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Pursuit of Excellence

JOTI JOURNAL

(BI-MONTHLY)

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AUGUST 2024

AUGUST 2024

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

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(ii) Chain of custody – Narcotic substance – Effect of – Witness who prepared samples of *ganja*, not examined.

(iii) Sampling – Doubt – Property deposited in the Court was not having official seal – Glaring loopholes in the story of prosecution, give rise to suspicion – Evidence found to be unconvincing – Conviction set aside and accused persons were acquitted of the charges.

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धारा 8/20 – स्वापक पदार्थ – मात्रा। **173(ii)** **315**

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धाराएं 22 (ख) एवं 36 (क) – व्यतिक्रम जमानत – आवेदक से कथित रूप से जब्त हुई विनिषिद्ध पदार्थ की मात्रा वाणिज्यिक मात्रा से कम थी – धारा 36-क(4) के प्रावधान आकर्षित नहीं होते हैं इसलिए अभियोग पत्र 60 दिवस की अवधि में प्रस्तुत होना चाहिए था न कि 90 अथवा 180 दिवस की अवधि में – आदेश अपास्त किया गया एवं आवेदक को जमानत पर रिहा करने का आदेश दिया गया। **168** **304**

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धाराएं 3 एवं 4 – देखें किशोर न्याय (बालकों की देखरेख और संरक्षण) नियम, 2007 का नियम 12 एवं (स्कूल रजिस्टर में प्रविष्टियां) नियम, 1973 (म0प्र0) का नियम 3 एवं 4। **183 335**

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(ii) Decree of specific performance – Even if time for payment of balance consideration is not prescribed in the decree, plaintiff/purchaser is obliged to deposit the balance amount within a reasonable period which cannot be more than 3 months.

(iii) Agreement to sell executed on 24.11.1984 – Since continuous readiness and willingness of the decree-holder was found missing order of executing court upheld.

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(ii) विनिर्दिष्ट अनुपालन की आज्ञप्ति – बकाया प्रतिफल की अदायगी हेतु आज्ञप्ति में समय सीमा का उल्लेख न होने के उपरांत भी वादी/क्रेता का यह दायित्व है कि वह बकाया राशि युक्तियुक्त समय सीमा के भीतर जो कि तीन माह से अधिक अवधि की नहीं होगी, जमा करे ।

PART-III
(CIRCULARS/NOTIFICATIONS)

PART-IV
(IMPORTANT CENTRAL/STATE ACTS/AMENDMENTS)

EDITORIAL

Esteemed readers,

Warm greetings to everyone on the occasion of the 78th Independence Day!

It is pertinent to note that this year, the Hon'ble Supreme Court is also celebrating its jubilant and glorious 75 years of existence. In order to commemorate this magnificent journey, Hon'ble Supreme Court conducted a two day Conference on 31st August and 1st September, 2024 targetting the issues impacting the working of District Judiciary. Increasingly, it is acknowledged that the success of the Judicial System lies in how effectively the District Judiciary is able to function. This Conference witnessed a lot of brainstorming over pertinent issues and times to come are going to witness positive transformations. While several changes are being made to facilitate the functioning of the District Judiciary, it is incumbent that we, as members of the District Judiciary, also acknowledge the onerous duty bestowed upon us and strive to build a brighter and just future for our nation.

At this juncture, I would like to mention that recently in early July, 2024 Hon'ble Shri Justice Sanjeev Sachdeva, Judge, High Court of Madhya Pradesh has taken charge as Acting Chief Justice of High Court of Madhya Pradesh and Hon'ble Shri Justice Sheel Nagu has been appointed as the Chief Justice of High Court of Punjab and Haryana. We, welcome Hon'ble Shri Justice Sanjeev Sachdeva and also, wish Hon'ble Shri Justice Sheel Nagu, the best of tenure at the High Court of Punjab and Haryana and express our gratitude for his constant guidance and unflinching support. For this year's Independence Day celebration at the Academy, Hon'ble Acting Chief Justice Shri Sanjeev Sachdeva hoisted the National Flag in presence of the companion Hon'ble Judges of the High Court. Glimpses of the Independence Day event can be taken from the photograph section of this edition.

We also conducted *Samvad* – A Meet of the Juvenile Justice system in collaboration with the Juvenile Justice Committee, High Court of Madhya Pradesh, Madhya Pradesh State Legal Services Authority and UNICEF (M.P.) on 3rd & 4th August, 2024. This year's theme was focused on children with disabilities. As the participants comprised of people with disabilities, the entire two day Conference was conducted in sign language as well. This initiative stands as the first when sessions were also communicated simultaneously in sign language. I personally feel this is a major step that we took towards creating an inclusive society. I am also happy to apprise that Academy's infrastructure is now disabled-friendly with proper passages and washroom facilities.

Apart this, speaking of other training programmes conducted by the Academy, I would like to highlight the Transnational Crimes Workshop conducted by CEELI Institute, Prague, Federal Judicial Centre, Washington and National Judicial Academy, India hosted by the Academy on 10th & 11th August, 2024. This two day Conference was attended by Judges from across the nation and delegates from abroad. The entire schedule focused on enlightening the participating Judges on the crimes of transnational importance and also, promote andragogical style of teaching. This

conference was conducted on a new theme of interaction; the concept was that adults do not require college based training methods but more of interactive techniques must be utilized to promote sharing of issues, best practices and suggestions. It was a wonderful experience to host judges from across the nation and the foreign delegates.

Furthermore, Academy also conducted the training programmes for Legal Aid Defense Counsels and Assistant Legal Aid Defense Counsels from 1st - 3rd July, 2024 and 8th - 10th July, 2024, respectively. In addition, Academy conducted workshops for POCSO Court Judges, Family Court Judges, Principal Magistrates, Juvenile Justice Boards and a Refresher Course for District Judges who have completed 5 years in the service. Under the aegis of e-committee of Supreme Court, the Academy is also conducting a series of ECT programmes which commenced in July and is scheduled till March of next year. The target group for these workshops are Judges, advocates, court staff, clerks of advocates, litigants and others. Similarly, series of sessions under the programme of Special Workshop for Advocates are also being organized. Academy also conducted a Regional Workshop on 9th & 11th August, 2024 for Panel Lawyers of High Court Legal Services Committee practising at the High Court of Madhya Pradesh, Bench at Indore.

In this edition, we are publishing the Madhya Pradesh Electronic Processes (Issuance, Service and Execution) Rules, 2024 as notified on 13.08.2024. These rules are a wonderful example of how our court proceedings are keeping pace with the technological advancement. Adapting to the technology is a must and we must take initiatives to apply them in our court proceedings. Also, in OUR LEGENDS series, we are putting forth the life journey of Hon'ble Shri Justice J. S. Verma. After Justice M. Hidayatullah, His Lordship was the second Judge from our High Court to have become the Hon'ble Chief Justice of India. I hope readers will draw inspiration from his life journey.

Lastly, I would request our esteemed readers to please do send us your legal queries, articles and suggestions on Academy's e-mail id. With the advent of the New Criminal Laws, you must be getting confronted with complex legal issues. I look forward to hearing about these queries, as they will aid us in enriching our content on New Criminal Laws as well. I would like to conclude by quoting this Japanese saying:

> "A vision with no action is a dream, an action with no vision is a nightmare."

Meaning thereby, we need a creative vision to make a change in the world but vision alone is not enough; we also need execution to make that change real. Have a vision and work towards it, this will further help in effective utilization of time and help you to grow as an individual.

Best wishes

Krishnamurty Mishra
Director

GLIMPSES OF INDEPENDENCE DAY CELEBRATION

Hon'ble the Acting Chief Justice Shri Sanjeev Sachdeva hoisting the National Flag on 15.08.2024 at the Academy

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

"Samvad" **–** A Meet of the stakeholders of the Juvenile Justice System organized by the Juvenile Justice Committee, High Court of Madhya Pradesh, Madhya Pradesh State Legal Services Authority, Madhya Pradesh State Judicial Academy and UNICEF (M.P.) (3rd & 4th August, 2024)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Hon'ble the Acting Chief Justice Shri Sheel Nagu addressing the participants at the inaugural event of the Capacity Building Training Programme for the Chief and Deputy Legal Aid Defense Counsels (01.07.2024 to 03.07.2024)

Workshop on – Key issues relating to the POCSO Act with special reference to amendment relating to sexual offences, trial and enquiry in Children's Court (05.07.2024 & 06.07.2024)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Hon'ble the Acting Chief Justice Shri Sanjeev Sachdeva addressing the participants at the inaugural event of the Capacity Building Training Programme for the Assistant Legal Aid Defense Counsels (08.07.2024 to 10.07.2024)

Workshop on – Key issues relating to Juvenile Justice
(12.07.2024 & 13.07.2024)

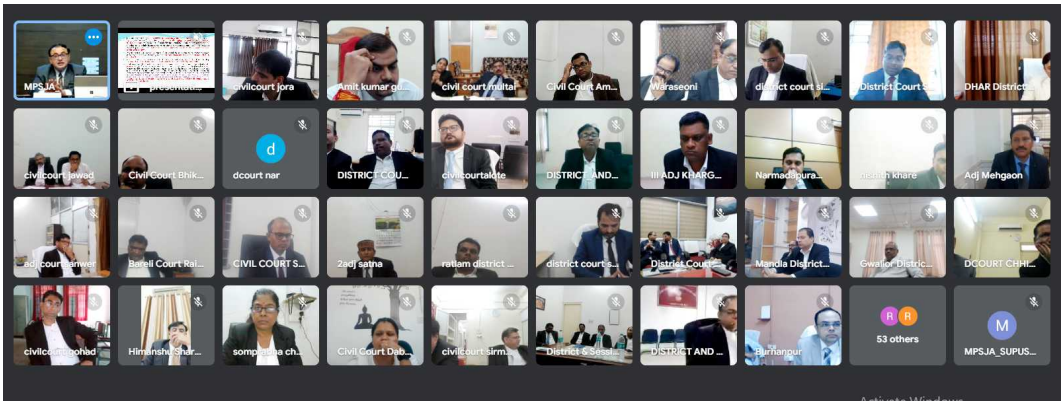
MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Conference on – Family Laws and Gender Justice
(19.07.2024 & 20.07.2024)

Refresher Course for the District Judges (Entry Level & Selection Grade)
(on completion of 5 years service) (Group - I)
(22.07.2024 to 27.07.2024)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Transnational Crimes Workshop organized by CEELI Institute, Prague, Federal Judicial Center, Washington and National Judicial Academy, India, hosted by MPSJA (10th & 11th August, 2024)



Specialised Educational Programme on – Motor Accident Claim Cases (24.08.2024)

ELEVATION OF HON'BLE SHRI JUSTICE SHEEL NAGU AS CHIEF JUSTICE OF HIGH COURT OF PUNJAB AND HARYANA

Hon'ble Shri Justice Sheel Nagu, who occupied the august office of the Judge of the High Court of Madhya Pradesh for approximately fourteen years, has been elevated as Chief Justice of High Court of Punjab and Haryana.

His Lordship was born on 1st January, 1965. His Lordship obtained B.Com and LL.B Degrees from Sagar University and was enrolled as an Advocate in December 1987. Practiced in Constitutional and Civil side. Clients included many reputed firms, multinational companies, Corporations, Statutory Bodies, Government Departments etc. His Lordship was appointed on the Committee constituted by the High Court to inspect and submit report regarding condition of prisoners in Central Jail, Sagar and suggested ways and means to improve the health and living conditions of the prisoners. His Lordship was appointed as Co-Chairman of Committee constituted under Section 394 of the Companies Act, 1954 for amalgamation of two Companies. His Lordship was actively involved in conducting of Lok Adalats and participated in then as Advocate Member.

His Lordship was elevated as Additional Judge of the High Court of Madhya Pradesh on 27th May, 2011 and as permanent Judge on 23rd May, 20013. His Lordship was appointed as Administrative Judge of the High Court of M.P., Principal Seat on 20th March, 2015. His Lordship assumed the charge of Office of Acting Chief Justice of the High Court of M.P. on 25th May, 2024.

Apart from judicial work, My Lord was assigned with many other works, *viz*. Executive Chairman of State Legal Services Authority (SLSA) and Senior Member of various Executive Committees of High Court.

On His Lordship's elevation as Chief Justice of High Court of Punjab and Haryana, was accorded farewell ovation on 5th July, 2014.

We on behalf of JOTI Journal wish His Lordship a happy and successful tenure.

HON'BLE SHRI JUSTICE RAJ MOHAN SINGH AND HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI) DEMIT OFFICE

Hon'ble Shri Justice Raj Mohan Singh, Judge, High Court of Madhya Pradesh demitted office on 17th August, 2024 on His Lordship's attaining superannuation.

Hon'ble Shri Justice Raj Mohan Singh was born on 18th August, 1962. After completing LL.B from Kurukshetra University, His Lordship started practice at Punjab and Haryana High Court and had a diversified practice. His Lordship was elected thrice as a Member of Bar Council of Punjab and Haryana and also Honorary Secretary of Bar Council of Punjab and Haryana. His Lordship was elevated as Additional Judge of the Punjab and Haryana High Court on 25th September, 2014 and as Permanent Judge on 23rd May, 2016.

On His Lordship's transfer to the High Court of Madhya Pradesh as Judge, took oath on 01.11.2023.

During His Lordship's tenure in the High Court of Madhya Pradesh, rendered invaluable services as Member of various Administrative Committees of the High Court.

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Hon'ble Shri Justice Amar Nath (Kesharwani), Judge, High Court of Madhya Pradesh demitted office on 14th August, 2024 on His Lordship's attaining superannuation.

Hon'ble Shri Justice Amar Nath (Kesharwani) was born on 15th August, 1962. His Lordship joined Judicial Services on 11th November, 1987 and was appointed as Civil Judge Class-I on 29th July, 1995. His Lordship was promoted as officiating District Judge in Higher Judicial Services on 28th January, 2002. Before elevation as Judge of the High Court of Madhya Pradesh, His Lordship was posted as Principal District & Sessions Judge, Balaghat.

His Lordship was elevated as the Judge of the High Court of Madhya Pradesh on 15th February, 2022. During His Lordship's tenure in the High Court of Madhya Pradesh, rendered invaluable services as Member of various Administrative Committees of the High Court.

We on behalf of JOTI Journal, wish Their Lordships a healthy, happy and prosperous life.

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PART – I

OUR LEGENDS

HON'BLE SHRI JUSTICE J.S. VERMA
10TH CHIEF JUSTICE OF HIGH COURT OF MADHYA PRADESH

This edition's legend is a well-acknowledged jurist who became the 2nd authority from our High Court to have become the 27th Chief Justice of India. This Legend of ours is known for delivering numerous pathbreaking judgments on vital social issues and was a pioneer in dispensing social justice. His Lordship is also acknowledged as 'the face of judicial activism' and is the youngest Chief Justice of the High Court of Madhya Pradesh.

To begin with, Jagdish Sharan Verma was born at Satna, Madhya Pradesh on 18th January, 1933 in a middle class family. He had six brothers and three sisters. He completed his early education at Venkat High School in Satna (Govt. Venkat H.S. Excellence School No.1, Satna), followed by Government Jubilee Intercollege, Lucknow from where he obtained the degree of Bachelor of Science. Later on, he graduated from the University of Allahabad with LL.B.

He was enrolled as a pleader in the Madhya Bharat Judicial Commissioner's Court at Rewa in 1955 and became an Advocate of the Madhya Pradesh High Court in August 1959. For sometime, he had worked in the Chambers of the retired Chief Justice Shri Guruprasanna Singh while he was practicing at Rewa. On the reorganization of States, he set up his practice with headquarters at Satna and continued to practice there till 1967 in which year he shifted to Jabalpur for exclusive practice at the seat of the M.P High Court. His Lordship soon garnered a good repute and enjoyed a good practice. It is owing to his hard work and successful practice that he was nominated to become a Judge of the High Court of Madhya Pradesh at a very young age. His Lordship was just 39, when he was appointed as an Additional Judge of the Madhya Pradesh High Court and became a permanent Judge on 02.06.1973 when he was just 48 years.

It is noteworthy that after merely a year of working in the High Court, the following year he delivered a judgment arguing that a juvenile convicted of murder ought to be tried under separate procedures from an adult. This went on to form the basis for the Juvenile Justice Act in 1986. On His Lordship's appointment as Chief Justice of the State in June, 1985, a felicitation programme was organized at the High Court wherein His Lordship was applauded for his meticulous knowledge of law, fearless judgments and administrative command.

The then Advocate General complimented His Lordship's eight months of Acting Chief Justiceship for disposing maximum number of cases and an efficient and strong administration. Another anecdote recalled during this ceremony was when there was a Golden Jubilee function to be held at Morena and His Lordship specifically shifted the function timings from 11.00 am to 5.00 p.m. so that the court work is not disturbed and no litigant has to endure absence of Judges.

His Lordship replied to the ovation and laid down his vision in the words below:

> "It is with great humility that I assume this high office, the duties of which I have been discharging now for some months. The experience of the last few months has further revealed to me the magnitude of my task and the onerous duties of this office. Consciousness of the fact that eminent men and great judges have preceded me in this august office further subdues me. I am aware of my limitations and have no pretensions of even equaling any of them much less excelling them. No one can do better than the best he is capable of. I can assure you of my best efforts and utmost industry in that direction.
>
> God has been kind to me always. My parents and other elders in my family, particularly my elder brother, have had a great influence in the making of my career. My greatest debt in the legal profession is to my 'Guru' Hon'ble Shri Justice Guru Prasanna Singh, a former Chief Justice and one of the most eminent Judges of this Court. I have no doubt that it is the blessings of all of them coupled with the grace of God and tremendous good will of you all for me which has brought to me this honour.
>
> I belong to the common stock and come from ordinary back ground. I do not have the benefit of judicial lineage and have come up from

the bottom of the ladder in the legal profession. This has impelled me from the very beginning to utmost industry since that is the only sure method of success I have known. My appointment to this office should encourage the industrious youthful aspirants in the profession even if they belong to the common stock but combine industry with ambition. I would be very happy if I can inspire even some of them.

At this juncture it would be appropriate to spell out a few of my top priorities. Elimination of artificial arrears in all courts forthwith and speedy disposal of cases; and improvement in the working conditions of subordinate court are the thoughts uppermost in my mind. The subordinate judges work in shocking conditions with inadequate provision even for the court-rooms and their residences. It is to the credit of most of them that even then they do so much. My predecessors have been alive to this problem and have striven to improve their working conditions. I would continue the good work done by them. It does appear likely that some headway in this direction may be made in due course. Effort has also to be made to eliminate the artificial arrears of cases which require only to be taken up for their disposal. Very often the bulky record acts as a deterrent giving a wrong impression that the case is complicated when actually the effort required to dispose it of is minimal. Similarly, a large number of small matters add to the statistics. These cases constitute artificial arrears. Such cases must be disposed of at the earliest. Full utilization of the Court working hours is imperative and all of us must ensure that this is done faithfully. This is necessary to ensure continuance of public faith in our system of administration of justice."

It is only apt to say that the entire tenure of His Lordship reflected this very same vision. His Lordship also served as Chief Justice of Rajasthan High Court from September, 1986 until his elevation to the Supreme Court in June, 1989. It is pertinent to mention that he also served as the Governor of Rajasthan twice i.e. between 1986 and 1989.

In June, 1989, His Lordship was appointed as Judge of the Supreme Court of India and became Chief Justice of India in March 25th, 1997. During his time in the Supreme Court, Justice Verma gave numerous landmark judgments.

Magnanimity of this Legend is reflected from a case wherein a mother of a 22-year-old man who had died in police custody wrote a letter to the Supreme Court which the court treated as a writ petition. A 1.5 lakh rupees compensation was awarded by the Supreme Court to the mother, as Justice Verma held that compensation was a public law remedy distinct from and in addition to the private law remedy in tort for damages. This case changed the course of custodial deaths in the country.

Likewise, His Lordship was always on the forefront in advancing the rights of women and children. One such notable case, which became a foundation stone of feminist jurisprudence in the country is that of ***Vishakha and ors. v. State of Rajasthan, (1997) 6 SCC 241,*** popularly known as ***Vishaka case*** and is considered as one of the world's landmark judgments in gender justice. It was brought as a class action by certain NGO's and social activists following the brutal gang rape of a social worker in Rajasthan to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. Justice Verma held that each incident of sexual harassment constitutes a violation of the fundamental rights of 'gender equality', 'right to life and liberty' and 'the right to practice any profession' or 'to carry out any occupation, trade or business' under Article 19 (1) (g) of the Constitution of India which depends on a safe working environment. The Supreme Court laid down guidelines to deal with the menace of sexual harassment at the workplace through an approach based on equal access, prevention, and empowerment. This approach was the foundation for national and international best practice in dealing with sexual harassment at the workplace. The absence of domestic law on this point was also highlighted. This in turn paved way for the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

His Lordship demitted the office of Chief Justice of India on 18th January, 1998. After retirement, Hon'ble Shri Justice Verma served as the Chairman of the National Human Rights Commission (NHRC) from 4th November, 1999 to 17th January 2003. He is known for having raised the issue of human rights violation in 2002 Gujarat Violence. It is pertinent to mention that the NHRC led by Justice Verma brought a petition to the Supreme Court seeking retrial of the ***Best Bakery case*** and also four additional cases outside Gujarat after a local court had acquitted the accused.

Justice Verma was a strong believer in the Right to Information. Observing the 52nd anniversary of the adoption of the Universal Declaration of Human Rights, Justice Verma said: "In a democracy, participatory role in governments can be realised only if the right to information exists so that the public can make an informed choice." Justice Verma had also publicly stated that the judiciary should be brought within the ambit of the Right to Information Act 2005. Justice Verma was one of the leading figures involved in the movement for the Right to Information Act, 2005 and in its implementation.

The significance of this legend can further be gathered in the aftermath of the 2012 gang rape in Delhi, wherein Justice Verma was appointed as Chairperson of a three-member commission tasked with reforming and invigorating anti-rape law. His committee members were Ex-Solicitor General Gopal Subramaniam and Justice Leila Seth. The Committee was assisted by a team of young lawyers, law students and academics. The Report dealt with sexual crimes at all levels and provided the measures needed for prevention as well as punishment of all offences with sexual overtones that are an affront to human dignity. It is noteworthy that the comprehensive 630-page report, which was completed in 29 days, was lauded both nationally and internationally. This also became the basis of the Criminal Law (Amendment) Act, 2013.

His Lordship passed away on 22nd April 2013 at Medanta Hospital, Gurgaon at the age of 80. He was survived by his wife and two daughters. His legacy is further carried on by his family members through the Justice Verma Foundation, whose mission is "to make the law a friend to those most in need of one." It focuses on providing quality *pro bono* representation to those most in need of it in High Courts and the Supreme Court. It does this by acting as a facilitator to match lawyers with clients in need. Justice Verma has left an indelible mark in the legal history of the country through his pathbreaking verdicts, legal innovations, firm commitment to women's empowerment, accountability of judiciary and government and above all, his quest for dispensing social justice.

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TRIAL IN ABSENTIA IN LIGHT OF THE BNSS, 2023

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The Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as BNSS) came into force from 1st July, 2024. An important feature in our judicial system is the trial of a proclaimed offender in *absentia*. A proclaimed offender is defined by the law as an individual who avoids standing trial when a court issues a proclamation. Historically, trials in absentia were not permitted under Indian law. Under certain conditions, individuals who have been officially declared as offenders, can be legally charged and brought to trial in accordance with recently enacted legislation.

As per Section 84(4) of the BNSS, if someone is suspected of serious crimes that carry a punishment of 10 years or more in prison, life imprisonment or death, he can be designated as a proclaimed offender. Such person can be tried individually or together with other co-accused. This article aims to highlight and delve into the nuances pertaining to this provision.

Overview:

Absenteeism, derived from the Latin term *"absentia,"* refers to the act of being absent or, more specifically, the state of being absent on one or more occasions. A trial in *absentia* refers to the legal process in which courts can proceed with a case even if the accused is not present. Legal mechanisms exist in countries such as the USA, Bangladesh, China, France, and Canada, which permit trials to be conducted in *absentia*. In the case of Stew Haley Mariam, the former Communist Dictator of Ethiopia, a court in his own country conducted a trial in his absence and subsequently, sentenced him to death in 2008. Another instance is Martin Bormann, a high-ranking Nazi official who served as Hitler's personal secretary. He underwent trial and was found guilty of war crimes, resulting in a death sentence during the renowned Nuremberg trial held from 1945 to 1946.

Section 273 of the Criminal Procedure Code, 1973, explicitly speaks that all evidence must be presented in the presence of the accused. In addition, according to Section 281 of the Criminal Procedure Code, 1973, the interrogation of the defendant must be documented in the official language of the court, and the summary of the interrogation must be signed by the magistrate. This demonstrates that every step of the legal process, including the formulation of charges, the documentation of statements from both prosecution and defense witnesses and the

questioning of the accused must be carried out in the presence of the accused or their legal representative. Failure to document evidence in the presence of the accused or their legal representative might result in the annulment of the trial. In the Indian legal system for criminal cases, there is no provision for conducting *ex-parte* trials. The Indian criminal justice system is based on ideas such as natural justice and *Audi alteram partem*, which affirms the accused's fundamental right to be heard, either personally or through legal representative. It is imperative that individuals are afforded appropriate chance to defend themselves before any punishment is administered. The defendant should be afforded a sufficient opportunity to present their defense, including the ability to call witnesses and submit documentary evidence in his favour, if necessary. The accused should be given a fair chance to call upon his witnesses, with the expenditures being covered by the public. The Indian judicial system guarantees the right to a fair trial, as stipulated by Article 21 of the Constitution of India and this entitlement should not be compromised under any circumstances.

The Criminal Procedure Code, 1973, contains both mandatory and directory regulations regarding the presence of the accused or suspect. During the investigation, law enforcement authorities have the power to summon and issue a warrant to the accused. If the accused fails to appear or attempts to hide, they can also issue a proclamation and order the attachment of their property under Chapter 6 of the Criminal Procedure Code, 1973. The Criminal Procedure Code outlines a procedural framework for the attachment, release, sale, and restoration of property. However, there are two primary issues. The first issue is that the accused were designated proclaimed criminals due to the lack of appropriate serving of summons and warrant. Additionally, there is the case of an individual who has been officially designated as a proclaimed criminal, who attempted to prolong the trial indefinitely. Section 299 of the Criminal Procedure Code, 1973 allows the court to document witness testimony in cases where the accused is evading capture. The court must determine that there is currently no likelihood of apprehending the defendant. Subsequently, the trial court or the court with the power to transfer the matter for trial may question the prosecution witnesses who have been before the court in the absence of the accused. Subsequently, if the accused was apprehended but the witness was unavailable for questioning due to reasons such as death, illness, inability to provide testimony, or difficulty in ensuring their prompt presence without incurring expenses, inconvenience or other circumstances, the court could utilize such evidence against the accused in an investigation or legal proceeding. The superior court, such as the high court or session court, has the authority to direct

the magistrate to record evidence in a criminal case that carries the penalty of death or life imprisonment. Furthermore, if a similar situation develops in the future, this evidence can also be used against the defendant.

In 2005, an amendment was introduced to Section 82 of the Criminal Procedure Code, 1973, which included the addition of sub-clauses (4) and (5). Whenever a proclamation was issued u/s 82(1) of the Criminal Procedure Code, 1973, for an individual accused of a crime punishable u/s 302, 304, 364, 367, 382, 392, 393, 394, etc. of the Indian Penal Code, 1860, after conducting a thorough investigation that confirmed the person's attempt to evade capture and failure to appear at a specified location and time, they were officially declared a proclaimed offender. Under such circumstances, the proclaimed offender may be subject to a criminal case u/s 174A of the Indian Penal Code, 1860. Violation of Section 174A IPC is considered as a serious offence and the accused can be immediately arrested and it does not allow for release. Additionally, there are no procedures for reaching a settlement or agreement to resolve the infraction. However, a difficulty arises when the accused comes in court after a significantly prolonged period, as there is a possibility that the witness can be influenced or swayed. The defendant attempted to evade court appearances and absconded whenever there was a possibility of influencing the witness to become uncooperative. Upon the emergence of the accusation, they endeavoured to manipulate the outcome of the trial in their own advantage. Occasionally, the process of declaring the accused as a proclaimed offender may also be contested. Therefore, it can be concluded that the previous approach was ineffective in addressing the problem.

