatoon (supra)]. The contentions advanced in ***Shahada Khatoon*** (supra) was the liability of husband arising out of an order passed under Section 125 to make payment of maintenance is a continuing one and on account of non–payment, there has been a breach of the order and therefore the Magistrate would be entitled to impose sentence on such a person continuing him in custody until payment is made. The submissions thus suggested that, Magistrate can keep or sentence the person until said person makes up the payment. These submissions glossed over the language of Sub–section (3) of Section 125 which contemplates a punishment of imprisonment which may extend to one month or until payment, if, sooner made. Therefore, the contentions raised were negatived holding that the "power of the Magistrate cannot be enlarged and therefore the only remedy would be after expiry of one month. For breach or non–compliance with the order of the Magistrate the wife can approach the Magistrate again for similar relief. By no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month.

The issue was not as in the present case where the arrears of maintenance has been claimed and despite issuance of warrant, there is non–compliance. Thus, on facts the decision in ***Shahada Khatoon*** (supra) is distinguishable.

In the context which we are dwelling, decision under Section 488 the Code of Criminal Procedure, 1882 which is *pari materia* Section 125 (3) of 1973 Act can be taken note of. Section 488 of Cr.P.C. 1882 stipulates: "The Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner hereinbefore provided for levying fines, and may sentence such person for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month."

In view whereof, the order making reference i.e. order dated passed in Criminal Revision No. 5630/2018 when tested on the anvil of above analysis cannot be upheld. The view taken by learned Single Judge in ***Rajesh Dubey*** (supra) that the Magistrate can impose a sentence for default of each month or a part of each months default in payment of maintenance, by awarding punishment for a period of one month till payment is made, whichever is sooner. If there are arrears for more than one month then the imprisonment exceeding for a period of one month can be imposed is uphold.

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18. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 173(8)
INDIAN PENAL CODE, 1860 – Sections 302 and 364
EVIDENCE ACT, 1872 – Section 45
APPRECIATION OF EVIDENCE:
CRIMINAL TRIAL:

(i) Registration of second FIR of same incident – When permissible? Generally, second FIR, except of counter case, is impermissible – But where fresh offence is committed during

the investigation of earlier offence which is distinct from the offence being investigated, such fresh offence should be separately investigated – Instantly, offence of abduction began on 01.10.2001 when deceased and his wife were forced into captivity and ended same day when they were released – However, offence of murder was committed independently on 26.10.2001 – Held, the two offences cannot be said to be committed in the course of same transaction, hence second FIR for offence of murder was proper.

(ii) DNA evidence; nature of – DNA evidence is also opinion evidence – Although accuracy of DNA evidence is increasing with advancement in science and technology, but yet it is not infallible – Held, no adverse inference can be drawn in absence of DNA evidence.

(iii) Superimposition test; identification of dead body – This test also give opinion evidence – This technique cannot be regarded as infallible – Held, superimposition test cannot be taken as conclusive proof of identification of dead body – It may corroborate other evidence.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154 एवं 173 (8)

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 364

साक्ष्य अधिनियम, 1872 – धारा 45

साक्ष्य का मूल्यांकनः

आपराधिक विचारणः

(i) एक ही घटना के संबंध में द्वितीय प्रथम सूचना रिपोर्ट का पंजीयन – कब अनुज्ञेय है? सामान्यतया, काउन्टर प्रकरण के अतिरिक्त, द्वितीय प्रथम सूचना रिपोर्ट अनुज्ञेय नहीं है – परन्तु जहां नया अपराध पूर्ववर्ती अपराध के अन्वेषण के दौरान कारित किया जाता है, जो कि अन्वेषणाधीन अपराध से भिन्न है तो ऐसे नए अपराध का पृथक से अन्वेषण किया जाना चाहिए – हस्तगत प्रकरण में अपहरण का अपराध दिनांक 01.10.2001 को प्रारंभ हुआ जब मृतक तथा उसकी पत्नी को बलपूर्वक परिरूद्ध किया गया था तथा उस दिन समाप्त हुआ जब उन्हें निर्मुक्त कर दिया गया था – हत्या का अपराध पृथकतः दिनांक 26.10.2001 को कारित किया गया था – अभिनिर्धारित, दोनों अपराध एक ही संव्यवहार के अनुक्रम में कारित किए गए नहीं कहे जा सकते, इसलिए हत्या के अपराध के लिए द्वितीय प्रथम सूचना रिपोर्ट उचित थी।

(ii) डी.एन.ए. साक्ष्य की प्रकृति – डी.एन.ए. साक्ष्य भी अभिमत की साक्ष्य है – यद्यपि विज्ञान एवं प्रौद्योगिकी में उन्नति के साथ डी.एन.ए. साक्ष्य की शुद्धता भी बढ़ रही है किंतु अभी भी यह सटीक नहीं है – अभिनिर्धारित, डी.एन.ए. साक्ष्य के अभाव में कोई भी प्रतिकूल निष्कर्ष नहीं निकाला जा सकता है।

(iii) सुपरइंपोजीशन परीक्षण; शव की पहचान – यह परीक्षण भी अभिमत साक्ष्य देता है – इस पद्धति को भी सटीक नहीं माना जा सकता – अभिनिर्धारित, सुपरइंपोजीशन परीक्षण को शव की पहचान का निश्चायक प्रमाण नहीं माना जा सकता – इससे मात्र अन्य साक्ष्य की सम्पुष्टि की जा सकती है।

Pattu Rajan v. The State of Tamil Nadu

Judgment dated 29.03.2019 passed by the Supreme Court in Criminal Appeal No. 680 of 2009, reported in 2019 (3) Crimes 12 (SC)

Relevant extracts from the judgment:

A quick overview of the sequence of unfolding of the incident of murder in question and the prior incident of abduction would show that the above factors cannot be said to be satisfied in this case. Even when the two FIRs Ext. P1 and P3 are read together, it becomes clear that the first incident of abduction began and ended on 01.10.2001. The crime of abduction commenced when the victims (PW1 and the deceased) were forced into captivity on the said date, and was completed on the same day immediately after the victims were released. In respect of the said incident, the first information came to be lodged on 12.10.2001 by PW1. During the investigation of the said case, on 24.10.2001, the accused brought the deceased, PW1 and her family members to Tirunelveli. The present crime came to be committed on 26.10.2001, whereby PW1 and her husband, Santhakumar were taken away in a car, and on the direction of Accused No.1, Accused Nos. 2 to 4, 6 and 7 forcibly took away Santhakumar by separating him from his wife, committed his murder and threw away his body at the Tiger–Chola forest area within the jurisdiction of Kodaikanal Police Station.

There cannot be any dispute that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but also violates Article 21 of the Constitution.

However, the aforementioned principles of law may not be applicable to the facts of the incident on hand, as the crimes underlying the two FIRs are distinct and different. The offence punishable under Section 302, in the present case, was committed during the course of investigation of the case in the first FIR, i.e. relating to the crime of abduction. We are of the considered opinion that the allegations and offences under this present FIR relating to the murder of the deceased are substantially distinct from the information lodged in Crime No. 1030 of 2001 relating to abduction. In case a fresh offence is committed during the course of the earlier investigation, which is distinct from the offence being investigated, such fresh offence cannot be investigated as part of the pending case, and should instead be investigated afresh.

One cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in Section 45 of the Indian Evidence Act. Undoubtedly, an expert giving evidence before the Court plays a crucial role, especially since the entire purpose and object of opinion evidence is to aid the

Court in forming its opinion on questions concerning foreign law, science, art, etc., on which the Court might not have the technical expertise to form an opinion on its own.

Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party.

In view of the above discussion, we hold that the High Court was justified in observing that a superimposition test cannot be taken as a conclusive one for the identification of a dead body, because by itself it may not conclusively establish identification. However, the High Court rightly accepted the expert testimony on this aspect since in the instant case, the superimposition test was merely one piece of evidence relied upon by the prosecution to corroborate the evidence of PWs 1 and 2 in order to strengthen its case.

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19. CRIMINAL PROCEDURE CODE, 1973 – Sections 167, 309, 437 and 439

(i) Bail – Addition of new and grave offences against an accused enlarged on bail – Whether a ground to re–arrest such accused? Held, Yes – But investigating authority can only re–arrest the accused after obtaining order from the Court which had granted bail – Court may permit re–arrest after cancellation of bail – There cannot be automatic re–arrest without order of Court.

(ii) Remand – Sections 167 and 309 CrPC; applicability of – Remand u/s 167 (2) can be given during investigation only – After taking cognizance, same accused can be remanded into judicial custody only u/s 309 (2) – But if a new accused is arrested after taking cognizance during further investigation, he may be remanded u/s 167 (2).

दण्ड प्रक्रिया संहिता, 1973 – **धाराएं** 167, 309, 437 **एवं** 439

(i) **जमानत – जमानत पर रिहा अभियुक्त के विरूद्ध नए तथा गंभीर अपराधों का जोड़ा जाना – क्या यह अभियुक्त को पुनः गिरफ्तार करने का आधार है? अभिनिर्धारित, हाँ – परन्तु अन्वेषण अधिकारी अभियुक्त को मात्र उस न्यायालय के आदेश से, जिसने जमानत प्रदान की थी, पुनः गिरफ्तार कर सकता है – न्यायालय जमानत रद्द करने के उपरांत पुनः गिरफ्तारी की अनुज्ञा दे सकता है – न्यायालय के आदेश के बिना स्वयमेव गिरफ्तारी नहीं हो सकती है।**

(ii) **रिमाण्ड – धारा 167 एवं 309 द.प्र.सं. की प्रयोज्यता – धारा 167 (2) के अंतर्गत रिमाण्ड मात्र अन्वेषण के दौरान दिया जा सकता है – संज्ञान लेने के पश्चात् वही अभियुक्त धारा 309 (2) के अंतर्गत न्यायिक अभिरक्षा में प्रेषित किया जा सकता है – परन्तु यदि संज्ञान लेने के उपरांत, अग्रिम अन्वेषण के दौरान कोई नया अभियुक्त गिरफ्तार किया जाता है, तो उसे धारा 167 (2) के अंतर्गत रिमाण्ड पर प्रेषित किया जा सकता है।**

Pradeep Ram v. State of Jharkhand and anr.

Judgment dated 01.07.2019 passed by the Supreme Court in Criminal Appeal No. 816 of 2019, reported in 2019 (3) Crimes 110 (SC)

Relevant extracts from the judgment:

From the submissions of the learned counsel for the parties and the pleadings on the record, following are the issues, which arise for consideration in these appeals:–

(i) Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, is it necessary that bail earlier granted should be cancelled for taking the accused in custody?

(ii) Whether re–registration of F.I.R. No. RC–06/2018/NIA/DLI is a second F.I.R. and is not permissible there being already a FIR No. 02/2016 registered at P.S. Tandwa arising out of same incident?

(iii) Whether NIA could conduct any further investigation in the matter when investigation in the P.S. Case No. 02/2016 having already been completed and charge sheet has been submitted on 10.03.2016 with regard to which cognizance has already been taken by Chief Judicial Magistrate, Chatra on 11.03.2016?

(iv) Whether the order dated 25.06.2018 passed by Judicial Commissioner–cum–Special Judge, NIA, Ranchi remanding the appellant to judicial custody is in accordance with law?

(v) Whether the power under Section 167 CrPC can be exercised in the present case, where the cognizance has already been taken by Chief Judicial Magistrate on 11.03.2016 or the accused could have been remanded only under Section 309(2) CrPC?

We arrive at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and non–bailable offences are added:–

(i) The accused can surrender and apply for bail for newly added cognizable and non–bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Section 437(5) or 439(2) of CrPC for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non–cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail.

After having noticed, the relevant provisions of Section 167(2) and Section 309, CrPC and law laid down by this Court, we arrive at followingconclusions: –

(i) The accused can be remanded under Section 167(2) CrPC during investigation till cognizance has not been taken by the Court.

(ii) That even after taking cognizance when an accused is subsequently arrested during further investigation, the accused can be remanded under Section 167(2) CrPC.

(iii) When cognizance has been taken and the accused was in custody at the time of taking cognizance or when inquiry or trial was being held in respect of him, he can be remanded to judicial custody only under Section 309 (2) CrPC.

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20. CRIMINAL PROCEDURE CODE, 1973 – Sections 190 and 202

Protest petition; How to be dealt with by Magistrates? Held, Magistrate has following courses on filing of final report by investigating officer and protest petition by informant/complainant –

(i) Magistrate may take cognizance on the final report u/s 190(1)(b) of CrPC if the material persuades him to disagree with the conclusion of IO;

(ii) Magistrate may accept the final report and drop the proceedings rejecting the protest petition if he is convinced on the basis of final report and allegations contained in protest petition along with annexures that no *prima facie* case is made out;

(iii) Magistrate could not be compelled to take cognizance treating protest petition as a complaint. However, he may treat protest petition as a complaint and take cognizance u/s 190(1)(a) of CrPC. In that case, he would have to follow the procedure prescribed u/s 200 and 202 of CrPC.

(iv) Magistrate may treat a protest petition as complaint only when it fulfills the requirements of a complaint as defined u/s 2(d) of CrPC such as list of witnesses, etc.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 190 एवं 202

प्रतिवाद याचिका – मजिस्ट्रेट द्वारा किस प्रकार कार्यवाही की जानी चाहिए? – अभिनिर्धारित, अनुसंधान अधिकारी द्वारा अंतिम प्रतिवेदन प्रस्तुत करने और सूचनाकर्ता/परिवादी द्वारा प्रतिवाद याचिका प्रस्तुत करने पर मजिस्ट्रेट को निम्नलिखित विकल्प उपलब्ध होते हैं –

(i) मजिस्ट्रेट अंतिम प्रतिवेदन पर द.प्र.सं. की धारा 190(1)(ख) के अनुसार संज्ञान ले सकता है यदि अभिलेख पर लाई गई सामग्री के आधार पर वह अनुसंधान अधिकारी के निष्कर्ष से असहमत होता हो।

(ii) मजिस्ट्रेट अंतिम प्रतिवेदन को स्वीकार कर और प्रतिवाद याचिका को खारिज कर कार्यवाही समाप्त कर सकता है यदि उसका समाधान है कि अंतिम प्रतिवेदन एवं प्रतिवाद याचिका में निहित आरोपों एवं उसके साथ प्रस्तुत अनुलग्नकों के आधार पर कोई भी प्रथम दृष्टया मामला नहीं बनता है।

(iii) मजिस्ट्रेट को प्रतिवाद याचिका को परिवाद मानकर उस पर संज्ञान लेने के लिए बाध्य नहीं किया जा सकता है। हालाँकि, वह प्रतिवाद याचिका को एक परिवाद मानकर धारा 190(1)(क) द.प्र.सं. के अनुसार संज्ञान ले सकता है। इस स्थिति में उसे द.प्र.सं. की धारा 200 और 202 द्वारा निर्धारित प्रक्रिया का पालन करना होगा।

(iv) मजिस्ट्रेट एक प्रतिवाद याचिका को परिवाद के रूप में तभी मान सकता है जब वह द.प्र.सं. की धारा 2(घ) में परिभाषित परिवाद की आवश्यकताओं को पूरा करती हो, जैसे साक्षियों की सूची आदि।

Vishnu Kumar Tiwari v. State of Uttar Pradesh through Secretary Home, Civil Secretariat Lucknow and anr.

Judgment dated 09.07.2019 passed by the Supreme Court in Criminal Appeal No. 1015 of 2019, reported in AIR 2019 SC 3482

Relevant extracts from the judgment:

In the facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the procedure prescribed under Sections 200 and 202 of the Code if the latter Section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No

doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

If a protest petition fulfills the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or liable to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections of the second respondent against the final report.

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***21. CRIMINAL PROCEDURE CODE, 1973 – Section 197**

Sanction for prosecution – Public servant – Employees of Public Sector Corporations are not entitled to protection u/s 197 as 'public servant'.

दण्ड प्रक्रिया संहिता, 1973 – धारा 197

अभियोजन के लिये स्वीकृति – लोक सेवक – सार्वजनिक क्षेत्र निगमों के कर्मचारी धारा 197 के अन्तर्गत ''लोक सेवक'' के रूप में संरक्षण के हकदार नहीं हैं।

Bharat Sanchar Nigam Limited and others v. Pramod V. Sawant and anr.

Judgment dated 19.08.2019 passed by the Supreme Court in Criminal Appeal No. 503 of 2010, reported in AIR 2019 SC 3929

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22. CRIMINAL PROCEDURE CODE, 1973 – Section 302

Permission to conduct prosecution – Victim has right to assist Court in trial before Magistrate – If victim is found in position to assist it, Magistrate can grant permission to victim to take over the inquiry pending before Magistrate – Order of High Court granting permission to victim without examining his position, set aside – Matter remitted to Magistrate to consider position of victim.

दण्ड प्रक्रिया संहिता, 1973 – धारा 302

अभियोजन का संचालन करने की अनुज्ञा – मजिस्ट्रेट के समक्ष विचारण में न्यायालय की सहायता करने का अधिकार पीड़ित को है – यदि पीड़ित, उसकी सहायता करने की स्थिति में पाया जाता है, तो मजिस्ट्रेट के समक्ष लंबित जांच का कार्यभार संभालने की अनुज्ञा पीड़ित को मजिस्ट्रेट प्रदान कर सकता है – पीड़ित की स्थिति का परीक्षण किये बिना उच्च न्यायालय द्वारा प्रदान की गई अनुज्ञा का आदेश, अपास्त किया गया – पीड़ित की स्थिति पर विचार करने के लिये मजिस्ट्रेट को मामला प्रतिप्रेषित किया गया।

Amir Hamza Shaikh and others v. State of Maharashtra and anr.
Judgment dated 07.08.2019 passed by the Supreme Court in Criminal Appeal No. 1217 of 2019, reported in AIR 2019 SC 3721

Relevant extracts from the judgment:

In ***J.K. International v. State (Govt. of NCT of Delhi), (2001) 3 SCC 462,*** it has been held that if the cause of justice would be better served by granting such permission, the Magistrate's court would generally grant such permission. An aggrieved private person is not altogether eclipsed from the scenario when the criminal court take cognizance of the offences based on the report submitted by the police.