Judicial rulings:

The legal community in India has acknowledged the growing issue of declared offenders. The Supreme Court and various High Courts have provided their insights in court rulings pertaining to this matter. In the case of ***Hussain and ors. v. Union of India, (2017) 5 SCC 702***, the esteemed Apex Court made the observation that in appropriate instances where the accused has fled, their trial should be carried out in their absence. In the case of ***Bacheche Lal Yadav v. Akhahd Pratap Singh, (2018) SCC Online SC 3818***, the Ministry of Home Affairs has submitted an affidavit to the Hon'ble Supreme Court on the amendments in the Criminal Procedure Code, 1973. The affidavit states that the Ministry is introducing the idea of trial in absentia. In the case of ***Sunil Tyagi versus State (NGT of Delhi), 2021 SCC Online Delhi 3597***, Hon'ble Mr. Justice J.R. Medha has referenced the article 'New Dimension of Justice', specifically highlighting the absconded accused.

In order to prevent or eliminate the potential for abuse of arrest warrants, the court has also established specific standards that must be followed by all trial courts when issuing such warrants. Additionally, specific recommendations for making proclamations during the investigation were recorded. A high-level committee was also established to oversee the implementation of guidelines set by the Hon'ble High Court of Delhi. The directives of the esteemed Supreme Court have prompted the Central Government to create and elaborate regulations regarding the trial of the accused in their absence in BNSS 2023.

Selected excerpts of pertinent clauses:

In the Criminal Procedure Code of 1973, there were provisions in Sections 82 and 83 that dealt with the proclamation of individuals who were evading the law. Section 84 of the Bhartiya Nagarik Suraksha Sanhita, 2023, shall now be the governing provision. According to Section 84(4), if a proclamation is issued for an individual who is accused of a crime that carries a punishment of 10 years or more in prison, life imprisonment, or death under BNS, 2023, or any other law, the court has the authority to investigate and, if convinced, declare that person a proclaimed offender. There are additional safeguards in place, which refer to the procedures outlined in the provision that must be followed in order to publish a proclamation in accordance with the Statute. Upon the issuance of a proclamation, it is required to be publicly read. Additionally, a copy of the proclamation must be attached at the accused's most recent place of residence, as well as in prominent locations within the town, village and court. The Court may also order the publication of the proclamation in daily newspapers that are distributed in the residential areas where the accused person is proclaimed. In addition, the court has the authority to request the police officer to provide testimony regarding the dissemination and impact of the proclamation in question. Once the court is convinced, it will issue an order declaring the accused person as a proclaimed offender if he fails to comply with the directives given to him to be present at a specific location and time, as stated in the proclamation.

Another concern that arises throughout the investigation is whether there are any alternative measures to ensure the presence of a proclaimed offender. The previous version of the Code had a provision for the attachment and forfeiture of the proclaimed offender's property in the location where they reside. This provision is also included in the new Sanhita, namely in Section 85. However, a new provision called Section 86 has been introduced in BNSS. This provision grants the Superintendent of Police or the Commissioner the authority to submit a written

request to the Courts. The purpose of this request is to identify the property belonging to the proclaimed offender and proceed with the attachment and forfeiture of said property, not only within the State but also in the contracting State.

Provisions pertaining to the investigation and legal proceedings of a person who has been declared as an offender:

Section 356 BNSS begins with a non-obstante clause, stating that regardless of what is stated in the Sanhita, if the accused is declared a proclaimed offender and attempts to evade the legal trial process, he can be prosecuted under this section. The Sanhita requires all inquiry and trial proceedings to be conducted in the presence of the accused. If the accused is tried collectively or individually, and there is no possibility of imminent apprehension, it will be seen as if the accused has voluntarily relinquished his right to defend his case. The court is required to articulate the rationale in the order, after which it may proceed with the trial of the accused individual. The court proceedings will proceed as scheduled, as the accused is present for the trial, allowing the court to deliver its verdict. The court must bear in mind that a trial can only commence once 90 days have passed following the laying of accusations against the proclaimed offender. Prior to moving to trial, the court must adhere to specific protections. Initially, upon the commencement of the trial, the court is obligated to issue two successive arrest orders, with a minimum interval of 30 days between them. It is crucial for the trial court to provide a notice to the proclaimed offender regarding the trial, explicitly stating that if the offender fails to appear in court within 30 days, the trial would proceed in their absence. This notice must be published in a nationally or locally disseminated newspaper that is typically distributed in the geographical area where the proclaimed offender most recently resides. The court is obligated to notify the close acquaintances of declared offenders, including their family members, relatives, or friends, of the start of the trial. Another precaution that must be adhered to is the requirement to prominently display a notice regarding the start of the trial at a visible location at the residence of the individual who has been publicly declared as an offender, specifically at the place of their last known residence. Additionally, a single copy of this notice must be prominently exhibited at the designated local police station, where the wanted individual was last known to have been present.

The legislature has considered that, initially, when an accused is declared as a proclaimed offender, a notice must be issued and made public. Furthermore, once the trial begins, it is imperative to provide notice in order to ensure his attendance. There is a fundamental distinction between the two proceedings: the first being that

a notice was given at the time of the accused's declaration. The notice was to notify him that the police would carry out the inquiry in his absence. Hence, if he desires to present himself to the police, he can choose to appear before either the court or the police and provide assistance throughout the inquiry. On the second occasion, in accordance with Section 356 of the BNSS, a notice was issued, followed by two consecutive warrants. The purpose was to notify the declared fugitive that if he chooses not to appear in court, the court will assume that he has voluntarily given up his right to defend himself. The accused was provided with a formal notice, offering him the chance to present his defense by appearing in court, questioning the prosecution witness, and presenting his own arguments. The accused may present any oral and documentary evidence throughout the trial. However, if the accused is evading capture, the court will not delay proceedings until their presence or arrest, and will proceed in their absence.

Legal representation provided by an advocate:

The Indian judicial system operates on the principles of natural justice and *audi alteram partem*, which ensures that individuals have the right to legal representation in order to defend themselves. The framers of BNSS, 2023 have taken into consideration the need to allow proclaimed offenders to be represented by an advocate. According to Section 356(3) of the BNSS, 2023, a lawyer will be appointed to represent the declared offender. The State Government will cover the expenses of such an advocate. Thus, the fugitive, who was absent throughout the trial, and his legal representative will represent him, question the prosecution's witness, and, if necessary, give his case to the court. This initiative will be exceptional.

What will occur when a fugitive accused presents himself before the trial court before the trial is completed? The framers also considered that if an accused person is declared a proclaimed offender and evidence is recorded in his absence, he should be allowed to cross-examine the witnesses who were examined during his absence when he appears before the trial concludes, in the interest of justice. If the individual was absent throughout the court proceedings and the trial reached its conclusion, the court will depend on the testimony of the witness who provided a statement during the investigation or trial, and will then deliver the verdict. In addition, during the trial of a declared criminal, evidence can be documented using audio-visual electronic methods. Mobile phones may be used to record evidence, and the court will retain the recording of the examination. Thus, so far there have been no explicit laws of this nature necessitating the creation of guidelines to

address the situation. The court will securely store such recordings. In the near future, it is possible that State Governments would establish Standard Operating Procedures (SOPs) or regulations to ensure proper documentation of witness testimonies during examinations.

Is it possible for the court to render a judgment in absentia following the trial?

According to Section 356(6) of the BNSS, 2023, the Court has the authority to proceed with the case and deliver a verdict even if the accused is not present. Now, the question arises as to whether, in such instances, it is possible to document the interrogation of the defendant.

It is important to remember that abstentia law is a legal privilege established by Statute. This means that a declared criminal can only exercise the rights explicitly granted by the Statute. If the accused was not present during the presentation of the prosecution's evidence and remained absent even after the conclusion of the prosecution's evidence, then, according to the author's perspective, there is no need to question the accused. A fugitive is legally represented by a lawyer, and if the lawyer fails to provide any evidence in defense, the court will request both the prosecution and defense to submit their reasons. After considering the arguments, the court will then deliver its ruling. Another crucial feature is that during the hearing, the Court has the authority to request the defense council, who represents the accused, to present their arguments on the severity of the sentence.

Appeal rights:

The fugitive also possesses the entitlement to file an appeal under the BNSS, 2023. In order to file an appeal against the conviction, he must personally appear before the court that has jurisdiction over the ordinary appeal. During his appearance before the appellant court, he will have the chance to present a defense for all the reasons he was convicted. There exists a certain constraint for submitting an appeal in accordance with the Limitation Act, 1963. If convicted, a time of 30 days is ordered, but in the case of acquittal, a period of 90 days is prescribed. According to the BNSS, 2023, a proclaimed offender has a three-year timeframe from the date of the decision to file an appeal. After this term, a proclaimed criminal is not allowed to pursue any appeal against his conviction. If he was apprehended subsequent to that incident, then he is obligated to endure the punishment that was imposed by the trial court.

Extension of inquiry, trial, and judgment in absentia refers to the continuation of the investigation, legal proceedings and final decision-making process in the absence of the accused individual.

The State Government has the authority to expand the scope of investigation, legal proceedings, and verdicts for declared criminals in additional cases by means of an official notification. This demonstrates that in addition to the crimes that carry a minimum sentence of 10 years or more, the State Government has the authority to include other offences as necessary through official notification.

Concurrent trial:

A new clarification has been included u/s 24 of the BSA, 2023. In cases where many defendants are being jointly tried and one of the defendants is deemed a proclaimed offender, his trial can nevertheless proceed alongside the other defendants who are present in the court. The aforementioned trial shall be regarded as a consolidated trial in accordance with Section 24 of the BSA, 2023. In previous criminal cases involving multiple accused, one or more of them would intentionally be absent to delay the trial. The trial would then be postponed until the absent accused appeared. This caused significant delays in the trial process. However, with the introduction of this new provision, the trial can now be concluded even if one of the accused is absent.

Implications of the accused's failure to appear in the Bhartiya Nyaya Sanhita, 2023:

If the accused fails to appear during the investigation, the investigation agency has the authority to declare him a proclaimed offender. Following the release of the official announcement as per Section 84(1) of the BNSS, 2023, the individual who has been proclaimed as an offender can be legally charged u/s 209 of the BNS, 2023. If found guilty, the offender may face a prison sentence up to three years or with fine or with both, as well as community service u/s 84(4) of the BNSS, 2023, if a proclamation is issued, the individual who is proclaimed as an offender will face a maximum sentence of seven years and will also be subject to a fine. This is another measure implemented by legislators to ensure the presence of the accused. An offence u/s 209 of the Bhartiya Nayay Sanhita, 2023, is a serious offence that can be immediately investigated and does not allow for bail or compromise.

Potential or past effect:

Section 356 of the BNSS, 2023 includes a provision that allows for the trial of an accused individual under certain circumstances. This provision states that if

the accused was declared a proclaimed offender on or before June 30, 2024, and an inquiry or trial is initiated after taking cognizance, the trial can be conducted under this provision, regardless of any other provisions in the Sanhita. Section 531 of the BNSS, 2023 contains a distinct clause for repealing and saving. This section stipulates that any pending appeal, application, trial, inquiry, or investigation will be resolved in accordance with the regulations outlined in the Code of Criminal Procedure, 1973. If the investigation is concluded and the case is scheduled for inquiry or trial, then the provisions of the new Sanhita will be applicable. Therefore, it can be inferred that if the investigation was conducted under the previous Code of Criminal Procedure, 1973, and subsequently, after July 1, the inquiry or trial commences, the regulations of the new Code will be applied. Hence, the option of conducting a trial in absentia might be initiated for individuals who were previously designated as proclaimed offenders prior to July 1, 2024.

Conclusion:

In an adversarial system, parties serve as the primary observers and gatherers of information for the legal framework. Therefore, the implementation of the trial in absentia for one or more defendants is a significant measure that was adopted to expedite the process of dispensing justice. Nevertheless, as current problems emerge inside the legal system, creative resolutions must be devised. Trial in absentia is a legal procedure that prioritizes the protection of the public interest over certain fundamental principles of a criminal trial. After careful examination and discussions these provisions are being adopted in our Sanhita. Courts must assess the relevance of the provision, which necessitates many protections and processors. The crucial question is whether conducting a trial in absentia can yield a favorable outcome and gain approval from the judiciary about the Indian legal system. Undoubtedly, this well-executed strategy will expedite the legal proceedings and alleviate the backlog in the Indian courts.

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PART – II

NOTES ON IMPORTANT JUDGMENTS

***151. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 3, 12(1)(a) and 13(6)**

Suit for eviction – Default in payment of rent – Condonation of – Tenant committed delay in depositing the rent multiple times – Application was never filed for extension of time – Deposited rent after long time along with application for condonation of delay – Such multiple delays could not be condoned – Tenant deserves to be evicted.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धाराएं 3, 12(1)(क) एवं 13(6) निष्कासन हेतु वाद – किराए के संदाय में व्यतिक्रम – व्यतिक्रम के लिए क्षमा– अभिधारी ने अनेक बार किराया जमा करने में देरी की – किराया जमा करने हेतु समय बढ़ाने के लिए आवेदन कभी भी प्रस्तुत नहीं किया गया – विलंब को क्षमा करने के आवेदन के साथ लंबे समय उपरांत किराया जमा किया गया – इस प्रकार अनेक बार के विलंब को क्षमा नहीं किया जा सकता – अभिधारी निष्कासित किये जाने योग्य है।

Savitri Soni and ors. v. Nekse (deceased) thr. His Legal Heir and ors.

Order dated 29.01.2024 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 41 of 2003, reported in 2024 (1) MPLJ 398

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152. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 12(1) (a) and (c)

(i) Eviction – Arrears of rent – Tenancy and rate of rent was admitted by tenant/ defendant No. 1 – His plea that his biological son Defendant No. 3 has been adopted by landlord/plaintiff as such he started paying rent to defendant No. 3 who became landlord by virtue of adoption deed, was not found proved by the court – Collusion between defendant No. 1 and his son defendant No. 3 established – Defendant No. 3 was therefore, had no authority to accept the rent in the capacity of landlord from tenant/defendant No. 1 – Trial court rightly decreed the suit for arrears of rent.

(ii) Denial of title of landlord – Relationship between plaintiff and defendant No. 3 as landlord and tenant not established – Tenant/defendant No. 1 did not make payment of arrears of rent to plaintiff – His plea that he was paying rent to defendant No. 3 who was not landlord in any manner amounts to denial of title to the plaintiff – Plaintiff rightly found entitled to the decree of eviction u/s 12(1)(c).

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धारा 12(1) (क) एवं (ग)

(i) निष्कासन – बकाया किराया – अभिधारी/प्रतिवादी क्रं. 1 द्वारा किरायेदारी और किराए की दर को स्वीकार किया गया था – उसका यह अभिकथन कि उसके जैविक पुत्र प्रतिवादी क्रं. 3 को वादी/भू-स्वामी द्वारा दत्तक लिया गया है, इसलिए उसने प्रतिवादी क्रं. 3 को किराए का भुगतान करना शुरू कर दिया है जो दत्तक विलेख के आधार पर मकान का भू-स्वामी बन गया है, न्यायालय द्वारा साबित नहीं पाया गया – प्रतिवादी क्रं. 1 और उसके पुत्र प्रतिवादी क्रं. 3 के मध्य दुरभिसंधि होना स्थापित – प्रतिवादी क्रं. 3 को भू-स्वामी की हैसियत से किराया प्राप्त करने का कोई अधिकार नहीं था – विचारण न्यायालय ने बकाया किराए के आधार पर वाद को सही डिक्री किया है।

(ii) भू-स्वामी के स्वत्व से इंकार – वादी और प्रतिवादी क्रं. 3 के मध्य भू-स्वामी एवं अभिधारी के संबंध स्थापित नहीं – अभिधारी/प्रतिवादी नंबर 1 ने वादी को किराए की बकाया राशि का भुगतान नहीं किया – उसका यह तर्क है कि वह प्रतिवादी क्रं. 3 को किराए का भुगतान कर रहा था जो किसी भी तरह से भू-स्वामी नहीं था, वादी के स्वत्व से इंकार करने के समान है – वादी को उचित ही धारा 12 (1) (ग) के तहत निष्कासन की डिक्री प्राप्त करने का अधिकारी पाया गया।

Kailash Narayan v. Shyamlata and ors.

Judgment dated 17.01.2024 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 214 of 2004, reported in 2024 (1) MPLJ 472

Relevant extracts from the judgment:

It is worth mentioning the fact that adoption deed by which defendant No. 3 was allegedly tried to establish himself as adopted son of plaintiff was challenged by the plaintiff in different proceedings by way of Civil Suit No. 102-A/2002 RCS

and vide judgment dated 02.02.2005 adoption deed was declared void by Civil Judge Class-I, Shivpuri. Appeal was preferred by defendant No. 3 and the said appeal No. 53-A/2005 was also dismissed vide judgment dated 24.03.2005. Thereafter, second appeal was preferred vide Second Appeal No. 464/2005 and the same was also dismissed vide judgment dated 09.11.2005 and thereafter Special Leave Petition (Civil) No. 2941/2006 was preferred and the same was also dismissed vide order dated 17.02.2006. All the orders/judgments were placed on record, therefore, it was not a case simplicitor of eviction. In fact it is a case where plaintiffs were fighting for eviction of tenant (since 1996) in which collusion of defendant No. 1 and defendant No. 3 was established through their conduct.

Very cleverly, defendant No. 3 raised the plea that on 05.05.1995 a rent note was executed between defendant No. 1 and defendant No. 3 which was not exhibited by the defendants but tried to rely upon on the ground that rent was given by defendant No. 1 to defendant No. 3 w.e.f. 01.04.1995 but the trial Court did not find relationship of landlord and tenant between defendant No. 1 and defendant No. 3 as established because it was tainted with collusion. Without attornment, relationship of landlord-tenant could not have been established.

Trial Court categorically held that defendant No. 1 and defendant No. 3 were making false statements on record just to frustrate the cause of plaintiffs. Therefore, on the plea of fraud, collusion and misrepresentation of facts, trial Court rightly appreciated the evidence available on record and passed the impugned judgment. Defendants No. 1 and 3 cannot be given premium to their mischief and collusion.

Incidentally, defendant No. 1 admitted the fact about rent note but made a specific pleading that biological son of defendant No. 1 namely Ashutosh who is arrayed as defendant No. 3 was adopted by the plaintiffs vide adoption deed dated 26.07.1994 and therefore, he became the landlord by virtue of adoption deed. From 01.04.1995 defendant No. 1 started paying rent to defendant No. 3 who according to defendant No. 1 became landlord of the house and therefore, he started giving him the rent. That aspect has been duly considered by the trial Court while considering issue No. 1, 2(a) and 2(b). It is worth mentioning the fact that while deciding issue No. 2(a) and 2(b), trial Court again discussed the fact of collusion because as discussed earlier, this case suffers from peculiarity of collusion between defendant No. 1 and defendant No. 3 in which defendant No. 3 misused the

document or his position to the detriment of the plaintiffs. Assertion of defendant No. 1 that since 01.04.1995 he started paying rent to defendant No. 3 lacks merits because defendant No. 3 had no authority to take rent from defendant No. 1.

Tenancy in the present case started from 01.05.1994 and as per the specific submission of defendant No. 1, adoption of defendant No. 3 was undertaken on 26.07.1994 by way of adoption deed. It means that when landlord tenant relationship established between plaintiffs and defendant No. 1 on 01.05.1994 at that time, defendant No. 3 Ashutosh was not in picture in any manner as landlord, even if for a minute it is assumed that adoption deed was valid. Therefore, at the time of establishment of landlord tenant relationship on 01.05.1994 when defendant No. 3 was not in picture and thereafter Attornment was never done by plaintiffs *vis-a-vis* Ashutosh (defendant No. 3) then Ashutosh had no authority to accept rent and in fact payment of rent to the Ashutosh was amounting to denial of title to the plaintiffs about their landlordship which would be discussed under different head under Section 12(1)(c) of the Act.

When defendant No. 1 did not pay arrears of rent and took the plea that he is paying rent to defendant No. 3 who was not landlord in any manner then it amounts to placing the title/landlordship in some other person and amounting to denial of title to the plaintiffs.

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153. ARBITRATION AND CONCILIATION ACT, 1996 – Section 11(6) Application seeking appointment of Arbitrator – Period of limitation – Commencement of – The limitation period of three years for filing a petition u/s 11(6) commences only after the applicant has sent a valid notice invoking arbitration proceeding to the other party and there has been a subsequent failure or refusal by the other party to comply with the requirements specified in the notice.

माध्यस्थम् और सुलह अधिनियम, 1996 – धारा 11(6)
मध्यस्थ की नियुक्ति हेतु आवेदन – परिसीमा अवधि – प्रारम्भ होना – धारा 11(6) के अतंर्गत याचिका दायर करने हेतु तीन वर्ष की परिसीमा अवधि केवल तभी प्रारंभ होती है जब आवेदक ने दूसरे पक्ष को माध्यस्थम कार्यवाही का आह्वान करने हेतु एक वैध सूचना पत्र प्रेषित कर दिया हो और दूसरा पक्ष सूचना पत्र में निर्दिष्ट आवश्यकताओं का पालन करने में असफल रहा हो या उसके द्वारा इससे इंकार कर दिया गया हो ।

Arif Azim Company Limited v. Aptech Limited

Judgment dated 01.03.2024 passed by the Supreme Court in Arbitration Petition No. 29 of 2023, reported in (2024) 5 SCC 313 (Three Judge Bench)

Relevant extracts from the judgment:

Section 21 of the Act, 1996 provides that the arbitral proceedings in relation to a dispute commence when a notice invoking arbitration is sent by the claimant to the other party.

In ***Milkfood Ltd. v. GMC Ice Cream (P) Ltd., (2004) 7 SCC 288***, it was observed thus:

> "The commencement of an arbitration proceeding for the purpose of applicability of the provisions of the Indian Limitation Act is of great significance. Even Section 43(1) of the 1996 Act provides that the Limitation Act, 1963 shall apply to the arbitration as it applies to proceedings in court. Sub-section (2) thereof provides that for the purpose of the said section and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21.

Article 21 of the Model Law which was modelled on Article 3 of the UNCITRAL Arbitration Rules had been adopted for the purpose of drafting Section 21 of the 1996 Act. Section 3 of the 1996 Act provides for as to when a request can be said to have been received by the respondent. Thus, whether for the purpose of applying the provisions of Chapter II of the 1940 Act or for the purpose of Section 21 of the 1996 Act, what is necessary is to issue/serve a request/notice to the respondent indicating that the claimant seeks arbitration of the dispute.

x x x

For the purpose of the Limitation Act an arbitration is deemed to have commenced when one party to the arbitration agreement serves on the other a notice requiring the appointment of an arbitrator. This indeed is relatable to the other purposes also, as, for example, see Section 29(2) of (English) Arbitration Act, 1950.

x x x

Section 21 of the 1996 Act, as noticed hereinbefore, provides as to when the arbitral proceedings would be deemed to have commenced. Section 21 although

may be construed to be laying down a provision for the purpose of the said Act but the same must be given its full effect having regard to the fact that the repeal and saving clause is also contained therein. Section 21 of the Act must, therefore, be construed having regard to Section 85(2)(a) of the 1996 Act. Once it is so construed, indisputably the service of notice and/or issuance of request for appointment of an arbitrator in terms of the arbitration agreement must be held to be determinative of the commencement of the arbitral proceeding."

Similarly, in ***BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738***, it was held by this Court thus:

> "The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, [***S.S. Rathore v. State of M.P., (1989) 4 SCC; Union of India v. Har Dayal, (2010) 1 SCC 394; CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd., (2020) 5 SCC 185***] or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that:"where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it." There must be a clear notice invoking arbitration setting out the "particular dispute" [Section 21 of the Arbitration and Conciliation Act, 1996.] (including claims/amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail."

In the present case, the notice invoking arbitration was received by the respondent on 29.11.2022, which is within the three-year period from the date on which the cause of action for the claim had arisen. Thus, it cannot be said that the claims sought to be raised by the petitioner are ex-facie time-barred or dead claims on the date of the commencement of arbitration.

Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test – first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims

sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an arbitral tribunal.

The present arbitration petition having been filed within a period of three years from the date when the respondent failed to comply with the notice of invocation of arbitration issued by the petitioner is not hit by limitation.

The notice for invocation of arbitration having been issued by the petitioner within a period of three years from the date of accrual of cause of action, the claims cannot be said to be *ex-facie* dead or time-barred on the date of commencement of the arbitration proceedings.

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154. CIVIL PROCEDURE CODE, 1908 – Section 11 and Order 14 Rules 1 and 2

(i) ***Res judicata*** **– Framing of issues – Suit for declaration and injunction with respect to immovable property was filed – Defendants contended in written statement that judgment passed in earlier suit between the parties operates as *res judicata* – Plaintiff had already pleaded that judgment and decree passed in previous suit is in respect of different property – The trial court on the basis of disputed facts did not frame all the issues and framed only one issue of *res judicata* – Without affording any opportunity to the parties to adduce the evidence, the court decided the same as preliminary issue and dismissed the suit holding it to be barred by principle of *res judicata* – Whether course adopted by the court was proper? Held, No – The Court was required to frame all the necessary issues on the basis of disputed pleadings and thereafter, if the court is of opinion that the suit can be disposed of on an issue of law only, the court can try and decide it as a preliminary issue and that too after affording opportunity to the parties to adduce evidence.**

(ii) Preliminary issue – With respect to *res judicata* – It is a mixed question of law and fact – Should be decided after recording evidence adduced by the parties.

सिविल प्रक्रिया संहिता, 1908 – धारा 11 एवं आदेश 14 नियम 1 एवं 2

(i) पूर्व न्याय – विवाद्यकों की विरचना – स्थावर संपत्ति के संबंध में घोषणा एवं निषेधाज्ञा के लिए वाद प्रस्तुत किया गया था – प्रतिवादीगण ने लिखित कथन में अभिकथन किया कि पक्षकारों के मध्य चले पूर्ववर्ती वाद में पारित निर्णय पूर्व न्याय का प्रभाव रखता है – वादी ने पूर्व से ही यह अभिवचन किया था कि पूर्ववर्ती वाद में पारित निर्णय एवं आज्ञप्ति भिन्न संपत्ति के संबंध में थी – विचारण न्यायालय द्वारा विवादित तथ्यों के आधार पर सभी विवाद्यकों की रचना नहीं की गई एवं मात्र पूर्व न्याय का एक विवाद्यक विरचित किया – पक्षकारों को साक्ष्य प्रस्तुत करने का अवसर दिए बिना, विचारण न्यायालय ने प्रारंभिक वाद प्रश्न के रूप में उक्त वाद प्रश्न को निराकृत करते हुये वाद इस आधार पर निरस्त किया कि वाद पूर्व न्याय के सिद्धांत के आधार पर वर्जित है – क्या न्यायालय द्वारा अपनाई गई प्रक्रिया उचित थीं? अवधारित नहीं – न्यायालय के लिए विवादित अभिवचनों के आधार पर सभी आवश्यक विवाद्यकों की रचना करना आवश्यक था और इसके बाद यदि न्यायालय का यह मत था कि विधि के विवाद्यक मात्र से ही वाद निराकृत हो सकता है तब न्यायालय पक्षकारों को साक्ष्य प्रस्तुत करने का अवसर प्रदान करने के बाद ऐसे विवाद्यक को प्रारंभिक वाद प्रश्न के रूप में निराकृत कर सकता है।

(ii) प्रारंभिक वाद प्रश्न – पूर्व न्याय के विषय में – यह तथ्य एवं विधि का मिश्रित वाद प्रश्न है – इसे पक्षकारों की साक्ष्य अभिलिखित करने के पश्चात निराकृत किया जाना चाहिए।

Usha Rai and anr. v. Sanskrit Pathsala Samiti, Pipariya

Judgment dated 03.08.2023 passed by the High Court of Madhya Pradesh in Second Appeal No. 414 of 2000, reported in 2024 (1) MPLJ 321

Relevant extracts from the judgment:

Rule 1(5) makes it clear that learned Court is required to frame all the necessary issues on the basis of disputed pleadings made in plaint and written statement and Rule 2 provides that if the Court is of opinion that the suit may be disposed of an issue of law only, which relates to jurisdiction of the Court or a bar to the suit created by any law, then the Court may try it as a preliminary issue. The said provisions nowhere say that the issue which requires evidence, may be decided as a preliminary issue. Meaning thereby, if an issue requires evidence, then it should be decided after recording evidence of the parties along with other issues.

In the present case, on the basis of pleadings of the parties, learned trial Court neither framed all the relevant issues nor cared to record evidence on the preliminary issue of *res judicata* framed by it. It is well settled that the issue of *res judicata* is a mixed question of law and fact and should be decided after recording evidence of the parties. The Hon'ble Supreme Court in the case of ***Sathyanath and anr. v. Sarojamani, (2022) 7 SCC 644*** has held as under:

> "We find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of *res-judicata* is not desirable to ensure speedy disposal of the Us between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2).