In ***Mallikarjun Kodagali (Dead) represented through LRs v. State of Karnataka & ors., (2019) 2 SCC 752,*** this Court approved the Justice Malimath Committee, wherein the victim's right to participate in the criminal proceedings which includes right to be impleaded, right to know, right to be heard and right to assist the court in the pursuit of truth had been recognised.

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23. CRIMINAL PROCEDURE CODE, 1973 – Section 319

Summoning of additional accused – Standard of proof required for – It should be more than the standard of framing of charge – But short of satisfaction to the extent that the evidence, if goes unrebutted, would lead to conviction [*Hardeep Singh v. State of Punjab, (2014) 3 SCC 92* followed.]

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

अतिरिक्त अभियुक्त को आहूत किया जाना – प्रमाण का अपेक्षित स्तर – इसे आरोप विरचित करने के स्तर से उच्च स्तर का होना चाहिए – परंतु इस स्तर तक कम कि साक्ष्य के अखंडित रहने पर दोषसिद्धि हो जाये। [*हरदीप सिंह विरूद्ध पंजाब राज्य, (2014) 3 एससीसी 92*, अनुसरित]

Shiv Prakash Mishra v. State of Uttar Pradesh and anr.
Judgment dated 23.07.2019 passed by the Supreme Court in Criminal Appeal No. 1105 of 2019, reported in (2019) 7 SCC 806

Relevant extracts from the judgment:

As held by the Constitution Bench in para (105 and 106) in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92,*** the power under Section 319 CrPC is discretionary and is to be exercised sparingly which reads as under:–

> "105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.
>
> 106. Thus, we hold that though only a *prima facie*case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross–examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie*case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words *"for which such person could be tried together with the accused"*. The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

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24. CRIMINAL PROCEDURE CODE, 1973 – Section 360
PROBATION OF OFFENDERS ACT, 1958 – Sections 3 and 4

(i) Benefit of probation – Provisions of Section 360 CrPC; nature of – Held, these provisions are in addition to the provisions of Act of 1958 or any other law in force for treatment, training and rehabilitation of youthful offenders – Both the provisions exist simultaneously.

(ii) Benefit of probation – Distinction between the two provisions – Under Act of 1958, Court is required to seek report from probationary officer before allowing benefit of provision – There is no such limitation while exercising the powersu/s 360 CrPC.

दण्ड प्रक्रिया संहिता, 1973 – **धारा** 360

अपराधी परिवीक्षा अधिनियम, 1958 – **धाराएं** 3 **एवं** 4

(i) **परिवीक्षा का लाभ – द.प्र.सं. की धारा** 360 **के प्रावधानों की प्रकृति –अभिनिर्धारित, यह प्रावधान** 1958 **के अधिनियम अथवा किशोर अपराधियों के उपचार, प्रशिक्षण एवं पुनर्वास हेतु प्रवृत्त किसी अन्य विधि के अतिरिक्त हैं – दोनों ही प्रावधान एक साथ प्रभाव रखते हैं।**

(ii) **परिवीक्षा का लाभ – दोनों प्रावधानों के मध्य भेद –** 1958 **के अधिनियम के अंतर्गत प्रावधान का लाभ दिए जाने के पूर्व न्यायालय परिवीक्षा अधिकारी से प्रतिवेदन की अपेक्षा करता है – द.प्र.सं. की धारा** 360 **के अंतर्गत शक्ति का प्रयोग करते समय ऐसा कोई प्रतिबंध नहीं है।**

Lakhanlal @ Lakhan Singh v. State of Madhya Pradesh

Order dated 04.04.2019 passed by the Supreme Court in Criminal Appeal No. 1306 of 2013, reported in 2019 (3) Crimes 95 (SC)

Relevant extracts from the order:

If the offender is less than 21 years of age or a woman not convicted of an offence not punishable with death or imprisonment for life; such offender can be granted benefit of probation on satisfaction of the court on the basis of parameters contained in Section 360 of the Code. However, in respect of an offender more than 21 years of age, the benefit of release is available only if the offence is punishable for less than seven years imprisonment or fine. The object of Section 360 of the Code is to prevent young persons from being committed to jail, who have for the first–time committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens.

The distinction is that under the 1958 Act, the Court is required to seek report from the Probationary Officer before allowing an offender the benefit of probation apart from satisfying other conditions, whereas there is no such limitation while exercising the powers under Section 360 of the Code.

We find that the attention of the Court was not drawn to sub Section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non–obstante clause, giving overriding effect over any other provisions of law.

The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

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***25. CRIMINAL PROCEDURE CODE, 1973 – Section 427(2)**
NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138
Scope of Section 427 of the Code – Conviction of accused in three cases for offence punishable u/s 138 of 1881 Act – Application to order running of sentence concurrently – Held, accused convicted in different cases – Not entitled to the benefit of Section 427 (2) CrPC – Jail sentence cannot run concurrently.

दण्ड प्रक्रिया संहिता, 1973 – धारा 427(2)

परक्राम्य लिखत अधिनियम, 1881– धारा 138

संहिता की धारा 427 का विस्तार – तीन मामलों में अभियुक्त को 1881 के अधिनियम की धारा 138 के अंतर्गत दण्डनीय अपराध के लिए दोषसिद्ध किया गया – कारावास के समवर्ती रूप से चलने के आदेश हेतु आवेदन – अभिनिर्धारित, अभियुक्त को विभिन्न मामलों में दोषसिद्ध किया गया है – दण्ड प्रक्रिया संहिता की धारा 427 (2) के लाभ का हकदार नहीं – कारावासीय सजा समवर्ती नहीं भुगताई जा सकती।

Hemant Uday v. State of M.P. and anr.
Order dated 02.04.2019 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 47265 of 2018, reported in 2019 (3) MPLJ 131

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26. CRIMINAL PROCEDURE CODE, 1973 – Section 439
Bail – Relevant factors – The antecedents of the accused and the manner in which the offence was committed are very much relevant factors for consideration of bail application and the court must apply its mind to all the relevant facts while deciding the bail application related to heinous crime.

दण्ड प्रक्रिया संहिता, 1973 – **धारा** 439

जमानत – सुसंगत तथ्य – जमानत आवेदन पर विचार करने हेतु अभियुक्त का पूर्ववृत्त और अपराध कारित करने का तरीका अत्यधिक सुसंगत तथ्य हैं एवं न्यायालय को जघन्य अपराधों से संबंधित जमानत आवेदनों को निर्णीत करते समय सभी सुसंगत तथ्यों पर अपने विवेक का प्रयोग अवश्य करना चाहिए।

Mauji Ram v. State of Uttar Pradesh and anr.
Judgment dated 29.07.2019 passed by the Supreme Court in Criminal Appeal No. 1150 of 2019, reported in (2019) 8 SCC 17

Relevant extracts from the judgment:

Having perused the FIR and keeping in view the antecedents of the accused persons which are brought on record by the State in their counter affidavit and further keeping in view the manner in which the offence under Section 302 IPC was committed, we are *prima facie* of the view that this is not a fit case for grant of bail to the accused persons (respondent No.2 herein in all the appeals).

These factors were relevant while considering the bail application and, in our view, they were not taken into consideration.

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27. CRIMINAL TRIAL:

APPRECIATION OF EVIDENCE:

(i) If the evidence of the eye witness is found to be credible and trustworthy, minor discrepancies which do not affect the core of the prosecution case, cannot be made a ground to doubt thetrustworthiness of the witness.

(ii) It is quite natural for a rustic aged lady to be overawed by the Court atmosphere to give varying statements and therefore, the Court should not judge the evidence of ruralites by the same standards and exactitude like any other witness.

आपराधिक विचारणः

साक्ष्य का मूल्यांकनः

(i) **यदि प्रत्यक्षदर्शी साक्षी की साक्ष्य विश्वसनीय एवं भरोसेमंद हो, तब तुच्छ त्रुटियां, जो कि अभियोजन प्रकरण के मूल को प्रभावित नहीं करती; साक्षी की विश्वसनीयता पर संदेह करने का आधार नहीं हो सकती।**

(ii) **ग्रामीण पृष्ठभूमि की वृद्ध महिला का न्यायालयीन वातावरण से अचंभित होकर पूर्वकथन से कुछ भिन्न कथन किया जाना स्वाभाविक है, अतः न्यायालय को ऐसे ग्रामीणों की साक्ष्य का परीक्षण अन्य साक्षियों की तरह उन्हीं मानकों एवं सटीकता से नहीं करना चाहिए।**

Malikarjun and others v. State of Karnataka

Judgment dated 08.08.2019 passed by the Supreme Court in Criminal Appeal No. 1066 of 2009, reported in (2019) 8 SCC 359

Relevant extracts from the judgment:

No doubt, there are slight variations in the statement of PW–5 as to when and how her statement was recorded by the police. At one place, PW–5 states that the police came to the village at 11.00 a.m. and took her complaint by obtaining her left thumb impression; whereas PW 17 PSI stated that he was not knowing about the incident till PW–5 came to the police station and lodged the complaint at 01.15 P.M. and before that he has not received any phone call from the village Dalapathi. As pointed out by the trial court, PW–5 is an ordinary home maker and an illiterate woman. While in the witness box, it is quite natural for a witness like PW–5 being overawed by the court atmosphere to give varying statements. The courts are not to judge the evidence of ruralites by the same standard and exactitude like any other witness. As pointed out by the trial court, the evidence of PW–5 as to the place of occurrence is corroborated by the spot *panchnama* (Ex.–P7) drawn by PW 17 PSI and also the inquest on the dead body of the deceased in the Padasala itself. The alleged variations in the statement

of PW–5, in our view, do not affect the trustworthiness of PW–5 so as to doubt her testimony.

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28. CRIMINAL TRIAL:

APPRECIATION OF EVIDENCE:

(i) When the separation of truth from falsehood is not feasible because of two things being inextricably mixed up, then the prosecution evidence should be discarded in toto.

(ii) Duty of prosecution – It is the duty of the prosecution to remove all the obvious doubts as regards the sequence of events relating to the incidents in question and as regards the actual place of occurrence.

आपराधिक विचारणः

साक्ष्य का मूल्यांकनः

(i) **जब दो तथ्यों के अटूट रूप से जुड़े होने के कारण सत्य को असत्य से अलग करना असाध्य हो, तब अभियोजन साक्ष्य को पूर्णतः त्याग देना चाहिए।**

(ii) **अभियोजन का कर्तव्य – जहां तक प्रश्नगत घटना से संबंधित घटनाओं के क्रम का प्रश्न है, इस संबंध में और घटना के वास्तविक स्थान के संबंध में स्पष्ट संदेहों को दूर करना अभियोजन का कर्तव्य है।**

R. Jaypal v. State of Tamil Nadu and anr.

Judgment dated 09.08.2019 passed by the Supreme Court in Criminal Appeal No. 56 of 2010, reported in (2019) 8 SCC 342

Relevant extracts from the judgment:

Where this Court found that separation of truth from falsehood was not feasible because of the two being inextricably mixed up, the prosecution evidence was discarded in toto. However, on the facts of other cases, this Court found that acquittal of co–accused did not enure to the benefit of the convicted accused.

In the given set of fact and circumstances, burden was heavy on the prosecution to clear the doubts as to how and why the deceased was at the door–step of the house of the appellant; and how the blood stains were also found at the door–step of the house of the appellant. The prosecution has not been able to remove all the obvious doubts as regards the sequence of events relating to the incident in question and as regards the actual place of occurrence.

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***29. EASEMENTS ACT, 1882 – Sections 12, 13 and 41**

Extinction on termination of necessity – Right of passage – Sale deed in favour of defendant No. 2, wife conferring right of passage – Right of passage necessary to approach her land – Subsequent transfer of some part of property in favour of her husband by her would not negate the right of passage granted to her by way of sale deed merely because

recital is generic in nature as usually put by deed writers – Such right would not extinguish in terms of section 41.

सुखाधिकार अधिनियम, 1882 – धाराएं 12, 13 एवं 41

आवश्यकता के पर्यवसान पर निर्वापण – मार्ग का अधिकार – प्रतिवादी क्रं. 2 के पक्ष में विक्रय अभिलेख, मार्ग का अधिकार पत्नी ने प्रदान किया – उसकी भूमि पर पहुँचने के लिये मार्ग का अधिकार आवश्यक है – उसके द्वारा उसके पति के पक्ष में संपत्ति के कतिपय भाग का पश्चातवर्ती अन्तरण, विक्रय विलेख के द्वारा उसे प्रदत्त मार्ग के अधिकार को अर्थहीन नहीं करेगा, मात्र इसलिये कि वृतांत प्रकृति में सामान्य है जैसा कि आमतौर पर विलेख लेखकों के द्वारा किया जाता है – ऐसा अधिकार धारा 41 के निबंधों में निर्वापित नहीं होगा।

Dr. S. Kumar and ors. v. S. Ramalingam

Judgment dated 16.07.2019 passed by the Supreme Court in Civil Appeal No. 8628 of 2009 reported in AIR 2019 SC 3654

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30. ELECTRICITY ACT, 2003 – Section 151 and Second Proviso
CRIMINAL PROCEDURE CODE, 1973 – Sections 193 and 209
Cognizance by Special Court – Committal of accused – Special Court is empowered to take cognizance without committal – Order taking cognizance is not u/s 193 of Cr.P.C.

विद्युत अधिनियम, 2003 – धारा 151 एवं द्वितीय परन्तुक

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 193 एवं 209

विशेष न्यायालय द्वारा संज्ञान – अभियुक्त का उपार्पण – बिना उपार्पण के संज्ञान लेने के लिये विशेष न्यायालय सशक्त है – संज्ञान लेने का आदेश द.प्र.सं. की धारा 193 के अंतर्गत नहीं है।

Sri A.M.C.S. Swamy, ADE/DPE/Hyd (Central) v. Mehdi AgahKarbalai and anr.

Judgment dated 23.07.2019 passed by the Supreme Court in Criminal Appeal No. 1102 of 2019, reported in AIR 2019 SC 3650

Relevant extracts from the judgment:

Section 151 of the Electricity Act, 2003 is altogether a new provision. Section 151 of the Act provides that no court shall take cognizance of an offence punishable under the Act except upon a complaint in writing made by the Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose. Second proviso to Section 151 of the Electricity Act, 2003, specially empowers the Special Court constituted under Section 153 of the Electricity Act, 2003, to take cognizance of an offence without the accused being committed. In view of the specific provision under Section 151 of the Electricity Act, 2003, we are of the view that Special Court

is empowered to take cognizance without there being an order of committal as contemplated under Section 193 of the Code of Criminal Procedure, 1973. When there is express provision in the Special Act empowering the Special Court to take cognizance of an offence without the accused being committed, it cannot be said that taking cognizance of offence by Special Court is in violation of Section 193 of the Code of Criminal Procedure, 1973. It appears that the High Court has not considered the said proviso to Section 151 and passed the impugned order. As the impugned order is passed only on the said ground, we are of the view that the order impugned is liable to be set aside by this Court.

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***31. EVIDENCE ACT, 1872 – Section 106**

Facts especially within knowledge – Burden of proof – Dead body of deceased found burning in *'Bitora'* (conical storage of cow dung cakes) in the village of accused – Since *'Bitora'* was not in possession of accused and was in open place, finding of High Court that accused required to explain presence of body parts of deceased in burning *'Bitora'*, erroneous.

साक्ष्य अधिनियम, 1872 – धारा 106

विशेषत: ज्ञान का तथ्य – यह साबित करने का भार – मृतक का शव अभियुक्त के गांव में 'बिटोरा' (गाय के गोबर के उपले का शंक्वाकार भंडारण) में जलता हुआ पाया गया – चूंकि 'बिटोरा' अभियुक्त के आधिपत्य में नहीं था और खुले स्थान में था, उच्च न्यायालय का यह निष्कर्ष, कि जलते हुये 'बिटोरा' में मृतक के शरीर के अंगों की उपस्थिति का स्पष्टीकरण अभियुक्त से अपेक्षित था, त्रुटिपूर्ण है।

Sunita v. State of Haryana

Judgment dated 30.07.2019 passed by the Supreme Court in Criminal Appeal No. 546 of 2010, reported in AIR 2019 SC 3571

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***32. FOREST ACT, 1927 – Section 52**

Release of vehicle – Initiation of confiscation proceedings as well as criminal proceedings for offence relating to forest – Approach – Should not be liberal – Release must be only in exceptional cases – *State of Karnataka v. K. Krishnan, (2000) 7 SCC 80* followed.

वन अधिनियम, 1927 – धारा 52

वाहन को छोड़ना – वन से संबंधित अपराध के लिए आपराधिक कार्यवाही के साथ–साथ अधिहरण की कार्यवाही प्रारंभ की गई – दृष्टिकोण – उदार नहीं होना चाहिए – असाधारण मामलों में ही वाहन छोड़ा जाना चाहिए – कर्नाटक राज्य विरुद्ध के. कृष्णन, *(2000) 7* एससीसी *80* अनुसरित।

Anil Kumar Sharma v. State of M.P.

Order dated 16.01.2019 passed by the High Court of Madhya Pradesh in Writ Petition No. 514 of 2019, reported in 2019 (3) MPLJ 177 (DB)

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33. HINDU MARRIAGE ACT, 1955 – Section 9

Restitution for conjugal rights – Denial of marriage – Effect – Denial of marriage by husband to be adjudicated by District Court or Family Court after framing issues and adducing evidence by parties – In absence of availability of specific procedure in Family Courts Act to decide suit as per S. 10, procedure prescribed in C.P.C. shall be applicable – Dismissal of application for conjugal rights on the ground of non–maintainability of petition on mere denial of marriage by husband, unsustainable – Trial Court directed to restore suit.