The objective of the provisions of Order XLI Rules 24 and 25 is that if evidence is recorded by the learned Trial Court on all the issues, it would facilitate the first Appellate Court to decide the questions of fact even by reformulating the issues. It is only when the first Appellate Court finds that there is no evidence led by the parties, the first Appellate Court can call upon the parties to lead evidence on such additional issues, either before the Appellate Court or before the Trial Court. All such provisions of law and the amendments are to ensure one objective i.e., early finality to the lis between the parties.

Keeping in view the object of substitution of sub-Rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues.

Therefore, the order of the High Court remanding the matter to the learned trial court to frame preliminary issues runs counter to the mandate of Order XIV

Rule 2 of the Code and thus, not sustainable in law. The learned trial court shall record findings on all the issues so that the first appellate court has the advantage of the findings so recorded and to obliviate the possibility of remand if the suit is decided only on the preliminary issue."

In the present case, learned trial Court just contrary to the settled law did not frame all the issues at once and after framing one issue of res judicata (as a preliminary issue) fixed the case for argument thereon and then decided the same vide final order dated 27.07.1993. Apparently the parties were not given any opportunity of adducing evidence in support of their pleas. It is pertinent to mention here that even in the plaint there were sufficient pleadings in respect of previous litigation and plaintiff came with the case, that judgment and decree passed in previous suit is in respect of different property. As such the case pleaded by the plaintiffs deserves to be decided after recording evidence on all the issues and could not have been dismissed on the ground of res judicata even without affording the parties an opportunity to adduce evidence and pleadings of the earlier suit.

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155. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 1 and Order 7 Rule 11
GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999 – Sections 2 (1)(n), (b) and 21
INTERPRETATION OF STATUTES:

(i) Rejection of plaint – In an application under order 7 rule 11, whether Civil Court can hold non-joinder of a party to be fatal to the suit or direct for impleadment of any party as a necessary/proper party to the suit? Held, No – Non-joinder of party is not a ground specified under order 7 rule 11 for rejection of plaint – It is therefore, not permissible to examine impact of non-joinder of necessary parties on the overall maintainability of suit under the said rule.

(ii) Suit for infringement of GI – Whether u/s 21(1), registered Proprietor can bring the suit in its own capacity or must join authorized user to make the suit maintainable – Held, registration of GI gives equal rights to both registered proprietor and authorized user – Therefore, registered proprietor can

independently file suit for grant of injunction against unauthorised use of GI tag.

(iii) Interpretation – How should the word 'and' occurring in section 21(1)(a) of the Act, 1999 be read? The word 'and' used in 21(1)(a) has to be treated as 'or', as otherwise the status of RP would be reduced below AU by any other interpretation.

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 1 एवं आदेश 7 नियम 11 वस्तुओं के भौगोलिक संकेत (पंजीकरण और संरक्षण) अधिनियम, 1999 – धाराएं 2(1)(ढ़), (ख) एवं 21

संविधियों का निर्वचनः

(i) वाद नामंजूर किया जाना – क्या आदेश 7 नियम 11 के अंतर्गत प्रस्तुत आवेदन में सिविल न्यायालय पक्षकार के असंयोजन को वाद के लिये घातक ठहरा सकता है या वाद में किसी पक्षकार को आवश्यक/उचित पक्षकार के रूप में जोड़ने का निर्देश दे सकता है? अभिनिर्धारित, नहीं – पक्षकारों का असंयोजन आदेश 7 नियम 11 के अंतर्गत वादपत्र को नामंजूर करने के निर्दिष्ट आधारों में से एक नहीं है– इसलिये उक्त नियम के अंतर्गत वाद की सम्पूर्ण पोषणीयता पर आवश्यक पक्षकारों के असंयोजन के प्रभाव की जांच किया जाना अनुज्ञेय नहीं है।

(ii) भौगोलिक संकेत के अतिलंघन हेतु वाद – क्या धारा 21(1) के अंतर्गत रजिस्ट्रीकृत स्वत्वधारी स्वयं की हैसियत से वाद ला सकता है अथवा वाद की पोषणीयता हेतु प्राधिकृत उपयोगकर्ता को संयोजित करना आवश्यक है? अभिनिर्धारित, भौगोलिक संकेतों का पंजीकरण रजिस्ट्रीकृत स्वत्वधारी एवं प्राधिकृत उपयोगकर्ता दोनों को समान अधिकार देता है – अतः रजिस्ट्रीकृत स्वत्वधारी स्वतंत्र रूप से जीआई टैग के अनधिकृत उपयोग के विरूद्ध निषेधाज्ञा जारी किये जाने हेतु वाद दायर कर सकता है ।

(iii) निर्वचन – 1999 के अधिनियम की धारा 21(1) (क) के अंतर्गत प्रयुक्त शब्द 'अथवा' को कैसे पढ़ा जाना चाहिए? धारा 21(1) (क) के अंतर्गत प्रयुक्त शब्द 'अथवा' को 'तथा' के रूप में माना जाना चाहिए अन्यथा किसी अन्य व्याख्या से रजिस्ट्रीकृत स्वत्वधारी की स्थिति प्राधिकृत उपयोगकर्ता से कम हो जाएगी।

Scotch Whisky Association v. J.K. Enterprises and ors.

Order dated 18.12.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 4543 of 2021, reported in 2024 (2) MPLJ 466 (DB)

Relevant extracts from the order:

It has been held consistently by various High Courts, including this Court also ***(Babu Lal and ors. v. Smt. Omwati and ors., 2014 MPLJ Online 104*** Order dated 26.08.2014), that Non-Joinder/Joinder of necessary parties, not being one of the grounds specified under Order 7 Rule 11, can't be devised as a ground for rejection or return of plaint by the Trial Court. It cannot lead to immediate rejection of the plaint, if the plaintiff fails to do so. The provisions of Order 7 Rule 11 clearly don't envisage joinder/non-joinder as grounds for rejection of the plaint. The said exercise may be done during the course or further stages of the trial. It can be examined by the Trial Court at the stage of framing of issues later during the trial about the necessity of joinder of any necessary party or implication of non-joinder of any such party on the maintainability of the suit. However, in an application under Order 7 Rule 11, such an inquiry is clearly not permissible to be undertaken by the Trial Court. The Division Bench of the Madras High Court in the matter of ***B. Govinda Petitionermi v. Manikam and ors., (2016) 1 LW 49*** has taken the same view holding that consideration of validity of plaint has to be adjudged on the limited grounds specified thereunder, within the purview of which non-joinder of the necessary party clearly doesn't fall. Similar view has been taken by the Patna High Court in the matter of ***Rajendra Sah v. Jamila Khatoon and ors., 2016 SCC OnLine Pat 3908*** (CWJC 4856 of 2014, Judgment dated 21.01.2016) and the Telangana High Court in the matter of ***Soyal Infra v. Rameezbee, CRP*** No. 3026/2019, Judgment dated 09.03.2022. The Delhi High Court also in one of its recent judgments in the matter of ***Silver Maple Healthcare Services v. Dr. Tejinder Bhatti, 2022/DHC/004573*** has taken the same view of impermissibility of examination of impact of non-joinder of necessary parties on the overall maintainability of suit under Order 7 Rule 11. Thus on this ground also the impugned order dated 28.10.2021 becomes assailable.

From the overall study of anatomy of the GI Act, the Rules of 2002 framed thereunder, it is clear that the application for grant of GI status can be filed by an applicant, who has to be a producer or any person entrusted as the RP. It is on the application of the RP or any other applicant that GI tag comes into existence, never otherwise. The RP can alternatively, even in the absence of AU as postulated under various provisions mentioned supra, institute an action or proceeding in his own right, one of them being a renewal of GI or for grant of additional protection. The

RP needs to be informed and updated whenever any new AU is added to the register of any GI of good concerned. Thus the RP can very well be treated as an entity independent of AU, under the provisions of the GI Act for the purposes of obtaining or continuing with the GI tag of any good concerned. Otherwise, the GI Act would have made specific mention of the same as done vide Section 68, mandating, compulsory impleadment of AU along with RP or any other party when disputes under the provisions specified therein are involved. The RP has an independent legal status and entitlement to relate himself to the GI tag of the good concerned under the Act as well as the Rules framed thereunder. The argument of JKE (Respondent), therefore, does not have any legs to survive that except AU, RP has no existence and has no claim or right relatable to the usage of GI tag of any good. As is clear from Section 17, AU has a right to get himself registered separately and claim protection of GI independently. However, the mere existence or registration of AU cannot operate to the complete exclusion of the RP so as to dislodge and displace him from claiming the protection of any GI or standing against infringement thereof. This is the overall scheme of the GI Act as well as the Rules framed thereunder. Section 21 has also to be viewed in the larger scheme of the GI Act, titled 'Rights conferred by registration'. Section 20 preceding Section 21 placed under the same Chapter titled 'Effect of Registration' in a negatively worded covenant debars any person from instituting any proceeding pertaining to the infringement of unregistered GI. The legislative intent is loud and clear that it is protecting only the registered GI, nothing more and nothing less. Section 21 thus is enacted to protect the registered GI, the unregistered version of which has no protection or identity available under the Act. The title of Section 21 indicates the end purpose and intent behind its enactment, which is the right arising out of an incident to registration. Clearly, when registration can be applied for by both RP or AU, then both entities shall equally be entitled to the rights flowing out of the same as its consequence thereof. It cannot be contended that without an application preferred u/s 11, a GI tag can come into existence on its own and that the application u/s 11 has to necessarily be either by the RP, AU or both. In the absence of RP, many procedures and processes relating to GI tag would not occur, as is luminescent from the provisions mentioned supra. Thus the registration of GI gives equal recognition & rights to the RP as well as AU of obtaining the 'right to obtain relief' in the event of infringement of GI by any person. Section 21(1)(a) is different from Section 21(1)(b) and the difference in legislative drafting of the same further

magnified the above interpretation. On one hand, Section 21(1)(a) accords RP and AU the 'right to obtain relief' for any infringement and Section 21(1)(b) on the other hand accords the 'exclusive right' to the use of goods whose GI is registered. The exclusive right to use is qua the world at large and cannot work to the exclusion of RP who is, as in the present case 'Bhagirathi' of the GI tag itself, the original applicant. Petitioner is the 'Bhagirathi' of the GI tag in India as is luminescent from the notification of January 2009. Therefore, the legislature could not have been presumed to have conferred exclusive rights on the AU to the exclusion of RP itself, the originator of the very existence of a right. On the principles of *ubi jus ibi remedium*, viz., if there is a right, there is a remedy, therefore, RP would also have a right to file a restraint suit for grant of injunction against any unauthorised user of GI tag.

The word 'and' used under Section 21(1)(a) has to be treated as 'or', as otherwise the status of RP would be reduced below AU by any other interpretation. The interpretation of 'and' as 'or' or 'or' as 'and' has often been a subject matter of debate and depending on the legislative text and context, 'and' can be interpreted as 'or' or vice-versa. In the matter of ***Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755***, whilst interpreting section 86 (1)(f) of the Electricity Act, 2003, the Supreme Court interpreting the word 'and to mean 'or' held thus:

> "The main question before us is whether the application under Section 11 of the Act of 1996 is maintainable in view of the statutory specific provisions contained in the Electricity Act of 2003 providing for adjudication of disputes between the licensee and the generating companies.
>
> In our opinion, the submission of Mr. K.K. Venugopal has to be accepted.
>
> It may be noted that Section 86(1) of the Act of 2003 a special provision for adjudication of disputes between the licensee and the generating companies. Such disputes can be adjudicated upon either by the State Commission or the person or persons to whom it is referred for arbitration. In our opinion the word "and" in Section 86(1) between the words "generating companies" and "to refer any dispute for arbitration" means "or". It is well settled that sometimes

and can mean "or" and sometimes "or" can mean "and" (vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, p. 404).

In our opinion in Section 86(1)(o) of the Electricity, Act, 2003 the word "and" between the words "generating companies" and the words "refer any dispute" means "or", otherwise it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself means "or", Section 86(1)(0) is a special provision and hence, will override the general provision in Section 1 of the Arbitration and Conciliation Act, 1996 and also refer it to some arbitrator. Hence the word "and" in Section 86(1) means "or".

That towards the same proposition counsel for the petitioner have ably relied on the positions of the ***Alka v. Abhinish Chandra Sharma., 1991 MPLJ 625,*** spelling the same condition. ***Godavat Pan Masala Products I.P. v. UOI., (2004) 7 SCC 68.*** Thus in view of the above the word 'and' must be inferred and read as 'or', giving 'equal rights' to sue to both the RP as well as AU in the event of a registered GI. The contention of the JKE (Respondent) though may appear to be attractive at first blush, on deeper scrutiny fails sustenance and is rejected as such. In view thereof the reasoning adopted by the trial Court in the impugned order holding impleadment of AU along with the RP for proceeding further in the suit proceedings is also liable to be set aside in view of the discussions above.

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156. CIVIL PROCEDURE CODE, 1908 – Order 8 Rules 3 and 5

Written statement – Requirement of para-wise reply to the plaint and specific admission or denial of pleadings – Necessary to find out which pleading in the plaint is admitted or denied, that otherwise requires roving Court inquiry – However, preliminary objections and additional pleadings can be taken by defendant in separate set of paragraphs, which can be responded by plaintiff in the replication/rejoinder, if needed.

सिविल प्रक्रिया संहिता, 1908 – आदेश 8 नियम 3 एवं 5

लिखित कथन – वादपत्र का कंडिकावार जवाब देने तथा अभिवचनों की विनिर्दिष्ट स्वीकारोक्ति अथवा प्रत्याख्यान करने की अपेक्षा करना – यह ज्ञात करने के लिए आवश्यक है कि वादपत्र के किन अभिवचनों को स्वीकार किया अथवा प्रत्याख्यान

किया गया है, अन्यथा इसके लिए न्यायालय को अतिगामी जांच करने की आवश्यकता होगी – प्रतिवादी द्वारा प्रारंभिक आपत्तियॉ एवं अतिरिक्त अभिवचन पृथक कंडिका में किये जा सकते है, जिनका आवश्यकता होने पर वादी द्वारा प्रत्युत्तर दिया जा सकता है।

Thangam and anr. v. Navamani Ammal

Judgment dated 04.03.2024 passed by the Supreme Court in Civil Appeal No. 8935 of 2011, reported in (2024) 4 SCC 247

Relevant extracts from the judgment:

In the absence of para-wise reply to the plaint, it becomes a roving inquiry for the Court to find out as to which line in some paragraph in the plaint is either admitted or denied in the written statement filed, as there is no specific admission or denial with reference to the allegation in different paras.

Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved.

The requirement of Order VIII Rules 3 and 5 CPC are specific admission and denial of the pleadings in the plaint. The same would necessarily mean dealing with the allegations in the plaint para-wise. In the absence thereof, the respondent can always try to read one line from one paragraph and another from different paragraph in the written statement to make out his case of denial of the allegations in the plaint resulting in utter confusion.

In case, the defendant/respondent wishes to take any preliminary objections, the same can be taken in a separate set of paragraphs specifically so as to enable the plaintiff/petitioner to respond to the same in the replication/rejoinder, if need be. The additional pleadings can also be raised in the written statement, if required. These facts specifically stated in a set of paragraphs will always give an opportunity to the plaintiff/petitioner to respond to the same. This in turn will enable the Court to properly comprehend the pleadings of the parties instead of digging the facts from the various paragraphs of the plaint and the written statement.

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157. CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 6-A

Counter-claim – Defendant filed counter-claim after issues were framed – Plaintiff challenged it as being time barred – Defendant cannot be permitted to file the counter-claim after framing of issues and after substantial progress of the suit – In this case, although issues were framed and one witness of the plaintiff had filed an affidavit under Order 18 Rule 4, but cross-examination had not begun – Since there was no substantial progress in the suit, order of trial court allowing the counter-claim was upheld.

सिविल प्रक्रिया संहिता, 1908 – आदेश 8 नियम 6-क

प्रतिदावा – प्रतिवादी ने वादप्रश्न विरचित हो जाने के पश्चात् प्रतिदावा प्रस्तुत किया – वादी ने इसे अवधि बाह्य होने के आधार पर चुनौती दी – प्रतिवादी को वादप्रश्न विरचित हो जाने और वाद की कार्यवाही में सारभूत प्रगति हो जाने के पश्चात् प्रतिदावा प्रस्तुत करने की अनुमति नहीं दी जा सकती – इस वाद में यद्यपि वादप्रश्न विरचित किये जा चुके थे एवं वादी के एक साक्षी ने आदेश 18 नियम 4 के अंतर्गत शपथपत्र प्रस्तुत किया था किंतु प्रतिपरीक्षण प्रारम्भ नहीं हुआ था – चूंकि वाद में कोई सारभूत प्रगति नहीं हुई थी अतः प्रतिदावे की अनुमति देने के विचारण न्यायालय के आदेश को यथावत रखा गया।

Shri Krishna Ginning Factory, Nagda v. State of M.P. and ors.

Order dated 18.01.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 3541 of 2021, reported in 2024 (2) MPLJ 462

Relevant extracts from the order:

In paragraph – 19 of the judgment delivered in the case of ***Ashok Kumar Kalra v. Wing CDR. Surendra Agnihotri and ors., (2020) 2 SCC 394*** the Apex Court has held that the "discretion vested with the trial Court to ascertain the maintainability of the counter-claim is limited by various considerations based on facts and circumstances of each case and there cannot be a straitjacket formula, rather there are numerous factor which needs to be taken into consideration before admitting the counter-claim. The trial Court has to exercise the discretion judiciously and come to the conclusion that by allowing the counter-claim, no prejudice is caused to the opposite party, the process is not unduly delayed and the same is in the best interest of justice". The Apex Court, however, has opined that "defendants cannot be permitted to file the counter-claim after the issues are framed

and after the suit has proceeded substantially". Therefore, there are twin requirements (i) the issues have been framed and (ii) the suit has proceeded substantially.

In the present case, although the issues have been framed, but there is no substantial progress in the suit as only one witness of the plaintiff has filed an affidavit under Order XVIII, Rule 4 of the CPC and cross-objection has not begun so far. Since the order passed by the trial Court neither suffers from illegality nor any infirmity, I do not find any reason to interfere with the same.

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158. CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 6-A and Order 22 Rule 3

Counter-claim – Substitution of legal representatives – Legal representatives of plaintiff are already substituted in the plaint – No need to substitute them again in the counter-claim – Parties to the suit are treated as parties to the counter-claim also. [*Organic Insulations v. Indian Rayon Corporation Ltd.,(2003) 6 SCC 187* relied on].

सिविल प्रक्रिया संहिता, 1908 – आदेश 8 नियम 6-क एवं आदेश 22 नियम 3 प्रतिदावा – विधिक प्रतिनिधियों का प्रतिस्थापन – वादी के विधिक प्रतिनिधि पूर्व से ही वाद में प्रतिस्थापित – उन्हें प्रतिदावे में पुनः प्रतिस्थापित करने की कोई आवश्यकता नहीं है – वाद के पक्षकार प्रतिदावे के लिए भी पक्षकार माने जाएंगें। [*ऑर्गेनिक इंशुलेशन विरूद्ध इंण्डियन रॉयन कॉरपोरेंशन लिमिटेड (2003) 6 एससीसी 187,* अनुसरित]

Mazid Beg (dead) thr. Arkey Investment Pvt. Ltd., Bhopal v. Subhashini Pandey and ors.

Order dated 28.08.2023 passed by the High Court of Madhya Pradesh in Civil Revision No. 400 of 2021, reported in 2024 (1) MPLJ 290

Relevant extracts from the order:

In the case of ***Organic Insulations v. Indian Rayon Corporation Ltd., (2003) 9 SCC 187***, Hon'ble Supreme Court has held as under:

> "Coming to the provisions of Order 8 Rule 6-A, although sub-rule (4) says that the counter-claim will be treated as a plaint, under sub-rule (2), such counter-claim has the same effect as a cross-suit so as

to enable the court to pronounce a final judgment in the same suit, both on the original suit and on the counter-claim As the substitution has been made by the plaintiff in the suit, the legal heirs of the plaintiff will have full opportunity to defend the counter-claim as both the suit and the counter-claim will be tried in the same proceeding and therefore, no prejudice would be caused to the legal heirs of the plaintiff in the counter-claim We, therefore, find that the contention of the learned counsel for the appellant has no force."

In view of the aforesaid decision in the case of ***Organic Insulations*** (supra) and further in view of the provisions contained under Order 8 Rule 6-A to G of CPC, in my considered opinion, after making substitution/addition in the plaint, there is no need to substitute/add the legal representatives of plaintiff or defendant or additionally added parties, in the counter-claim also.

In addition to the aforesaid, it is pertinent to mention here that Rule 6A of CPC does not say as to who shall be parties to the counter claim, however it can be filed only against the plaintiff(s) and against no other person. Order VII Rule 1 CPC prescribes about particulars to be contained in plaint but order VIII does not prescribe containing of such particulars in the written statement or counter-claim also. Meaning thereby the particulars about plaintiff(s) and defendants) remain the same in both cases as shown in the plaint and in my considered opinion, parties to the suit are treated the parties to the counter-claim also, therefore, there arises no question of substitution of LRs/addition of new party in the counter claim also.

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159. CIVIL PROCEDURE CODE, 1908 – Order 22 Rules 3 and 9

Dismissal of appeal as abated – Sole plaintiff/appellant died on 09.12.2015 – Application for substitution of legal representatives under Order 22 Rule 3 along with application u/s 5 of the Limitation Act was filed on 13.07.2016 – Court rejected the same on the ground that no application praying for setting aside abatement of appeal was filed – Whether order was justified? Held, No – Appellate Court ought to have afforded opportunity to applicants to file application under Order 22 Rule 9 – Matter remanded. [*Mithailal Dalsangar Singh and ors. v. Annabai Devram Kini and ors., (2003) 10 SCC 691* and *State of M.P., v. Pradeep Kumar, (2000) 7 SCC 372* relied on]

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 3 एवं 9
उपशमित हो जाने के आधार पर अपील निरस्त – एकमात्र वादी/अपीलकर्ता की मृत्यु दिनांक 09.12.2015 को हो गई – आदेश 22 नियम 3 के तहत विधिक प्रतिनिधियों के प्रतिस्थापन के लिए आवेदन, परिसीमा अधिनियम की धारा 5 के आवेदन के साथ दिनांक 13.07.2016 को प्रस्तुत किया गया था – न्यायालय ने दोनों आवेदन एवं अपील को इस आधार पर निरस्त कर दिया कि अपील का उपशमन अपास्त करने के लिए आवेदन प्रस्तुत नहीं किया गया था – क्या आदेश उचित था? अवधारित, नहीं – अपीलीय न्यायालय को आदेश 22 नियम 9 के तहत आवेदन प्रस्तुत करने का अवसर आवेदकगण को देना चाहिए था – मामला प्रतिप्रेषित किया गया। [*मिठाईलाल दलसांगर सिंह और अन्य बनाम अन्नाबाई देवराम किनी, (2003) 10 एससीसी 691 और मध्य प्रदेश राज्य, बनाम प्रदीप कुमार, (2000) 7 एससीसी 372* पर विश्वास किया गया]

Roshanlal Tiwari (dead) thr. L.Rs. and ors. v. Pannalal Tiwari and ors.

Order dated 11.10.2023 passed by the High Court of Madhya Pradesh in Civil Revision No. 74 of 2021, reported in 2024 (1) MPLJ 297

Relevant extracts from the order:

In the case of ***Mithailal Dalsangar Singh and ors. v. Annabai Devram Kini and ors., (2003) 10 SCC 691,*** the Supreme Court has observed that if the explanation of delay is available on record then even without filing application under Order 22 Rule 9 CPC, the prayer for setting aside abatement can be considered and allowed. In the present case, fault of non-filing of application under Order 22 Rule 9 CPC is not attributable to the applicants but it was legal duty of their counsel to file application under Order 22 Rule 9 CPC and it is well settled that the litigant should not be made to suffer for the faults of the counsel.

In the case of ***Mithailal Dalsangar Singh*** (supra), the Supreme Court has held as under:

> **"**In as much as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting

aside of an abatement may in substance be construed as a prayer for setting aside abatement. So also a prayer for setting aside abatement as regard one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for."

Reading of the provision of Order 22 Rule 9(2) CPC makes it clear that an application is to be made and not to be filed. The word *made* shows that the application can be orally made.

As such, while considering the applications under Order 22 Rule 3 CPC as well as Section 5 of the Limitation Act, if learned appellate Court was of the opinion that application under Order 22 Rule 9 CPC needs to be filed, then before proceeding further learned appellate Court ought to have afforded further opportunity to the applicants to file application under Order 22 Rule 9 CPC and in the available facts and circumstances of the case, where the applicants moved an application under Section 5 of the Limitation Act then it should not have dismissed the application for substitution for want of application under Order 22 Rule 9 CPC.

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160. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 1(3)

Application for withdrawal of suit with liberty to file fresh suit – Such application cannot be partly allowed and partly rejected – It has either to be completely allowed or completely rejected – Suit cannot be allowed to be withdrawn without giving the plaintiff liberty to file a fresh suit – This would leave the plaintiff remediless.

सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 1(3)
नवीन वाद प्रस्तुत करने की स्वतंत्रता के साथ वाद वापस लेने का आवेदन – ऐसा आवेदन आंशिक रूप से स्वीकार एवं आंशिक रूप से निरस्त नहीं किया जा सकता – इसे पूर्णतः स्वीकार या पूर्णतः निरस्त किया जाना चाहिए – वादी को नवीन वाद प्रस्तुत करने की स्वतंत्रता दिए बिना उसे वाद वापस लेने की अनुमति नहीं देनी चाहिए – ऐसा करना वादी को उपचारहीन कर देगा।

Madhuribai v. Shakuntalabai and ors.

Order dated 01.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 4647 of 2022, reported in 2024 (2) MPLJ 718

Relevant extracts from the order:

This Court is of the considered opinion that an application under order XXIII Rule 1(3) cannot be decided in such a manner, which would leave the plaintiff as remediless, as on one hand, the liberty to file a fresh suit has been rejected and, at the same time the suit has also been allowed to be withdrawn, and is rejected. On a bare reading of the language used in order XXIII Rule 1(3) reveals that an application filed under the said provision is either to be allowed as a whole or rejected as a whole and, there is no third course available to the Court to partly allow it.

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161. CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 and 2
Temporary injunction – Grant of – Suit for specific performance of agreement to sell immovable property – Time was the essence of the contract as sale deed was agreed to be executed within a period of six months – Plaintiff did not make any effort to get the sale deed executed during stipulated period and filed suit only few days before the expiry of the period of limitation – Conduct of plaintiff is also a very relevant consideration for the purpose of injunction – Merely because execution of agreement to sell and part payment of sale consideration is admitted, plaintiff would not be entitled to the relief of injunction.

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 1 एवं 2
अस्थायी निषेधाज्ञा – प्रदान किया जाना – स्थावर संपत्ति के विक्रय अनुबंध के विर्निदिष्ट अनुपालन हेतु वाद – समय संविदा का सार था क्योंकि विक्रय विलेख

को छह माह की अवधि के भीतर निष्पादित करने पर सहमति हुई थी – वादी ने इस अवधि के दौरान विक्रय विलेख निष्पादित करने हेतु कोई प्रयास नहीं किया एवं परिसीमा काल की समाप्ति के कुछ दिन पूर्व ही वाद प्रस्तुत किया – निषेधाज्ञा के प्रयोजन के लिए वादी का आचरण भी अत्यन्त सुसंगत विचारणीय तथ्य होता है – मात्र इस कारण कि विक्रय अनुबंध का निष्पादन एवं विक्रय प्रतिफल का आंशिक भुगतान स्वीकृत है, वादी निषेधाज्ञा की सहायता पाने का अधिकारी नहीं हो जाता।

Deepak Grover v. Atul Agrawal and ors.

Order dated 27.09.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 2305 of 2023, reported in 2024 (1) MPLJ 407

Relevant extracts from the order:

Undisputedly, all the three agreements in question were executed on 19.02.2012 (notarized on 22.02.2012) whereby total sale consideration was fixed at Rs.1,00,00,000/- out of which an amount of Rs.25,00,000/- was paid in advance and as per condition no.2 of the agreement(s), the sale deed was to be executed within six months i.e. on or before 22.08.2012. However, there are other conditions mentioned in other columns of the agreements but it appears that time of six months was fixed for fulfillment of other conditions also.

Even prima facie, in presence of fixed period of six months, it was for the plaintiffs to issue notice to the defendant 1 before expiry of period of six months, but for the reasons best known to them, the plaintiffs did not issue notice complaining their grievance. Copy of plaint shows that even after expiry of six months, the plaintiffs did not do anything for a period of more than two years and five months and just before few days of expiry of three years the suit was filed on 16.02.2015.

Thereafter on 16.06.2016 the defendant 1 filed written statement and in paragraph 1 of which itself, he stated that because the plaintiffs have failed to get executed sale deed within a period of six months, therefore, if the plaintiffs want to purchase the property, the defendant 1 is ready and willing to sell it on the prevailing/current Collector guideline, but nothing is on record to show that the plaintiffs ever made any effort to get the sale deed executed or even they did not show their willingness to purchase the property at current/prevailing Collector guideline.

Perusal of the impugned orders passed by learned Courts below shows that both the learned Courts below have, on the premise that the factum of execution of agreements in question and payment of advance consideration amount of Rs. 25,00,000/- has been admitted by the defendant-1, issued temporary injunction restraining the defendant-1 from alienating the suit property and from raising construction thereon, but nowhere learned Courts have considered the conduct of the plaintiffs which is required to be considered necessarily in the light of decisions of Supreme Court in the case of ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LlP Ltd. (2020) 5 SCC 410*** and ***M/s. Gujarat Bottling Co. Ltd. and ors. v. Coca Cola Company and ors., (1995) 5 SCC 545*** non-consideration of which has vitiated the impugned orders.

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162. COMMERCIAL COURTS ACT, 2015 – Section 15(4)
CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 1
Filing of written statement – Class-B suit initially filed before District Court Betul on 21.01.2019 – Said suit was transferred to Commercial Court, Bhopal and was re-registered on 18.04.2022 – Defendant submitted written statement on 13.09.2022 – Commercial Court rejected the written statement on the ground that pendency of application filed under Order 7 Rule 11 cannot be a ground to extend the limitation for filing the same beyond the period of 120 days – After transfer of the suit to the Commercial Court, the case management hearing needs to be applied and for that purpose, the court is obliged to prescribe a new time period within which the written statement shall be filed – Since without prescribing a new time line as per sub-section (4) of section 15 of the Act, the Commercial Court declined the written statement – Order was set aside and written statement was directed to be taken on record.

वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 15(4)
सिविल प्रक्रिया संहिता, 1908 – आदेश 8 नियम 1
लिखित कथन की प्रस्तुति – आरम्भ में जिला न्यायालय बैतूल के समक्ष दिनांक 21.01.2019 को बी क्लास वाद प्रस्तुत किया गया – उक्त वाद वाणिज्यिक न्यायालय, भोपाल में अंतरित कर दिया गया था और दिनांक 18.04.2022 को पुनः पंजीबद्ध हुआ – प्रतिवादी ने दिनांक 13.09.2022 को लिखित कथन प्रस्तुत किया – वाणिज्यिक न्यायालय ने लिखित कथन को इस आधार पर नामंजूर कर

दिया कि आदेश 7 नियम 11 के अंतर्गत प्रस्तुत आवेदन का लंबित रहना 120 दिन की अवधि से परे लिखित कथन प्रस्तुत करने हेतु समय सीमा का विस्तार करने का आधार नहीं हो सकता – वाणिज्यिक न्यायालय में वाद के अंतरण के उपरांत, मामला सुनवाई प्रबंधन का लागू करना आवश्यक है और इस प्रयोजन से न्यायालय के लिए बाध्यकर है कि वह नई समय सीमा निर्धारित करे जिसके भीतर लिखित कथन प्रस्तुत किया जाएगा – चूँकि अधिनियम की धारा 15 की उपधारा 4 के तहत नई समय सीमा निर्धारित किये बिना वाणिज्यिक न्यायालय ने लिखित कथन अस्वीकार किया – आदेश अपास्त किया गया एवं लिखित कथन अभिलेख पर लेने का निर्देश दिया गया।

Tele Communications Consultants India Ltd. v. Rajendra Singh Kiledar Construction Pvt. Ltd.

Order dated 13.12.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 6026 of 2022, reported in 2024(1) MPLJ 416 (DB)

Relevant extracts from the order:

The language employed in sub-section 4, makes it crystal clear that after transfer of matter to the Commercial Court, the case management hearing needs to be applied and for that purpose, the Court is obliged to prescribe a new time line or issue further directions. The language of the statute is plain, simple and unambiguous. Thus, it must be given effect to irrespective of its consequences. (See :***Nelson Motis v. Union of India, (1992) 4 SCC 711***

The Division Bench in the case of ***Amoda Iron Steel Limited v. Sneha Analytics and Scientifics,*** Civil Revision ***No. 1261 of 2020***, delivered on 25.01.2022 considered the judgment of Supreme Court in ***SCG Contracts (India) Pvt. Ltd. v. K.S. Chamankar Infrastructure Private Limited and ors., (2019) 12 SCC 210*** and enabling statutory provisions including Section 15(4) of the Act of 2015 as well as Order V Rule 1 and Order VIII Rule 1 and Rule 10 of the Code of Civil Procedure. It is apt to consider few paragraphs of this judgment:—

> "Here, we notice an anomaly in the statutory provisions. A comparative study of the second proviso to Order V Rule 1 sub-rule(1) CPC and the proviso to Order VIII Rule 1 CPC as amended through Section 16 of the Act, 2015 shows that both the provisos are verbatim the same. Section 15(4) of the Act, 2015, which expressly

excludes the applicability of the proviso to sub rule(1) of rule (1) of Order V CPC, is silent about the proviso to rules 1 and 10 of Order VIII. On the one hand, proviso to sub rule 1 of rule 1 of Order V CPC shall not apply, meaning thereby that with respect to the suits or applications transferred to the Commercial Court from the civil court under Section 15(1) or (2) the right of the defendant to file written statement shall not be forfeited even if the same is not filed within a period of 120 days from the date of service of summons and further, in view of Section 15(4) itself, the commercial court may in its discretion prescribe a new time period within which the written statement shall be filed, but on the other hand, in view of the proviso to Order VIII Rule 1 CPC on expiry of 120 days, the right of the defendant to file the written statement, if the written statement is not filed within that time-limit, shall be forfeited and the court shall not allow the written statement to be taken on record on expiry of such period nor the court shall extend the time for filing the written statement in view of rule 10 of Order VIII CPC. Both the provisions i.e. Section 15(4) proviso and Order VIII rules 1 and 10, therefore apparently cannot be given effect to at the same time.

After dealing with the relevant provisions, it was concluded as under: –

We are therefore of the considered view and hold on point No. 1 as under:—

1) where the suit or application has been transferred to the Commercial Court under Section 15(2) of the Act, to file written statement and the 2015 from the civil court and the procedure for filing written statement had not been completed at the time of transfer, the commercial court shall have the power and jurisdiction to prescribe a new time period for filing written statement, irrespective of the expiry of 120 days from the date of service of summons on the concerned defendant.

2) In a suit or application transferred to the commercial court under Section 15(2) of the Act, 2015, the written statement shall be filed within the new time period prescribed by the Commercial Court in exercise of power under Section 15(4) of the Act, 2015, failing which, on expiry of new time line so prescribed, the defendant shall forfeit his right court shall neither take the

written statement on record nor shall extend the new prescribed time period as mandated by Order VIII rules 1 and 10 CPC."

We have gone through the aforesaid Division Bench judgment and we are in respectful agreement with the view taken by the Andhra Pradesh High Court. The interpretation advanced by the Division Bench is in consonance with the statutory scheme ingrained in Section 15(4) of the Act of 2015. In Para-61 with utmost clarity, the Division Bench dealt with the impact of Section 15(4) of the Act of 2015 and Order V Rule 1 and Order VIII Rule 1 and 10 of the Code of Civil Procedure.

In this view of the matter, learned Commercial Court has committed an error of law in declining the written statement without prescribing a new time line as per Sub-section 4 of Section 15 of the Act of 2015. Resultantly, the impugned order dated 13.9.2022 (Annexure P-7) passed in Commercial Suit No. 06 of 2022 is set aside. The court below is directed to take the written statement on record and prepare a further time line as per Section 15(4) of the Commercial Courts Act, 2015.

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163. CONSTITUTION OF INDIA – Article 141

(i) Doctrine of binding precedent – *Per incuriam* and *sub silentio* decisions – Meaning – Non-binding effect of both kinds of decisions – Law clarified.

(ii) Order obtained by playing fraud on Court – Will be treated *non est* in the eye of law – Doctrine of *res judicata* or doctrine of binding precedent would not be attracted.

भारत का संविधान – अनुच्छेद 141

(i) बाध्यकारी पूर्वनिर्णय का सिद्धांत – *पर इन्क्यूरियम* और *सब साइलेन्शियो* निर्णय – अर्थ – दोनों प्रकार के निर्णयों का अबाध्यकारी प्रभाव – विधि स्पष्ट की गई ।

(ii) न्यायालय से कपट कर प्राप्त किया गया आदेश – विधि की दृष्टि में इसे अस्तित्व में न होना माना जाएगा – पूर्व न्याय का सिद्धांत अथवा बाध्यकारी पूर्वनिर्णय का सिद्धांत आकृष्ट नहीं होगा ।

Bilkis Yakub Rasool v. Union of India and ors.

Judgment dated 8.01.2024 passed by the Supreme Court in Writ Petition (Crl.) No. 491 of 2022, reported in (2024) 5 SCC 481

Relevant extracts from the judgment:

It is trite that fraud vitiates everything. It is a settled proposition of law that fraud avoids all judicial acts. In ***S. P. Chengalvaraya Naidu v. Jagannath (Dead) through LRs, (1994) 1 SCC 1*** it has been observed that "fraud avoids all judicial acts, ecclesiastical or temporal." Further, "no judgment of a court, no order of a minister would be allowed to stand if it has been obtained by fraud. Fraud unravels everything" vide ***Lazarus Estates Ltd. v. Beasley, (1956) 2 WLR 502 (CA)***.

It is well settled that writ jurisdiction is discretionary in nature and that the discretion must be exercised equitably for promotion of good faith vide ***State of Maharashtra v. Prabhu, (1994) 2 SCC 481***. This Court has further emphasized that fraud and collusion vitiate the most solemn precedent in any civilized jurisprudence; and that fraud and justice never dwell together (*fraus et jus nunquam cohabitant*). This maxim has never lost its lustre over the centuries. Thus, any litigant who is guilty of inhibition before the Court should not bear the fruit and benefit of the court's orders. This Court has also held that fraud is an act of deliberation with a desire to secure something which is otherwise not due. Fraud is practiced with an intention to secure undue advantage. Thus, an act of fraud on courts must be viewed seriously.

Furmer, fraud can be established when a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, being careless about whether it be true or false. While suppression of a material document would amount to a fraud on the Court, suppression of material facts vital to the decision to be rendered by a court of law is equally serious. Thus, once it is held that there was a fraud in judicial proceedings all advantages gained as a result of it have to be withdrawn. In such an eventuality, doctrine of res Judicata or doctrine of binding precedent would not be attracted since an order obtained by fraud is *non est* in the eye of law.

A Division Bench of this Court comprising Justice B. R. Gavai and Justice C.T. Ravikumar placing reliance on the dictum in S.P. Chengalvaraya Naidu, held in ***Ram Kumar v. State of Uttar Pradesh, AIR 2022 SC 4705***, that a judgment or decree obtained by fraud is to be treated as a nullity.

In ***State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139*** a two Judge Bench of this Court (speaking through Sahai J. who also wrote the concurring

judgment along with Thommen, J.) observed that the expression *per incuriam* means *per ignoratium*. This principle is an exception to the rule of *stare decisis*. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. It would result in a judgment or order which is *per incuriam*. In the case of Synthetics and Chemicals Ltd., the High Court relied upon the observations in paragraph 86 of the judgment of the Constitution Bench in Synthetics and Chemicals Ltd., namely, "sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol" and struck down the levy.

Thus, although it is the ratio decidendi which is a precedent and not the final order in the judgment, however, there are certain exceptions to the rule of precedents which are expressed by the doctrines of *per incurium* and *sub silentio*. *Incuria* legally means carelessness and *per incurium* may be equated with *per ignorantium*. If a judgment is rendered in *ignorantium* of a statute or a binding authority, it becomes a decision *per incurium*. Thus, a decision rendered by ignorance of a previous binding decision of its own or of a court of coordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law is *per incurium*. Such a *per incurium* decision would not have a precedential value. If a decision has been rendered per in curium, it cannot be said that it lays down good law, even if it has not been expressly overruled vide ***Mukesh K. Tripathi v. Senior Divisional Manager, LIC, (2004) 8 SCC 387***. Thus, a decision per *incurium* is not binding.

Another exception to the rule of precedents is the rule of *sub- silentio*. A decision is passed *sub-silentio* when the particular point of law in a decision is not perceived by the Court or not present to its mind or is not consciously determined by the Court and it does not form part of the *ratio decidendi* it is not binding vide ***Amrit Das v. State of Bihar, (2000) 5 SCC 488***.

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164. COURT FEES ACT, 1870 – Section 7

Suit for declaration and mandatory injunction – Payment of court fees – Relief was sought by the plaintiff to the effect that direction issued by Respondent Nos. 1 & 2 for grant of retiral dues of deceased employee to

the Respondent Nos. 3 & 4 be declared as null and void and for granting mandatory injunction regarding payment of said amount to the plaintiff – For the relief of declaration, plaintiff paid the Court fees but did not pay Court fees for the relief of mandatory injunction stating that the said relief is consequential in nature – Whether said relief can be said to be consequential in nature? Held, No – Both the reliefs claimed by the plaintiff are totally distinct and independent of each other – The injunction claimed is not consequential to the declaration sought – Therefore, both the relief needs to be valued separately and requisite Court fees is required to be paid.

न्यायालय फीस अधिनियम, 1870 – धारा 7

घोषणा एवं आज्ञापक निषेधाज्ञा का वाद – न्यायालय शुल्क की अदायगी – वादी द्वारा यह अनुतोष चाहा गया कि प्रत्यर्थी क्रमांक 1 व 2 द्वारा मृतक कर्मचारी की सेवानिवृत्ति देयकों को प्रत्यर्थी क्रमांक 3 व 4 को प्रदान करने के निर्देश को अकृत और शून्य घोषित किया जाए एवं आज्ञापक निषेधाज्ञा प्रदान कर उक्त राशि वादी को भुगतान की जावे – घोषणा के अनुतोष के लिए वादी ने न्यायालय फीस का भुगतान किया किन्तु आज्ञापक निषेधाज्ञा को पारिणामिक अनुतोष बताते हुए उक्त अनुतोष के लिए न्यायालय फीस का भुगतान नहीं किया – क्या उक्त अनुतोष को पारिणामिक प्रकृति का माना जा सकता है – अवधारित, नहीं – दोनों अनुतोष जो वादी द्वारा चाहे गए है वे पूर्णतः एक दूसरे से सुभिन्न व स्वतंत्र है – जो निषेधाज्ञा चाही गयी है वह कथित घोषणा का पारिणामिक स्वरूप नहीं है – अतः दोनो अनुतोष का पृथक–पृथक मूल्यांकन कर आवश्यक न्यायालय शुल्क अदा करना होगा।

Bhagwanlal Sharma v. Government Kamla Nehru Kanya Uchchatar Mahavidyalaya, Bhopal and ors.

Order dated 24.01.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 2306 of 2023, reported in 2024 (2) MPLJ 696

Relevant extracts from the order:

The legal position, as is involved in the present case, has been dealt with by the Delhi High Court in the case of ***Sujata Sharma v. Manu Gupta & ors., 2010 SCC Online Del 506*** wherein the Court relied upon the case of ***Hans Raj Kalra v. Kishan Lal Kalra and ors., ILR 1976 Delhi***, in which the Court observed as under:

> As to what constitutes 'consequential relief', …..the observation in ***Mt. Zeb-ul-Nissa v. Din Mohammad, AIR 1941 Lahore 7 (FB) (6)*** which was also upheld by the Supreme Court in ***Shamsher Singh v. Rajinder Prasad, AIR 1973 SC 2384 (7)*** as follows:
>
> "The expression 'consequential relief' in Article 7(iv)(c) means some relief, which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a 'substantial relief'."

'Further relief' as mentioned in Section 34 of the Specific Relief Act, 1963 must arise from the cause of action on which the declaratory suit is based. However, the operation of Section 7(iv)(c) of the Court Fees Act, 1870 is limited to cases where a consequential relief is claimed in addition to a declaratory relief. The section does not apply to all cases falling within the ambit of Section 34 of the Specific Relief Act as though every 'consequential relief' would be 'further relief', there would be 'further relief' which would not constitute 'consequential relief'. No relief is consequential unless it cannot be granted without a declaration.

It is settled law that a declaration with consequential relief falls within the meaning of Section 7(iv)(c) of the Court Fee Act, 1870 and the plaintiff in such a case is required to value the suit for the purposes of court fee which is payable ad-valorem according to the value of the relief sought."

I am of the considered view that the Court has rightly observed that although a declaration was claimed, but by a mandatory injunction claiming whatever amount as to be paid towards the retiral dues of late employee in favour of respondent Nos. 3 and 4 be paid in favour of plaintiff/petitioner is not a relief consequential to the said declaration. By the said relief, the plaintiff is not only depriving the defendants to get the relief, which is already granted in their favour, but the plaintiff is also claiming that the said amount be paid to him. The declaration and consequential relief claimed by the plaintiff are very much distinct to each other. The injunction claimed is not consequential to the declaration made. The amount towards the retiral dues of late employee is being claimed by the plaintiff for himself, therefore trial court has rightly observed that the relief of declaration and injunction needs to be valued separately and ad valorem court fees is required

to be paid. I do not find any illegality or perversity in the order passed by the trial court. The case on which the petitioner is relying upon is not applicable in the facts and circumstances of the present case.

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165. COURT FEES ACT, 1870 – Section 7(xi)(cc)

Suit for eviction and arrears of rent – Requisite court fees – Court fees paid only in relation to relief of eviction – When relief of recovery of arrears of rent is sought, plaintiff is required to value the suit on the basis of amount of arrears and has to pay *ad valorem* court fees on the said amount.

न्यायालय फीस अधिनियम, 1870 – धारा 7(xi)(गग)

निष्कासन एवं बकाया किराया की वसूली हेतु वाद – अपेक्षित न्यायालय शुल्क – न्यायालय शुल्क मात्र निष्कासन की सहायता के लिए अदा की गई – जब बकाया किराये की वसूली का अनुतोष चाहा गया है – वादी को वाद का मूल्यांकन बकाया किराये की राशि के आधार पर करते हुए उस राशि पर मूल्यानुसार न्यायालय शुल्क का भुगतान करना होगा।

Raj Jaiswal v. Shri Gopal Lal Ji Maharaj Trust, Jabalpur and anr.

Order dated 24.01.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 43 of 2024, reported in 2024 (2) MPLJ 668

Relevant extracts from the order:

So far as the question of valuation of suit for purpose of arrears of rent (prior to suit) is concerned, a coordinate Bench of this Court has, in the case of ***Shri Ramkrishan Trading Co. v. Smt. Shakuntla Devi, 1982 MPWN 401***, held as under :-

> "The learned counsel for the non-applicant has vehemently argued before me that there is no need of paying Court fees for the amount of arrears of rent, as has been held by the Courts below. It has been alleged in the plaint that if the defendant fails to deposit the amount of arrears of rent, a decree for the said amount be also passed in favour of the plaintiff and he will pay the Court fees subsequently. This sort of prayer, which, amounts for asking for arrears of rent, even though made in a very clear language, cannot be said to be sufficient so as to evade the payment of Court fee and, in my

opinion, payment of Court- fees, arrears of rent is absolutely essential and the order of the Courts below in this regard is correct. If the plaintiff does not want to pay the Court-fee for the said relief, then she will have to delete the said prayer for passing a decree for arrears of rent."

Aforesaid view of coordinate Bench of this Court in the case of ***Shri Ramkrishan Trading Co.*** (supra) has already been affirmed by Division Bench of this Court in the case of ***Omprakash Gupta (Dr.) v. Ram Prakash and ors., 1993 MPLJ 869 (DB)***. Relevant paragraph 15 of which is as under :

"15. The question still remains to be decided whether on such transfer, in view of the law laid down in Baijnath 's case (supra), a landlord can seek eviction on the ground of default in payment of arrears of rent under Section 12(1)(a) and, if he can, then certainly, as rightly contended by Shri V.K. Bharadwaj, learned counsel for the tenants, placing reliance on short-noted decision of a learned Single Judge of this Court in ***Shri Ramkrishan Trading Co. v. Smt. Shakuntala Devi, 1982 MPWN 401*** that, as the suit will not only be for possession but for arrears of rent also, the court-fees payable on the former relief would be under Sub-clause (cc) of Clause (xi) of Section 7 of the Court Fees Act, and for the latter *ad valorem* court-fees on the money claimed."

It is clear that if the plaintiff prays for relief in respect of recovery of arrears of rent, then he is required to value the suit for that purpose and has to pay requisite/*ad-valorem* court fee on the amount of arrears of rent claimed by him.

As in the instant suit, no valuation has been made in respect of arrears of rent and no court fee has been paid, therefore, in my considered opinion trial court has committed illegality in dismissing the application holding thereby that the plaintiff has valued the suit properly and has paid requisite court fee.

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166. CRIMINAL PROCEDURE CODE, 1973 – Sections 29(2), 248, 325 and 360 Sentence – Procedure when Magistrate cannot pass sufficiently severe sentence – When it appears to the Magistrate from the records that the accused is guilty and deserves heavier sentence than that what he/she could impose, it would not be proper for him to straightway act u/s 325

of the Code and forward the case to the CJM – Magistrate has to pass a speaking and reasoned order referring the evidence on record in brief for forming an opinion of guilt and then refer the matter to the CJM.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 29(2), 248, 325 एवं 360
दण्डादेश – प्रक्रिया जब मजिस्ट्रेट पर्याप्त कठोर दण्डादेश नहीं दे सकता – जब मजिस्ट्रेट को अभिलेख से यह दर्शित होता है कि अभियुक्त दोषी है और जितना दण्डादेश वह दे सकता है उससे कठोर दण्ड पाने का अधिकारी है तब उसके लिए यह उचित नहीं होगा कि वह मामले को संहिता की धारा 325 के अधीन सीधे ही मुख्य न्यायिक मजिस्ट्रेट को भेज दे – मजिस्ट्रेट को अभियुक्त के दोषी होने के संबंध में राय बनाने के लिए अभिलेख पर उपलब्ध साक्ष्य का संक्षेप में उल्लेख करते हुए एक बोलता हुआ सकारण आदेश पारित करना होगा और फिर मामले को मुख्य न्यायिक मजिस्ट्रेट के पास भेजना होगा।

Shiv Pal Singh Chouhan v. State of M.P. & anr.

Order dated 20.09.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 40253 of 2023, reported in ILR 2024 MP 784

Relevant extracts from the order:

Section 325 of the Code specifically deals with the cases of punishment more than what the trial Magistrate can award. When, from the records, it appears to a Magistrate that the accused may have to be given a heavier sentence that what he/she could impose, it would not be proper for the Magistrate to straightway act under Section 325 of the Code and forward the case to the Chief Judicial Magistrate without forming an opinion that the accused is guilty. The mandate of Section 325 of the Code is clear and specific. It is only when a Magistrate is of the opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty and that he ought to receive a punishment different in kind from, or more severe than, that which the Magistrate is empowered to inflict. There should be a case where the sentence ought to be even for more than a Chief Judicial Magistrate can award, there will be no difficulty to the Magistrate forwarding the case to the Chief Judicial Magistrate in so far as Section 325(3) of the Code provides that Chief Judicial Magistrate can pass any order which he thinks fit but it is just possible only after hearing of the evidence for the prosecution and the defence and only then Magistrate can opine that the accused is guilty. After hearing the evidence for the

prosecution and the defence, Magistrate might opine that the accused is not guilty and in that case it would be perfectly open to him to acquit the accused. Forwarding cases to the Chief Judicial Magistrate without reaching the stage where Magistrate could form an opinion of guilt, but which are likely to end in an acquittal after hearing the evidence for the prosecution and the defence under Section 325 of the Code merely because it appears to him from the nature of the allegations that, in the remote prospect of the accused being convicted he/she might not be able to award adequate sentence, would be wasting the precious time of the Court, as after all the Magistrate is quite competent to try the case and acquit the accused, if he/she so find the accused not guilty. Section 325 of the Code should be resorted to only when the Magistrate opines that accused is guilty of offence and he may have to be given a heavier sentence that what he/she could impose.

The Magistrate while forwarding the accused to Chief Judicial Magistrate, when it forms an opinion that higher dose of sentence is required, is not merely to act as a post office but has to fully appreciate the facts of the case in context of the evidence led before it and it is only thereafter that a Magistrate can effectively opine that the case is such where a higher dose of sentence would be justified. Although such an exercise of marshalling entire evidence led before it would virtually be an exercise almost equivalent to passing of a judgment but under the scheme of the Code, the Chief Judicial Magistrate is still competent to admit fresh evidence and differ with the opinion of the Magistrate.

Magistrate is only required to form an opinion by recording the same in the form of a short but speaking and reasoned order referring the evidence for prosecution and defence in brief for forming an opinion of guilt and then refer the matter to the Chief Judicial Magistrate. Even if, a final opinion has been recorded in the form of judgment in case of more than one accused where one or more of them have been convicted for the charge, and some has been acquitted of the charge, the same shall not be binding on the Chief Judicial Magistrate to the extent of accused who have been convicted and whose case has been forwarded to it under Section 325 Cr.P.C. and shall be considered as opinion. The Chief Judicial Magistrate shall be required to pass a final judgment independently and if he comes to the conclusion, on appreciation of evidence that a judgment of conviction is required to be passed, he shall pass the same while awarding appropriate sentence.

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167. CRIMINAL PROCEDURE CODE, 1973 – Sections 82 and 438

(i) Anticipatory bail – Entitlement of – Accused persons were consistently disobedient to comply with the orders of the Court – They failed to appear before the trial court after receipt of summons and then after issuance of bailable warrants – Even after issuance of non-bailable warrants, they did not care to appear and did not apply for regular bail after its recalling – After coming to know about the proclamation u/s 82 of the Code, no steps were taken to challenge the same – Accused persons not entitled to be released on anticipatory bail.

(ii) Anticipatory bail – Caution – Extraordinary power of Court, to be exercised in exceptional cases to safeguard the freedom of individual against unwarranted arrest and not to be exercised as of rule, in favour of a person continuously defying order of Court and kept absconding.

(iii) Whether initiation of proceedings u/s 82 of the Code is barred because an anticipatory bail application has been filed or because such application was adjourned without passing any interim protection order? Held, No – Law clarified.

दंड प्रक्रिया संहिता, 1973 – धाराएं 82 एवं 438

(i) अग्रिम जमानत – पात्रता – अभियुक्त व्यक्ति न्यायालय के आदेशों का पालन करने में सत्त अवज्ञा कर रहे थे – वे समंस प्राप्त करने तथा उसके पश्चात् जमानतीय वारंट जारी होने के उपरान्त विचारण न्यायालय के समक्ष उपस्थित होने में असफल रहे – गैर–जमानतीय वारंट जारी होने के उपरान्त भी उन्होने उपस्थित होने की परवाह नहीं की एवं उसे वापस लिये जाने हेतु एवं उसके उपरान्त नियमित जमानत के लिए आवेदन नहीं किया – संहिता की धारा 82 के अंतर्गत उदधोषणा के संबंध में जानकारी होने के उपरान्त उन्होने उसे चुनौती देने के लिए कोई कदम नहीं उठाया – अभियुक्त व्यक्ति अग्रिम जमानत पर मुक्त किये जाने के पात्र नहीं हैं।

(ii) अग्रिम जमानत – सावधानी – न्यायालय की असाधारण शक्ति का उपयोग अपवादित मामलों में अनुचित गिरफ्तारी के विरूद्ध व्यक्ति की स्वत्रंता की रक्षा करने हेतु किया जाना चाहिए एवं नियम के रूप में ऐसे व्यक्ति के पक्ष में उपयोग नहीं किया जाना चाहिए जो सत्त रूप से न्यायालय के आदेशों का उल्लघंन करता है एवं फरार रहता है।

(iii) क्या संहिता की धारा 82 के अंतर्गत कार्यवाही का प्रारंभ किया जाना वर्जित है क्योंकि अग्रिम जमानत आवेदन प्रस्तुत किया गया है अथवा कोई अंतरिम सुरक्षा आदेश पारित किये बिना ऐसे आवेदन पर सुनवाई स्थगित की गई है? अभिनिर्धारित, नहीं – विधि स्पष्ट की गई।

Srikant Upadhyay and ors. v. State of Bihar and anr.