हिन्दू विवाह अधिनियम, 1955 – धारा 9

दाम्पत्य अधिकारों का प्रत्यास्थापन – विवाह का प्रत्याख्यान – प्रभाव – पति द्वारा विवाह के प्रत्याख्यान का जिला न्यायालय या कुटुम्ब न्यायालय द्वारा विवाद्यक विरचित करने और पक्षकारों द्वारा साक्ष्य प्रस्तुत किये जाने के पश्चात् न्याय निर्णयन किया जाना चाहिए – कुटुम्ब न्यायालय अधिनियम में धारा 10 के अनुसार वाद निराकृत करने की विनिर्दिष्ट प्रक्रिया के अभाव में सिविल प्रक्रिया संहिता में विहित प्रक्रिया प्रयोज्य होगी – पति द्वारा विवाह के प्रत्याख्यान मात्र पर, याचिका की अपोषणीयता के आधार पर दाम्पत्य अधिकारों के आवेदन को निरस्त करना, अरक्षणीय है – विचारण न्यायालय को निर्देषित किया गया कि वाद पुनःस्थापित किया जाए।

Smt. Reena Tuli v. Naveen Tuli

Judgment dated 20.03.2019 passed by the High Court of Madhya Pradesh in First Appeal No. 382 of 2018, reported in AIR 2019 MP 169

Relevant extracts from the judgment:

Thus on perusal of facts, it is clear that either the husband or the wife without reasonable excuse if withdraws from the society of other and whosoever is aggrieved may file a petition to the District Court now Family Court on its establishment to ask for the relief of restitution of conjugal rights. On receiving the said petition, the Court is required to satisfy the "truthfulness of the statements made in the petition" and if the "ground raised has not been proved in lieu of the defence taken by other side, a decree of restitution of conjugal rights may be granted. Its explanation only clarifies that the burden of proving reasonable excuses taken by either party for withdrawal from the society of other shall be on such person who has withdrawn from the society. Thus, either husband or wife, who wish to withdraw from the society of other, must plead for the marriage and the reason of the withdrawal made by other on which the satisfaction to the truthfulness of the statements made in such petition is required to be adjudged by the District Court or by the Family Court. The satisfaction of words "truthfulness of statements", indicate the plurality of facts for recording satisfaction to the truthfulness, therefore, it would include the performance

of marriage, and the grounds of withdrawal from the society of others and on rebuttal of those allegation, if ground of refusal of restitution is not available, after adducing evidence by the parties, the Court may pass the judgment granting decree of restitution of conjugal rights.

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34. HINDU MARRIAGE ACT, 1955 – Sections 13 and 13–B

Divorce – Irretrievable breakdown of marriage – Exercise of power by Supreme Court under Article 142 of the Constitution to dissolve marriage in such cases – Law summarised – Clarified, there is no necessity of consent by both parties, for exercise of powers under Article 142 of the Constitution to dissolve marriage on the ground of irretrievable breakdown of marriage.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 13 एवं 13ख

विवाह विच्छेद – विवाह का असुधार्य भंग – ऐसे मामलों में विवाह विघटन के लिये संविधान के अनुच्छेद 142 के अंतर्गत सर्वोच्च न्यायालय द्वारा शक्तियों का प्रयोग – विधि संक्षिप्तकृत – स्पष्टीकृत, विवाह के असुधार्य भंग के आधार पर विवाह विघटन के लिये संविधान के अनुच्छेद 142 के अंतर्गत शक्तियों का प्रयोग करने के लिये, उभयपक्ष की सहमति की आवश्यकता नहीं होती है।

R. Srinivas Kumar v. R. Shametha

Judgment dated 04.10.2019, passed by the Supreme Court in Civil Appeal No. 4696 of 2013, reported in (2019) 9 SCC 409

Relevant extracts from the judgment:

In ***Hitesh Bhatnagar v. Deepa Bhatnagar, (2011) 5 SCC 234,*** it is noted by this Court that courts can dissolve a marriage as irretrievably broken down only when it is impossible to save the marriage and all efforts are made in that regard and when the Court is convinced beyond any doubt that there is actually no chance of the marriage surviving and it is broken beyond repair.

In ***Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558,*** a three–Judge Bench of this Court has observed as under:

> "Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist.

In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct *de jure* what is already defunct *de facto*."

A similar view has been expressed in ***Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511***.

In the similar set of facts and circumstances of the case, this Court in ***Sukhendu Das v. Rita Mukherjee, (2017) 9 SCC 632*** has directed to dissolve the marriage on the ground of irretrievable breakdown of marriage, in exercise of powers under Article 142 of the Constitution of India.

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35. HINDU SUCCESSION ACT, 1956 – Section 8

MITAKSHARA LAW:

(i) Coparcenary property and self acquired property – Concept of birth right – The shares allotted to coparceners upon partition of coparcenary property continues to remain coparcenary property *qua* their male descendants – They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently – Instantly, death of original owner LS took place in 1951 – His son IS inherited property as coparcener – IS affected partition of his property amongst his three sons in 1964 – Held, property obtained by each son in such partition would be his coparcenary property *qua* his male descendants up to three degrees.

(ii) Impact of the Act of 1956 on Mitakshara coparcenary – After property is distributed in accordance with Section 8 of the Act, such property ceases to be coparcenary property in the hands of various persons who have succeeded to it – A coparcenary property shall not lose its character unless it is succeeded by heirs of deceased male in accordance with Section 8 of the Act.

हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 8

मिताक्षरा विधिः

(i) सहदायिकी संपत्ति और स्व–अर्जित संपत्ति – जन्मसिद्ध अधिकार की संकल्पना – सहदायिकी संपत्ति के विभाजन पर सहदायिक को आवंटित अंश उनके पुरुष उत्तराधिकारियों के सापेक्ष सहदायिकी संपत्ति बना रहता है – वे जन्म से ही इसमें हित प्राप्त कर लेते हैं, चाहे वे विभाजन के समय अस्तित्व में हों अथवा उसके पश्चात पैदा हुए हों – हस्तगत प्रकरण में मूल स्वामी लाल सिंह की मृत्यु 1951 में हुई – उनके पुत्र इन्दर सिंह ने सहदायिक के रूप में संपत्ति प्राप्त की – इन्दर सिंह ने 1964 में अपने तीन पुत्रों के मध्य संपत्ति का विभाजन किया – अभिनिर्धारित, प्रत्येक पुत्र को उक्त विभाजन में प्राप्त संपत्ति उनके तीन डिग्री तक के पुरुष उत्तराधिकारियों के सापेक्ष सहदायिकी संपत्ति होगी।

(ii) 1956 के अधिनियम का मिताक्षरा सहदायिकी पर प्रभाव – अधिनियम की धारा 8 के अनुसार संपत्ति वितरित होने के पश्चात, ऐसी संपत्ति उसे प्राप्त करने वाले विभिन्न व्यक्तियों की सहदायिकी संपत्ति नहीं रह जाती है – एक सहदायिकी संपत्ति अपना चरित्र तब तक नहीं खोती है जब तक यह अधिनियम की धारा 8 के अनुसार मृत पुरुष के उत्तराधिकारियों द्वारा प्राप्त नहीं कर ली जाती।

Arshnoor Singh v. Harpal Kaur and ors.

Judgment dated 01.07.2019 passed by the Supreme Court in Civil Appeal No. 5124 of 2019, reported in AIR 2019 SC 3098

Relevant extracts from the judgment:

The issues that arise for consideration before us are two–fold: (i) whether the suit property was coparcenary property or self–acquired property of Dharam Singh; (ii) the validity of the Sale Deeds executed on 01.09.1999 by Dharam Singh in favour of Respondent No.1, and the subsequent Sale Deed dated 30.10.2007 executed by Respondent No.1 in favour of Respondent Nos. 2 and 3.

With respect to the first issue, it is the admitted position that Inder Singh had inherited the entire suit property from his father Lal Singh upon his death. As per the Mutation Entry dated 16.01.1956 produced by Respondent No. 1, Lal Singh's death took place in 1951. Therefore, the succession in this case opened in 1951 prior to the commencement of the Hindu Succession Act, 1956 when Inder Singh succeeded to his father Lal Singh's property in accordance with the old Hindu Mitakshara law.

Mulla in his commentary on Hindu Law (22nd Edition) has stated the position with respect to succession under Mitakshara law as follows:

> **Page 129** "A son, a grandson whose father is dead, and a great–grandson whose father and grandfather are both dead, succeed simultaneously as single heir to the separate or self–acquired property of the deceased with rights of survivorship."

> **Page 327** "All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great–grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth. A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property."

After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post–1956, if a person inherits a self–acquired property from his paternal ancestors, the said property becomes his self–acquired property, and does not remain coparcenary property.

If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands *vis–a–vis* his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.

In the present case, the succession opened in 1951 on the death of Lal Singh. The nature of the property inherited by his son Inder Singh was coparcenary in nature. Even though Inder Singh had effected a partition of the coparcenary property amongst his sons in 1964, the nature of the property inherited by Inder Singh's sons would remain as coparcenary property *qua* their male descendants upto three degrees below them.

The judgment in ***Uttam v. Saubhag Singh, AIR 2016 SC 1169*** relied upon by the Respondents is not applicable to the facts of the present case. In ***Uttam*** (supra), the appellant therein was claiming a share in the coparcenary property of his grandfather, who had died in 1973 before the appellant was born. The succession opened in 1973 after the Hindu Succession Act, 1956 came into force. The Court was concerned with the share of the appellant's grandfather in the ancestral property, and the impact of Section 8 of the Hindu Succession Act, 1956. In light of these facts, this Court held that after property is distributed in accordance with Section 8 of the Hindu Succession Act, 1956, such property ceases to be joint family property in the hands of the various persons who have succeeded to it. It was therefore held that the appellant was not a coparcener *vis–a–vis* the share of his grandfather.

In the present case, the entire property of Lal Singh was inherited by his son Inder Singh as coparcenary property prior to 1956. This coparcenary property was partitioned between the three sons of Inder Singh by the court vide a decree

of partition dated 04.11.1964. The shares allotted in partition to the coparceners, continued to remain coparcenary property in their hands *qua* their male descendants. As a consequence, the property allotted to Dharam Singh in partition continued to remain coparcenary property *qua* the Appellant.

With respect to the devolution of a share acquired on partition, Mulla on Hindu Law (22nd Edition) states the following:

> "**339. Devolution of share acquired on partition. –** The effect of a partition is to dissolve the coparcenary, with the result, that the separating members thenceforth hold their respective shares as their separate property, and the share of each member will pass on his death to his heirs. However, if a member while separating from his other coparceners continues joint with his own male issue, the share allotted to him on partition, will in his hands, retain the character of a coparcenary property as regards the male issue [221, sub (4)]."

The suit property which came to the share of late Dharam Singh (son of Inder Singh) through partition, remained coparcenary property *qua* his son – the Appellant herein, who became a coparcener in the suit property on his birth i.e. on 22.08.1985. Dharam Singh purportedly executed the two Sale Deeds on 01.09.1999 in favour of Respondent No.1 after the Appellant became a coparcener in the suit property.

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***36. INDIAN PENAL CODE, 1860 – Section 53**

SENTENCE:

Things to be considered while considering quantum of sentence – Courts are expected to consider nature of injuries and weapon used – Courts are bound to impose sentence commensurate with gravity of offence – Court must not only keep in view the right of accused but interest of victim and society at large – Courts should be consistent in approach that reasonable proportion has to be maintained between gravity of offence andpunishment.

भारतीय दण्ड संहिता, 1860 – धारा 53

दण्डः

दण्ड की मात्रा पर विचार करते समय विचार हेतु अपेक्षित परिस्थितियाँ – न्यायालयों से यह अपेक्षित है कि वे उपहतियों और प्रयुक्त आयुध की प्रकृति पर विचार करें – न्यायालय अपराध की गुरूता के समानुपाति दण्डादेश अधिरोपित करने के लिए आबद्ध हैं – न्यायालय को न केवल अभियुक्त के अधिकार बल्कि पीड़ित और समाज के व्यापक हित को भी ध्यान में रखना चाहिए – अपराध की गंभीरता एवं दण्ड के मध्य युक्तियुक्त समानुपात संधारित करने हेतु न्यायालयों का दृष्टिकोण तर्कयुक्त/सुसंगत होना चाहिये।

Suryakant Baburao alias Ramrao Phad v. State of Maharashtra and ors.

Judgment dated 30.07.2019 passed by the Supreme Court in Criminal Appeal No. 1161 of 2019, reported in AIR 2019 SC 3629

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37. INDIAN PENAL CODE, 1860 – Sections 53 and 302
CRIMINAL PROCEDURE CODE, 1973 – Sections 161 and 164
DEATH SENTENCE:

(i) Things to be considered while awarding death sentence and onerous duty of awarding sentence is judicial discretion of Court and should be exercised keeping in view the Doctrine of Proportionality and Doctrine of Reform and Rehabilitation. [*Santosh Kumar Satishbhushan Bariya v. State of Maharashtra, 2010 AIR SCW 1130,* relied on]

(ii) Statement of witness – Delay in recording – Effect – Investigations handed over to CBI pursuant to failure of State and local police – Delay in recording statements by CBI thus explained properly – No prejudice caused to the accused on account of long drawn process – Plea of belated recording of statements of witness, rejected.

भारतीय दण्ड संहिता, 1860 – धाराएं 53 एवं 302

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 161 एवं 164

मृत्यु दण्डः

(i) मृत्यु दण्ड अधिनिर्णीत किये जाने के समय विचार हेतु अपेक्षित परिस्थिति और दण्ड अधिनिर्णीत करने का दुर्भर कर्तव्य न्यायालय का न्यायिक सद्विवेक है और इस सद्विवेक का उपयोग सुधार एवं पुनर्वास के सिद्धांत और समानुपातिकता के सिद्धांत को दृष्टिगत रखते हुये किया जाना चाहिये। संतोष कुमार सतीशभूषण बारियार विरुद्ध महाराष्ट्र राज्य, 2010 एआईआर एससीडब्ल्यू 1130, अवलंबित,

(ii) साक्षियों के कथन – अभिलिखित किये जाने में विलम्ब – प्रभाव – राज्य एवं स्थानीय पुलिस की असफलता के परिणामस्वरूप केन्द्रीय अन्वेषण ब्यूरो को अन्वेषण सौंपा गया – केन्द्रीय अन्वेषण ब्यूरो द्वारा कथन अभिलिखित किये जाने में हुआ विलम्ब इस प्रकार उचित रूप से स्पष्टीकृत किया गया – दीर्घ लंबित प्रि या के कारण अभियुक्त प्रतिकूलतः प्रभावित नहीं हुआ – साक्षियों के कथनों के विलंबित अभिलेखन का अभिवाक्, अस्वीकार्य है।

Central Bureau of Investigation v. Sakru Mahagu Binjewar and ors. etc.

Judgment dated 24.05.2019 passed by the Supreme Court in Criminal Appeal No. 1791 of 2014, reported in AIR 2019 SC 3550 (Three Judge Bench)

Relevant extracts from the judgment:

It needs no elaborate discussion that the judicial discretion conferred upon a Court in the matter of awarding sentence is an onerous duty which has to be exercised keeping in view the settled and binding dictates including the Doctrine of Proportionality for assigning justifiable reasons to award death penalty and also to keep in mind the Doctrine of Reform and Rehabilitation. [Ref: ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498***.]

The delay of some hours in registration of the FIR has also been convincingly explained by the complainant–Bhaiyyalal Sudam Bhotmange (PW–17) and Siddharth Gajbhiye (PW–18). Where the prosecution has satisfactorily explained the cause of delay in the registration of FIR, there is no rhyme or reason for a court to look at the prosecution case with suspicious eyes. The plea of so–called delay in recording the statements of the witnesses, is to be merely noticed and rejected. It has come on record that the investigation was not carried out properly by the local police, therefore, the State Government handed over the case to the State CID. No effective progress could be made by the State CID also, hence the investigation was entrusted to CBI. It is thereafter that the statements of several witnesses including under Section 164 of the Code were recorded. The long drawn process has caused no prejudice to the Respondents–accused.

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38. INDIAN PENAL CODE, 1860 – Sections 141, 149 and 300

Unlawful assembly and murder – Framing of charge – Non–inclusion of Section 141 while framing charges for unlawful assembly – Effect – Since actions of unlawful assembly and punishment thereafter set in subsequent provisions, proving of necessary ingredients of unlawful assembly, is sufficient – Non–inclusion of Section 141 would not render complete trial illegal.

भारतीय दण्ड संहिता, 1860 – धाराएं 141, 149 एवं 300

विधि विरुद्ध जमाव और हत्या – आरोप की विरचना – विधि विरुद्ध जमाव के लिये आरोप विरचना में धारा 141 का असमावेष – प्रभाव – चूंकि विधि विरुद्ध जमाव के कार्य और तत्पश्चात् दण्ड को उत्तरवर्ती प्रावधानों में उपबंधित किया गया है, विधि विरुद्ध जमाव के आवश्यक तत्वों का साबित करना, पर्याप्त है – धारा 141 का असमावेश संपूर्ण विचारण को अवैध नहीं करेगा।

Dev Karan alias Lambu v. State of Haryana

Judgment dated 06.08.2019, passed by the Supreme Court in Criminal Appeal No. 299 of 2010, reported in AIR 2019 SC 3705

Relevant extracts from the Judgment:

What is necessary for invoking Section 149 of the Indian Penal Code has been set out in the judgments of ***Vinubhai Ranchhodbhai Patel v. Rajivbhai***

Dudabhai Patel & ors., (2018) 7 SCC 743, Dani Singh v. State of Bihar, (2004) 13 SCC 203, Mahadev Sharma v. State of Bihar, (1966) 1 SCR 18 and ***KuldipYadav v. State of Bihar, (2011) 5 SCC 324.*** It has nowhere been said that Section 141 of the Indian Penal Code should be specifically invoked or else the consequences would be fatal. As long as the necessary ingredients of an unlawful assembly are set out and proved, as enunciated in Section 141 of the Indian Penal Code, it would suffice. The actions of an unlawful assembly and the punishment thereafter are set out in the subsequent provisions, after Section 141 of the Indian Penal Code, and as long as those ingredients are met, Section 149 of the Indian Penal Code can be invoked.

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39. INDIAN PENAL CODE, 1860 – Section 302

(i) Capital punishment – When may be awarded? The legislature's intention and realization should be kept in mind while awarding sentence in heinous crime committed against children.

(ii) When aggravating circumstances outweigh the mitigating circumstances and when the facts and material produced by the prosecution definitely and fully establish the fact that the option of imprisonment for life will not suffice and is wholly disproportionate and therefore, the case belongs to the "rarest of rare" category, then only capital punishment may be awarded.

भारतीय दण्ड संहिता, 1860 – धारा 302

(i) मृत्यु दण्डादेश – कब अधिनिर्णीत किया जा सकता है? बच्चों के विरुद्ध किये गये जघन्य अपराधों में दण्डादेश अधिनिर्णीत करते समय विधायिका के उद्देश्यों एवं आशय को ध्यान में रखा जाना चाहिए।

(ii) जब गुरुत्तरकारी परिस्थितियां, लघुत्तरकारी परिस्थितियों पर भारी हों और जब अभियोजन पक्ष द्वारा प्रस्तुत तथ्य और सामग्री निश्चित और पूर्ण रूप से इस तथ्य को स्थापित करती हों कि आजीवन कारावास का विकल्प पर्याप्त न होकर पूर्णतः असंगत होगा एवं इस प्रकार मामला 'विरलतम से विरल' श्रेणी का है, केवल तब ही मृत्युदण्ड आदिष्ट किया जा सकता है।

Manoharan v. State, By Inspector of Police, Variety Hall Police Station, Coimbatore

Judgment dated 01.08.2019 passed by the Supreme Court inCriminal Appeal No. 1174 of 2019, reported in (2019) 7 SCC 716 (Three Judge Bench)

Relevant extracts from the judgment:

On the facts of the present case, there is no doubt that aggravated penetrative sexual assault was committed on the 10 year old girl by more than one person. The 10 year old girl child (who was below 12 years of age) would fall within Section 5 (m) of the POCSO Act. There can be no doubt that today's

judgment is in keeping with the legislature's realisation that such crimes are on the rise and must be dealt with severely. In fact, the Statement of Objects and Reasons of the Amendment are important and state as follows:–

> "However, in the recent past incidences of child sexual abuse cases demonstrating the inhumane mindset of the abusers, who have been barbaric in their approach towards young victims, is rising in the country. Children are becoming easy prey because of their tender age, physical vulnerabilities and inexperience of life and society. The unequal balance of power leading to the gruesome act may also detriment the mind of the child to believe that might is right and reported studies establish that children who have been victims of sexual violence in their childhood become more abusive later in their life. The report of the National Crime Records Bureau for the year 2016 indicate increase in the number of cases registered under the said Act from 44.7 per cent in 2013 over 2012 and 178.6 per cent in 2014 over 2013 and no decline in the number of cases thereafter.
>
> The Supreme Court, in the matter of ***Machhi Singh v. State of Punjab, (1983) 3 SCC 470,*** held that when the community feels that for the sake of self preservation, the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The same analogy has been reiterated by the Supreme Court in the matter of ***Devender Pal Singh v. State (NCT of Delhi), AIR 2002 SC 1661*** wherein it was held that when the collective conscience of the community is so shocked, the court must award death sentence.
>
> In the above backdrop, as there is a strong need to take stringent measures to deter the rising trend of child sex abuse in the country, the proposed amendments to the said Act make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child. It also empowers the Central Government to make rules for the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority".

The expression 'rarest of rare' literally means rarest even in the rare, i.e. a rarest case of an extreme nature. The expression and the choice of words, means that punishment by death is an extremely narrow and confined rare exception. The normal, if not an unexceptional rule, is punishment for life, which rule can be trimmed and upended only when the award of sentence for life is unquestionably foreclosed. Thus, capital punishment is awarded and invoked only if the facts and material produced by the prosecution disdainfully and fully establish that the option of imprisonment for life will not be suffice and is wholly disproportionate and therefore the case belongs to the 'rarest of rare' category.

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40. INDIAN PENAL CODE, 1860 – Section 302

(i) Death sentence – Imposition of, in cases based on circumstantial evidence – Law summarized – Doctrine of prudence and concept of residual doubt – Applicability of – Standard/Quality of circumstantial evidence required for imposition of death sentence being higher than that required for recording conviction – Quality of circumstantial evidence, held, detrimentally affected in present case due to errors apparent on the face of record, to the extent that death sentence could not be sustained thereon, but conviction and life imprisonment for entire life without remission could.

(ii) In cases based on circumstantial evidence, though concept of residual doubt is not given much importance in Indian capital sentencing, Court has stressed on higher quality of evidence for imposition of death sentence in a number of cases, and has applied doctrine of prudence for this, which only reflects the principle laid down in *Bachan Singh v. State of Punjab, (1980) 2 SCC 684,* that is while awarding death sentence, alternative option i.e. imposition of life imprisonment must be unquestionably foreclosed & irrevocable punishment of death must only be imposed when there is no other alternative, and in cases resting on circumstantial evidence, the doctrine of prudence should be invoked.

भारतीय दण्ड संहिता, 1860 – धारा 302

(i) परिस्थितिजन्य साक्ष्य पर आधारित प्रकरणों में मृत्यु दण्ड का अधिरोपण – विधि संक्षिप्तकृत – प्रज्ञा का सिद्धांत और अवशिष्ट संदेह की अवधारणा – की प्रयोज्यता – दोषसिद्धि अभिलिखित करने के लिये अपेक्षित रूप से अधिक उच्च स्तर की परिस्थितिजन्य साक्ष्य का मानक/गुणवत्ता मृत्यु दण्ड के अधिरोपण के लिये अपेक्षित है – प्रस्तुत मामले में अभिलेख के आमुख पर प्रकट त्रुटि के कारण परिस्थितिजन्य साक्ष्य की गुणवत्ता, इस स्तर तक प्रतिकूल रूप से प्रभावित अभिनिर्धारित की गई कि, इसके आधार पर मृत्यु दण्ड अवधारित नहीं

किया जा सकता है किन्तु दोषसिद्धि और परिहार के बिना संपूर्ण जीवन के लिये आजीवन कारावास धारित।

(ii) परिस्थितिजन्य साक्ष्य पर आधारित मामलों में, यद्यपि अवशिष्ट संदेह की अवधारणा को मृत्यु दण्ड संबंधी भारतीय विधि में बहुत महत्व नहीं दिया गया है, न्यायालय ने अनेक मामलों में मृत्यु दण्ड का अधिरोपण करने के लिये साक्ष्य की उच्चतर गुणवत्ता पर बल दिया है, और इसके लिये प्रज्ञा के सिद्धांत को प्रयोज्य किया है, जो बच्चन सिंह विरुद्ध पंजाब राज्य, *(1980) 2* एससीसी *684* में प्रतिपादित सिद्धांत मात्र को प्रतिबिंबित करता है, अर्थात् मृत्यु दण्ड अधिनिर्णीत करने के समय, आनुकल्पिक विकल्प, अर्थात् आजीवन कारावास का अधिरोपण अविवादतः पुरोबन्धित हो जाए – जहाँ कोई अन्य अनुकल्प न हो मात्र वहीं मृत्यु का अखण्डनीय दण्ड अधिरोपित किया जाए और परिस्थितिजन्य साक्ष्य पर आधारित मामलों में, प्रज्ञा के सिद्धांत का आलम्ब लिया जाना चाहिये।

Sudam alias Rahul Kaniram Jadhav v. State of Maharashtra

Judgment dated 01.10.2019 passed by the Supreme Court in Review Petition (Crl.) No. 401 of 2012, reported in (2019) 9 SCC 388

Relevant extracts from the judgment:

It must be noted that though it may be a relevant consideration in sentencing that the evidence in a given case is circumstantial in nature, there is no bar on the award of the death sentence in cases based upon such evidence [see ***Swamy Shraddananda v. State of Karnataka, (2007) 12 SCC 288 and Ramesh v. State of Rajasthan, (2011) 3 SCC 685***].

In such a situation, it is up to the Court to determine whether the accused may be sentenced to death upon the strength of circumstantial evidence, given the peculiar facts and circumstances of each case, while assessing all the relevant aggravating circumstances of the crime, such as its brutality, enormity and premeditated nature, and mitigating circumstances of the accused, such as his socio–economic background, age, extreme emotional disturbance at the time of commission of the offence, and so on.

In this regard, it would also be pertinent to refer to the discussion in ***Ashok Debbarma v. State of Tripura, (2014) 4 SCC 747,*** where this Court elaborated upon the concept of "residual doubt" – which simply means that in spite of being convinced of the guilt of the accused beyond reasonable doubt, the Court may harbour lingering or residual doubts in its mind regarding such guilt. This Court noted that the existence of residual doubt was a ground sometimes urged before American courts as a mitigating circumstance with respect to imposing the death sentence, and noted as follow:

> "In ***California v. Brown, (1987) SCC Online US SC 15*** and other cases, the US courts took the view, *"residual doubt" is not a fact about the defendant or the circumstances of the crime,*

> *but a lingering uncertainty about facts, a state of mind that exists somewhere between* "beyond a reasonable doubt" and "absolute certainty". The petitioner's "residual doubt" claim is that the States must permit capital sentencing bodies to demand proof of guilt to "an absolute certainty" before imposing the death sentence. Nothing in our cases mandates the imposition of this heightened burden of proof at capital sentencing.
>
> We also, in this country, as already indicated, expect the prosecution to prove his case beyond reasonable doubt, but not with *"absolute certainty". But in between "reasonable doubt" and "absolute certainty", a decision–maker's mind may wander, possibly in a given case he may go for "absolute certainty" so as to award death sentence, short of that he may go for "beyond reasonable doubt". Suffice it to say, so far as the present case is concerned, we entertained a lingering doubt as to whether the appellant alone could have executed the crime single–handedly,* especially when the prosecution itself says that it was the handiwork of a large group of people. If that be so, in our view, the crime perpetrated by a group of people in an extremely brutal, grotesque and dastardly manner, could not have been thrown upon the appellant alone without charge–sheeting other group of persons numbering around 35. All the element test as well as the residual doubt test, in a given case, may favour the accused, as a mitigating factor."

While the concept of "residual doubt" has undoubtedly not been given much attention in Indian capital sentencing jurisprudence, the fact remains that this Court has on several occasions held the quality of evidence to a higher standard for passing the irrevocable sentence of death than that which governs conviction, that is to say, it has found it unsafe to award the death penalty for convictions based on the nature of the circumstantial evidence on record. In fact, this question was given some attention in a recent decision by this Bench, in ***Mohd. Mannan @ Abdul Mannan v. State of Bihar, (2019) 16 SCC 584,*** where we found it unsafe to affirm the death penalty awarded to the accused in light of the nature of the evidence on record, though the conviction had been affirmed on the basis of circumstantial evidence.

In ***Mohd. Mannan*** (supra) this Court affirmed the proposition that the quality of evidence is a relevant circumstance in the sentencing analysis, referring to the following observations of this Court in ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498***.

> "At this stage, ***Bachan Singh v. State of Punjab, (1980) 2 SCC 684*** informs the content of the sentencing hearing. The Court must play a proactive role to record all relevant information at this stage. Some of the information relating to crime can be culled out from the phase prior to sentencing hearing. This information would include aspects relating to the nature, motive and impact of crime, culpability of convict, etc. Quality of evidence adduced is also a relevant factor. For instance, extent of reliance on circumstantial evidence or child witness plays an important role in the sentencing analysis. But what is sorely lacking, in most capital sentencing cases, is information relating to characteristics and socio–economic background of the offender. This issue was also raised in the 48th Report of the law Commission."

The Court in ***Mohd. Mannan*** (supra) also relied on ***Ramesh*** (supra) and ***Ram Deo Prasad v. State of Bihar, (2013) 7 SCC 725,*** which follow ***Bariyar*** (supra) in this respect, and referred to ***Sushil Sharma v. State (NCT of Delhi), (2014) 4 SCC 317, Kalu Khan v. State of Rajasthan, (2015) 16 SCC 492 and Sebastian v. State of Kerala, (2010) 1 SCC 58,*** wherein a similar position has been adopted.

We find it pertinent to observe that the above trend only affirms the "prudence doctrine enunciated by this Court in ***Bachan Singh*** (supra). In this regard, we may refer to the following observations made in ***Santosh Kumar Satishbhushan Bariyar*** (supra).

> "Principle of prudence, enunciated by ***Bachan Singh*** (supra) is sound counsel on this court which shall stand us in good stead & Whenever in the given circumstances, there is difference of opinion with respect to any sentencing prop (sic)/rationale, or subjectivity involved in the determining factors, or lack of thoroughness in complying with the sentencing procedure, it would be advisable to fall in favour of the "rule" of life imprisonment rather than invoking the "exception" of death punishment."

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***41. INDIAN PENAL CODE, 1860 – Section 302**
EVIDENCE ACT, 1872 – Sections 27 and 106
Murder – Burden of proof – Accused allegedly committed murder of deceased alongwith co–accused, his nephew and wife of deceased and buried his body inside house rented to them – Recovery of dead body in gunny bags at the instance of wife of deceased from rented house of accused – No dispute that lock of house was opened by police for the first time after accused locked it and went to his native village – Burden of proving fact that somebody had access to house during absence of accused, was

on him – Accused failed to rebut presumption u/s 106 of the Evidence Act – Apart from statement of wife of deceased, prosecution witness also identified dead body from wearing apparels of deceased – Conviction of accused persons, proper.

भारतीय दण्ड संहिता, 1860 – धारा 302

साक्ष्य अधिनियम, 1872 – धाराएं 27 एवं 106

हत्या – सबूत का भार – अभियुक्त पर सह–अभियुक्त, उसके भतीजे और मृतक की पत्नी के साथ मिलकर मृतक की हत्या करने और उसके शव को उन्हें भाड़े पर प्राप्त मकान में दफना देने का आक्षेप – अभियुक्त के भाड़े के आवास से मृतक की पत्नी के प्रेरण पर मृत शरीर का बोरों में अभिग्रहण – निर्विवादित कि अभियुक्त द्वारा भाड़ा आवास को ताला बन्द किये जाने और अपने गृह ग्राम जाने के पश्चात् पुलिस द्वारा प्रथम बार उसे खोला गया – यह साबित करने का भार कि अभियुक्त की अनुपस्थिति में किसी व्यक्ति की उक्त भाड़ा आवास में पहुंच थी, अभियुक्त पर था – साक्ष्य अधिनियम की धारा 106 के अन्तर्गत उपधारणा का खण्डन करने में अभियुक्त असफल रहा था – मृतक की पत्नी के कथन के अलावा, अभियोजन साक्षियों ने भी मृतक के पहने हुये कपड़ों से शव की पहचान की – अभियुक्त व्यक्तियों की दोषसिद्धि उचित पाई गई।

Ranjit Kumar Haldar v. State of Sikkim

Judgment dated 25.07.2019 passed by the Supreme Court in Criminal Appeal No. 427 of 2014, reported in AIR 2019 SC 3542

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42. INDIAN PENAL CODE, 1860 – Sections 302 and 304
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Sections 2(k) and 7–A
Age determination – Claim of juvenility on the date of incident i.e. 18.06.1995 on the basis of birth certificate obtained on 14.09.2010 – Secondary and Senior School certificate issued by statutory board (CBSE) in the years 1993 and 1995 suggested adulthood at the date of incident – Uncorroborated birth certificate obtained at later stage discarded.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 304

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 –धाराएं 2(ट) एवं 7–क

आयु का निर्धारण – दिनांक 14.09.2010 को प्राप्त जन्म प्रमाण पत्र के आधार पर घटना दिनांक 18.06.1995 को किशोरवयता का दावा किया गया – वैधानिक बोर्ड (सीबीएसई) द्वारा जारी माध्यमिक और उच्चतर विद्यालय प्रमाण पत्र वर्ष 1993 एवं 1995 के अनुसार घटना की दिनांक को वयस्कता प्रकट होती थी – पश्चातवर्ती प्रक्रम पर प्राप्त जन्म प्रमाण पत्र को संपुष्टि के अभाव में अस्वीकार किया गया।

Pratap Singh alias Pikki v. State of Uttarakhand

Judgment dated 12.07.2019 passed by the Supreme Court in Criminal Appeal No. 1890 of 2011, reported in (2019) 7 SCC 424

Relevant extracts from the judgment:

The submission of the learned counsel for the appellant is that he was a juvenile on the date of incident and his date of birth as per the birth certificate issued on 14th September, 2010 was 28th June, 1977 which was not properly appreciated by the High Court in passing the impugned judgment. The submission is without substance for the reason that documentary evidence has come on record that the appellant passed out his Secondary School Examination in the year 1993 from CBSE and mark sheet was issued to him by the Education Board on 5th June, 1993 in which his recorded date of birth is 13th June, 1977. In 1995, he passed out his Senior School Certificate Examination from CBSE, his recorded date of birth is 13th June, 1977 which clearly establishes that he was more than 18 years of age by few days on the date of incident, i.e. 18th June, 1995.

The strength of the appellant's case is that birth certificate issued to him by the competent authority dated 14th September, 2010 recorded his date of birth as 28th June, 1977 which shows that he was less than 18 years of age on the date of incident. Taking note of the later birth certificate issued by the competent authority which was obtained by him on 14th September, 2010, this Court vide its Order dated 9th January, 2019 directed the appellant to file copy of the affidavit which was filed by him before the competent authority on the basis of which birth certificate was obtained by him on 14th September, 2010 with liberty to the learned counsel for the State also to file affidavit of the concerned Officer to place on record the factual position about the genuineness of the stated birth certificate, if so required.

In the instant case, admittedly, the secondary school certificate was issued to the appellant in the year 1993 on 5th June, 1993 in which his recorded date of birth is 13th June, 1977. In the given circumstances, when the appellant has failed to place any supporting material on record while obtaining the date of birth certificate at the later stage on 14th September, 2010, the reliable evidence on record can be discerned from his own certificate issued by the statutory board (CBSE) from where he passed out Secondary and Senior School Examination in the year 1993 and 1995 where his recorded date of birth is 13th June, 1977. In the given circumstances this Court is clear in its view that the appellant was not a juvenile and has crossed the age of 18 years by few days on the date of incident, i.e. 18th June, 1995 and the protection of the Juvenile Justice Act was not available to him.