Judgment dated 14.03.2024 passed by the Supreme Court in Criminal Appeal No. 1552 of 2024, reported in AIR 2024 SC 1600

Relevant extracts from the judgment:

In the case on hand, application for anticipatory bail was filed by the appellants before the High Court in November, 2022 and brought up for hearing on 04.04.2023, on which day it was dismissed as per the impugned order. The very ground, extracted above, would reveal that in the meanwhile, proclamation under Section 82 Cr.PC, was issued on 04.01.2023 and thereafter process under Section 83 Cr.PC was initiated on 15.03.2023.

The factual narration made hereinbefore would reveal the consistent disobedience of the appellants to comply with the orders of the trial Court. They failed to appear before the Trial Court after the receipt of the summons, and then after the issuance of bailable warrants even when their co-accused, after the issuance of bailable warrants, applied and obtained regular bail. Though the appellants filed an application, which they themselves described as "bail-cum-surrender application" on 23.08.2022, they got it withdrawn on the fear of being arrested. Even after the issuance of non bailable warrants on 03.11.2022 they did not care to appear before the Trial Court and did not apply for regular bail after its recalling. It is a fact that even after coming to know about the proclamation under Section 82 Cr.PC., they did not take any steps to challenge the same or to enter appearance before the Trial Court to avert the consequences. Such conduct of the appellants in the light of the aforesaid circumstances, leaves us with no hesitation to hold that they are not entitled to seek the benefit of pre-arrest bail.

The power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of

interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.

Whether there could be any bar on the Trial Court for proceeding under Section 82 Cr.PC, merely because an anticipatory application for bail has been filed or because such an application was adjourned without passing any interim order. We may hasten to add here that it is always preferable to pass orders, either way, at the earliest.

A bare perusal of Section 438 (1), Cr.PC, would reveal that taking into consideration the factors enumerated thereunder the Court may either reject the application forthwith or issue an interim order for the grant of anticipatory bail. The proviso thereunder would reveal that if the High Court or, the Court of Sessions, as the case may be, did not pass an interim order under this Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest the person concerned without warrant, on the basis of the accusation apprehended in such application. In view of the proviso under Section 438(1), Cr.PC, it cannot be contended that if, at the stage of taking up the matter for consideration, the Court is not rejecting the application, it is bound to pass an interim order for the grant of anticipatory bail. In short, nothing prevents the court from adjourning such an application without passing an interim order.

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168. CRIMINAL PROCEDURE CODE, 1973 – Section 167 (2)
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 22 (b) and 36 (A)
Default bail – Accused was charged for having committed the offence punishable u/s 22(b) of the Act – He was produced before the Court on 18.06.2023 – Since chargesheet was not filed, accused filed an application

u/s 167(2) of CrPC for grant of bail on 27.09.2023 – The said application has been rejected on the ground that time limit for filing chargesheet was already extended upto the period of 180 days by order dated 27.09.2023 – Whether Special Court was justified in rejecting the said application? Held, No – Quantity of the contraband alleged to have been seized from the applicant is less than commercial quantity – Provisions of Section 36-A (4) are not attracted and therefore, chargesheet was required to be filed within a period of 60 days and not within a period of 90 or 180 days – Order set aside and the applicant was directed to be released on bail.

दण्ड प्रक्रिया संहिता, 1973 – धारा 167 (2)
स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 22 (ख) एवं 36 (क)
व्यतिक्रम जमानत – अभियुक्त पर यह आरोप था कि उसने अधिनियम की धारा 22 (ख) के अंतर्गत दण्डनीय अपराध कारित किया है – उसे दिनांक 18.06.2023 को न्यायालय के समक्ष प्रस्तुत किया गया – चूंकि अभियोग पत्र प्रस्तुत नहीं हुआ था, अभियुक्त ने द.प्र.सं. की धारा 167(2) के अंर्तगत दिनांक 27.09.2023 को जमानत प्रदाय करने हेतु आवेदन प्रस्तुत किया – उक्त आवेदन इस आधार पर निरस्त किया गया कि आदेश दिनांक 27.09.2023 द्वारा अभियोग पत्र प्रस्तुति हेतु समय सीमा 180 दिनो तक बढ़ाई जा चुकी है – क्या विशेष न्यायालय द्वारा उक्त आवेदन को निरस्त करना न्यायोचित था? अभिनिर्धारित, नहीं – आवेदक से कथित रूप से जब्त हुई विनिषिद्ध पदार्थ की मात्रा वाणिज्यिक मात्रा से कम थी – धारा 36-क(4) के प्रावधान आकर्षित नहीं होते हैं इसलिए अभियोग पत्र 60 दिवस की अवधि में प्रस्तुत होना चाहिए था न कि 90 अथवा 180 दिवस की अवधि में – आदेश अपास्त किया गया एवं आवेदक को जमानत पर रिहा किया जाना आदेशित किया गया।

Brijesh Kumar Mishra v. State of M.P.

Order dated 20.12.2023 passed by High Court of Madhya Pradesh in Criminal Revision No. 4874 of 2023, reported in ILR 2024 MP 1233

Relevant extracts from the order:

A perusal of the provision of Section 22(b) and Section 36(A) of NDPS Act and the facts of the case, it can be said that the quantity seized from the applicant is less than commercial quantity. As such, provision of Section 36-A of NDPS Act is not applicable.

Thus, on the basis of above examination of the facts and legal position, it is apparent that in this case charge sheet was required to be filed within a period of 60 days and not in a period of 90 or 180 days. In this case, application for default bail under Section 167(2) of Cr.P.C was filed on 27.09.2023 i.e almost after 100 days of the judicial custody and when application for extension of time was filed, no notice either oral or written was given to the accused about filing of the application for extension of period of filing of charge sheet. As charge sheet was not filed within 60 days and applicant filed the application almost after 90 days, the trial court was required to allow the application and dispose of the same on the same day. Thus, on screening the material on record, it is crystal clear that charge sheet was not filed within maximum period of 60 days. As per the law laid down by the Hon'ble Apex Court *"the right to get this bail is an indefeasible right"* which cannot be defeated by the prosecution after completion of the period as per provision of Section 167(2) of Cr.P.C.

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169. CRIMINAL PROCEDURE CODE, 1973 – Sections 202(1) and 204
Summoning order – Private complaint was filed on 17.07.2004 – Judicial Magistrate recorded the statement of complainant and other witnesses – After recording evidence, the Magistrate on 15.12.2011 called report from the concerned police station u/s 202 of the Code – Report never submitted by the police – However, without awaiting the report, Magistrate passed the summoning order – Whether procedure adopted and order passed was proper and justified? Held, No – Proper course to be followed by Magistrate, clarified.

दंड प्रक्रिया संहिता, 1973 – धाराएं 202(1) एवं 204
समन करने का आदेश – निजी परिवाद दिनांक 17.07.2004 को प्रस्तुत किया गया – न्यायिक मजिस्ट्रेट ने परिवादी तथा अन्य साक्षीगण के कथन लेखबद्ध किये – साक्ष्य अभिलिखित करने के उपरांत मजिस्ट्रेट ने दिनांक 15.12.2011 को संबंधित आरक्षी केन्द्र से संहिता की धारा 202 के अंतर्गत रिपोर्ट आहूत की – पुलिस द्वारा कभी रिपोर्ट प्रस्तुत नहीं की गयी – किंतु रिपोर्ट की प्रतीक्षा किये बिना मजिस्ट्रेट ने समन आदेश पारित किया – क्या अपनायी गयी प्रक्रिया एवं पारित आदेश उचित एवं न्यायानुमत है? अभिनिर्धारित, नहीं – मजिस्ट्रेट को जिस उचित प्रक्रिया का पालन करना चाहिए था, स्पष्ट किया गया।

Shiv Jatia v. Gian Chand Malick and ors.

Judgment dated 23.02.2024 passed by the Supreme Court in Criminal Appeal No. 776 of 2024, reported in (2024) 4 SCC 289

Relevant extracts from the judgment:

After recording the evidence of the three witnesses and perusing the documents on record, the learned Magistrate passed the order calling for the report under Section 202 of the Cr.PC. He postponed the issue of the process. The learned Magistrate ought to have waited until the report was received. He had an option of conducting an inquiry contemplated by subsection (1) of Section 202 of the Cr.PC himself due to the delay on the part of the Police in submitting the report. But, he did not exercise the said option. For issuing the order of summoning, the learned Magistrate could not have relied upon the same material which was before him on 15th December 2011 when he passed the order calling for the report under Section 202 of the Cr.PC. The reason is that, obviously, he was not satisfied that the material was sufficient to pass the summoning order.

The order issuing process has drastic consequences. Such orders require the application of mind. Such orders cannot be passed casually. Therefore, in our view, the learned Magistrate was not justified in passing the order to issue a summons.

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170. CRIMINAL PROCEDURE CODE, 1973 – Sections 437, 438 and 439

(i) Anticipatory bail – Salient features – Substantive factors guiding judicial discretion – Procedural requirements to be followed while exercising jurisdiction u/s 438 of the Code – Explained.

(ii) Extra-territorial transit or interim anticipatory bail – Grant of – For an offence committed outside the territorial jurisdiction of a High Court or Court of Sessions – Permissible in what circumstances? Nature, extent and duration of such bail – Enquiry to be made and pre-condition to be satisfied before grant of such bail – Law laid down – Vigilance to be exercised by the Courts while granting such bail also clarified.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437, 438 एवं 439

(i) अग्रिम जमानत – प्रमुख तत्व – न्यायिक विवेकाधिकार को मार्गदर्शित करने वाले सारभूत कारक – संहिता की धारा 438 के अंतर्गत क्षेत्राधिकार

का प्रयोग करते समय पालन की जाने वाली प्रक्रियात्मक आवश्यकताएं – समझाई गई ।

(ii) राज्यक्षेत्रातीत पारगमन या अंतरिम अग्रिम जमानत – प्रदान करना – किसी उच्च न्यायालय अथवा सत्र न्यायालय की क्षेत्रीय अधिकारिता के बाहर कारित अपराध हेतु – किन परिस्थितियों में अनुज्ञेय? ऐसी जमानत की प्रकृति, सीमा एवं अवधि – ऐसी जमानत प्रदान करने के पूर्व जांच करना चाहिए एवं पूर्ववर्ती शर्त की संतुष्टि होनी चाहिए – विधि प्रतिपादित की गई – ऐसी जमानत प्रदान करते समय न्यायालयों को बरतने योग्य सतर्कता को भी स्पष्ट किया गया।

Priya Indoria v. State of Karnataka and ors.

Judgment dated 20.11.2023 passed by the Supreme Court in Criminal Appeal No. 3549 of 2023, reported in (2024) 4 SCC 749

Relevant extracts from the judgment:

The salient features of Section 438 of Cr.P.C. can be culled out as under:

(i) It confers a statutory right upon any person who has a reason to believe that he may be arrested in relation to the commission of a non-bailable offence.

(ii) The statutory right consists of the right to apply before the High Court or the Court of Session for a direction that in the event of such arrest, he shall be released on bail.

(iii) The Parliament has provided ample legislative guidance on the factors that may guide the High Court or the Court of Session while considering the application for grant of an anticipatory bail.

(iv) The substantive factors consist of the nature and gravity of the accusation, the criminal antecedents of the applicant, the risk of the applicant absconding from justice or not cooperating with the criminal justice administration and the possibility of an accusation made in bad faith with the aim of injuring or humiliating the applicant.

(v) In addition to the aforementioned substantive factors guiding the exercise of judicial discretion, Section 438 of Cr.P.C. engrafts certain procedural requirements. The High Court or the Court of Session may grant an interim order u/s 438(1) of Cr.P.C. in case the facts and averments in the application satisfy the factors laid down. However, the proviso to Section 438(1) of Cr.P.C. provides that if such an interim order is denied, the officer in-charge

of a police station is at liberty to arrest the applicant without warrant. Even if the interim order is made in favour of the applicant, the High Court or the Court of Session is mandated u/s 438 (1A) of Cr.P.C. to cause a notice of not less than seven days along with a copy of the interim order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application is finally heard by the Court. The Court is also empowered u/s 438 (1B) of Cr.P.C. to allow the Public Prosecutor's application to make the presence of the applicant seeking anticipatory bail obligatory at the time of final hearing, if the Court deems such presence necessary in the interest of justice.

(vi) The High Court or the Court of Session, u/s 438(2) of Cr.P.C., is further empowered to pass any such conditions in light of the facts of a particular case, including.

(a) A condition that the person shall make himself available for interrogation by a police officer as and when required;

(b) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(c) a condition that the person shall not leave India without the previous permission of the Court;

(d) such other condition as may be imposed under Sub-Section (3) of Section 437, as if the bail is being granted under that Section.

(vii) Section 438(3) states that if such a person is thereafter arrested without warrant by an officer in charge of a police station on an accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he is entitled to be released on bail. If a Magistrate taking cognizance of an offence decides that a warrant should be issued in the first instance against that person, he is empowered to issue a bailable warrant in conformity with the direction of the Court u/s 438(1).

(viii) Parliament has inserted clause (4) to Section 438 of Cr.P.C. vide the Criminal Law (Amendment) Act, 2018, thereby stipulating that the remedy u/s 438 of

Cr.P.C. cannot be resorted to by any person accused of having committed an offence u/s s 376(3), 376-AB, 376-DA or 376-DB of the IPC.

In view of what we have discussed above, we are of the view that considering the constitutional imperative of protecting a citizen's right to life, personal liberty and dignity, the High Court or the Court of Session could grant limited anticipatory bail in the form of an interim protection u/s 438 of Cr.P.C. in the interest of justice with respect to an FIR registered outside the territorial jurisdiction of the said Court, and subject to the following conditions:

(i) Prior to passing an order of limited anticipatory bail, the investigating officer and public prosecutor who are seized of the FIR shall be issued notice on the first date of the hearing, though the Court in an appropriate case would have the discretion to grant interim anticipatory bail.

(ii) The order of grant of limited anticipatory bail must record reasons as to why the applicant apprehends an inter-state arrest and the impact of such grant of limited anticipatory bail or interim protection, as the case may be, on the status of the investigation.

(iii) The jurisdiction in which the cognizance of the offence has been taken does not exclude the said offence from the scope of anticipatory bail by way of a State Amendment to Section 438 of Cr.P.C.

(iv) The applicant for anticipatory bail must satisfy the Court regarding his inability to seek anticipatory bail from the Court which has the territorial jurisdiction to take cognizance of the offence. The grounds raised by the applicant may be –

   a. a reasonable and immediate threat to life, personal liberty and bodily harm in the jurisdiction where the FIR is registered;

   b. the apprehension of violation of right to liberty or impediments owing to arbitrariness;

   c. the medical status/ disability of the person seeking extra- territorial limited anticipatory bail.

It would be impossible to fully account for all exigent circumstances in which an order of extra territorial anticipatory bail may be imminently essential to safeguard the fundamental rights of the applicant. We reiterate that such power to grant extra-territorial anticipatory bail should be exercised in exceptional and

compelling circumstances only which means where, denying transit anticipatory bail or interim protection to enable the applicant to make an application u/s 438 of Cr.P.C. before a Court of competent jurisdiction would cause irremediable and irreversible prejudice to the applicant. The Court, while considering such an application for extra-territorial anticipatory bail, in case it deems fit may grant interim protection instead for a fixed period and direct the applicant to make an application before a Court of competent jurisdiction.

We therefore set aside the judgment of Patna High Court in ***Syed Zafrul Hassan v. State 1986 SCC OnLine Pat 3*** and judgment of Calcutta High Court in ***Sadhan Chandra Kolay v. State, 1998 SCC Online Cal 382*** to the extent that they hold that the High Court does not possess jurisdiction to grant extra-territorial anticipatory bail i.e., even a limited or transit anticipatory bail.

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171. CRIMINAL PROCEDURE CODE, 1973 – Sections 437 r/w/s 389, 438 and 439

(i) Bail application – Mandatory mentioning of information regarding prior/pending bail applications – Details of copies of orders passed in the earlier bail applications as well as pending bail applications within any Court and if no application is pending, a clear statement in this regard has also to be made – The I.O. has a duty to apprise the court about the facts of the decision of pending bail applications.

(ii) Duties of litigant – Suppression of material facts from the Court is actually playing fraud with the Court – If material facts are stated in a distorted manner to mislead the court, after examining the case on merits, the Court can order that such party requires to be dealt with for contempt of Court.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437 सहपठित धारा 389, 438 एवं 439

(i) जमानत आवेदन – पूर्व/लंबित जमानत आवेदनों के संबंध में जानकारियों का उल्लेख अनिवार्य – पूर्व के जमानत आवेदनों में पारित आदेश की प्रतियों के साथ साथ किसी भी अन्य न्यायालय में लंबित जमानत आवेदनों का विवरण एवं यदि कोई आवेदन लंबित नहीं है तो इसके बारे में भी स्पष्ट विवरण देना होगा – अन्वेषण अधिकारी का कर्तव्य है कि वह लंबित जमानत आवेदनो पर हुए निर्णय के तथ्यों से न्यायालय को अवगत कराये।

(ii) पक्षकार के कर्तव्य – न्यायालय से तात्विक तथ्यों को छिपाना वास्तव में न्यायालय से छल करना है – यदि न्यायालय को गुमराह करने के उद्देश्य

से तात्विक तथ्यों को विकृत तरीके से प्रस्तुत किया गया है तो गुणदोष के आधार पर मामले की जांच के पश्चात न्यायालय आदेश दे सकता है कि ऐसे पक्ष के विरूद्ध न्यायालय की अवमानना की कार्यवाही किया जाना आपेक्षित है।

Kusha Duruka v. State of Odisha

Judgment dated 19.01.2024 passed by the Supreme Court in Criminal Appeal No. 303 of 2024, reported in (2024) 4 SCC 432

Relevant extracts from the judgment:

It was held in ***Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421, K.D. Sharma v. Steel Authority of India Limited and ors., (2008) 12 SCC 481, Dalip Singh v. State of Uttar Pradesh and ors., (2010) 2 SCC 114*** and ***Moti Lal Songara v.. Prem Prakash @ Pappu and anr., (2013) 9 SCC 199***, that one of the two cherished basic values by Indian society for centuries is "*satya*" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-Independence era, however, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim *supressio veri, expression faisi*, i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. Its nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that `Lies are very sweet, while truth is bitter, that's why most people prefer telling lies.'

In ***Pradip Sahu v. State of Assam, (2024) 4 SCC 448*** the accused who was found to be guilty of concealing material facts from the court and against him the

High Court (Gauhati High Court) had directed (***Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2835***) for taking appropriate legal action, had challenged the order passed by the High Court before this Court. In the aforesaid case, first bail application filed by the appellant there was dismissed (***Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2832***) by the High Court (on 11.11.2021), thereafter he moved second bail application before the High Court in which notice was issued on 30.11.2021 (***Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2833***). During the pendency of the aforesaid application before the High Court, the appellant therein moved fresh bail application before the Trial Court on 01.12.2021, which was granted on the same day. The aforesaid facts came to the notice of the High Court on 08.12.2021 (***Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2834***) when a report of the Registrar (Judicial) was received, who was directed to conduct the enquiry in the matter. However, on an apology tendered by the appellant therein and also considering the facts as stated that he belonged to Tea Tribe community and his brother, a cycle mechanic, who was also pursuing the case, did not appreciate the intricacy of the law. As a result of which, the mistake occurred. This Court, having regard to the unqualified apology tendered by the appellant therein, had set aside the order passed by the High Court to file FIR/complaint against the appellant therein.

In our opinion, to avoid any confusion in future it would be appropriate to mandatorily mention in the application(s) filed for grant of bail:

(1) Details and copies of order(s) passed in the earlier bail application(s) filed by the petitioner which have been already decided.

(2) Details of any bail application(s) filed by the petitioner, which is pending either in any court, below the court in question or the higher court, and if none is pending, a clear statement to that effect has to be made.

(3) This court has already directed vide order passed in ***Pradhani Jani v. State of Odisha, (2024) 4 SCC 451*** that all bail applications filed by the different accused in the same FIR should be listed before the same Judge except in cases where the Judge has superannuated or has been transferred or otherwise incapacitated to hear the matter. The system needs to be followed meticulously to avoid any discrepancies in the orders.

(4) In case it is mentioned on the top of the bail application or any other place which is clearly visible, that the application for bail is either first, second or

third and so on, so that it is convenient for the court to appreciate the arguments in that light. If this fact is mentioned in the order, it will enable the next higher court to appreciate the arguments in that light.

(5) The Registry of the court should also annex a report generated from the system about decided or pending bail application(s) in the crime case in question. The same system needs to be followed even in the case of private complaints as all cases filed in the trial courts are assigned specific numbers (CNR No.), even if no FIR number is there.

(6) It should be the duty of the investigating officer/any officer assisting the State counsel in court to apprise him of the order(s), if any, passed by the court with reference to different bail applications or other proceedings in the same crime case. And the counsel appearing for the parties have to conduct themselves truly like officers of the Court.

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172. CRIMINAL PROCEDURE CODE, 1973 – Sections 437 and 439(2)
Bail – Parameters for grant of and cancellation of bail – Distinction between them clarified – Concept of setting aside an unjustified, illegal or perverse order and concept of cancellation of bail on the grounds of misconduct of accused also explained.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437 एवं 439(2)
जमानत – जमानत प्रदान करने तथा निरस्त करने के मानदंड – उनके मध्य अंतर को स्पष्ट किया गया – एक अनुचित, अवैध अथवा दोषपूर्ण आदेश को रद्द करने एवं अभियुक्त के अवचार के आधार पर जमानत रद्द करने की अवधारणा को भी समझाया गया।

Himanshu Sharma v. State of Madhya Pradesh

Judgment dated 20.02.2024 passed by the Supreme Court in Criminal Appeal No. 1051 of 2024, reported in (2024) 4 SCC 222

Relevant extracts from the judgment:

The concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal

or contrary to law by the court superior to the court which granted the bail and not by the same court.

The considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail: (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud.

Under normal circumstances, the application for cancellation of bail filed on merits as opposed to violation of the conditions of the bail order should have been placed before the same learned Single Judge who had granted bail to the accused.

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173. CRIMINAL PROCEDURE CODE, 1973 – Sections 437(5), 439(2) and 482 NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 8/20

(i) Bail – Cancellation of – Bail was granted by Chief Judicial Magistrate under wrong impression that seized quantity of contraband is a small quantity – After hearing the parties and getting information that the quantity is commercial, order of cancellation of bail passed – Such order not illegal.

(ii) Narcotic substance – Quantity – In the mixture of narcotic drugs or psychotropic substance with one or more neutral substance, quantity of neutral substance is not to be excluded – It is to be taken into consideration for determining the small or commercial quantity of narcotic substance.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437(5), 439(2) एवं 482
स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 8/20

(i) जमानत – निरस्त किया जाना – मुख्य न्यायिक दण्डाधिकारी द्वारा इस गलत धारणा के अंतर्गत जमानत स्वीकार की गई कि जब्त की गई प्रतिबंधित सामग्री अल्प मात्रा है – पक्षकारों को सुनने के बाद और यह जानकारी होने पर कि उक्त मात्रा व्यावसायिक है, जमानत निरस्त करने का आदेश पारित किया गया – ऐसा आदेश अवैधानिक नहीं है।

(ii) स्वापक पदार्थ – मात्रा – एक या एक से अधिक तटस्थ पदार्थ के साथ स्वापक औषधियों या मनःप्रभावी पदार्थ के मिश्रण में से तटस्थ पदार्थ की

मात्रा अलग नहीं की जाएगी – मादक पदार्थ की अल्प या व्यावसायिक मात्रा का निर्धारण करते समय इसे विचार में रखा जाना चाहिए।

Rahul Gupta v. State of M.P.

Order dated 03.07.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 5054 of 2021, reported in ILR 2023 MP 2278

Relevant extracts from the order:

It is a settled position of law that Court in exercise of power under Section 437(5) as well as Section 439(2) Cr.P.C. can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-bailable offences, which may not be necessary always with order of cancelling of earlier bail. Section 437 of Cr.P.C. deals with the provision when bails can be taken in case of non-bailable offence. Section 437(5), which is relevant, for the present controversy is as follows:-

> "Any Court which has released a person on bail under sub- section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody."

On a plain reading of Section 437(5) of Cr.P.C., it is apparent that it empowers the Court to arrest an accused and commit him to custody, who has been released on bail under Chapter XXXIII of the case. There may be numerous grounds for exercise of power under Section 437(5). The principles and grounds for cancelling a bail are well settled.

In the case on hand, accused was erroneously granted bail by the learned CJM as he was under wrong impression that seized quantity is a small quantity. It is trite in law that a person against whom serious offences have been registered or added, who is already on bail can very well be directed to be arrested and committed to custody by the Court in exercise of power under Sections 437(5) and 439(2) Cr.P.C. Cancelling the bail granted to an accused and directing him to be arrested and taken into custody can be one course of action, which can be adopted while exercising power under Sections 437(5) and 439(2) Cr.P.C. but there may be cases where without cancelling the bail granted to an accused, on relevant consideration, Court can direct the accused to be arrested and committed to custody. If the Court under any erroneous assumption has granted bail, in such cases, Court can direct the

accused to be arrested and committed to custody despite the bail having been granted with regard to the offences with which he was charged at the time when bail was considered and granted.

Adverting to the facts of this case, it is apparent that 274 bottles of Onrex cough syrup having codeine phosphate were seized from the possession of the present applicant. In the case of ***Hira Singh and anr. v. Union of India and anr., (2020) 20 SCC 272*** along with other questions, following question was referred to a larger bench:

> "Does the NDPS Act envisage that the mixture of narcotic drug and seized material/substance should be considered as a preparation in totality or on the basis of the actual drug content of the specified narcotic drug?

Three Judge Bench of Hon'ble Apex Court in ***Hira Singh*** (supra) answered the reference as under:

The decision of this Court in the case of ***E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau, (2008) 5 SCC 161*** taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;

From the decision of the Apex Court in the case of ***Hira Singh*** (supra), it is apparent that in the case of seizure of mixture of narcotic drugs or psychotropic substance with one or more neutral substance, the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with the actual content by weight of the offending drug, while the determining the "small quantity or commercial quantity" of Narcotic Drugs or Psychotropic Substance.

In the instant case, 274 bottles of Onrex Cough Syrup having codeine phosphate have been seized from the possession of the applicant. It is apparent that seized quantity was commercial quantity and applicant had to be produced before the Special Judge, NDPS Act, Sidhi but police under misconception produced him before the Court of CJM who erroneously granted bail but when Investigating Agency moved the application informing that seized quantity was commercial quantity and offence is punishable under Section 8/20 of NDPS Act, learned CJM exercising power under Section 437(5) of Cr.P.C. after hearing the learned counsel for both the parties, has passed the order cancelling the bail and directing police to arrest applicant and produce him before the Special Court having jurisdiction to try the case.

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174. EVIDENCE ACT, 1872 – Section 112
HINDU SUCCESSION ACT, 1956 – Section 14

(i) Presumption as to legitimacy of child – DNA test for determination of paternity – Court should not direct such test to be conducted as a matter of course – There must be a strong *prima facie* case in existence to dispel the presumption arising u/s 112 of the Act – It should also be carefully examined by the Court as to what would be the consequences of ordering such test – Direction for conducting DNA test is also violative of privacy of an individual.

(ii) *Stridhan* – It is the personal property of a woman – Status of her in-laws, who are in possession of such property, is like a trustee and are bound to return the same – Even father/relative of woman has no right to receive the *stridhan* back on her behalf.

साक्ष्य अधिनियम, 1872 – धारा 112
हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 14

(i) बालक के धर्मजत्व की उपधारणा – पितृत्व के निर्धारण के लिए डीएनए परीक्षण – न्यायालय सामान्यतः ऐसा परीक्षण कराने के लिए निर्देशित नहीं कर सकता – अधिनियम की धारा 112 के अंतर्गत उत्पन्न होने वाली उपधारणा को खंडित करने के लिए प्रथम दृष्टया एक बहुत प्रबल मामला विद्यमान होना चाहिए – न्यायालय को सावधानीपूर्वक यह भी विचार में लेना चाहिए कि ऐसे परीक्षण का आदेश देने के क्या परिणाम होंगे – डीएनए परीक्षण कराने का निर्देश व्यक्ति की निजता का भी उल्लंघन करता है।

(ii) स्त्रीधन – यह महिला की व्यक्तिगत संपत्ति है – उसके ससुराल वाले जिनके आधिपत्य में ऐसी सम्पत्ति है, उनकी हैसियत न्यासी की हो जाती है और वे उक्त सम्पत्ति वापस लौटाने के लिए बाध्य है – महिला के पिता/रिश्तेदार को भी उक्त स्त्रीधन उसकी ओर से प्राप्त करने का अधिकार नहीं है।

Seenu Tripathi (Smt.) v. Saurabh Tripathi & ors.

Order dated 07.11.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 6244 of 2019, reported in ILR 2024 MP 746

Relevant extracts from the order:

The Supreme Court in the case of ***Banarsi Dass v. Teeku Dutta (Mrs.) and anr., 2005 (4) SCC 449*** has held that the courts in India cannot order blood test as a matter of course. There must be a strong prima-facie case to the effect that the husband had no acces in order to dispel the presumption arising under Section 112 of Evidence Act and the court must carefully examine as to what would be the consequence of ordering the blood test i.e. whether it will have the effect of branding a child as illegitimate child or mother as an unchaste woman.

Direction for conducting the DNA test is also violative of privacy of a individual.

The Supreme Court in the case of ***Ashok Kumar v. Raj Gupta and ors., (2022) 1 SCC 20*** has held as under :

> "In ***Bhabani Prasad Jena v. Orissa State Commission for Women, (2010) 8 SCC 633***, R.M. Lodha, J., while reconciling two earlier decisions ***Goutam Kundu v. State of W.B., (1993) 3 SCC 418*** and ***Sharda v. Dharmpal, (2003) 4 SCC 493***] of this Court on the point, had rightfully prescribed that :
>
> "There is no conflict in the two decisions of this Court, namely, ***Goutam Kundu v. State of W.B., (1993) 3 SCC 418***] and ***Sharda v. Dharmpal, (2003) 4 SCC 493***. In ***Goutam Kundu*** (supra) it has been laid down that courts in India cannot order blood test as a matter of course and such prayers cannot be granted to have roving inquiry; there must be strong prima facie case and the court must carefully examine as to what would be the consequence of ordering the blood test. In ***Sharda*** [supra] while concluding that a matrimonial court has power to order a person to undergo a medical test, it was

> reiterated that the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA test can be given by the court only if a strong prima facie case is made out for such a course."

The learned Judge while noting the sensitivities involved with the issue of ordering a DNA test, opined that the discretion of the court must be exercised after balancing the interests of the parties and whether a DNA test is needed for a just decision in the matter and such a direction satisfies the test of "eminent need".

The above decision in ***Bhabani Prasad Jena*** [supra] was considered and approved in ***Dipanwita Roy v. Ronobroto Roy, (2015) 1 SCC 365***, where the Court noticed from the facts that the husband alleged infidelity against his wife and questioned the fatherhood of the child born to his wife. In those circumstances, when the wife had denied the charge of infidelity, the Court opined that but for the DNA test, it would be impossible for the husband to establish the assertion made in the pleadings. In these facts, the decision of ***Ronobrto Roy v. Dipanwita Roy, 2012 SCC OnLine Cal 13135*** of the High Court to order for DNA testing was approved by the Supreme Court. Even then, J.S. Khehar, J., writing for the Division Bench, considered it appropriate to record a caveat to the effect that the wife may refuse to comply with the High Court direction for the DNA test but in that case, presumption may be drawn against the party.

In circumstances where other evidence is available to prove or dispute the relationship, the court should ordinarily refrain from ordering blood tests. This is because such tests impinge upon the right of privacy of an individual and could also have major societal repercussions. Indian law leans towards legitimacy and frowns upon bastardy. The presumption in law of legitimacy of a child cannot be lightly repelled.

Stridhan is the personal property of a woman and even if her in-laws are in possession of the same their status is like that of a trustee and a person receiving dowry articles who is in dominion over the same is bound to return the same.

Unless and until Stridhan is returned back to the woman, the respondents cannot take a defence that they have already returned a part of the same to Dhaniram. Even father/relative of the woman has no right to receive the Stridhan back on behalf of his daughter/woman.

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175. HINDU MARRIAGE ACT, 1955 – Sections 24 and 25

(i) Permanent alimony – Grant of – In a divorce petition, whether husband can be directed to pay permanent alimony without the wife filing application u/s 25 of the Act? Held, No – Without the wife demanding permanent alimony in the written statement or by a separate application, trial court cannot grant permanent alimony.

(ii) Respondent wife filed an application u/s 24 of the Act – Issue to be framed on the point and evidence regarding the income, liabilities and occupation of the husband, as adduced by the wife.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 24 एवं 25

(i) स्थायी निर्वाह भत्ता – प्रदान करना – क्या विवाह विच्छेद याचिका में पत्नि द्वारा अधिनियम की धारा 25 के अन्तर्गत आवेदन प्रस्तुत किये बगैर पति को यह निर्देशित किया जा सकता है कि वह पत्नि को स्थायी निर्वाह भत्ते का भुगतान करे? अवधारित, नहीं – पत्नि के लिखित कथन अथवा पृथक आवेदन में स्थाई निर्वाह भत्ते की माँग नहीं किए जाने पर विचारण न्यायालय स्थायी निर्वाह भत्ता अदा करने का आदेश पारित नहीं कर सकता।

(ii) प्रत्यर्थी पत्नि द्वारा अधिनियम की धारा 24 के अंतर्गत आवेदन प्रस्तुत – इस संबंध में विवाद्यक विरचित करना होगा और पत्नी को पति की आय, वित्तीय क्षमता एवं पति के व्यवसाय के संबंध में साक्ष्य प्रस्तुत करना होगा।

Kuldeep Rai v. Rita

Judgment dated 07.02.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in First Appeal No. 145 of 2023, reported in 2024 (2) MPLJ 595 (DB)

Relevant extracts from the judgment:

Learned Trial Court has not framed any issue and no evidence was adduced on this point, no document was filed by the respondent/wife regarding the income and occupation of the appellant/husband. He was not cross-examined regarding his income and was not suggested that he had movable or immovable property by which he can pay regular maintenance to his wife. In the same way, the respondent/wife - Rita (DW-1) in her examination-in-chief has not stated regarding movable or immovable property of her husband and she has not filed any document regarding that. She has also not stated what her husband is doing. Thus, no fact was brought on record to prove the income and financial capacity of her husband.

There was no material before the Trial Court regarding the income and ascertain liabilities of the appellant/husband. Learned Family Court in paragraph-49 of its judgement has held that the respondent has not filed any application u/s 25 of the HMA but she has filed an application u/s 24 of the HMA and on that basis, without discussing the income and liability and without ascertaining the employment and financial status of the appellant, has ordered Rs.4.00 lakhs permanent alimony in favour of the respondent.

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176. INDIAN PENAL CODE, 1860 – Sections 34, 120B and 302
EVIDENCE ACT, 1872 – Sections 3 and 27
Circumstantial evidence – Murder – Memorandum of accused – Dead body was recovered from pond on the basis of information allegedly given by accused in memorandum statement – No other incriminating evidence against the accused – Discovery of fact should be in consequence of information given by accused – Information which can be proved must relate distinctly to the fact thereby discovered – Confessional part is not admissible – Police and witnesses knew about dead body prior to the statement of accused persons being recorded u/s 27 of the Act – Statement of witness to memorandum were recorded before recovery of dead body – They were taken to police station and signed at another place – Prosecution failed to prove that the discovery of dead body from pond was on the basis of disclosure statement made by accused persons – Prosecution failed to prove the charge beyond reasonable doubt therefore, conviction set-aside.

भारतीय दंड संहिता, 1860 – धाराएं 34, 120ख एवं 302
साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 27
परिस्थितिजन्य साक्ष्य – हत्या – अभियुक्त का ज्ञापन – ज्ञापन कथन में अभियुक्त द्वारा कथित रूप से दी गई जानकारी के आधार पर तालाब से शव बरामद किया गया था – अभियुक्त के विरूद्व कोई अन्य संलिप्तता दर्शित करने योग्य साक्ष्य नहीं – अभियुक्त द्वारा दी गई जानकारी के परिणामस्वरूप तथ्य की खोज होना चाहिए – जानकारी जो साबित की जा सकती है, वह स्पष्ट रूप से उस तथ्य से संबंधित होनी चाहिए जिसे खोजा गया – संस्वीकृति कथन स्वीकार्य नहीं है – पुलिस और साक्षियों को मृत शरीर के बारे में अभियुक्त के धारा 27 के अंतर्गत दर्ज किए गये कथन के पूर्व से ही जानकारी थी – ज्ञापन के साक्षियों के कथन

मृत शरीर की बरामदगी के पूर्व ही दर्ज कर लिये गये थे – कथन पुलिस स्टेशन में लिये गये थे और हस्ताक्षर दूसरे स्थान पर किए गए थे – अभियोजन यह साबित करने में असफल रहा कि तालाब से शव की खोज आरोपी व्यक्तियों द्वारा दिए गए प्रकटीकरण कथन के आधार पर की गई थी – अभियोजन आरोप को संदेह से परे प्रमाणित करने में असफल रहा, अतः दोषसिद्धि अपास्त की गई।

Ravishankar Tandon v. State of Chhattisgarh

Judgment dated 10.04.2024 passed by the Supreme Court in Criminal Appeal No. 3869 of 2023, reported AIR 2024 SC 2087

Relevant extracts from the judgment:

It can clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court held that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

It is settled law that suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.

A perusal of the evidence of Narendra Kumar (PW–2) read with that of Ramkumar (PW–5) would clearly reveal that the police as well as these witnesses knew about the death of Dharmendra Satnami occurring and the dead body being found at Bhatgaon prior to the statements of the accused persons being recorded under Section 27 of the Evidence Act. All the statements are recorded after 10:00 am whereas Ramkumar (PW–2) stated that at around 08:00 am, police informed him about the accused persons killing the deceased and thereafter they going to

Bhatgaon. Ramkumar (PW–5) also admitted that he arrived at village Kunda and on his arrival, he was informed by his brother–in–law and nephew about the murder which was done by the accused persons.

We therefore find that the prosecution has utterly failed to prove that the discovery of the dead body of the deceased from the pond at Bhatgaon was only on the basis of the disclosure statement made by the accused persons under Section 27 of the Evidence Act and that nobody knew about the same before that. It is further to be noted that Ajab Singh (PW–18) has clearly admitted that he had signed the papers without reading them and that too on the instructions of the police.

The evidence of Ramkumar (PW–5) would show that though his statement was taken at Kunda police station, it was signed at Bhatgaon. As such, the possibility of these documents being created to rope in the accused persons cannot be ruled out. In any case, insofar as the statement of Dinesh Chandrakar (accused No. 3) is concerned, even the statement recorded under Section 27 of the Evidence Act is not at all related to the discovery of the dead body of the deceased. As a matter of fact, nothing in his statement recorded under Section 27 of the Evidence Act has led to discovery of any incriminating fact.

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177. INDIAN PENAL CODE, 1860 – Sections 34 and 302
EVIDENCE ACT, 1872 – Sections 3, 114 and 118

(i) Murder – Evidence and proof – Main prosecution witness i.e mother of deceased, made out a case different from police statement in examination-in-chief – Mother's admission during cross-examination that a day before their statements were recorded in the court, prosecution witnesses were called to the police station and were taught how to depose against the accused – Neither prosecution re-examined the witness on this point, nor investigating officer offered any explanation – Testimony of such witnesses becomes doubtful – Accused had taken the plea of *alibi* and mother of deceased admitted that accused worked at different villages – Material independent witnesses were not called upon to testify – Therefore, adverse inference was drawn against prosecution case and benefit of doubt was given to accused.

(ii) Evidence – Tutoring of witnesses by police – Effect – Possibility of prosecution witnesses being tutored by the police a day before court examination tentamount to gross misuse of power by the police machinery and a kind of interference by the police with the judicial process – Police cannot be allowed to tutor the prosecution witnesses – Enquiry directed to be initiated against the erring officials.

भारतीय दण्ड संहिता, 1860 – धाराएं 34 एवं 302
साक्ष्य अधिनियम,1872 – धाराएं 3, 114 एवं 118

(i) हत्या – साक्ष्य एवं सबूत – मुख्य अभियोजन साक्षी, जो कि मृतक की माता है, द्वारा मुख्य परीक्षण में पुलिस कथन से भिन्न मामला अभिकथित किया गया – माता द्वारा प्रतिपरीक्षण में स्वीकार किया गया कि न्यायालय में उनके कथन अभिलिखित किये जाने के एक दिवस पूर्व अभियोजन साक्षीगण को आरक्षी केन्द्र बुलाया गया एवं यह सिखाया गया कि अभियुक्त के विरूद्ध किस प्रकार साक्ष्य देना है – अभियोजन द्वारा उक्त बिन्दु पर न तो साक्षी का पुनःपरीक्षण किया गया, न ही अन्वेषण अधिकारी ने कोई स्पष्टीकरण दिया – ऐसे साक्षीगण की परिसाक्ष्य संन्देहास्पद हो जाती है – अभियुक्त ने अन्यत्र उपस्थित होने का अभिवाक् लिया एवं मृतक की माता ने स्वीकार किया कि अभियुक्त भिन्न-भिन्न ग्रामों में कार्य करता है – मुख्य स्वतंत्र साक्षीगण को परीक्षण हेतु आहूत नहीं किया गया – अतः अभियोजन मामले के विरूद्ध प्रतिकूल निष्कर्ष निकाला गया एवं अभियुक्त को संदेह का लाभ दिया गया।

(ii) साक्ष्य – पुलिस द्वारा साक्षीगण को सिखाया जाना – प्रभाव – न्यायालय परीक्षण के एक दिवस पूर्व पुलिस द्वारा अभियोजन साक्षीगण को सिखाये जाने की संभावना पुलिस तंत्र द्वारा शक्ति के घोर दुरूपयोग के समान है एवं पुलिस द्वारा न्यायिक प्रक्रिया में हस्तक्षेप किये जाने का एक प्रकार है – पुलिस को अभियोजन साक्षीगण को सिखाये जाने की अनुमति नहीं दी जा सकती – त्रुटि कारित करने वाले अधिकारियों के विरूद्ध जांच प्रांरभ करने हेतु निर्देशित किया गया।

Manikandan v. State by Inspector of Police

Judgment dated 05.04.2024 passed by the Supreme Court in Criminal Appeal No. 1609 of 2011, reported in AIR 2024 SC 1801

Relevant extracts from the judgment:

PW-2 is the mother of the deceased. In her examination-in-chief, she attempted to make out a case that the accused had spoken ill about her daughter-

inlaw. Admittedly, she did not say so in her statement recorded by the police. Most importantly, in the cross-examination by the advocate for accused no.1, she stated, "Yesterday, I, my husband and other witnesses went to Haridwarmangalam Police station. There, the police authorities taught us how to adduce evidence."

It is pertinent to note that the prosecution did not put questions to the witness by way of re-examination on this aspect. The investigation officer did not offer any explanation for this. Therefore, we must proceed on the footing that the first five witnesses were "taught" at the Police Station how to depose.

The scenario which emerges is that precisely a day before the evidence of PW-1 to PW-5 was recorded before the Trial Court, they were called to the Police Station and were taught to depose in a particular manner. One can reasonably imagine the effect of "teaching" the witnesses inside a Police Station. This is a blatant act by the police to tutor the material prosecution witnesses. All of them were interested witnesses. Their evidence will have to be discarded as there is a distinct possibility that the said witnesses were tutored by the police on the earlier day. This kind of interference by the Police with the judicial process, to say the least, is shocking. This amounts to gross misuse of power by the Police machinery. The Police cannot be allowed to tutor the prosecution witness. This conduct becomes more serious as other eyewitnesses, though available, were withheld. We are surprised that both the Courts overlooked this critical aspect. It is pertinent to note that the defence of the accused, as can be seen from the line of cross-examination, was that they were not present at the place of the incident at the time of the incident. PW-2 admitted that accused no.1 was working in another village called Tirrupur. Although available, independent witnesses were not examined by the Prosecution. Therefore, adverse inference must be drawn against the prosecution. Hence, there is a serious doubt created about the genuineness of the prosecution case. The benefit of this substantial doubt must be given to the appellants.

The Director General of Police of the State of Tamil Nadu shall cause an enquiry to be made into the conduct of the police officials of tutoring PW-1 to PW-5 at the concerned Police Station. Needless to add, appropriate action shall be initiated against the erring officials in accordance with the law.

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178. INDIAN PENAL CODE, 1860 – Sections 107 and 306
SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3(2)(v)
Abetment of suicide – Deceased belonged to SC/ST category – Deceased left behind a suicide note claiming that he was insulted by the accused – Prosecution had not alleged that accused insulted victim on the basis of his caste which led him to commit suicide – Contents of suicide note did not indicate any act or omission on the part of accused which could make him responsible for abetment – Ingredients of section 3(2) (v) of the Act are not made out – Proceedings against the accused were quashed.

भारतीय दण्ड संहिता, 1860 – धाराएं 107 एवं 306
अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 3(2)(V)
आत्महत्या का दुष्प्रेरण – मृतक अनु.जा./अनु.जन.जा. श्रेणी का था – मृतक ने आत्महत्या लेख छोड़ा था जिसमें यह अभिकथित किया कि उसे अभियुक्त ने अपमानित किया था – अभियोजन का ऐसा आक्षेप नहीं है कि अभियुक्त ने प्रार्थी को उसकी जाति के आधार पर अपमानित किया था जिसके कारण उसने आत्महत्या कर ली – आत्महत्या लेख की अंतर्वस्तु से भी यह दर्शित नहीं था कि अभियुक्त ने ऐसा कोई कृत्य या लोप कारित किया था जिसके कारण उसे दुष्प्रेरण का जिम्मेदार माना जाता – अधिनियम की धारा 3(2)(V) के घटक गठित नहीं होते हैं – अभियुक्त के विरूद्ध कार्यवाही अपास्त की गई।

Prabhat Kumar Mishra @ Prabhat Mishra v. State of U.P. and anr.

Judgment dated 05.03.2024 passed by the Supreme Court in Criminal Appeal No. 1397 of 2024, reported in 2024 CriLJ 1461

Relevant extracts from the judgment:

It is not in dispute that the prosecution case is entirely based on the suicide note left behind by the deceased before committing suicide. On a minute perusal of the suicide note, we do not find that the contents thereof indicate any act or omission on the part of the accused appellant which could make him responsible for abetment as defined u/s 107 IPC.

We have minutely perused the suicide note (reproduced supra) which clearly shows that the deceased was frustrated on account of work pressure and was apprehensive of various random factors unconnected to his official duties. He was

also feeling the pressure of working in two different districts. However, such apprehensions expressed in the suicide note, by no stretch of imagination, can be considered sufficient to attribute to the appellant, an act or omission constituting the elements of abetment to commit suicide. The facts of the case at hand are almost identical to the case of Netai Dutta (supra). Thus, we have not hesitation in holding that the necessary ingredients of the offence of abetment to commit suicide are not made out from the chargesheet and hence allowing prosecution of the appellant is grossly illegal for the offences punishable u/s 306 IPC and section 3(2)(v) of the SC/ST Act tantamount to gross abuse of process to law.

It may be noted that in the first instance, the investigating agency itself proposed a closure report in the matter after conducting thorough investigation. In this background, we are of the opinion that there do not exist any justifiable ground so as to permit the prosecution of the appellant for the offences u/s 306 IPC and section 3(2)(v) of the SC/ST Act.

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179. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Section 102
Murder – Burden of proof – Appellate Court reversed the judgment of acquittal and convicted the accused after recording a finding that the accused had failed to adduce defence evidence and also to establish falsity of the prosecution version – Court erred in recording such finding and improperly placed the burden of proof on the accused to prove their innocence, contrary to established legal principles – Unless, there is a negative burden put on the accused under the penal law or there is reverse onus clause, accused is not required to discharge any burden – Where there is a statutory presumption, the burden of rebuttal may shift on the accused only after prosecution discharges initial burden – In other cases, burden always lies on the prosecution to prove the guilt of accused beyond reasonable doubt.

भारतीय दण्ड संहिता, 1860 – धारा 302
साक्ष्य अधिनियम,1872 – धारा 102
हत्या – सबूत का भार – अपीलीय न्यायालय ने दोषमुक्ति के आदेश को पलट दिया एवं यह निष्कर्ष लेखबद्ध करते हुए अभियुक्त को दोषसिद्ध किया कि अभियुक्त बचाव साक्ष्य प्रस्तुत करने में एवं अभियोजन मामले के मिथ्या होने को स्थापित करने में असफल रहा – न्यायालय ने ऐसा निष्कर्ष अभिलिखित करने

में त्रुटि कारित की एवं स्थापित विधिक सिद्धांतों के विपरीत अभियुक्त पर उसकी निर्दोषिता साबित करने के संबंध में अनुचित तरीके से सबूत का भार अधिरोपित किया – जब तक दाण्डिक विधि के अंतर्गत अभियुक्त पर कोई नकारात्मक भार न हो अथवा सबूत के उल्टे दायित्व का प्रावधान न हो, अभियुक्त को किसी भार को उन्मोचित करने की आवश्यकता नहीं है – जहां कोई वैधानिक उपधारणा है, वहां अभियोजन द्वारा प्रारंभिक भार के उन्मोचन उपरान्त ही खण्डन का भार अभियुक्त पर अंतरित हो सकता है – अन्य मामलों में अभियुक्त की दोषिता को युक्ति-युक्त संदेह से परे प्रमाणित करने का भार हमेशा अभियोजन पर रहता है।

Bhupatbhai Bachubhai Chavda and anr. v. State of Gujarat

Judgment dated 10.04.2024 passed by the Supreme Court in Criminal Appeal No. 334 of 2019, reported in AIR 2024 SC 1805

Relevant extracts from the judgment:

Recording a finding that the appellants have failed to adduce evidence in their support, failed to examine the defence witness and failed to establish falsity of the prosecution's version. This concept of the burden of proof is entirely wrong. Unless, under the relevant penal statute, there is a negative burden put on the accused or there is a reverse onus clause, the accused is not required to discharge any burden. In a case where there is a statutory presumption, after the prosecution discharges initial burden, the burden of rebuttal may shift on the accused. In the absence of the statutory provisions as above, in this case, the burden was on the prosecution to prove the guilt of the accused beyond a reasonable doubt. Therefore, the High Court's finding on the burden of proof is completely erroneous. It is contrary to the law of the land.

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180. INDIAN PENAL CODE, 1860 – Sections 302 and 307

(i) Criminal trial – Offence of murder and attempt to murder – Death and injury due to gun shot – Weapon of offence not recovered – Only pallets and *tikli* of cartridge were recovered from the place of incident and from the body of the deceased however, they were not sent for ballistic examination – Whether non-recovery of fire arm and omission to obtain ballistic report would be fatal to the prosecution case? Law summarised. [*Sukhwant Singh v. State of Punjab (1995) 3 SCC 367, Gulab v. State of U.P. (2022) 12 SCC 677* and *Pritinder Singh v. State of Punjab (2023) 7 SCC 727* relied.]

(ii) Acquittal of co-accused – Its effect on the case of remaining accused –When the evidence against both the accused is similar and identical in nature, court cannot convict one accused and acquit the other. [*Javed Shaukat Ali Qureshi v. State of Gujrat, (2023) 9 SCC 164* followed]

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 307

(i) दाण्डिक विचारण – हत्या और हत्या के प्रयत्न का अपराध – बन्दूक की गोली से उपहति एवं मृत्यु – अपराध में प्रयुक्त आयुध बरामद नहीं हुआ – घटनास्थल तथा मृतक के शरीर से केवल कारतूस के छर्रे और टिकली बरामद हुए किंतु उन्हे प्राक्षेपिक परीक्षण के लिए प्रेषित नहीं किया गया – क्या आग्नेयास्त्र का बरामद नहीं होना एवं प्राक्षेपिक परीक्षण रिपोर्ट की प्राप्ति में लोप अभियोजन मामले के लिए घातक होगा? – विधि सारांशित की गयी। [*सुखवंत सिंह बनाम पंजाब राज्य, (1995) 3 एससीसी 367, गुलाब बनाम उत्तरप्रदेश राज्य, (2022) 12 एससीसी 677* एवं *प्रीतिंदर सिंह बनाम पंजाब राज्य, (2023) 7 एससीसी 727* पर विश्वास किया गया]

(ii) सह-अभियुक्त की दोषमुक्ति – अन्य अभियुक्त के मामले पर इसका प्रभाव – जब दोनों अभियुक्त के विरूद्ध एक जैसी और समान प्रकृति की साक्ष्य हो, न्यायालय एक अभियुक्त को दोषसिद्ध एवं अन्य को दोषमुक्त नहीं कर सकता। *(जावेद शौकत अली कुरैशी बनाम गुजराज राज्य, (2023)9 एससीसी 164* अनुसरित)

Ram Singh v. State of Uttar Pradesh

Judgment dated 21.02.2024 passed by the Supreme Court in Criminal Appeal No. 206 of 2024, reported in (2024) 4 SCC 208

Relevant extracts from the judgment:

Non-recovery of the weapon of crime by itself would not be fatal to the prosecution case. When there is such non-recovery, there would be no question of linking the empty cartridges and pellets seized during investigation with the weapon allegedly used in the crime. Obtaining of ballistic report and examination of the ballistic expert is again not an inflexible rule. It is not that in each and every case where the death of the victim is due to gunshot injury that opinion of the ballistic expert should be obtained and the expert be examined. When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and non-examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or

suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case.

When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination.

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***181.INDIAN PENAL CODE, 1860 – Sections 302 and 397**

EVIDENCE ACT, 1872 – Sections 3 and 27

Offence of robbery and murder – Deceased was allegedly killed by accused during snatching of bag containing jewellery – Test identification of jewellery was conducted which was recovered at the instance of accused – Prosecution witness stated that he gave original gold and diamond jewellery to the deceased – Jewellery seized as "looted property" however, was found to be artificial – No purpose would be served if test identification is conducted – As recovery of jewellery has become doubtful hence, conviction set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 397

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 27

लूट और हत्या का अपराध – मृतक से आभूषण रखे थैले को खींचते समय अभियुक्त द्वारा मृत्यु कारित करने का आक्षेप – अभियुक्त द्वारा बताये जाने पर जब्त हुए आभूषण की पहचान कार्यवाही की गई – अभियोजन साक्षी का कथन है कि उसने मृतक को असली स्वर्ण एवं हीरे के आभूषण दिये थे – ''लूटी गई सम्पत्ति'' के रूप में जब्त आभूषण नकली होना पाये गये – पहचान कार्यवाही के संपादन से कोई उद्देश्य पूर्ण नहीं होता है – आभूषण की जब्ती चूँकि संदेहास्पद हो गई अतः दोषसिद्धि अपास्त की गई।

Sarman Shivhare v. State of Madhya Pradesh

Judgment dated 15.12.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 840 of 2013, reported in 2024 CriLJ 709 (DB)

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182. INDIAN PENAL CODE, 1860 – Sections 306 r/w/s 107, 342 and 365
EVIDENCE ACT, 1872 – Section 106

(i) Abetment of suicide – Deceased allegedly borrowed money from the accused/appellant – Having failed to repay the amount, appellant and other accused persons kidnapped the deceased and wrongfully confined him in the tailoring shop of one prosecution witness – It was alleged that the deceased being unable to withstand the torment, committed suicide by hanging in the said shop – All the accused persons including appellant were acquitted of the charges u/s 342 and 365 of the Code – Appellant alone was convicted for the offence u/s 306 – Whether appellant can be said to have abetted commission of suicide? Held, No – Law explained.

(ii) Burden of proof – Applicability of Section 106 of the Act – This section cannot be used to shift the initial burden of proving the offence from the prosecution to the accused – Therefore, conviction of the appellant invoking section 106 on the ground that he failed to explain the circumstances under which deceased committed suicide set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 306 सहपठित धाराएं 107, 342 एवं 365
साक्ष्य अधिनियम, 1872 – धारा 106

(i) आत्महत्या का दुष्प्रेरण – मृतक ने कथित तौर पर अभियुक्त/अपीलार्थी से धन उधार लिया था – राशि वापस करने में विफल रहने पर अपीलार्थी और अन्य आरोपियों ने मृतक का अपहरण किया और उसे एक अभियोजन साक्षी की सिलाई दुकान में सदोष परिरूद्ध किया – ऐसा आरोप था कि मृतक ने पीड़ा सहने में असमर्थ होने पर उक्त दुकान में फांसी लगाकर आत्महत्या कर ली – अपीलार्थी सहित सभी अभियुक्तों को संहिता की धारा 342 और 365 के अंतर्गत आरोपों से दोषमुक्त कर दिया गया – केवल अपीलार्थी को धारा 306 के अंतर्गत दोषसिद्ध ठहराया गया – क्या अपीलार्थी द्वारा आत्महत्या का दुष्प्रेरण किया जाना कहा जा सकता है? अभिनिर्धारित, नहीं – विधि समझाई गई।

(ii) सबूत का भार – अधिनियम की धारा 106 की प्रयोज्यता – इस धारा का उपयोग अभियोजन पक्ष से अपराध साबित करने के प्रारंभिक भार को अभियुक्त पर अंतरित करने के लिए नहीं किया जा सकता – इसलिए

अपीलार्थी की धारा 106 का अवलंब लेकर इस आधार पर की गई दोषसिद्धि कि वह यह स्पष्ट करने में असमर्थ रहा कि मृतक ने किन परिस्थितियों में आत्महत्या की, अपास्त की गई।

M. Vijaykumar v. State of Tamil Nadu

Judgment dated 21.02.2024 passed by the Supreme Court in Criminal Appeal No. 1078 of 2024, reported in 2024 (4) SCC 633

Relevant extracts from the judgment:

In the decision in ***Enforcement Directorate v. MCTM Corpn. Pvt. Ltd., AIR 1996 SC 1100***, it was observed that *mens rea* is a state of mind and held that under the criminal law *mens rea* is considered as the "guilty intention" and unless it is found that the 'accused' had the guilty intention to commit the crime, he could not be held guilty of committing the crime.