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***43. INDIAN PENAL CODE, 1860 – Sections 302 and 392 r/w/s 34**

Circumstantial evidence – Facts must be such which do not admit any inference but of guilt – Absence of test identification parade, but reliable testimony of witness identifying accused entering the apartment – Recovery of robbed articles on the same day from accused – No explanation from the accused – Absence of TIP held inconsequential – Conviction upheld.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 392 सहपठित धारा 34

परिस्थितिजन्य साक्ष्य – तथ्य ऐसे होने चाहिए जो दोषिता के अतिरिक्त किसी अन्य अनुमान को अनुज्ञात नहीं करते हों – पहचान परेड का अभाव परन्तु अभियुक्त के अपार्टमेन्ट में प्रवेश करते समय पहचानने संबंधी साक्षी की विश्वसनीय साक्ष्य – उसी दिन लूटी गई सम्पत्ति अभियुक्त के आधिपत्य से अभिग्रहित की गई – अभियुक्त की ओर से कोई स्पष्टीकरण नहीं – पहचान परेड का अभाव अप्रासंगिक अभिनिर्धारित किया गया – दोषसिद्धि की पुष्टि की गई।

Ramesh Dasu Chauhan and another v. State of Maharashtra

Judgment dated 04.07.2019 passed by the Supreme Court in Criminal Appeal No. 1682 of 2012, reported in (2019) 7 SCC 476

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44. INDIAN PENAL CODE, 1860 – Section 304–B

Dowry death – "Soon before her death" – Consideration of – The prosecution must prove nexus between death of deceased and cruelty/ harassment in respect of dowry demand made "soon before her death" – Although this phrase is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it.

भारतीय दण्ड संहिता, 1860 – धारा 304–ख

दहेज मृत्यु – ''उसकी मृत्यु के शीघ्र पूर्व'' – विचारणीय पद – अभियोजन को मृतक की मृत्यु एवं दहेज की मांग को लेकर "उसकी मृत्यु के शीघ्र पूर्व'' क्रूरता या उसे तंग किये जाने के मध्य संबंध अवश्य साबित करना होगा – हालांकि इस उद्धरण की अभिव्यक्ति लचीली है और इसे उसकी मृत्यु के तुरंत पूर्व अथवा कुछ दिनों के भीतर यहां तक कि घटना के कुछ सप्ताह पूर्व तक विस्तारित किया जा सकता है।

Mahesh Kumar v. State of Haryana

Judgment dated 07.08.2019 passed by the Supreme Court in Criminal Appeal No. 1042 of 2012, reported in (2019) 8 SCC 128

Relevant extracts from the judgment:

This Court in ***Satvir Singh & ors. v. State of Punjab & anr., (2001) 8 SCC 633*** examining the significance and implication of the use of the words 'soon before her death' in Section 304–B, has held as under:

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

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

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

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies."

x x x

It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304–B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry–related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death"."

In view of the judgments ***Hira Lal v. State (NCT of Delhi), (2003) 8 SCC 80, Sakatar Singh v. State of Haryana, (2004) 11 SCC 291*** and ***Major Singh v. State of Punjab, (2015) 4 SCC 201*** referred to above, the prosecution has failed to prove either the demand of dowry or that any such demand was raised soon before her death. Therefore, the essential ingredients of offence under Section 304–B of IPC are not proved by the prosecution. The prosecution has even failed to prove the initial presumption under Section 113–B of the Evidence Act.

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***45. INDIAN PENAL CODE, 1860 – Sections 306 and 498–A**

Cruelty – Any willful conduct which is likely to drive a woman to commit suicide or harassment of a woman by unlawful demand of dowry is cruelty – Absence of physical or mental cruelty means there is no willful conduct – Fact of demand of dowry must be proved from record – Appellate Court ought not to reverse finding of trial Court without detailed discussion of evidence.

भारतीय दण्ड संहिता, 1860 – धाराएं 306 एवं 498–क

क्रूरता – जानबूझकर किया गया कोई आचरण जो किसी महिला को आत्महत्या करने को प्रेरित करता है अथवा किसी महिला को दहेज की अवैध मांग के लिए प्रताड़ित करना क्रूरता है – मानसिक अथवा शारीरिक क्रूरता का अभाव जानबूझकर किए गए आचरण का अभाव दर्शाता है – दहेज की मांग का तथ्य अभिलेख पर उपलब्ध सामग्री से प्रमाणित किया जाना चाहिए – अपीलीय न्यायालय को साक्ष्य की विस्तृत विवेचना के बिना विचारण न्यायालय के निष्कर्ष को नहीं उलटना चाहिए।

Wasim v. State of NCT of Delhi

Judgment dated 18.07.2019 passed by the Supreme Court in Criminal Appeal No. 1061 of 2019, reported in 2019 (3) Crimes 157 (SC)

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46. INDIAN PENAL CODE, 1860 – Sections 406 and 420

CRIMINAL PROCEDURE CODE, 1973 – Sections 31, 173, 218, 219and 220

(i) Cheating – Allurement of large number of investors for deposit – Whether each deposit constitute a separate and individual offence or all transactions can be clubbed into single FIR? Held, each deposit by an investor constitutes a separate and individual offence – All transactions cannot be clubbed into a single FIR by showing one investor as complainant and others as witnesses – Every such transaction must be registered as separate FIR.

(ii) Final report; amalgamation of – Whether more than one FIR may be amalgamated into a single final report? Held, No – There cannot be amalgamation of FIRs into final reports – Amalgamation of offences may be considered by Court/Magistrate at the stage of framing of charge.

भारतीय दण्ड संहिता, 1860 – धाराएं 406 एवं 420

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 31, 173, 218, 219 एवं 220

(i) छल – निक्षेप के नाम पर बड़ी संख्या में निवेशकों को प्रलोभन – क्या प्रत्येक निक्षेप एक पृथक और व्यक्तिगत अपराध का गठन करता है अथवा सभी लेनदेन को एक प्रथम सूचना रिपोर्ट में जोड़ा जा सकता है? – अभिनिर्धारित, एक निवेशक द्वारा किया गया प्रत्येक निक्षेप एक पृथक और व्यक्तिगत अपराध का गठन करता है – एक निवेशक को परिवादी के रूप में और अन्य को साक्षियों के रूप में प्रस्तावित कर सभी लेनदेन को एक प्रथम सूचना रिपोर्ट में नहीं जोड़ा जा सकता है – इस तरह के प्रत्येक लेनदेन के लिए पृथक–पृथक प्रथम सूचना रिपोर्ट पंजीबद्ध होनी चाहिए।

(ii) अंतिम प्रतिवेदनों का संयोजन – क्या एक से अधिक प्रथम सूचना रिपोर्ट को एक अंतिम प्रतिवेदन में संयोजित किया जा सकता है? अभिनिर्धारित, नहीं – अंतिम प्रतिवेदन में प्रथम सूचना रिपोर्टों का संयोजन नहीं हो सकता है – आरोप तय करने के चरण पर न्यायालय अथवा मजिस्ट्रेट द्वारा अपराधों के संयोजन पर विचार किया जा सकता है।

State v. Khimji Bhai Jadeja

Judgment dated 08.07.2019 passed by the High Court of Delhi in Criminal Reference No. 1 of 2014, reported in 2019 (3) Crimes 1 (Del.)

Relevant extracts from the judgment:

The questions of law framed by the Ld. ASJ for determination of this Court, read as follows:

''a. Whether in a case of inducement, allurement and cheating of large number of investors/depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction or all such transactions can be amalgamated and clubbed into a single FIR by showing one investor as complainant and others as witnesses?

b. If in case the Hon'ble Court concludes that each deposit has to be treated as separate transaction, then how many such transactions can be amalgamated into one charge–sheet?''

For a series of acts to be regarded as forming the ''same transaction'', they must be connected together in some way, and there should be continuity of action. Though: (i) proximity of time; (ii) unity of place; and, (iii) unity or community of purpose or design have been taken into account to determine the issue viz. whether the series of acts constitute the "same transaction", or not, neither of them is an essential ingredient, and the presence or absence of one or more of them, would not be determinative of the issue, which has to be decided by adoption of a common sense approach in the facts of a given case.

Our answer to Question (a) is that in a case of inducement, allurement and cheating of large number of investors/depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction. All such transactions cannot be amalgamated and clubbed into a single FIR by showing one investor as the complainant, and others as witnesses. In respect of each such transaction, it is imperative for the State to register a separate FIR if the complainant discloses commission of a cognizable offence.

Our answer to question (b) is that in respect of each FIR, a separate final report [and wherever necessary supplementary/further charge sheet(s)] have to be filed, and there is no question of amalgamation of the final reports that may be filed in respect of different FIRs. The amalgamation, strictly in terms of Section 219 Cr.P.C., would be considered by the Court/Magistrate at the stage of framing of charge, since Section 219(1) mandates that where the requirements set out in the said Section are met, the accused "may be charged with, and tried at one trial for, any number of them not exceeding three".

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47. INDIAN PENAL CODE, 1860 – Sections 498–A and 302
APPRECIATION OF EVIDENCE:
CRIMINAL TRIAL:

(i) Circumstantial evidence – Bride burning – Incident took place in house when only accused and deceased were present – Kerosene oil was present on body of deceased – One bottle of kerosene oil was found in the room – This suggest pouring of kerosene oil on deceased – Broken bangles found in the room suggest struggle by deceased to save herself – Accused took defence of accidental catching of fire in sari from oven – Kerosene oil on body of deceased negate chances of accident – Relationship between accused and deceased were not cordial over unsuccessful demand of dowry – Neither prosecution nor defence project case of suicide – Held, in absence of any plausible explanation by accused about these circumstances, manner in which incident occurred and material seized, guilt of accused is proved beyond reasonable doubt.

(ii) Witnesses turning hostile – Effect – It is of no significance so far as prosecution case is proved by available evidence.

भारतीय दण्ड संहिता, 1860 – धाराएं 498–क एवं 302

साक्ष्य का मूल्यांकनः

आपराधिक विचारणः

(i) परिस्थितिजन्य साक्ष्य – वधु–दाह – घटना घर में घटित हुई जब मात्र अभियुक्त तथा मृतका उपस्थित थे – मिट्टी का तेल मृतका के शरीर पर पाया गया –

कमरे से मिट्टी के तेल की एक बोतल भी प्राप्त हुई – यह तथ्य मृतका पर मिट्टी का तेल उड़ेलना इंगित करता है – कमरे में टूटी चूड़ियों का पाया जाना यह इंगित करता है कि मृतका ने स्वयं को बचाने का प्रयत्न किया होगा – अभियुक्त ने सिगड़ी से अचानक साड़ी में आग लग जाने का बचाव लिया – मृतका के शरीर पर मिट्टी का तेल दुर्घटना की संभाव्यता को नकारता है – दहेज की असफल मांग के कारण अभियुक्त तथा मृतका के मध्य संबंध मधुर नहीं थे – न तो अभियोजन और न ही बचाव पक्ष ने मृतका द्वारा आत्महत्या किया जाना प्रस्तावित किया – अभिनिर्धारित, अभियुक्त द्वारा इन परिस्थितियों का विश्वसनीय स्पष्टीकरण प्रकट करने का अभाव, घटना की रीति तथा जप्त हुई सामग्री के आलोक में अभियुक्त की दोषिता संदेह से परे प्रमाणित हुई।

(ii) साक्षी का पक्षद्रोही हो जाना – प्रभाव – यह महत्वहीन है यदि अभियोजन का मामला उपलब्ध साक्ष्य से साबित होता है।

Mahadevappa v. State of Karnataka Rep. By Public Prosecutor

Judgment dated 07.01.2019 passed by the Supreme Court in Criminal Appeal No. 1261 of 2008, reported in 2019 (3) Crimes 29 (SC)

Relevant extracts from the judgment:

In these circumstances, it was the appellant who could give some plausible explanation as to how and in what manner the incident in question occurred. As mentioned above, the explanation given by the appellant was that Rukmini Bai's sari accidentally caught fire when she was boiling the water on the oven. In our opinion, this story of the appellant cannot be believed.

Second, the evidence of I.O., Post–Mortem Report, FSL report and the evidence of doctor (PW6) has proved that kerosene oil was found on the body of deceased and second, one bottle of kerosene oil was also lying in the room. The presence of kerosene oil on the body of deceased would indicate that the kerosene oil was poured on her body. Since the appellant was the only person present in the room (kitchen), it was he who could do it.

Third, the presence of broken bangles found in the room suggest that the deceased must have struggled with the appellant to save herself which resulted in breaking of her bangles.

Fourth, had it been a case of catching of simple fire from the oven, then in such event, the smell of kerosene oil from the body of the deceased would not have been found on her body.

Fifth, it is nobody's case that the deceased tried to commit suicide by pouring kerosene oil on her and then put herself on fire.

Sixth, the relations between the appellant and deceased were not cordial. The appellant always used to demand money from the deceased which she was not in a position to give to the appellant.

Seventh, had this been a case of accident as suggested by the defense then burn injuries sustained by the deceased would have been more on the lower part of her body rather on the upper part of the body because according to defense, the deceased was near to oven when her sari caught fire. The post–mortem report, however, showed that the burn injuries were more on her upper part and her blouse was found burnt.

In the absence of any plausible explanation given by the appellant and the one which was suggested but not having been proved and further keeping in view the circumstances, the manner in which the incident occurred and material seized from the room i.e. kerosene oil bottle, it is proved beyond reasonable doubt that the appellant was responsible for causing death of Rukmini Bai. In other words, Rukmini Bai's death was homicidal and not accidental.

Learned counsel for the appellant argued that some of the witnesses of the prosecution did not support their case, and turned hostile. It is for this reason, learned counsel submitted that the prosecution case should be discarded.

We do not agree to this submission of the learned counsel for the appellant. The evidence of four prosecution witnesses which we have detailed above fully proves the case of the prosecution. In this view of the matter, even if, some witnesses might have turned hostile, yet it would be of no significance and nor it would adversely affect the case of the prosecution. It is more so when the witnesses which we have referred above did not turn hostile and were, therefore, rightly believed by the High Court.

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48. LIMITATION ACT, 1963 – Section 5

CIVIL PRACTICE:

(i) Appellate Court; duty of – Whether appellate Court is duty bound to consider all the issues and evidence on record even though appeal is barred by limitation? Held, No – Unless the delay in preferring the appeal has been condoned, there cannot be an appeal in the eyes of law.

(ii) Condonation of delay – Sufficient cause – There was delay of more than one year and two months – Appellants raised the grounds that they were not aware of the dismissal of suit – Held, it is the duty of plaintiffs to keep track of their civil suit – Nowadays, everybody is having mobile phone to contact their counsel and technical facilities to track the suit – Sufficient cause not made out.

परिसीमा अधिनियम, 1963 – धारा 5

सिविल प्रथाः

(i) अपीलीय न्यायालय के कर्तव्य – क्या अपीलीय न्यायालय परिसीमा द्वारा वर्जित अपील में भी समस्त विवाद्यकों तथा अभिलेख पर उपलब्ध साक्ष्य पर विचार करने

के लिए कर्तव्यबद्ध है? अभिनिर्धारित, नहीं – जब तक कि अपील संस्थित करने में हुआ विलंब क्षमा नहीं किया गया हो, विधि की दृष्टि में कोई अपील हो ही नहीं सकती है।

(ii) विलंब क्षमा किया जाना – पर्याप्त हेतुक – एक वर्ष दो माह से अधिक का विलंब था – अपीलार्थीगण द्वारा यह आधार लिया गया कि उन्हें वाद की खारिजी की जानकारी नहीं थी – अभिनिर्धारित, यह वादीगण का कर्तव्य है कि वे अपने वाद पर नजर रखें – आजकल प्रत्येक व्यक्ति के पास अपने अधिवक्ता से संपर्क करने के लिये मोबाईल और अपने वाद पर नजर रखने की तकनीकी सुविधाएं उपलब्ध हैं – पर्याप्त हेतुक नहीं पाया गया।

Lokpal Singh and anr. v. Matre and ors.

Order dated 08.01.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 1226 of 2017, reported in 2019 (3) MPLJ 330

Relevant extracts from the order:

The submissions made by the counsel for the appellants cannot be accepted because in the present case the appellate court has rejected the application filed by the appellants under Section 5 of the Indian Limitation Act and the appellate court would get a jurisdiction to entertain the appeal only when the delay is condoned. When the application under Section 5 of the Indian Limitation Act was rejected, then as a natural consequence, the First Appeal was also dismissed as barred by limitation. Unless and until the delay is condoned, it cannot be said that there was any appeal in the eye of law.

For explaining the delay of more than one year and two months it is merely stated by the appellants that since the appellants were not aware of the dismissal of the suit, therefore, they could not file the appeal within the period of limitation. The ground raised by the appellants in the application for condonation of delay cannot be said to be sufficient warranting condonation of delay of more than one year and two months. Being the plaintiffs, it was the duty of the appellants to keep a track of their civil suit and in view of the fact that nowadays everybody is having a mobile phone and they have full technical facilities to contact their counsel even on mobile and having failed to do so, this Court is of the considered opinion that the appellants have failed to make out any good reason before the appellate court for condonation of delay in filing the appeal.

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49. LIMITATION ACT, 1963 – Section 27, Articles 64 and 65

Adverse possession – Suit for declaration of title and for restoration of possession – Person perfecting title by virtue of adverse possession can maintain suit under Article 65. [*Gurdwara Sahib v. Gram Panchayat Village Sirthala and anr., (2014) 1 SCC 669,* overruled]

परिसीमा अधिनियम, 1963 – धारा 27, अनुच्छेद 64 एवं 65

प्रतिकूल आधिपत्य – आधिपत्य के प्रत्युद्धरण और स्वत्व की घोषणा के लिये वाद – प्रतिकूल आधिपत्य के आधार पर स्वत्व अधिकार प्राप्त करने वाला व्यक्ति अनुच्छेद 65 के अंतर्गत वाद प्रस्तुत कर सकता है। गुरूद्वारा साहिब विरुद्ध ग्राम पंचायत ग्राम सिरथला एवं अन्य, *(2014) 1* एससीसी *669,* अस्वीकार|

Ravinder Kaur Grewal and ors. v. Manjit Kaur and ors.

Judgment dated 07.08.2019 passed by the Supreme Court in Civil Appeal No. 7764 of 2014, reported in AIR 2019 SC 3827 (Three Judge Bench)

Relevant extracts from the judgment:

Resultantly, we hold that decisions of ***Gurudwara Sahib v. Gram Panchayat Village Sirthala & anr., (2014) 1 SCC 669,*** and decision relying on it in ***State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj, (2017) 9 SCC 579*** and ***Dharampal (dead) through LRs. v. Punjab Wakf Board, (2018) 11 SCC 449,*** cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by Plaintiff Under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a Plaintiff.