In the case on hand the question to be considered is whether the appellant had instigated as envisaged u/s 107 IPC, to commit the offence u/s 306 IPC. It is in the said circumstances that we have earlier referred to the ingredients to attract offence u/s 306 IPC. Essentially the gravamen of the offence punishable u/s 306 IPC, is abetting suicide. Abetment imposes a mental process of instigating a person or initially aiding a person in doing the offence. In the case on hand, the question is whether the appellant abetted the deceased Senthil Kumar to commit suicide.

The evidence of the prosecution witness viz., PW-1 and PW-3 did not reveal existence of the element of *mens rea* on the part of the appellant. There is nothing in their oral testimonies which would suggest that the appellant had instigated the deceased Senthil Kumar to commit suicide. In this context, it is to be noted that the victim committed suicide inside the tailoring shop of PW-3 Sampath Kumar. He would submit that on 06.12.2002 at about 06.30 pm he locked his shop and left the key of the shop with A-3, father of the appellant. Sampath Kumar would further depose that he came to know about the commission of suicide by Senthil Kumar inside his tailoring shop only in the next morning by about 9 O'clock.

We have already noted that though the prosecution got a case that one Alexander had witnessed the appellant taking the victim and wrongfully confining him in the said shop, the said Alexander was not examined by the prosecution. At

any rate, the fact is that the appellant was already acquitted for the offence u/s 342 and 365 IPC. It is also to be noted that though A-3, Muthu, (the father of the appellant) was the person to whom PW-3 said to have handed over the key of his shop, he was acquitted by the trial Court and no appeal was filed against his acquittal.

The impugned judgment ***(M. Vijaya Kumar v. State, 2019 SCC OnLine Mod 39352)*** would reveal that even after acquitting the appellant for the offences u/s 342 & 365, IPC, the High Court confirmed his conviction u/s 306, IPC, holding that the appellant had failed to offer explanation as to how the deceased ***Senthil Kumar*** entered into the tailoring Shop of PW-3 to commit suicide in terms of section 106 of the Evidence Act.

We are at a loss to understand as to how Section 106 of the Evidence Act could be applied in the case on hand against the appellant in view with facts narrated above. This Section is an exception to the general rule laid down in Section 101 which casts burden of proving a fact on the party who substantially asserts the affirmative of the issue. Section 106 is not intended to relieve any person of that duty or burden. On the contrary, it says that when a fact to be proved, either affirmatively or negatively, is especially within the knowledge of a person, it is for him to prove it. This Section, in its application to criminal cases, applies where the defence of the accused depends on his proving a fact especially within his knowledge and of nobody else.

In short, Section 106 of the Evidence Act cannot be used to shift the burden of proving the offence from the prosecution to the accused. It can only when the prosecution led evidence, which, if believed, will sustain a conviction or which makes out a *prima facie* case, that the question of shifting the onus to prove such fact(s) on the accused would arise. (See the decision in ***Sawal Das v. State of Bihar, AIR 1974 SC 778***).

In view of the exposition of law as above and in the absence of anything to make section 106 applicable to shift the onus on the appellant, the High Court had committed an error in applying Section 106 of the Evidence Act, in the instant case.

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183. INDIAN PENAL CODE, 1860 – Sections 342 and 376(2)(f)

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 3 and 4

EVIDENCE ACT, 1872 – Section 35

DATE OF BIRTH (ENTRIES IN THE SCHOOL REGISTER) RULES, 1973 (M.P.) – Rules 3 and 4

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007 – Rule 12

(i) Age determination of victim – Admission register of school showing date of birth was produced before the Court by the Headmaster – Parents gave contradictory oral evidence – As school register was found to be relevant, documentary evidence has to be given precedence over oral evidence of parents.

(ii) Non-production of declaration – Absence of declaration as per Rules 3 and 4 of Rules, 1973 – If date of birth is recorded on the instruction of parents, no fault can be found in the date of birth even if declaration is not produced.

भारतीय दण्ड संहिता, 1860 – धाराएं 342 एवं 376(2)(च)

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 3 एवं 4

साक्ष्य अधिनियम, 1872 – धारा 35

जन्म तिथि (स्कूल रजिस्टर में प्रविष्टियाँ) नियम, 1973 (म0प्र0) – नियम 3 एवं 4

किशोर न्याय (बालकों की देखरेख और संरक्षण) नियम, 2007 – नियम 12

(i) पीड़ित की उम्र का निर्धारण – जन्मतिथि दर्शाने वाला विद्यालय का प्रवेश रजिस्टर प्रधानाध्यापक द्वारा न्यायालय के समक्ष प्रस्तुत किया गया – माता पिता ने विरोधाभासी मौखिक साक्ष्य दिये – चूंकि विद्यालय का रजिस्टर सुसंगत पाया गया इसलिये दस्तावेजी साक्ष्य को माता-पिता की मौखिक साक्ष्य की तुलना में वरीयता दी जानी चाहिए।

(ii) घोषणा प्रस्तुत न करना – 1973 के नियमों के नियम 3 एवं 4 के अनुसार घोषणा का अभाव – यदि जन्मतिथि माता पिता के निर्देश पर दर्ज की गई है, तब घोषणा प्रस्तुत नहीं करने पर भी जन्म तिथि में कोई त्रुटि नहीं पाई जा सकती है।

Ramswaroop v. State of M.P.

Judgment dated 02.08.2023 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 2630 of 2015, reported in ILR 2023 MP 2258 (DB)

Relevant extracts from the judgment:

This is trite that a document becomes admissible under Section 35 of Indian Evidence Act, if three conditions are fulfilled. We have examined the Admission Register and date of birth Register alongwith the statement of Headmaster (PW-9) who produced them before the Court below. We are satisfied that (i) entry relating to date of birth was made in the Register in discharge of public duty (ii) the entry states a relevant fact and (iii) the entry was made by a public servant in discharge of his official duty. Thus, School Register is a relevant and admissible document as per Section 35 of the Act. The School Register was held to be admissible for the purpose of determination of age in the later judgments of Supreme Court in ***Shah Nawaz v. State of U.P., (2011) 13 SCC 751, Ashwani Kumar Saxena v. State of M.P. (2012) 9 SCC 750, Mahadeo v. State of Maharashtra and anr., (2013) 14 SCC 637*** and ***Ram Suresh Singh v. Prabhat Singh, (2009) 6 SCC 681***.

Pertinently, in ***Ashwani Kumar Saxena*** (supra), the Apex Court made it crystal clear that Admission Register of the school in which a candidate first attended, is a relevant piece of evidence for determining the date of birth. It was poignantly held that the argument that parents could have entered a wrong date of birth in the Admission Register is erroneous because parents could not have anticipated at the time of entry of date of birth that their child would commit a crime or subject to a crime in future.

In ***Abuzar Hossain v. State of W.B., (2012) 10 SCC 489*** a three Judge Bench of Supreme Court drawn the curtains on the issue by holding that the credibility/acceptability of a document needs to be determined in the facts and circumstances of each case and no hard and fast rule can be prescribed. The similar view was taken by Apex Court in ***Rishipal Singh Solanki v. State of U.P., (2022) 8 SCC 602***. The judgment of ***Rishipal Singh Solanki*** (supra) was followed by the Division Bench of this Court in ***Ramnath Kewat v. State of M.P, 2022 SCC OnLine MP 1826***.

By following the *ratio decidendi* of the judgment of ***Ashwani Kumar Saxena*** (supra) in ***Raje v. State of M.P., 2013 SCC OnLine MP 10475***, this Court opined

that date of birth can be determined on the basis of Admission Register of School as per Rules of 2007. Hence, Admission Register is indeed an important piece of evidence.

In ***Ramnath Kewat*** (supra) principle laid down by Supreme Court in ***Rishipal Singh Solanki*** (supra) was followed by us that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be based on the material on record and on appreciation of evidence adduced by the parties in each case. The words of caution were added by the Apex Court by holding that when determination of age is on the basis of school records, the requirement of Section 35 of Indian Evidence Act must be satisfied. We have already held in para-34 that the Admission Register so produced fulfills the said requirement.

The birth Register (Ex.P-14C) was produced and proved by producing Suresh Kumar Uikey (PW-9) before the Court below. A bare perusal of the relevant portion of birth Register shows that the date of birth of victim is recorded as 28.06.1996. The same date of birth was also written in words. In a specific column of the Register, the father certified that the date of birth of his daughter is 28.06.1996 and under this certification / declaration put his signature. Thus, the requirement of declaration, even otherwise is satisfied. Whether or not said declaration was in a prescribed form as per the Rules of 1973, will not make any difference. It is the content which is important and not the form. The statement of father of victim that in rural areas sometimes parents narrate the date of birth of their ward on the basis of assessment is, in our opinion, a general statement not made by him in relation to entry of date of birth of victim. We are of the view that if prosecution is able to prove the date of birth in consonance with the requirement of J.J. Act by producing the Admission Register or any other document, the Court is not required to go beyond and behind the said document and conduct a roving inquiry as to on what basis said date of birth was recorded. We say so because the legislative intent ingrained in Section 94 shows that the law makers have placed reliance on certain documents on the strength of which age can be determined. If said test is fulfilled by producing relevant document, the Courts are not obliged to examine further source of such declaration or entry mentioned in the said document.

In our opinion, when Rules of 2007 prescribes the method for determination of age, the statement of parents cannot form basis for determination of age. In other words, variation in their statements regarding date of birth/age of victim, will not throw the documentary evidence i.e. Admission Register and date of birth Register

of the school to the winds. In the said documents, the date of birth of victim is recorded as 28.06.1996. This entry was made when prosecutrix was admitted in Class I. Thus, in the light of judgments of Supreme Court in aforesaid cases, the admission and date of birth registers can form basis for determination of age of the prosecutrix.

In ***P. Yuvaprakash v. State Rep. By Inspector of Police, 2023 SCC OnLine SC 846***, it was held that as held earlier, the document produced, i.e. a transfer certificate and extracts of the Admission Register, are not what section 94(2)(i) mandates; nor are they in accord with section 94(2)(ii) because DW-1 clearly deposed that there was no records relating to the birth of the victim. A careful reading of this judgment shows that various Division Bench judgments of Supreme Court were not brought to the notice of the Court in ***P. Yuvaprakash*** (supra). The judgment of ***Shah Nawaz, Ashwani Kumar Saxena*** and ***Ram Suresh Singh*** (supra) were even not cited before the Apex Court. As per these judgments, Admission Register's entry can be relied upon for determination of age. Thus, judgment of ***P. Yuvaprakash*** (supra) does not improve the case of the appellant.

The judgment of ***Abuzar Hossain*** (supra) (decided by a Bench of three Judges) was also not cited in the case of ***P. Yuvaprakash*** (supra). The judgment of ***Rishipal Singh Solanki*** (supra) was although referred to, the Apex Court has not distinguished the principles laid down in the said case. It needs no mention that if a judgment of Supreme Court of larger strength is holding the field, the said judgment will be binding on this Court in comparison to the judgment which is passed by a Bench of lesser strength.

A Special Bench (five Judges) of this Court in ***Jabalpur Bus Operators Association and ors. v. State of M.P. and anr., 2003 (1) MPHT 226 (FB)*** opined as under:

> ". …….In case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. Decision of a larger Bench is binding on smaller Benches."

As per *ratio decidendi* of this judgment, if previous Division Bench judgments were not considered by the subsequent Bench, the previous Division Bench judgment will be binding. For this reason, in our opinion, the argument of

appellant cannot be accepted that Admission Register and date of birth Register cannot form basis for determination of age. Thus, we find no flaw in the method adopted by the Court below for the purpose of determination of age.

The Rules of 1973 are procedural in nature. The rustic villagers and common man is not supposed to know about the said Rules when they visit the school for admission of their ward. If a declaration is obtained from the parents by the school, as per Rules of 1973, it will undoubtedly give more weightage to the entry recorded in the Admission/date of birth Register. However, we are unable to persuade ourselves with the line of argument that if no 'declaration form' as per the Rules of 1973 is filled up, it will make the entry recorded in the Admission/date of birth Register as untrustworthy. Putting it differently, if requirement of Section 35 of Indian Evidence Act is satisfied while producing the admission/date of birth certificate, noncompliance of Rules of 1973 will not cause any dent on the entry so recorded in the said registers. The Rules of 1973 requires the parent to declare the date of birth. Neither the Rules of 1973 nor format prescribed therein makes it obligatory to produce any documentary proof in support of such declaration regarding the date of birth. Thus on a mere written declaration of parent, date of birth is required to be reduced in writing in the school Register. In absence of such declaration in the prescribed form as per Rules of 1973, if date of birth is still recorded on the instructions of parents in the admission/scholar/birth Register, no fault can be found in the date of birth so recorded provided such certificate / document is produced in the Court and requirement of Section 35 of Evidence Act are satisfied. Although appellant faintly argued that in the admission / birth Register in the relevant page, signature of school staff is not mentioned, suffice it to say that no such requirement of existence of such signature on each page of register could be established. No amount of cross-examination was made to establish that Register was either not produced from proper official custody or entry so made was not made in discharge of official duties. Thus, neither the procedure nor the probative value of entry of register can be doubted.

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184. INDIAN PENAL CODE, 1860 – Sections 376(2), 377, 504 and 506
Rape – Consent – Acquaintance between the accused and the prosecutrix started in the year 2011 – Their physical relationship commenced in 2012 and continued till 2017 – In February, 2013 and December, 2017, the prosecutrix got pregnant – In July, 2017, there was engagement

ceremony between accused and the prosecutrix – Complaint was filed by the prosecutrix on 23.02.2018 stating that she learnt on 22.02.2018 that accused was married to another woman – Relationship between them found to be consensual – Offence of rape not made out – In these circumstances, the allegation that physical relationship allowed on the basis of false promise to marry, cannot be accepted.

भारतीय दण्ड संहिता, 1860 – धाराएं 376 (2), 377, 504 एवं 506
बलात्संग – सहमति – अभियुक्त और अभियोक्त्री के मध्य जान पहचान वर्ष 2011 से आरम्भ हुई – उनके मध्य शारीरिक संबंध 2012 में शुरू हुए और 2017 तक जारी रहे – फरवरी, 2013 एवं दिसंबर, 2017 में अभियोक्त्री गर्भवती हुई – जुलाई, 2017 में अभियुक्त और अभियोक्त्री का सगाई समारोह हुआ – अभियोक्त्री द्वारा दिनांक 23.02.2018 को यह कथन करते हुए शिकायत दर्ज कराई गई कि उसे दिनांक 22.02.2018 को ज्ञात हुआ कि अभियुक्त ने दूसरी महिला से विवाह किया है – उनके मध्य संबंध सहमतिपूर्ण पाए गए – बलात्कार का अपराध गठित नहीं होता – इन परिस्थितियों में यह आरोप स्वीकार नहीं किया जा सकता कि शारीरिक संबंध स्थापित करने की अनुमति विवाह के झूठे वादे के आधार पर दी गई थी।

Sheikh Arif v. State of Maharashtra and anr.

Judgment dated 30.01.2024 passed by the Supreme Court in Criminal Appeal No. 1368 of 2023, reported in (2024) 4 SCC 463

Relevant extracts from the judgment:

When the complaint was filed, the age of the second respondent was 24 years. Her year of birth is recorded as 1994. The averments made in her complaint go to show that their physical relationship started in 2012. Though she claimed that it was a forced relationship, she did not make any grievance about it till February 2018. In February 2013 and in December 2017, the second respondent was pregnant. It is not the case of the second respondent that from February 2013 to December 2017, the appellant forced the second respondent to maintain the physical relationship. In 2013, the relationship resulted in pregnancy. Still, it continued till 2017. In fact, according to the second respondent, in July 2017, there was an engagement ceremony between the appellant and the second respondent. Therefore, in the facts of the case, it is impossible to accept that the second respondent allowed the physical relationship to be maintained with her from 2013 to 2017 on the basis of a false promise to marry.

Now, coming to the Nikahnama dated 20.01.2017, it is true that the original Nikahnama could not be produced. However, the seizure panchnama dated 21.09.2018 (Annexure: P-14) records that a carbon copy of the Nikahnama was seized. The statement of one Burhanuddin was recorded by the police who was present at the time of Nikah. He confirmed the fact of performance of Nikah between the appellant and the second respondent.

On 08.05.2018, the police recorded a statement of Dr. Sarita Rai Vidyarthi, who stated that the appellant and second respondent used to come to her from November 2017 for advice and treatment as the second respondent was pregnant. She stated that the appellant did not tell her that they were married or that they were living as husband and wife. However, the second respondent told her that the appellant was her husband. She stated that apart from the fact that the appellant used to accompany the second respondent to her clinic, even relatives of the second respondent used to visit her clinic.

If this material, which is a part of the investigation papers, is perused carefully, it is obvious that the physical relationship between the appellant and the second respondent was consensual, at least from 2013 to 2017. The fact that they were engaged was admitted by the second respondent. The fact that in 2011, the appellant proposed her and in 2017, there was engagement is accepted by the second respondent. In fact, she participated in the engagement ceremony without any protest. However, she has denied that her marriage was solemnised with the appellant. Taking the prosecution case as correct, it is not possible to accept that the second respondent maintained a physical relationship only because the appellant had given a promise of marriage.

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185. INFORMATION TECHNOLOGY ACT, 2000 – Sections 67 and 67A
Offence u/s 67 and 67A of the Act – Allegations regarding production, transmission and online publication of obscene and sexually-explicit material in a web series – Vulgarity and profanities do not *per se* amounts to obscenity – Standard to determine obscenity cannot be an adolescent's or child's mind or a hyper-sensitive person who is susceptible to such influence – Offence not made out as the grievance is about excessive usage of vulgar expletives, swear words and profanities and not any sexually-explicit act or conduct – Law classified.

सूचना प्रौद्योगिकी अधिनियम, 2000 – धाराएं 67 एवं 67क
अधिनियम की धारा 67 एवं 67क के अंतर्गत अपराध – वेब सीरिज में अश्लील एवं स्पष्ट यौन सामग्री के उत्पादन, संचरण एवं ऑनलाईन प्रकाशन के संबंध में आक्षेप – अशिष्टता एवं अपवित्र आचरण स्वयं में अश्लीलता के समान नहीं – अश्लीलता का निर्धारण करने का मानक किशोर या बालक का मस्तिष्क अथवा एक अतिसंवेदनशील व्यक्ति नहीं हो सकता जो ऐसे प्रभाव के लिए अतिसंवेदनशील है – अपराध गठित नहीं होता क्योंकि शिकायत अश्लील अपशब्द, गालियों के अत्यधिक प्रयोग के संबंध में है एवं किसी स्पष्ट यौन कार्य अथवा आचरण के संबंध में नहीं है – विधि स्पष्ट की गई।

Apoorva Arora and anr. etc. v. State (Govt. of NCT of Delhi) and anr.

Judgment dated 19.03.2024 passed by the Supreme Court in Criminal Appeal No. 1694 of 2024, reported in AIR 2024 SC 1775

Relevant extracts from the judgment:

A complaint was filed by respondent no. 2 before the Assistant Commissioner of Police that Season 1, Episode 5 of the web-series, titled 'Happily F****d Up', has vulgar and obscene language in its title and various portions of the episode, constituting an offence under Sections 292, 294 and 509 of the Indian Penal Code 6, Sections 67 and 67A of the IT Act, and Sections 2(c) and 3 of the Indecent Representation of Women (Prohibition) Act, 1986.

Whether the use of expletives and profane language in the titles and content of the episodes of the web-series 'College Romance' constitutes an offence of publication and transmission of obscene and sexually explicit content under Sections 67 and 67A of the IT Act.

The High Court has taken the meaning of the language in its literal sense, outside the context in which such expletives have been spoken. While the literal meaning of the terms used may be sexual in nature and they ther, the common usage of these words is reflective of emotions of anger, rage, frustration, grief, or perhaps excitement. By taking the literal meaning of these words, the High Court failed to consider the specific material (profane language) in the context of the larger web-series and by the standard of an "ordinary man of common sense and prudence".

Application of wrong standard: The last issue is that of the standard or perspective used by the High Court to determine obscenity. It is well-settled that

the standard for determination cannot be an adolescent's or child's mind, or a hypersensitive person who is susceptible to such influences.

The facts of the present case certainly do not attract Section 67A as the complainant's grievance is about excessive usage of vulgar expletives, swear words, and profanities. There is no allegation of any 'sexually explicit act or conduct' in the complaint and as such, Section 67A does not get attracted.

Section 67A as the complainant's grievance is about excessive usage of vulgar expletives, swear words, and profanities. contains sexually explicit act or conduct. Though the three expressions "explicit", "act", and "conduct" are open-textured and are capable of encompassing wide meaning, the phrase may have to be seen in the context of 'obscenity' as provided in Section 67.

Thus, there could be a connect between Section 67A and Section 67 itself. For example, there could be sexually explicit act or conduct which may not be lascivious. Equally, such act or conduct might not appeal to prurient interests. On the contrary, a sexually explicit act or conduct presented in an artistic or a devotional form may have exactly the opposite effect, rather than tending to deprave and corrupt a person.

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186. MINERAL (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, 2022 (M.P.) – Rules 18(4) and 21
CRIMINAL PROCEDURE CODE, 1973 – Sections 451 and 457

(i) Interim custody of seized vehicle – Jurisdiction to grant – Whether Judicial Magistrarte First Class has jurisdiction to release the vehicle u/s 451 or 457 of CrPC seized in case of Illegal Mining and Transportation of Mineral Rules? Held, No – Rules of 2022 require that the seized vehicle should be produced before the authorized officer who is Collector or any officer not below the rank of Deputy Collector – JMFC has power to release only those vehicles which are produced before him during investigation or in respect of which any case is pending before the Magistrate – Since vehicle seized under Rules of 2022 is not produced before JMFC and no criminal case was pending, therefore JMFC has no power or jurisdiction to release the vehicle on supurdginama.

(ii) Words "seized", "forfeiture" and "confiscation" – Difference amongst them explained.

खनिज (अवैध खनन परिवहन तथा भंडारण का निवारण) नियम, 2022 (म.प्र.) – नियम 18(4) एवं 21

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 451 एवं 457

(i) जब्त वाहन की अन्तरिम अभिरक्षा – प्रदान करने की अधिकारिता – क्या न्यायिक मजिस्ट्रेट प्रथम श्रेणी को धारा 451 या 457 द.प्र.स. के अन्तर्गत ऐसा वाहन जो खनिज के अवैध खनन एवं परिवहन नियम के अन्तर्गत जब्त किया गया है, को मुक्त करने की अधिकारिता है? – अवधारित, नहीं – 2022 के नियम यह अपेक्षा करते है कि जब्त वाहन को प्राधिकृत अधिकारी जो कलेक्टर या डिप्टी कलेक्टर से निम्न पद का न हो, के समक्ष प्रस्तुत किया जाएगा – न्यायिक मजिस्ट्रेट प्रथम श्रेणी के पास मात्र उस वाहन को मुक्त करने की शक्ति है जो उसके समक्ष अन्वेषण के स्तर पर प्रस्तुत किए गए है या फिर जिस वाहन के संबंध में मामला मजिस्ट्रेट के समक्ष लंबित है – 2022 के नियम के अन्तर्गत जब्त वाहन मजिस्ट्रेट के समक्ष प्रस्तुत नहीं किया गया और न ही कोई आपराधिक प्रकरण लंबित है अतः न्यायिक मजिस्ट्रेट प्रथम श्रेणी को उक्त वाहन मुक्त करने की शक्ति या अधिकारिता नहीं है।

(ii) शब्द ''जब्त'', ''समपहरण'' एवं ''अधिहरण'' – इनमें अन्तर समझाया गया ।

Prince Patel v. State of M.P.

Order dated 06.12.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 35253 of 2023, reported in ILR 2024 MP 806

Relevant extracts from the order:

Word 'seizure' means, when police takes any property, article, vehicle, tools etc. into custody which are being used for committing crime or illegal act or proceeds of crime. Seizure does not have any other meaning except taking possession of the article or vehicle under custody by investigating agency. The judgments of Nagpur High Court in case of ***Emperor v. Mohamad Khan and ors., AIR 1938 Nagpur 365*** and Bombay High Court in case of ***State of Maharashtra v. Rajendra Hilal Patil and anr., 1989 (1) Bom cr. 287*** it is clear that words 'confiscation' and 'forfeiture' cannot be used casually *inter se*. Each word has different meaning and connotation. When property or valuable belonging to owner/title holder is finally taken over by the State Government, which is used in

commission of crime or subject matter of crime and it is to be used by the State Government for itself or for public good, then such a procedure is forfeiture of property, article or valuable. Forfeiture is against owner of property as penalty.

However, when a property, valuable, article, vehicle etc. is finally taken over by the State Government from any person who may be owner of property or may not be owner of property and such property is used for committing crime or proceeds of crime then word 'confiscation' is used. In case of confiscation, owner may or may not be involved in committing of crime and may be innocent but, irrespective of it, property or article is confiscated in favour of State Government for its use or for public good to control occurrence of crime. Thus, confiscation of vehicle is not necessary as penalty to owner but to control the occurrence and re-occurrence of crime. Property/vehicle used by any person whether owner or not can be confiscated.

Rule 19(6) lays down that in cases of illegal transportation, owner of vehicle shall be responsible. Said Rule 19(6) creates a fiction that owner will be responsible for illegal transportation of minor minerals, though he may or may not have knowledge of the offence. Due to said legal fiction even if owner is innocent and he does not have knowledge that vehicle may be used by any other person to whom he has lent the vehicle for committing offence, then also owner is responsible due to legal fiction created under Rule 19(6) and therefore, due to creation of said legal fiction, word 'forfeiture' used in Minor Minerals Rules, 2022 is to be read as 'confiscation'. If any vehicle which is used in commission of crime irrespective of the fact that owner is innocent, vehicle will be forfeited by the State as owner is held responsible for illegal transportation of minor mineral in Rule 19(6).

Rule 18(4) of Rules of 2022 talks about release of forfeited vehicle, machine, tools etc. Said Rule relates to final release of vehicle. Release under Rule 18(4) shall be made after payment of penalty and compounding fees. Release of vehicle under Rule 18(4) is after forfeiture of vehicle, which means that guilt of the offender has been determined and he was found guilty therefore, after payment of compounding fees and payment of penalty, vehicle is to be released. Rules 18(4) relates to final release of vehicle after forfeiture i.e. at the time of final decision and this does not relate to giving interim custody or interim release of vehicle on supurdaginama.

Rule 21 of Rules of 2022 deals with interim release of vehicle, however, word forfeited vehicle has wrongly been used in Rule 21. Forfeiture is by way of penalty

to the owner of vehicle. Once guilt is established only then vehicle is forfeited. Guilt will be established at the time of final order which will be passed by the authority and not during the interim stage or at the stage of investigation. Therefore, word 'forfeited' used in Rule 21 is to be read as 'seized' vehicle. While release of vehicle under Rule 21, requirement is receipt of amount of vehicle, machinary as prescribed in Schedule-I. Authority before whom vehicle is produced or competent authority to pass orders and impose penalty may release the vehicle on payment of amount mentioned in Schedule-I. Rule 21 relates to giving interim custody of vehicle, machinary, tools etc.