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50. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Multiplier – Death claim – Multiplier has to be applied on basis of age of deceased and not on basis of age of dependants.

मोटर यान अधिनियम, 1988 – धारा 166

क्षतिपूर्ति – गुणांक – मृत्यु दावा – मृतक की आयु के आधार पर गुणांक प्रयोज्य किया जाना चाहिए ना कि आश्रितों की आयु के आधार पर।

Smt. Sunita Tokas and another v. New India Insurance Co. Ltd. and anr.

Judgment dated 16.08.2019 passed by the Supreme Court in Civil Appeal No. 6339 of 2019, reported in AIR 2019 SC 3921

Relevant extracts from the judgment:

Recently the legal issue whether in case of a motor accident of a bachelor, the age of the deceased, or the age of the dependants, would be taken into account, for calculating the multiplier, came up for consideration before a three judge bench of this Court in ***Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goudand ors., (2019) 5 SCC 554***.

The Court referred to the earlier three judge bench decision rendered in ***Munna Lal Jain & ors. v. Vipin Kumar Sharma & ors., (2015) 6 SCC 347*** which in turn relied upon the judgment in ***Sarla Verma & ors. v. Delhi Transport Corporation & anr., (2009) 6 SCC 121,*** which has been affirmed by the Constitution Bench in ***National Insurance Company Limited v. Pranay Sethi & ors., (2017) 16 SCC 680.*** The Court also referred to the three judge bench decision in ***Sube Singh & ors. v. Shyam Singh (dead) & ors., (2018) 3 SCC 18***.

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51. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168

Compensation – Computation of – Fellowship component should not be excluded while computing compensation in motor vehicles claim cases, especially when certificate of annual income from fellowship issued by the Institutions is on record of the Tribunal.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 168

प्रतिकर – संगणना – मोटर यान दावा प्रकरणों में प्रतिकर की संगणना करते हुए अध्येतावृत्ति घटक को अपवर्जित नहीं किया जाना चाहिए, विशेषकर जब अध्येतावृत्ति से वार्षिक आय का, संस्थान द्वारा जारी प्रमाणपत्र न्यायाधिकरण के अभिलेख पर हो।

National Insurance Company Limited v. Satish Kumar Verma and anr.

Judgment dated 03.09.2019 passed by the Supreme Court in Civil Appeal No. 7032 of 2019, reported in (2019) 8 SCC 660

Relevant extracts from the judgment:

We do not see any justification and ground to interfere with the findings recorded by the High Court of Uttarakhand in adding fellowship of ₹ 12,000/– per month to the salary of ₹ 3,000/– per month for computing the loss of dependency. The Motor Accidents Claims Tribunal had clearly erred in excluding the fellowship component notwithstanding the Annual Income Certificate issued by the Indian Institute of Technology (IIT), Roorkee, affirming that the deceased was being paid consolidated fellowship as Fellow–'A' (Hydro Power). Notably, late Amol Verma was having an M.Tech degree and was working in one of the most prestigious engineering institutes in the country. Given this background, salary of ₹ 3,000/– per month would be ridiculously low. Entire compensation package has to be taken into account. Thus, the High Court was right in computing annual income of the deceased at ₹ 3,00,000/– per annum by giving benefit of future prospects. The High Court has also rightly applied the multiplier of seventeen in view of the decision of this Court in ***M/s. Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagiri Goud and others, (2017) 16 SCC 680***.

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***52. MOTOR VEHICLES ACT, 1988 – Section 163–A**

(i) Motor accident claim – Assessment of income of deceased – Helping in family business – Deceased, a bachelor aged 20 years, involved in family business of making namkin, chips, snacks etc. – There was no proof of separate income – Looking to the fact that accident had taken place in the year 2008, claim tribunal rightly arrived to the finding of income to be ₹ 4000/–per month.

(ii) Use of multiplier – When deceased is unmarried – Multiplier should be applied on the age of deceased.

मोटर यान अधिनियम, 1988 – धारा 163–ए

(i) मोटर दुर्घटना दावा – मृतक की आय का आंकलन – पारिवारिक व्यवसाय में मदद करना – मृतक 20 वर्षीय अविवाहित जो नमकीन, चिप्स, नाश्ता अन्य बनाने के पारिवारिक व्यवसाय में लिप्त था – पृथक आय का कोई प्रमाण नहीं था – इस तथ्य को दृष्टिगत रखते हुए कि घटना वर्ष 2008 में हुई थी अधिकरण ₹ 4,000/– मासिक के सही निष्कर्ष पर पहुंचा है।

(ii) गुणांक का उपयोग – जब मृतक अविवाहित हो – मृतक की आयु पर गुणांक प्रयोज्य होना चाहिए।

New India Assurance Co. Ltd. v. Ramkumar Sahu and ors.

Judgment dated 02.04.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in M.A. No. 1132 of 2009, reported in 2019 ACJ 2270

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***53. MOTOR VEHICLES ACT, 1988 – Section 163–A**

Permanent disability – Determination of compensation – Paraplegia – Injured became orthopedically disabled with post traumatic and weakness in his right hand – Injured, aged 10 years, suffered 70 per cent permanent disablement – Tribunal awarded ₹ 2,00,000/– – High Court affirmed Tribunal's award – Apex Court considering the age of victim, extent of disability and medical treatment taken so far and to be taken in future, enhanced the award from ₹ 2,00,000/– to ₹ 10,00,000/–.

मोटर यान अधिनियम, 1988 – धारा 163–ए

स्थाई निःशक्तता – प्रतिकर का निर्धारण – पैरापलोजिया – चोट लगने के बाद आहत आर्थोपेडिक रूप से अक्षम हो गया और उसके दाहिने हाथ में कमजोरी हो गई – 10 वर्षीय आहत को 70 प्रतिशत स्थाई निःशक्तता कारित हो गई – अधिकरण द्वारा ₹ 2,00,000/– अधिनिर्णत किए गए – उच्च न्यायालय ने अधिकरण के अधिनिर्णय की पुष्टि की – उच्चतम न्यायालय ने आहत की आयु, निःशक्तता के स्तर और अब तक

के एवं भविष्य में लगने वाले चिकित्सीय उपचार को दृष्टिगत रखते हुए अधिनिर्णय ₹ 2,00,000/– से ₹ 10,00,000/– बढ़ा दिया।

Rupa Roy v. New India Assurance Co. Ltd. and anr.

Judgment dated 29.07.2019 passed by the Supreme Court of India in Civil Appeal No. 5932 of 1993, reported in 2019 ACJ 2382

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***54. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138**

Demand notice – Validity – What amount should be mentioned in demand notice issued u/s 138? Held, demand notice should only be for cheque amount and not for any amount more than the cheque amount.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

मांग सूचनापत्र – वैधता – धारा 138 के अधीन जारी मांग सूचनापत्र में किस राशि का उल्लेख होना चाहिए? अभिनिर्धारित, मांग सूचनापत्र केवल चेक राशि के लिए जारी होना चाहिए न कि चेक राशि से अधिक की किसी राशि के लिए।

Vijay Gopala Lohar v. Pandurang Ramchandra Ghorpade and anr.

Judgment dated 05.04.2019 passed by the Supreme Court in Criminal Appeal No. 607 of 2019, reported in AIR 2019 SC 3272

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55. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 143–A(5) (as inserted by Amendment Act 20 of 2018)

Interim compensation – Provisions of Section 143–A are prospective in operation and can be invoked only in cases where offenceu/s 138 was committed after its introduction.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138, 143–क(5) (2018 के 20वें संशोधन अधिनियम, द्वारा यथा अन्तःस्थापित) –

अंतरिम क्षतिपूर्ति – धारा 143–क के प्रावधान प्रभाव में भविष्यलक्षी है और वहीं आलम्ब लिया जा सकता है, जहाँ अन्तःस्थापन के पश्चात् धारा 138 के अंतर्गत अपराध कारित किया गया था।

G.J. Raja v. Tejraj Surana

Judgment dated 30.07.2019 passed by the Supreme Court in Criminal Appeal No. 1160 of 2019, reported in AIR 2019 SC 3817

Relevant extracts from the Judgment:

In our view, the applicability of Section 143–A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143–A, in order to force an accused to pay such interim compensation.

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56. PROPERTY LAW

EVIDENCE ACT, 1872 – Sections 35, 81 and 114 Ill. (e)

LIMITATION ACT, 1963 – Article 65

Adverse Possession:

(i) Plaintiff, can claim title based on adverse possession – Law laid down by three–Judge Bench in *Ravinder Kaur Grewal, (2019) 8 SCC 729,* summarised and followed – Further held, dispossession of plaintiff seeking to establish acquisition of title based on adverse possession, subsequent to filing of suit therefore, has no bearing – In the present case, as appellant–plaintiff had been to establish acquisition of title over property in question by adverse possession, decree of trial court decreeing such title, restored.

(ii) Revenue Records & Presumption of truth attached to revenue records – However, such presumption is rebuttable & Presumption as to possession of person shown as owner in revenue records, though such person is not actually the owner.

सम्पत्ति विधिः

साक्ष्य अधिनियम, 1872 – धाराएं 35, 81 एवं 114 दृष्टांत (ङ)

परिसीमा अधिनियम, 1963 – अनुच्छेद 65

प्रतिकूल कब्जाः

(i) वादी, प्रतिकूल आधिपत्य के आधार पर स्वत्व का दावा कर सकता है - *रविन्द्र कौर ग्रेवाल, (2019) 8 एससीसी 729,* में तीन न्यायमूर्ति की खण्डपीठ द्वारा प्रतिपादित विधि, संक्षिप्तकृत एवं अनुसरित – अग्रेत्तर धारित, प्रतिकूल आधिपत्य के आधार पर स्वत्व का अर्जन स्थापन चाहने वाले वादी का वाद संस्थित किए जाने के पश्चात् बेदखल किए जाने का, कोई संबंध नहीं है – प्रस्तुत प्रकरण में प्रतिकूल आधिपत्य द्वारा प्रश्नगत सम्पत्ति पर स्वत्व का अर्जन अपीलार्थी/ वादी द्वारा साबित किया गया था, विचारण न्यायालय की ऐसे स्वत्व को आज्ञप्त करने वाली आज्ञप्ति पुर्नस्थापित की गई।

(ii) राजस्व अभिलेख – राजस्व अभिलेखों के लिये संलग्न स्वत्व की उपधारणा – यद्यपि, ऐसी उपधारणा खण्डनीय है – राजस्व अभिलेख में स्वामी के रूप में दर्शित व्यक्ति के आधिपत्य की उपधारणा, तथापि ऐसा व्यक्ति वास्तविक स्वामी नहीं है।

Krishnamurthy S. Setlur (Dead) by Legal Representatives v. O.V. Narasimha Setty (Dead) by Legal Representatives

Judgment dated 26.09.2019, passed by the Supreme Court in Civil Appeal No. 6111 of 2009, reported in (2019) 9 SCC 488

Relevant extracts from the judgment:

In a reference made to a larger Bench of this Court in this case as well as in other connected matters in ***Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729,*** the larger Bench had held that the plea of adverse possession can be used both as an offence and as a defence i.e. both as sword and as a shield. Relevant portion of the judgment reads as follows:

> "We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title onextinguishment of the owner's title, a person cannot beremediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.
>
> When we consider the law of adverse possession as has developed *vis–a–vis* to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences,

hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

... We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff."

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57. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 5 (J) (ii) and 6

(i) Age of prosecutrix; determination of – Date of birth in certificate issued after 15 months of birth – Same age was recorded in School Admission Register which was proved by Head Master – Age described therein held to be reliable.

(ii) Birth certificate – Proof – Challenged on the basis of absence of examination of Registrar – Public document – Admitted without formal proof – Absence of objection at the time of admissibility – Precluded from objecting about the probative value later.

(iii) Delay in FIR – Delay of six months – Prosecutrix did not tell about pregnancy – Mortification, apprehension of informing and fear of reprisal – Sufficient explanation of delay – Not fatal.

(iv) Presumption of culpable mental state – Must be rebutted beyond reasonable doubt.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 5 (ञ)(ii) एवं 6

(i) अभियोक्त्री की आयु का निर्धारण – जन्म के 15 माह पश्चात् जारी प्रमाण पत्र में जन्मतिथि – स्कूल प्रवेश पंजियों में भी यही आयु अभिलिखित की गई, जिसे प्रधान अध्यापक द्वारा साबित किया गया – उसमें उल्लेखित आयु को विश्वसनीय अभिनिर्धारित किया गया।

(ii) जन्म प्रमाण पत्र – सबूत – रजिस्ट्रार के परीक्षण के अभाव के आधार पर चुनौती दी गई – लोक दस्तावेज – औपचारिक प्रमाण के बिना ग्राह्य किया गया – ग्राह्यता के समय आपत्ति नहीं की गई – पश्चातवर्ती स्तर पर साक्ष्यिक मूल्य के आधार पर आपत्ति लेने से बाधित है।

(iii) प्रथम सूचना रिपोर्ट में विलंब – छः माह का विलंब – अभियोक्त्री ने गर्भावस्था के बारे में नहीं बताया – बताने पर मानहानि की आषंका और प्रतिहिंसा का भय – विलंब का पर्याप्त स्पष्टीकरण – घातक नहीं।

(iv) दोषी मानसिक स्थिति की उपधारणा – युक्तियुक्त संदेह से परे खण्डित की जानी चाहिए।

Lakhi Ram Takbi v. State of Sikkim

Judgment dated 28.03.2019 passed by the High Court of Sikkim in Criminal Appeal No.15 of 2017, reported in 2019 CriLJ 2667

Relevant extracts from the judgment:

Now to address the first doubt raised by learned Counsel for the Appellant, that Exhibit 2, the Birth Certificate prepared by the Registrar of Births and Deaths, Health and Family Welfare Department, Government of Sikkim was prepared *ante litem motam* and was therefore suspicious. On perusing Exhibit 2 it is revealed that it is the original Birth Certificate issued in the name of the victim by the Registrar, Births and Deaths, Health and Family Welfare Department, Government of Sikkim where the victim's date of birth is entered as 21.12.1996. The date of registration has been recorded as 24.03.1998. It is undoubtedly prepared almost fifteen months after the birth of the victim. Would this fact by itself make the document unreliable? According to the Black's Law Dictionary, *"ante litem motam"* means "before the law suit started''. The principle would imply the meaning "before an action has been raised" or "before a legal dispute arose," at a time when the declarant had no motive to lie. The principle on which this restriction is based is succinctly stated in Halsbury's Laws of England, 3rd Edition and Volume 15 at page 308 in these words;

> "To obviate bias the declarations are required to have been made *ante litem motam* which means not merely before the commencement of legal proceedings but before even the existence of any actual controversy concerning the subject–matter of the declarations."
>
> While discussing this principle, the Hon'ble Supreme Court in ***Murugan alias Settu v. State of Tamil Nadu, AIR 1988 SC 1796*** held as follows;
>
> "23. In ***Mohd. Ikram Hussain v. State of U.P., AIR 1964 SC 1625*** this Court had an occasion to examine a similar issue and held as under:
>
> > "16. In the present case Kaniz Fatima was stated to be under the age of 18. There were two certified copies from school registers which showed that on 20–06–1960 she was under 17 years of age. There [was] also the affidavit of the father stating the date of her birth and the statement of Kaniz Fatima to the police with regard to her own age. These amounted to evidence under the Evidence Act and the entries in the school

registers were made *ante litem motam*. As against this the learned Judges apparently held that Kaniz Fatima was over 18 years of age. They relied upon what was said to have been mentioned in a report of the doctor who examined Kaniz Fatima, …. The High Court thus reached the conclusion about the majority without any evidence before it in support of it and in the face of direct evidence against it."

24. The documents made *ante litem motam* can be relied upon safely, when such documents are admissible under Section 35 of the Evidence Act, 1872. (Vide ***Umesh Chandra v. State of Rajasthan, (1982) 2 SCC 202 and State of Bihar v. Radha Krishna Singh, AIR 1983 SC 684***)

25. This Court in ***Madan Mohan Singh v. Rajni Kant, AIR 2010 SC 2933*** considered a large number of judgments including ***Brij Mohan Singh v. Priya Brat Narain Sinha and others, AIR 1965 SC 282, Birad Mal Singhvi v. Anand Purohit, 1988 AIR 1796, Updesh Kumar v. Prithvi Singh, AIR 2001 SC 703, State of Punjab v. Mohinder Singh, AIR 2005 SC 1868, Vishnu v. State of Maharashtra, AIR 2006 SC 508 and Satpal Singh v. State of Haryana, (2010) 8 SCC 714*** and came to the conclusion that while considering such an issue and documents admissible under Section 35 of the Evidence Act, the court has a right to examine the probative value of the contents of the document. The authenticity of entries may also depend on whose information such entry stood recorded and what was his source of information, meaning thereby, that such document may also require corroboration in some cases.

The *ratio* (supra) establishes two points (i) that documents made *ante litem motam* can be safely relied upon when such documents are admissible under Section 35 of the Indian Evidence Act, 1872 (for short "Evidence Act"), and (ii) that the Court has the right to examine the probative value of a document admissible even under Section 35 of the same Act if it so requires. Exhibit 2 was prepared in 1998 while the FIR came to be lodged in 2014, thus it cannot be said that Exhibit 2 was prepared with a prior motive to distort the truth, consideration being taken of the age of the document and the date when the FIR was filed.

The next contention flagged by learned Counsel for the Appellant was that the contents and signature on Exhibit 2 the Birth Certificate remained unproved in the absence of examination of witnesses by the prosecution. While addressing this issue it would be pertinent to recapitulate the provisions of Sections 35 and Section 74 of the Evidence Act which are furnished here in below for easy reference;

> "*35. Relevancy of entry in public [record or an electronic record] made in performance of duty.* – An entry in any public or other official book, register or [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or [record or an electronic record] is kept, is itself a relevant fact."
>
> "*74. Public documents.*–The following documents are public documents:–
>
> (1) Documents forming the acts, or records of the acts –
>
> (i) of the sovereign authority,
>
> (ii) of official bodies and tribunals, and
>
> (iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;
>
> (2) Public records kept [in any State] of private documents."
>
> The seizure of the Birth Certificate Exhibit 2 has been established by P.W.2. Exhibit 2 fulfils the requirements of both Section 35 and Section 74 of the Evidence Act. No doubts were raised about the authenticity of Exhibit 2 by way of cross–examination of witnesses before the learned trial Court. Therefore, can this question be brought up before the Appellate Court. In ***Murugan alias Settu*** (supra) the Hon'ble Supreme Court further held as follows:
>
> > "26. In the instant case, in the birth certificate issued by the Municipality, the birth was shown to be as on 30–3–1984; registration was made on 5–4–1984; registration number has also been shown; and names of the parents and their address have correctly been mentioned. Thus, there is no reason to doubt the veracity of the said certificate. More so, the school certificate

has been issued by the Headmaster on the basis of the entry made in the school register which corroborates the contents of the certificate of birth issued by the Municipality. Both these entries in the school register as well as in the Municipality came much before the criminal prosecution started and those entries stand fully supported and corroborated by the evidence of Parimala (PW15), the mother of the prosecutrix. She had been cross–examined at length but nothing could be elicited to doubt her testimony. The defence put a suggestion to her that she was talking about the age of her younger daughter and not of Shankari (PW 4), which she flatly denied. Her deposition remained unshaken and is fully reliable."

In the present appeal, as already pointed out, no objection was raised when the original Birth Certificate Exhibit 2 was admitted in evidence nor any issue raised on its probative value and objection to the document is being heard in the Appellate Court for the first time. Exhibit 2 for its part, a public document is admissible in evidence and in the absence of objection it is assumed that the Appellant has accepted its probative value.

x x x

Besides, Section 30 of the POCSO Act, 2012 provides for presumption of culpable mental state and reads as follows:

"*30. Presumption of culpable mental state.–*

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."

It is evident from the provision delineated that the absence of culpable mental state has to be established beyond a reasonable doubt. It is also relevant to point out that in the reverse burden of proof as postulated in Section 30 (supra),

it is not preponderance of probability but "beyond reasonable doubt," thereby distinguishing it from rebuttable presumption such as required under Section 304B of the IPC, 1860, which is to the extent of existence of a preponderance of probability. In ***Hiten Dalal P. Dalal v. Bratindranath Banerjee, AIR 2001 SC 3897*** the Hon'ble Supreme Court while dealing with an appeal under Section 138 of the Negotiable Instruments Act, 1881 (for short "N.I. Act, 1881) and considering the words "shall presume" as appears in Sections 138 and 139 of the N.I. Act, 1881 held as follows:

> "22. Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in ***State of Madras v. A. Vaidvanatha Iyer, 1958 CriLJ 232,*** it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused"
>
> (ibid). Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs.
>
> Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non–existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exists, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. .....

24. ..... In the case of a discretionary presumption the presumption if drawn may be rebutted by an explanation which "might

reasonably be true and which is consistent with the innocence" of the accused. On the other hand in the case of a mandatory presumption "the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under S. 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted. ..."

The ratio clears the air on the burden resting on the accused and clarifies that where the statute so demands no discretion rests with the Court, save to draw the statutory conclusion, while at the same time allowing the accused to rebut the presumption, which under the POCSO Act, 2012 demands it to be beyond a reasonable doubt.

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58. SPECIFIC RELIEF ACT, 1963 – Sections 10, 16 (c) and 20
CONTRACT AND SPECIFIC RELIEF:

(i) Readiness and willingness of plaintiff buyer to perform his part of agreement for sale of immovable property – Power–of–attorney holder when may depose on behalf of plaintiff buyer – Subsequent power–of–attorney holder, held, incompetent to depose on behalf of buyer in respect of acts or matters which pertain to period prior to conferment of power–of–attorney.

(ii) Suit for specific performance of agreement for sale, where agreement for sale has been cancelled by vendor – Need to seek relief of declaration of such cancellation as being bad in law, in addition to seeking relief of specific performance of such agreement.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 10, 16 (ग) एवं 20

संविदा एवं विनिर्दिष्ट अनुतोषः

(i) अचल सम्पति के विक्रय की संविदा के अपने भाग के पालन का वादी क्रेता का तैयार एवं रजामंद होना – वादी क्रेता की और से मुख्तारनामा धारक कब

अभिसाक्ष्य कर सकता है – पश्चातवर्ती मुख्तारनामा धारक, धारित, मुख्तारनामा के निष्पादन के पूर्व अवधि से संबंधित संव्यवहार या कृत्य के संबंध में क्रेता की ओर से अभिसाक्ष्य के लिये असमर्थ हैं।

(ii) विक्रय के लिये अनुबंध के विनिर्दिष्ट पालन के लिये वाद, जहाँ विक्रेता द्वारा विक्रय के लिये अनुबंध को निरस्त कर दिया गया है – ऐसे अनुबंध के विनिर्दिष्ट अनुपालन का अनुतोष चाहने के अतिरिक्त, ऐसे निरस्तगी को विधि में बुरा घोषित कराने की सहायता आवश्यक है।

Mohinder Kaur v. Sant Paul Singh

Judgment dated 01.10.2019 passed by the Supreme Court in Civil Appeal No. 2869 of 2010, reported in (2019) 9 SCC 358

Relevant extracts from the judgment:

In ***Janki Vashdeo Bhojwani and another v. Indusind Bank Ltd. and others, (2005) 2 SCC 217,*** it was held that a power–of–attorney holder, who has acted in pursuance of the said power, may depose on behalf of the principal in respect of such acts but cannot depose for the principal for the acts done by the principal and not by power–of–attorney holder. Likewise, the power–of–attorney holder cannot depose for the principal in respect of matters of which the principal alone can have personal knowledge and in respect of which the principal is entitled to be cross–examined. In our opinion, the failure of the respondent to appear in the witness box can well be considered to raise an adverse presumption against him as further observed therein as follows:

> "15. Apart from what has been stated, this Court in ***Vidhyadhar v. Manikrao, (1999) 3 SCC 573*** observed at SCC pp. 583–84, para 17 that:
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> > "17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross–examined by the other side, a presumption would arise that the case set up by him is not correct. ..."

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59. SPECIFIC RELIEF ACT, 1963 – Sections 16 and 20

(i) Readiness and willingness – Delayed filing of suit and price of property – Consideration thereof – Filing a suit for specific performance with some delay but within the period of limitation does not mean that the plaintiff was not ready and willing to perform.

(ii) The price of the property may differ from the real value of the property based on the negotiations by the parties to the sale agreement.

विर्निदिष्ट अनुतोष अधिनियम, 1963 – धाराएं 16 एवं 20

(i) तत्पर एवं इच्छुक होना – वाद का विलंब से दायर किया जाना एवं संपत्ति का मूल्य– विचारणीय पद–विनिर्दिष्ट अनुपालन का वाद कुछ देरी से किंतु परिसीमा की कालावधि के भीतर दायर करने का अर्थ यह नहीं है कि वादी पालन हेतु तत्पर एवं इच्छुक नहीं था।

(ii) संपत्ति का मूल्य, पक्षकारों के द्वारा विक्रय अनुबंध पर परिचर्चा के आधार पर, संपत्ति के वास्तविक मूल्य से भिन्न हो सकती है।

R. Lakshmikanthan v. Devaraji

Judgment dated 10.07.2019 passed by the Supreme Court in Civil Appeal No. 2420 of 2018, reported in (2019) 8 SCC 62

Relevant extracts from the judgment:

The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18.12.2002 and 19.12.2002 had not been sent to the defendant. The High Court also erred in holding that despite having the necessary funds, the plaintiff could not be said to be ready and willing. In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff – See ***Mademsetty Satyanarayana v. G. Yelloji Rao and others, AIR 1965 SC 1405*** (paragraph 7) which reads as under:

> "(7) Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a Court's discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems – English and Indian– *qua* the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay – the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises."

The High Court also went into error in stating that the value of the property was ₹ 10 lakhs at the time of the sale agreement. PW–1 in his cross examination admitted that it was ₹ 10 lakhs on the date when PW1 was cross–examined. The value of the property on the date of the sale agreement was only ₹ 6 lakhs, and it was open for the parties to negotiate the said price upwards or downwards,

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which was what the parties did in the facts of the present case. Nothing can, therefore, be derived from the erroneous assumption that a valuable property had been sold at a throwaway price.

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60. SPECIFIC RELIEF ACT, 1963 – Sections 16 (c) and 28
CONTRACT AND SPECIFIC RELIEF:
Specific performance of agreement – Grant of – Readiness and willingness – Principles summarised – Entirety of pleadings and evidence brought on record along with entire attending circumstances of each case, to be considered to determine readiness and willingness – Depositing balance consideration within time fixed by court, or, failure to deposit within time and seeking extension – Relevance of in assessing readiness and willingness – Modalities to be followed for seeking extension of time, explained.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 16 (ग) एवं 28

संविदा एवं विनिर्दिष्ट अनुतोषः

अनुबंध का विनिर्दिष्ट अनुपालन – का प्रदान किया जाना – तत्पर एवं इच्छुक – सिंद्धात संक्षिप्तिकृत – तत्पर एवं इच्छुक अवधारित करने के लिये प्रत्येक मामले के संपूर्ण अभिवचनों और अभिलेख पर लाई गई साक्ष्य के साथ संपूर्ण उपस्थित परिस्थितियों पर विचार किया जाये – न्यायालय द्वारा नियत समय में शेष प्रतिफल जमा करने, या समय में जमा करने में असफल रहने और चाहे गए विस्तार की – तत्परता एवं इच्छुकता के प्राकल्लन में सुसंगता – समय के विस्तार चाहने के लिये अनुसरित किये जाने वाली रूपरेखा, स्पष्टीकृत।

Ravi Setia v. Madan Lal and ors.

Judgment dated 04.10.2019 passed by the Supreme Court in Civil Appeal No. 2837 of 2011, reported in (2019) 9 SCC 381

Relevant extracts from the judgment:

There can be no straitjacket formula with regard to readiness and willingness. It will have to be construed in the facts and circumstances of each case in the light of all attending facts and circumstances. …

The grant of relief for specific performance under Section 16 (1)(c) of the Act is a discretionary and equitable relief. Under Section 16 (1)(c), the plaintiff has to demonstrate readiness and willingness throughout to perform his obligations under the contract. The plea that the amount would lie in the bank without interest is unfounded and contrary to normal banking practice. To our mind, this is sufficient evidence of the incapacity or lack of readiness and willingness on part of the plaintiff to perform his obligation. Undoubtedly, the time for deposit could be extended under Sections 28 of the Act. But the mere extension of time for deposit does not absolve the plaintiff of his obligation to demonstrate readiness and willingness coupled with special circumstances beyond his control to seek such extension.

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PART - II A

बलात्संग एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम के अंतर्गत अपराध के मामलों से संबंधित दिशा–निर्देश

महिलाओं के विरुद्ध बलात्कार एवं अन्य लैंगिक अपराध तथा पॉक्सो अधिनियम के अधीन दण्डनीय अपराध के पीड़ितों की निजता एवं अन्य अधिकारों का संरक्षण करने के उद्देश्य से माननीय सर्वोच्च न्यायालय द्वारा ***निपुन सक्सेना व अन्य वि. भारत संघ व अन्य, (2019) 2 एससीसी 703*** में प्रतिपादित दिशानिर्देश निम्नानुसार हैं:–

1. कोई भी व्यक्ति प्रिंट, इलेक्ट्रॉनिक, सोशल मीडिया आदि में, पीड़िता का नाम प्रकाशित नहीं कर सकता है। यहां तक कि किसी दूरस्थ तरीके से भी किन्हीं ऐसे तथ्यों का खुलासा नहीं कर सकता है जिससे पीड़िता की पहचान की जा सके अथवा जिससे उसकी पहचान आम जनता को ज्ञात हो सके।
2. ऐसे मामलों में जहां पीड़िता की मृत्यु हो चुकी है अथवा वह विकृत चित्त है वहां उसके नाम अथवा उसकी पहचान का खुलासा उसके परिजनों के प्राधिकार के अधीन भी नहीं किया जाना चाहिए, जब तक कि उसकी पहचान का खुलासा करने की औचित्यपूर्ण परिस्थितियां विद्यमान हों। ऐसा निष्कर्ष सक्षम अधिकारी द्वारा तय किया जाएगा, जो वर्तमान में सत्र न्यायाधीश हैं।
3. भारतीय दण्ड संहिता की धारा 376, 376ए, 376एबी, 376बी, 376सी, 376डी, 376डीए, 376डीबी अथवा 376ई एवं पॉक्सो अधिनियम के अधीन दण्डनीय अपराधों से संबंधित प्रथम सूचना रिपोर्ट सार्वजनिक पटल पर उपलब्ध नहीं कराई जाएगी।
4. यदि कोई पीड़ित धारा 372 दण्ड प्रक्रिया संहिता के अंतर्गत अपील संस्थित करता है, तो पीड़ित के लिए यह आवश्यक नहीं होगा कि वह अपनी पहचान का खुलासा करे और ऐसी अपील की विधिनुसार सुनवाई की जाएगी।
5. पुलिस अधिकारियों को यथासंभव, ऐसे समस्त दस्तावेजों को जिनमें पीड़ित के नाम का खुलासा किया गया हो और जिनकी सार्वजनिक पटल पर जांच होना संभाव्य हो, एक सीलबंद कवर में रखना चाहिए और इन दस्तावेजों को उनके समान दस्तावेजों द्वारा प्रतिस्थापित करना चाहिए जिनमें पीड़ित का नाम सभी अभिलेखों से हटा दिया गया हो।
6. ऐसे सभी प्राधिकारी, जिन्हें अनुसंधान एजेंसी अथवा न्यायालय द्वारा पीड़ित का नाम प्रकट किया गया हो, वे भी पीड़ित के नाम और पहचान को गुप्त रखने के लिए कर्तव्यबद्ध हैं तथा अपनी रिपोर्ट जो कि अनुसंधान एजेंसी अथवा न्यायालय को एक सीलबंद कवर में प्रेषित की जाएगी, के अतिरिक्त किसी भी तरीके से खुलासा नहीं करें।

7. भारतीय दण्ड संहिता की धारा 228ए(2)(सी) के अंतर्गत किसी मृत अथवा विकृत चित्त पीड़ित के निकट संबंधी द्वारा उसकी पहचान के प्रकटीकरण को अधिकृत करने के लिए आवेदन मात्र सत्र न्यायाधीश के समक्ष प्रस्तुत किया जाएगा तब तक कि संबंधित सरकार भारतीय दण्ड संहिता की धारा 228ए(1)(सी) के अधीन हमारे निर्देशों के अनुसार ऐसे सामाजिक कल्याण संस्थानों या संगठनों की पहचान एक मापदंड निर्धारित न कर दे।
8. पॉक्सो अधिनियम के अधीन अवयस्क पीड़ितों के मामले में, उनकी पहचान का खुलासा मात्र विशेष न्यायालय द्वारा ही किया जा सकता है, यदि ऐसा खुलासा बालक के हित में हो।
9. सभी राज्यों एवं केंद्रशासित प्रदेशों से अनुरोध है कि वे आज से एक वर्ष के भीतर प्रत्येक जिले में कम से कम एक ''वन स्टॉप सेंटर'' स्थापित करें।

कलकत्ता उच्च न्यायालय द्वारा ***बिजॉय वि. पश्चिम बंगाल राज्य, 2017 सीआरएलजे 3893*** में प्रतिपादित दिशानिर्देश निम्नानुसार हैं:–

1. अधिनियम के अधीन अपराध के घटित होने या घटित होने की संभावना की शिकायत प्राप्त करने वाले पुलिस अधिकारी या विशेष किशोर पुलिस इकाई तत्काल उसे अधिनियम की धारा 19 के संदर्भ में पंजीबद्ध करे और बालक अथवा उसके माता–पिता को निःशुल्क एक प्रति उपलब्ध कराएगा। साथ ही बालक या उसके माता–पिता या किसी भी व्यक्ति को, जिसमें बालक को भरोसा और विश्वास है, विधिक सहायता और प्रतिनिधित्व के अपने अधिकार की जानकारी देगा। यदि बालक अपने विधिक प्रतिनिधित्व के लिए व्यवस्था करने में असमर्थ है, तो अधिनियम की धारा 40 के अधीन आवश्यक विधिक सहायता या प्रतिनिधित्व के लिए जिला विधिक सेवा प्राधिकरण को बालक को रेफर करेगा। पॉक्सो अधिनियम की धारा 4, 6, 7, 10 और 12 के अंतर्गत दण्डनीय अपराधों के संबंध में प्रथम सूचना रिपोर्ट पंजीबद्ध करने में विफलता भारतीय दण्ड संहिता की धारा 166–बी के अधीन आपराधिक दायित्व को आकर्षित करेगी क्योंकि उपरोक्त अपराध उक्त धारा में उल्लेखित दण्ड संहिता के अपराधों के ही समान हैं।
2. एफ.आई.आर. दर्ज करने पर पुलिस अधिकारी तत्काल आपातकालीन चिकित्सा सहायता के लिए, जब भी आवश्यक हो, बालक को प्रेषित करेंगे, एवं/या अधिनियम की धारा 27 के अधीन चिकित्सा जांच के लिए और अधिनियम की धारा 25 के अधीन मजिस्ट्रेट के समक्ष पीड़ित के बयान लेखबद्ध कराना सुनिश्चित करेंगे। यदि पुलिस अधिकारी या विशेष किशोर पुलिस इकाई की राय है कि बालक किशोर न्याय (बालकों की देखभाल और संरक्षण) अधिनियम, 2000 की धारा 2(घ) जैसा कि किशोर न्याय (बालकों की देखभाल और संरक्षण) अधिनियम, 2015 द्वारा उपयुक्त रूप से संशोधित किया गया है, में परिभाषित ''देखरेख एवं संरक्षण की आवश्यकता वाले बच्चे'' की परिधि में आता है, तो उक्त पुलिस अधिकारी या विशेष किशोर पुलिस इकाई बालक को क्षेत्रीय अधिकारिता वाली बाल कल्याण समिति को विधिनुसार बालक की देखभाल, सुरक्षा, उपचार और पुनर्वास प्रदान करने के लिए अग्रेषित करेगी।

3. जब भी विशेष न्यायालय को एफआईआर के पंजीबद्ध होने की सूचना दी जाती है, तो विशेष न्यायालय उपरोक्त बिन्दु (1) और (2) में बताई गई विधि की पूर्वोक्त आवश्यकताओं का अनुपालन सुनिश्चित करने के लिए अनुसंधान एजेंसी से उचित पूछताछ करेगी एवं यदि आवश्यक समझे, तो विधिनुसार उनका अनुपालन सुनिश्चित कराने के लिए आवश्यक आदेश पारित करेगी।

4. थाने के प्रभारी अधिकारी और विशेष किशोर पुलिस इकाई सहित मामले के अनुसंधान अधिकारी यह सुनिश्चित करेंगे कि पीड़ित की पहचान का खुलासा अनुसंधान के दौरान नहीं किया गया है। विशेषकर अधिनियम की धारा 24 के तहत पीड़ित बयान लेखबद्ध करते समय (जो जहाँ तक व्यवहारिक हो, पीड़ित या उसके माता–पिता या संरक्षक के निवास स्थान पर या जैसा कि मामला हो, उनकी इच्छा का स्थान हो सकता है) अधिनियम की धारा 25 के तहत मजिस्ट्रेट के समक्ष उसकी परीक्षा के समय, धारा 19(5) के तहत आपातकालीन चिकित्सा सहायता के लिए बालक को अग्रेषित करते समय और/या अधिनियम की धारा 27 के तहत चिकित्सीय परीक्षण के समय।

5. अनुसंधान एजेंसी किसी भी मीडिया में पीड़ित की पहचान का खुलासा नहीं करेगी और यह सुनिश्चित करेगी कि न्याय के हित में विशेष न्यायालय की प्रत्यक्ष अनुमति के अतिरिक्त किसी भी तरह से ऐसी पहचान का खुलासा नहीं किया जाएगा। विधि की पूर्वोक्त आवश्यकता का उल्लंघन करने वाले पुलिस अधिकारी सहित कोई भी व्यक्ति उक्त अधिनियम की धारा 23(4) के अनुसार अभियोजित किया जाएगा।

6. मामले का विचारण अधिनियम की धारा 37 के संदर्भ में बंद कमरे में किया जाएगा और पीड़ित की साक्ष्य को अनावश्यक विलम्ब के बिना लेख किया जाएगा एवं इस हेतु अभियुक्त से पीड़ित का सामना कराए बिना धारा 36 में विहित प्रक्रिया का पालन किया जाएगा। माता–पिता, अभिभावक या किसी अन्य व्यक्ति, जिसमें बालक का भरोसा और विश्वास है, की उपस्थिति में न्यायालय द्वारा बालक के अनुकूल माहौल में पीड़ित की साक्ष्य लेखबद्ध की जाएगी। इस दौरान बालक को बार–बार विराम दिया जाएगा। विशेष न्यायालय द्वारा किसी भी दोहराव, आक्रामक या उत्पीड़नकारी पूछताछ की अनुमति नहीं दी जाएगी, विशेष रूप से बालक के चरित्र हनन के लिए या इस तरह की परीक्षा के दौरान बालक की गरिमा को क्षीण कर सकती है। उपयुक्त मामलों में, विशेष न्यायालय बचाव पक्ष को न्यायालय में लिखित रूप से प्रतिपरीक्षण के दौरान घटना से संबंधित अपने प्रश्न प्रस्तुत करने के लिए आदेशित कर सकती है और बाद में न्यायालय द्वारा पीड़ित से ऐसे प्रश्न उसे समझ में आने वाली भाषा में सौम्य और गैर–आक्रामक तरीके से पूछे जाएंगे।

7. ऐसी स्थिति में, जहां पीड़ित विदेश में है अथवा दूरस्थ स्थान पर निवासरत है अथवा उपस्थित परिस्थितियों के कारण न्यायालय में व्यक्तिगत रूप से साक्ष्य देने के लिए उपस्थित होने में असमर्थ है, उसकी साक्ष्य वीडियो कॉन्फ्रेंस के माध्यम से लेखबद्ध की जा सकेगी।

8. पीड़िता की पहचान विशेष रूप से उसका नाम, माता–पिता, पता या कोई अन्य विवरण जो इस तरह की पहचान को प्रकट कर सकता है, विशेष न्यायालय द्वारा दिए गए निर्णय में प्रकट नहीं किया जाएगा, जब तक कि पहचान का ऐसा खुलासा बालक के हित में न हो।

9. विशेष न्यायालय एफआईआर के पंजीबद्ध होने पर अधिनियम के अधीन किसी भी अपराध के घटित होने की सूचना प्राप्त होने स्वयमेव अथवा पीड़ित के आवेदन पर राहत या पुनर्वास के लिए बालक की तात्कालिक आवश्यकताओं की जांच करती है और राज्य व अन्य प्रभावित पक्षों, जिसमें पीड़ित भी सम्मिलित है, को सुनवाई का एक अवसर देकर बालक के अंतरिम प्रतिकर और/या पुनर्वास के लिए उचित आदेश पारित करेगी। कार्यवाही के समापन पर, चाहे अभियुक्त को दोषी ठहराया गया है या नहीं, या ऐसे मामलों में जहां अभियुक्त का पता नहीं चला है या वह फरार हो गया था, विशेष न्यायालय की संतुष्टि है कि अपराध के कारण पीड़ित को नुकसान या क्षति कारित हुई है, पीड़ित के पक्ष में उचित प्रतिकर का आदेश देगा। प्रतिकर की मात्रा को पीड़ित को कारित नुकसान या क्षति और अन्य संबंधित कारकों को, जैसा कि पॉक्सो नियम, 2012 के नियम 7 (3) में निर्धारित किया गया है, ध्यान में रखते हुए तय किया जाएगा। इसे पीड़ित प्रतिकर निधि में निर्धारित न्यूनतम राशि तक प्रतिबंधित नहीं किया जाएगा। अंतरिम या अंतिम प्रतिकर का भुगतान या तो पीड़ित प्रतिकर कोष या दण्ड प्रक्रिया संहिता, 1973 की धारा 357ए या किसी अन्य विधि के अधीन स्थापित किसी अन्य विशेष योजना या निधि से किया जाएगा जो राज्य विधिक सेवा प्राधिकरण या जिला विधिक सेवा प्राधिकरण के माध्यम से, जिनके पास निधि हो, भुगतान किया जाएगा। यदि न्यायालय किसी मामले में अंतरिम या अंतिम प्रतिकर का आदेश नहीं करती है तो ऐसा न करने के अपने कारणों को लेखबद्ध करेगी। यदि ऐसे अंतरिम प्रतिकर का भुगतान होता है तो इसे अधिनियम की धारा 33(8) के संदर्भ में मामले के निराकरण से समय, अंतिम क्षतिपूर्ति, यदि कोई हो, से समायोजित किया जाएगा।

10. विशेष न्यायालय यह सुनिश्चित करेगी कि पॉक्सो अधिनियम के अधीन मामलों का विचारण अनावश्यक विलंबित न हो और अधिनियम की धारा 35 (2) के संदर्भ में अनुचित स्थगन स्वीकार किए बिना अपराध का संज्ञान लेने से एक वर्ष के भीतर विचारण को पूर्ण करने के लिए समस्त उपाय किया जाना सुनिश्चित करेगी।

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PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 14.12.2019 OF MINISTRY OF HOME AFFAIRS REGARDING THE DATE OF ENFORCEMENT OF THE ARMS (AMENDMENT) ACT, 2019

का. आ. 4462 (अ) – केन्द्रीय सरकार, आयुध (संशोधन) अधिनियम, 2019 (2019 का 48) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 14 दिसम्बर, 2019 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के उपबंध प्रवृत्त होंगे।

S. O. 4462(E) – In exercise of the powers conferred by sub–section (2) of section 1 of the Arms (Amendment) Act, 2019 (48 of 2019), the Central Government hereby appoints the 14th day of December, 2019 as the date on which the provisions of the said Act shall come into force.

[F.No. RT– 11026/42/2019–Arms]
S.C.L. Das, Jt. Secy.

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NOTIFICATION DATED 20.01.2020 OF GENERAL ADMINISTRATION DEPARTMENT REGARDING CRIMINAL LAW AMENDMENT ORDINANCE, 1944

क्र. एफ–22–15–2019–एक–10. – क्रिमिनल लॉ (संशोधन) अध्यादेश, 1944 की धारा 3 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य सरकार, आर्थिक अपराध प्रकोष्ठ द्वारा उनके आपराधिक मामलों में जप्त/लिप्त धन एवं अन्य संपत्ति जिसका कि राज्य सरकार विश्वास करती है कि ऐसे धन या अन्य संपत्ति को उक्त अध्यादेश की अनुसूची में वर्णित अपराध/अपराधों के द्वारा अर्जित किया गया है, की कुर्की की कार्यवाही के लिये सक्षम न्यायालय में आवेदन मय दस्तावेज के प्रस्तुत करने के लिये एतद् द्वारा आर्थिक अपराध प्रकोष्ठ, भोपाल में पदस्थ सहायक पुलिस महानिरीक्षक (प्रशासन) को पदेन अधिकारी अधिकृत करती है।

No. F–22–15–2019–I–10. – In exercise of the powers conferred by Section 3 of the Criminal Law Amendment Ordinance, 1944, the State Government, hereby, authorizes Assistant Inspector General of Police (Administration) posted at Economic Offence Wing, Bhopal ex–officio officer to submit application along

with documents before the competent court to take action for attachment of money or other property seized/involved in criminal cases of Economic Offence Wing, which the State Government believes that such money or other property has been earned/acquired by committing offence/offences mentioned in the Schedule of the said Ordinance.

IN THE NAME OF AND BY THE ORDER OF
THE GOVERNOR OF THE STATE OF MADHYA PRADESH
MADHAVI NAGENDRA, DY. Secy.

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"This is my prayer to thee My Lord–

Strike, strike at the root of penury in my heart,

Give me the strength lightly to bear my joys and sorrows,

Give me the strength to make my love fruitful in service,

Give me the strength never to disown the poor or bend my knees before insolent might,

Give me the strength to raise my mind high above daily trifles,

And give me the strength to surrender my strength to thy will with love."

– Gitanjali

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE ARMS (AMENDMENT) ACT, 2019
(No. 48 of 2019)

[13th December, 2019]

[The following Act of Parliament received the assent of the President on the 13th December, 2019 and is hereby published for general information.]

An Act further to amend the Arms Act, 1959.

Be it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. **Short title and commencement –** (1) This Act may be called the Arms (Amendment) Act, 2019.

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

2. **Amendment of Section 2 –** In the Arms Act, 1959 (hereinafter referred to as the principal Act), in section 2, after clause (e), the following clause shall be inserted, namely:—

   '(ea) "licence" means a licence issued in accordance with the provisions of this Act and rules made thereunder and includes a licence issued in the electronic form;'.

3. **Amendment of Section 3 –** In section 3 of the principal Act, in sub–section (2),—

   (i) for the words "three firearms", the words "two firearm" shall be substituted;

   (ii) for the proviso, the following provisos shall be inserted, namely:

   "Provided that a person who has in his possession more firearms than two at the commencement of the Arms (Amendment) Act, 2019, may retain with him any two of such firearms and shall deposit, within one year from such commencement, the remaining firearm with the officer in charge of the nearest police station or, subject to the conditions prescribed for the purposes of sub–section (1) of section 21, with a licensed dealer or, where such person is a member of the armed forces of the Union, in a unit armoury referred to in that sub–section after which it shall be delicensed within ninety days from the date of expiry of aforesaid one year:

   Provided further that while granting arms licence on inheritance or heirloom basis, the limit of two firearms shall not be exceeded.".

4. **Amendment of Section 5 –** In section 5 of the principal Act, in sub–section (1), in clause (a), for the word "manufacture,", the words "manufacture, obtain, procure," shall be substituted.

5. **Amendment of Section 6 –** In section 6 of the principal Act, after the words "convert an imitation firearm into a firearm", the words and figures "or convert from any category of firearms mentioned in the Arms Rules, 2016 into any other category of firearms" shall be inserted.

6. **Amendment of Section 8 –** In section 8 of the principal Act, in sub–section (1), for the word "firearm", the words "firearm or ammunition" shall be substituted.

7. **Amendment of Section 13 –** In section 13 of the principal Act, in sub–section (3), in clause (a), in sub–clause (ii), for the words and figures "point 22 bore rifle or an air rifle", the word "firearm" shall be substituted.

8. **Amendment of Section 15 –** In section 15 of the principal Act, in sub–section (1),—
   (a) for the words "period of three years", the words "period of five years" shall be substituted;
   (b) after the proviso, the following proviso shall be inserted, namely:—
   "Provided further that the licence granted under section 3 shall be subject to the conditions specified in sub–clauses (ii) and (iii) of clause (a) of sub–section (1) of section 9 and the licensee shall produce the licence along with the firearm or ammunition and connected document before the licensing authority after every five years from the date on which it is granted or renewed."

9. **Amendment of Section 25 –** In section 25 of the principal Act,—
   (i) in sub–section (1),—
      (a) in clause (a), for the word "manufactures,", the words "manufactures, obtains, procures," shall be substituted;
      (b) in clause (b), after the words "convert an imitation firearm into a firearm", the words and figures "or convert from any category of firearms mentioned in the Arms Rules, 2016 into any other category of firearms" shall be inserted;
      (c) in the long line, for the words "three years but which may extend to seven years", the words "seven years but which may extend to imprisonment for life" shall be substituted;
   (ii) in sub–section (1A),—
      (a) for the words "five years but which may extend to ten years", the words "seven years but which may extend to fourteen years" shall be substituted;
      (b) the following proviso shall be inserted, namely:—
      "Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than seven years.";

(iii) after sub–section (1A), the following sub–section shall be inserted, namely:—

"(1AB) Whoever, by using force, takes the firearm from the police or armed forces shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.";

(iv) in sub–section (1AA), for the words "seven years", the words "ten years" shall be substituted;

(v) in sub–section (1B),—

(a) in the long line, for the words "one year but which may extend to three years", the words "two years but which may extend to five years and shall also be liable to fine" shall be substituted;

(b) in the proviso, for the words "one year", the words "two years" shall be substituted;

(vi) after sub–section (5), the following sub–sections shall be inserted, namely:—

'(6) If any member of an organised crime syndicate or any person on its behalf has at any time has in his possession or carries any arms or ammunition in contravention of any provision of Chapter II shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

(7) Whoever on behalf of a member of an organised crime syndicate or a person on its behalf,—

(i) manufactures, obtains, procures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5; or

(ii) shortens the barrel of a firearm or converts an imitation firearm into a firearm or converts from any category of firearms mentioned in the Arms Rules, 2016 into any other category of firearms in contravention of section 6; or

(iii) brings into, or takes out of India, any arms or ammunition of any class or description in contravention of section 11, shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

Explanation.— For the purposes of sub–sections (6) and (7),—

(a) "organised crime" means any continuing unlawful activity by any person, singly or collectively, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or

intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person;

(b) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime

(8) Whoever involves in or aids in the illicit trafficking of firearms and ammunition in contravention of sections 3, 5, 6, 7 and 11 shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

Explanation.— For the purposes of this sub–section, "illicit trafficking" means the import, export, acquisition, sale, delivery, movement or transfer of firearms and ammunition into, from or within the territory of India, if the firearms and ammunition are not marked in accordance with the provisions of this Act or are being trafficked in contravention of the provisions of the provisions of this Act including smuggled firearms of foreign make or prohibited arms and prohibited ammunition.

(9) Whoever uses firearm in a rash or negligent manner or in celebratory gunfire so as to endanger human life or personal safety of others shall be punishable with an imprisonment for a term which may extend to two years, or with fine which may extend to rupees one lakh, or with both.

Explanation.— For the purposes of this sub–section, "celebratory gunfire" means the practice of using firearm in public gatherings, religious places, marriage parties or other functions to fire ammunition.'.

10. Amendment of Section 27 – In section 27 of the principal Act, in sub–section (3), for the words "shall be punishable with death", the words "shall be punishable with imprisonment for life, or death and shall also be liable to fine" shall be substituted.

11. Amendment of Section 44 – In section 44 of the principal Act, in sub–section (2), in clause (f),—

(a) for the words "firearm shall be stamped or otherwise shown thereon", the words "firearm or ammunition shall be stamped or otherwise shown thereon for the purposes of tracing" shall be substituted;

(b) the following Explanation shall be inserted, namely:—

'Explanation.— For the purposes of this clause, "tracing" means the systematic tracking of firearms and ammunition from manufacturer to purchaser for the purpose of detecting, investigating and analysing illicit manufacturing and illicit trafficking;'.

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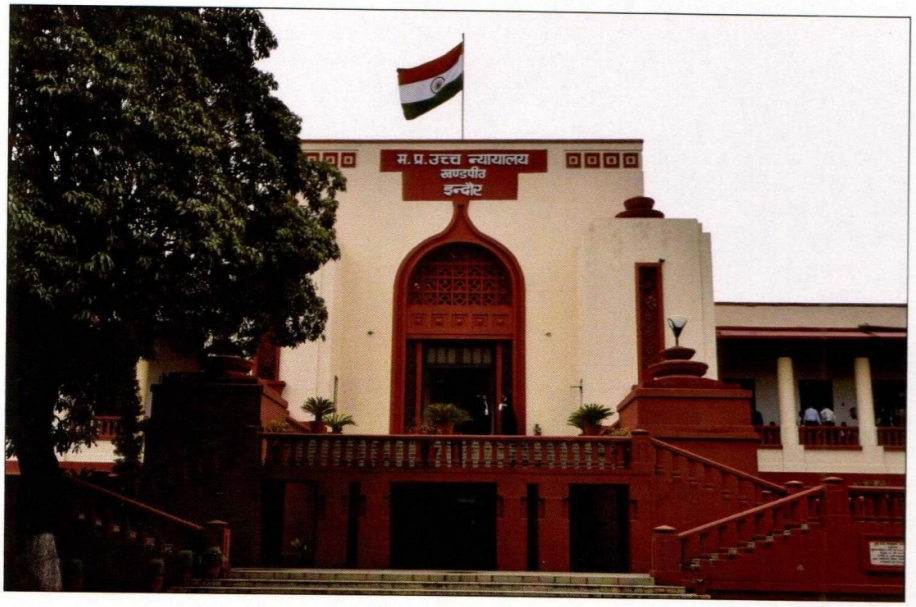

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