Vehicle which has been seized by investigating agency is to be produced before authorized officer. Penalty, fine, compounding fees, final release or interim release of property or valuable or article is to be decided by authorized officer which is Collector or any other authorized officer not below the rank of Deputy Collector. Since vehicles which are seized under the Rules of 2022 is produced before Executive Magistrate, therefore, Judicial Magistrate First Class will not have any power or jurisdiction to release the vehicle on supurdginama. Under Section 451 and 457 of Cr.P.C., Judicial Magistrate First Class have power and jurisdiction to release only those vehicles which are produced before them during investigation or in respect of which any case is pending before Magistrate. In case of vehicle or article which has been seized under the Rules of 2022, no case is pending before Judicial Magistrate First Class neither said vehicle is produced before Judicial Magistrate First Class, therefore, Judicial Magistrate First Class will not have power to release the vehicle on supurdginama despite there being no bar under Rules of 2022. Rules of 2022 specifically provides vehicle to be released on supurdginama or finally released by Authorized Officer. It is settled law that special law will supersede general law. In these circumstances, it is held that Judicial Magistrate First Class will not have any jurisdiction to release the vehicle on supurdginama which has been seized under the Rules of 2022.

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187. EXCISE ACT, 1915 (M.P.) – Section 47-A(2)

Confiscation of vehicle – During pendency of criminal trial, Collector passed the order of confiscation – Legality of the order – Held, Collector cannot pass order of confiscation till trial is pending – The words "offence has been committed" used in section 47-A(2) is to mean that when the trial court has recorded a finding of proving the offence.

आबकारी अधिनियम, 1915 (म.प्र.) – धारा 47-क(2)
वाहन का अधिहरण – कलेक्टर द्वारा आपराधिक विचारण लंबित रहने के दौरान अधिहरण का आदेश पारित किया गया – आदेश की वैधता – अवधारित, जब तक आपराधिक विचारण लंबित है, कलेक्टर अधिहरण का आदेश पारित नहीं कर सकता – धारा 47-क (2) में प्रयुक्त शब्द ''अपराध किया गया है'' का अर्थ यह है कि जब विचारण न्यायालय ने अपराध साबित होना निष्कर्षित किया हैं ।

Bhaskar @ Balkishan Sonone v. State of M.P. and ors.

Order dated 07.11.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Writ Petition No. 28288 of 2023, reported in 2024 (1) MPLJ 450

Relevant extracts from the order:

Learned counsel for the petitioner submits that during the pendency of the trial, the Collector has passed the impugned order of confiscation dated 14.06.2021 contrary to the provisions of Section 47-A (2) of Excise Act. It is argued that during the pendency of the trial, the Collector cannot pass an order for confiscation. In support of his submission, he has placed reliance on orders passed by Coordinate Bench in the case of ***Sheikh Kalim v. State of M.P., 2016 (1) MPLJ (Cri) 138*** in ***Suresh v. State of M.P. and ors.*** (W.P. No. 19528/2022) order dated ***11.05.2023, Aman v. State of M.P. and ors., 2023 MPLJ OnLine 3*** and also in the case of ***Akash Raikwar v. State of M.P. and ors., 2023 MPLJ OnLine 19.***

In the aforesaid cases, after considering the provisions of Section 47-A (2) of the Excise Act, the Court held that the word used "an offence has been committed" has to be interpreted that unless trial is concluded and offence is proved in the trial under Section 34(2) under the M.P. Excise Act, the order for confiscation cannot be passed.

The relevant provision under Section 47-A (2) reads as under:

(2) When the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be, is satisfied that an offence covered by clause (a) or clause (b) of sub-section (I) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds fifty bulk litres he may, on the ground to be recorded in writing, order the confiscation of the intoxicants, articles, implements, utensils, materials,

conveyance etc. so seized. He may, during the pendency of the proceedings for such confiscation also pass an order of interim nature for the custody, disposal etc. of the confiscated intoxicants, articles, implements, utensils, materials, conveyance etc. as may appear to Mm to be necessary in the circumstances of the case.

The word "offence has been committed" used in the said sub section has rightly been interpreted by Coordinate Bench that the "offence has been committed" is to mean that when the trial Court has recorded a finding that the offence has been proved then the order of confiscation can be passed by the Collector therefore it is held that till the trial is not concluded the Collector cannot pass an order of confiscation.

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188. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Doctor who examined the claimant deposed that the whole body disability suffered by him was to the extent of 17% – Tribunal however computed compensation on the basis of whole body disability at 10% – In absence of any contra-evidence, non-acceptance of medical evidence, held illegal – Compensation enhanced.

मोटर यान अधिनियम, 1988 – धारा 166

प्रतिकर – आवेदक का परीक्षण करने वाले चिकित्सक ने कथन दिया कि उसके पूरे शरीर की निःशक्तता 17 प्रतिशत तक थी – अधिकरण ने प्रतिकर की गणना पूरे शरीर की निःशक्तता को 10 प्रतिशत मानते हुए की – किसी भी विपरीत साक्ष्य के अभाव में, चिकित्सीय साक्ष्य की अस्वीकृति को अवैध ठहराया गया – प्रतिकर में वृद्धि की गई।

Aabid Khan v. Dinesh and ors.

Judgment dated 09.04.2024 passed by the Supreme Court in Civil Appeal No. 4828 of 2024, reported in (2024) 6 SCC 149

Relevant extracts from the judgment:

In ***Sidram v. United India Insurance Co. Ltd., (2023) 3 SCC 439*** this Court by:

> "Before we close this matter, it needs to be underlined, as observed in ***Pappu Deo Yadav v. Naresh Kumar, (2022) 13 SCC 790*** that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different

from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims. Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life Under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. If courts nit–pick and award niggardly amounts oblivious of these circumstances there is resultant affront to the injured victim."

In the light of the afore-stated position of law explained when the medical evidence tendered by the claimant is perused, we are of the considered view that tribunal and the High Court committed a serious error in not accepting the said medical evidence and in the absence of any contra evidence available on record, neither the tribunal nor the High Court could have substituted the disability to 10% as against the opinion of the doctor (PW–5) certified at 17%. In that view of the matter the compensation awarded under the head 'loss of income' towards permanent disability deserves to be enhanced by construing the whole body disability at 17%.

The monthly income of the claimant has been construed as Rs. 3,500/– which is on the lower side particularly in the background of the fact that the accident in question having occurred on 23.04.2013 and the evidence on record disclosing that claimant was self-employed as a mechanic and had work experience of over 30 years.

Resultantly his income has to be construed at Rs. 6,500/– per month in substitution to Rs. 3,500/– computed by the Tribunal and the High Court. Thus, the claimant/appellant would be entitled for enhanced compensation of Rs. 92,820/- (Rs. 6,500 X 12 X 7 X 17%) towards loss of future income.

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189. MOTOR VEHICLES ACT, 1988 – Sections 166 and 173
CIVIL PROCEDURE CODE, 1908 – Section 2(11)
Compensation – Legal representatives – Deceased was unmarried at the time of accident and his parents had already passed away – Brothers and sisters of deceased will be treated as legal representatives u/s 2 (11) of the

Code – They are also entitled to file application for compensation irrespective of the fact that they were fully dependant on the deceased or not – Since claimant/brother has not impleaded his sisters as party in the claim application, matter remanded to the Tribunal.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 173
सिविल प्रकिया संहिता, 1908 – धारा 2(11)
प्रतिकर – विधिक प्रतिनिधि – मृतक दुर्घटना के समय अविवाहित था और उसके माता-पिता की पूर्व में ही मृत्यु हो चुकी थी – संहिता की धारा 2(11) के अंतर्गत मृतक के भाई एवं बहनों को विधिक प्रतिनिधि माना जाएगा – वे भी प्रतिकर हेतु आवेदन प्रस्तुत कर सकेंगे बिना इस तथ्य की परवाह किये कि वे मृतक पर पूर्णतः आश्रित थे या नहीं – चूंकि दावाकर्ता/भाई ने अपनी बहनों को दावा आवेदन में पक्षकार के रूप में संयोजित नहीं किया था मामला अधिकरण को प्रतिप्रेषित किया गया।

Cholamandalam MS General Insurance v. Hajarilala & ors.

Order dated 16.02.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 3433 of 2022, reported in ILR 2024 MP 1215

Relevant extracts from the order:

According to Section 2(11) of CPC "legal representatives" means a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character 5 the person on who the estate devolves on the death of the party so suing or sued.

As per law laid down by Hon'ble the Apex Court in the case of ***Montford Brothers of St. Gabriel & anr. v. United India Insurance & anr. etc.*** in Civil Appeal Nos.3269-3270 of 2007, judgment dated 28.01.2014 it has been held that:

"brother of the deceased is a legal representative of the deceased".

The same is held by the Chhattisgarh High Court in the case of ***Oriental Insurance Company Ltd. v. Kamta Prasad Sahu and ors., 2021 Legal Eagle (Chh) 628***, therefore, it is clear that in the instant case at the time of incident deceased was unmarried and his parents have already died before his death, therefore, his brothers and sisters can be treated as a legal representative as well as the dependent on the deceased.

Respondent No.1 is the real brother of the deceased, but from perusal of the statements of *Peerulal* (PW-2), it is also proved that 6 deceased *Rambabu* was having two younger sisters, but respondent No.1 did not implicate his two younger sisters as a legal representative of the deceased and no application has been made on behalf of two younger sisters of the deceased. Respondent No.1 has submitted a false declaration before the below Tribunal that no other legal heirs are available in respect of the deceased *Rambabu*, therefore, in the interest of justice, this Court is of the considered opinion that two younger sisters of the deceased would not be deprived from getting compensation of her deceased brother.

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190. MOTOR VEHICLES ACT, 1988 – Section 173
MOTOR VEHICLES RULES, 1994 (M.P.) – Rule 242

(i) Cross objections in appeal – Maintainability – Where the appeal filed by insurance company is restricted only to denial of its liability to make payment of compensation – Even in such cases, cross-objections on behalf of claimants is maintainable.

(ii) Involvement of offending vehicle – In police investigation, driver of motor cycle was found to be negligent – Charge-sheet was filed against him for having committed the offence punishable u/s 279, 337 and 304A of IPC – Driver and owner of offending motor cycle never complained that they have been falsely implicated in the accident case – Hence, it cannot be said that offending vehicle has been falsely involved in the accident just to claim compensation.

मोटर यान अधिनियम, 1988 – धारा 173
मोटर यान नियम, 1994 (म.प्र.) – नियम 242

(i) अपील में प्रत्याक्षेप – पोषणीयता – जहां बीमा कंपनी द्वारा प्रस्तुत अपील केवल प्रतिकर का भुगतान करने के दायित्व से इनकार करने तक सीमित है – ऐसे मामलों में भी, दावेदारों की ओर से प्रत्याक्षेप पोषणीय हैं।

(ii) उल्लंघनकारी वाहन की संलिप्तता – पुलिस अन्वेषण में मोटर साइकिल के चालक को उपेक्षावान पाया गया – उसके विरूद्ध भा.द.स. की धारा 279, 337 और 304क के अंतर्गत दंडनीय अपराध कारित करने के लिए अभियोग पत्र प्रस्तुत किया गया था – चालक और उल्लंघनकारी मोटर साइकिल के मालिक ने कभी भी शिकायत नहीं की कि उन्हें दुर्घटना के

मामले में झूठा फंसाया गया है – इसलिए यह नहीं कहा जा सकता कि उल्लंघनकारी वाहन को केवल प्रतिकर का दावा करने के लिए दुर्घटना में असत्य रूप से संलिप्त किया गया है।

United Insurance Co. Ltd., Indore v. Raksingh Bhilala and ors.

Order dated 22.12.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellancous Appeal No. 2853 of 2008, reported in 2024 (1) MPLJ 422

Relevant extracts from the order:

Hon'ble Apex Court in ***Urmila Devi and ors. v. National Insurance Company Limited and anr., 2020 ACJ 771*** (three judge Bench judgment) after referring to the provisions of Section 173 of the Motor Vehicles Act and Order 41 Rule 22 of CPC, held that when appeal filed by Insurance Company is restricted only to denial of its liability to make payment of compensation, even in such cases, cross objections on behalf of the claimants are maintainable.

In the case of ***Oriental Insurance Company Limited v. Rajesh Devi and ors., 2018 ACJ 301***, ***U.P. State Road Transport Corporation v. Janki Devi and ors., 1982 ACJ 429*** and ***National Insurance Company Limited v. Shaik Kuddush and ors., 2021 ACJ 1149*** it is held that in appeal filed by Insurance Company, cross objections filed by the claimants are maintainable.

Perusal of record of the case reveals that Ex.P-9's charge sheet has been filed against respondent no.1 under sections 279, 337 and 304-A of IPC after investigation with respect to instant accident and therein it is mentioned that respondent Magan caused instant accident while riding TVS motorcycle MP-45-BA-6585 rashly and negligently. There is nothing on record to show that owner and driver of offending motorcycle has complained anywhere that respondent Magan/offending motorcycle have been falsely implicated in the accident. Perusal of record of Tribunal reveal that owner and driver of offending motorcycle has remained exparte before the Tribunal.

With respect to above testimony of PW-1 Raksingh, it is important to keep in mind that if Ex.P-1's FIR has been lodged after deliberation and as an after thought to falsely involve….

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191. NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 8 (c) r/w/s 20(b)(ii)(c)

(i) Search and seizure – Narcotic substances – Recovery of contraband from three bags wherein *ganja* as well as green chillies were present – No effort was made to conduct a separate weighment by segregating the chillies – It cannot be said with any degree of certainty about the exact weight of recovered *ganja*.

(ii) Chain of custody – Narcotic substance – Witness, who prepared samples of *ganja,* not examined – No witness was examined nor any document was produced regarding safe keeping of the samples from the time of seizure till the same reached FSL – No mention about the sealing of samples in the *Panchnama* – Prosecution failed miserably to prove the link to satisfy the Court.

(iii) Sampling – Doubt – Recovery Officer stated that three samples of *ganja* were taken out and out of the three, one sample was given to accused – Another witness stated that all three samples were sent to FSL, where as the report did not disclose about the punch chits and seal and signature of the accused on samples – The property deposited in the Court was not having official seal – Glaring loopholes in the story of prosecution, give rise to suspicion – Evidence found to be unconvincing – Conviction set aside and accused persons were acquitted of the charges.

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 8(ग) सहपठित धारा 20(ख)(ii)(ग)

(i) तलाशी और जब्ती – मादक पदार्थ – तीन बैगों से प्रतिबंधित सामग्री की बरामदगी जिसमें गांजा के साथ-साथ हरी मिर्च भी मौजूद थी – मिर्च को पृथक कर अलग से वजन करने का कोई प्रयास नहीं किया गया – बरामद गांजे के सटीक वजन के बारे में किसी भी सीमा तक निश्चितता के साथ कुछ नहीं कहा जा सकता ।

(ii) अभिरक्षा की श्रृंखला – मादक पदार्थ – गांजा के नमूने तैयार करने वाले साक्षी को परीक्षित नहीं किया गया – नमूनों की जब्ती के समय से लेकर इसके एफएसएल तक पहुंचने तक उन्हें सुरक्षित रखने के संबंध में किसी भी साक्षी का परीक्षण नहीं कराया गया और न ही कोई दस्तावेज प्रस्तुत किये गये – पंचनामा में नमूनों को सील करने के बारे में कोई उल्लेख

नहीं – अभियोजन पक्ष न्यायालय की संतुष्टि योग्य श्रृंखला साबित करने में पूरी तरह असफल रहा है ।

(iii) नमूना एकत्रण – संदेह – जब्ती अधिकारी ने बताया कि गांजे के तीन नमूने लिये गए थे और उन तीन में से एक नमूना अभियुक्त को दिया गया था – एक अन्य साक्षी ने कहा कि तीनों नमूने एफएसएल को भेजे गये थे जबकि रिपोर्ट में पंच चिट और नमूनों पर आरोपियों के हस्ताक्षर और मुहर के बारे में कोई वर्णन नहीं था – न्यायालय में जमा की गई संपत्ति पर कोई आधिकारिक मुहर नहीं थी – अभियोजन की कहानी में स्पष्टः कमियां संदेह को जन्म देती हैं – साक्ष्य अविश्वसनीय पाई गई – दोषसिद्धि को निरस्त करते हुए अभियुक्तगण को आरोपों से दोषमुक्त किया गया ।

Mohammed Khalid and anr. v. State of Telangana

Judgment dated 01.03.2024 passed by the Supreme Court in Criminal Appeal No. 1610 of 2023, reported in (2024) 5 SCC 393

Relevant extracts from the judgment:

A perusal of the evidence of the Seizure Officer (Inspector PW-1) and the confession-cum-seizure panchnama (Exhibit P-3) would reveal that the prosecution claims to have recovered the contraband from three bags wherein the ganja as well as green chillies were present. Seizure Officer (Inspector PW-1) made no effort whatsoever to conduct a separate weighment of the contraband by segregating the chillies. Rather, the *panchnama* is totally silent about presence of chillies with the bundles of ganja. Thus, it cannot be said with any degree of certainty that the recovered ganja actually weighed 80 kgs.

Seizure Officer (Inspector PW-1) also stated that he collected three samples of ganja at the spot and handed over one sample to accused. If this was true, apparently only two sample packets remained for being sent to the FSL. Contrary to the evidence of PW-1, PW-5 stated that three samples of ganja were taken by LW-10 who handed the same over to him. Thereafter, these samples were forwarded to the FSL through the ACP and a FSL report (Exhibit P-11) was received.

The FSL report (Exhibit P-11) does not disclose about the panch chits and seals and signature of the accused on samples. The property deposited in the Court (muddamal) was not having any official seals. The witness also admitted that he did not take any permission from the Court for changing the original three packets of muddamal ganja to seven new bags for safe keeping.

These glaring loopholes in the prosecution case give rise to an inescapable inference that the prosecution has miserably failed to prove the required link evidence to satisfy the Court regarding the safe custody of the sample packets from the time of the seizure till the same reached the FSL. Rather, the very possibility of three samples being sent to FSL is negated by the fact that the Seizure Officer handed over one of the three collected samples to the accused. Thus, their remained only two samples whereas three samples reached the FSL. This discrepancy completely shatters the prosecution case.

Admittedly, no proceedings under Section 52A of the NDPS Act were undertaken by the Investigating Officer PW-5 for preparing an inventory and obtaining samples in presence of the jurisdictional Magistrate. In this view of the matter, the FSL report (Exhibit P-11) is nothing but a waste paper and cannot be read in evidence. The accused A-3 and A-4 were not arrested at the spot.

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192. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138
EVIDENCE ACT, 1872 – Sections 40 to 43
Criminal and civil proceedings in respect of same subject-matter – Maintainability – Appellant allegedly borrowed Rs. 2 Lakh from the complainant – Cheque issued for discharge of the said liability, got dishonoured – Complainant instituted criminal case u/s 138 N.I. Act in which the appellant has been convicted and sentenced – At the same time, appellant instituted civil suit against the complainant to declare the cheque in question as a security cheque and for issuance of injunction – The said suit was eventually decreed in favour of appellant (accused) and the appeal filed against the said decree was also dismissed – Held, court in criminal jurisdiction would be bound by the decree passed by the civil court – Criminal proceedings found to be unsustainable in law and therefore, quashed.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138
साक्ष्य अधिनियम, 1872 – धाराएं 40 से 43
एक ही विषय वस्तु के संबंध में आपराधिक और सिविल कार्यवाही – पोषणीयता – अपीलार्थी ने परिवादी से कथित रूप से 2 लाख रुपये उधार लिए – उक्त दायित्व के निर्वहन के लिए जारी चैक अनादरित हुआ – परिवादी ने धारा 138 परक्राम्य लिखत अधिनियम के अंतर्गत आपराधिक मामला प्रस्तुत किया जिसमें

अपीलार्थी को दोषी ठहराया गया और सजा सुनाई गई – उसी समय, अपीलार्थी ने परिवादी के विरूद्ध सिविल वाद प्रस्तुत किया ताकि चैक को सुरक्षा बतौर दिये गये चैक के रूप में घोषित किया जा सके और निषेधाज्ञा जारी की जा सके – उक्त वाद अंततः अपीलार्थी (अभियुक्त) के पक्ष में डिक्री हुआ और उक्त डिक्री के विरूद्ध प्रस्तुत अपील भी निरस्त हो गई – अभिनिर्धारित, आपराधिक क्षेत्राधिकार के अंतर्गत न्यायालय सिविल न्यायालय द्वारा पारित डिक्री से बाध्य होगा – आपराधिक कार्यवाही विधिक रूप से स्थिर रखे जाने योग्य नहीं पायी गई, अतः अपास्त की गई।

Prem Raj v. Poonamma Menon and anr.

Judgment dated 02.04.2024 passed by the Supreme Court in Criminal Appeal No. 1858 of 2024, reported in (2024) 6 SCC 143

Relevant extracts from the judgment:

We find the manner in which this matter has travelled up to this Court to be quite concerning. We fail to understand as to how a civil as well as criminal course could be adopted by the parties involved, in respect of the very same issue and transaction, in these peculiar facts and circumstances.

In advancing his submissions, learned counsel appearing for the appellant, placed reliance on certain authorities of this Court. In ***Karam Chand Ganga Prasad v. Union of India, (1970) 3 SCC 694*** this Court observed that:

> "It is a well–established principle of law that the decisions of the civil courts are binding on the criminal courts. The converse is not true."

In ***K.G. Premshanker v. State of Kerala, (2002) 8 SCC 87*** a Bench of three learned Judges observed that, following the ***M.S. Sheriff v. State of Madras, (1954) 1 SCC 524*** no straight–jacket formula could be laid down and conflicting decisions of civil and criminal Courts would not be a relevant consideration except for the limited purpose of sentence or damages.

The issue has been laid to rest by a Constitution Bench of this Court in ***Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370***:

> "Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standards of proof required in the two proceedings are entirely different. Civil cases are decided on the

> basis of preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in ***M.S. Sheriff v. State of Madras***, ***1954 SC 397*** give a complete answer to the problem posed:

As between the civil and the criminal proceedings, we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

The position as per ***Premshanker*** (supra) is that sentence and damages would be excluded from the conflict of decisions in civil and criminal jurisdictions of the

Courts. Therefore, in the present case, considering that the Court in criminal jurisdiction has imposed both sentence and damages, the ratio of the above–referred decision dictates that the Court in criminal jurisdiction would be bound by the civil Court having declared the cheque, the subject matter of dispute, to be only for the purposes of security.

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

Dishonour of cheque – Complainant filed a complaint u/s 138 of the Act against accused no. 1 and the petitioner – Cheque was signed by accused no. 1 – Complainant alleged that the cheque was issued by accused no. 1 towards discharge of liability of both the petitioner and accused as well – Even if the cheque has been issued for discharging the liability of two or more persons, criminal liability u/s 138 of the Act can be fastened only on the person who issued the cheque – Since petitioner is not a signatory to the cheque, proceedings against him are quashed.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

चैक का अनादरण – परिवादी ने अधिनियम की धारा 138 के अंतर्गत अभियुक्त क्रमांक 1 एवं याचिकाकर्ता के विरूद्ध परिवाद दायर किया – चैक अभियुक्त क्रमांक 1 द्वारा हस्ताक्षरित था – परिवादी का आक्षेप है कि चैक अभियुक्त क्रमांक 1 ने याचिकाकर्ता और अभियुक्त दोनों के दायित्व के निर्वहन हेतु जारी किया था – यदि चैक दो या दो से अधिक व्यक्तियों के दायित्व के निर्वहन हेतु भी जारी किया गया हो तब भी धारा 138 के अतंर्गत आपराधिक दायित्व केवल उस व्यक्ति पर तय किया जा सकता है जिसने चैक जारी किया है – चूंकि याचिकाकर्ता चैक का हस्ताक्षरकर्ता नहीं है, उसके विरूद्ध कार्यवाहियां अपास्त की गईं।

K. V. Vijayvargiya v. Sanjay Nagpal

Order dated 06.02.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 34977 of 2022, reported in 2024 (2) MPLJ 419

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194. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

Legally recoverable debt – Complainant failed to show if any sum was advanced towards financial assistance – Cheque amount against any debt/liability not shown in balance sheet of complainant – Other partners

of firm did not depose that cheque amount was advanced to accused as financial assistance – Accused presented a plausible defence – Evidence available on record did not show legally enforceable debt or liability – Acquittal is proper.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

विधिक रूप से वसूली योग्य ऋण – परिवादी यह प्रमाणित करने में विफल रहा कि कोई राशि वित्तीय सहायता के लिए प्रदान की गई थी – किसी भी ऋण/देयता के विरूद्ध चैक राशि परिवादी की बैलेंस शीट में नहीं दर्शाई गई थी – फर्म के अन्य भागीदारों ने यह नहीं बताया कि चैक राशि वित्तीय सहायता के रूप में आरोपी को प्रदान की गई थी – अभियुक्त ने एक संभाव्य बचाव प्रस्तुत किया – अभिलेख पर उपलब्ध साक्ष्य से यह दर्शित नहीं होता कि राशि विधिक उत्तरदायित्व या वसूली योग्य ऋण था – दोषमुक्ति उचित है।

M/s. Rajco Steel Enterprises v. Kavita Saraff and anr.

Judgment dated 09.04.2024 passed by the Supreme Court in Special Leave Petition (Criminal) No. 5583 of 2022, reported in AIR 2024 SC 2105

Relevant extracts from the judgment:

The learned Senior Counsel for a case/ respondent No. 1 argued that in order to invoke the presumption under the Section 139 r/w/s 118 of 1881 Act, the jurisdictional facts had to be established by complainant/petitioner and any lacuna in the evidence of the complainant would strike at the root of the complaint of this nature. He relied on the judgment in the case of ***John K. Abraham v. Simon C. Abraham and anr., (2014) 2 SCC 236***.

We are dealing with a case where the First Appellate Court exercising its jurisdiction under Section 374(3) of Code of Criminal Procedure, 1973, ongoing through the analysis of evidence, acquitted the accused/respondent no.1. The acquittal was further upheld by the High Court in an appeal against acquittal under Section 378 of the 1973 Code. The whole question involved in this proceeding is as to whether the cheques were issued in discharge of a debt and if it was so, then whether the accused/respondent no.1 was able to rebut the presumption in terms of Section 118 read with Section 139 of the 1881 Act. In the light of the judgment of this Court in the case of ***Narendra Pratap Narain Singh v. State of U.P., (1991) 2 SCC 623*** the jurisdiction of this Court under Article 136 of the Constitution of India

to interfere with concurrent findings of fact is not in question, when such findings are based on no evidence or are perverse. The question, we have to address thus, is as to whether the findings of the First Appellate Court and the High Court are on no evidence or perverse. Both these Courts have examined the evidence threadbare and in the opinion of these two fora, go against the complainant/petitioner. On the question as to whether the sum involved in the cheques was advanced in discharge of a legally enforceable debt or not, the petitioner has failed to show if any sum was advanced towards financial assistance. The High Court found that the debt/liability, in discharge of which, according to the petitioner, the cheques were issued, did not reflect in the petitioner's balance–sheet. The other partners of the firm did not depose as prosecution witnesses to establish that the cheque–amounts were advanced to the accused as financial assistance. The respondent no.1/accused has put up a plausible defence as regards the reason for which the petitioner's funds had come to her account. Both the appellate fora, on going through the evidence did not find existence of any "enforceable debt or other liability". This strikes at the root of the petitioner's case.

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195. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 141

Dishonour of cheque – Commission of offence by company and its Directors – Some Directors in the company had resigned before issuance of cheque – At the time when cheque was issued, appellants were not in-charge and responsible for the conduct of business of company – Complainant has not placed any material on record indicating complicity of the appellants who had already resigned – Offence punishable u/s 138 of the Act not made out – Appellants were entitled to be discharged.

परक्राम्य लिखित अधिनियम, 1881 – धाराएं 138 एवं 141

चैक का अनादरण – कंपनी एवं उसके निदेशकों द्वारा अपराध कारित किया जाना – चैक जारी होने के पूर्व कंपनी के कुछ निदेशक त्यागपत्र दे चुके थे – चैक जारी करते समय अपीलार्थी कंपनी के भारसाधक और कंपनी के व्यवसाय के संचालन के लिए उत्तरदायी नहीं थे – परिवादी ने अभिलेख पर ऐसी कोई सामग्री प्रस्तुत नहीं की है जिससे अपीलर्थीगण जिन्होंने त्यागपत्र दे दिया था, की संलिप्तता दर्शित हो – अधिनियम की धारा 138 के अन्तर्गत दण्डनीय अपराध गठित नहीं होता – अपीलार्थीगण उन्मोचित किये जाने के अधिकारी हैं।

Rajesh Viren Shah v. Redington (India) Ltd.

Judgment dated 14.02.2024 passed by the Supreme Court in Criminal Appeal No. 888 of 2024, reported in 2024 (2) MPLJ 700

Relevant extracts from the judgment:

The position of law as to the liability that can be fastened upon a Director for non-realisation of a cheque is no longer *res integra.* Before adverting to the judicial position, we must also take note to the statutory provision – Section 141 of the N.I. Act, which states that every person who at the time of the offence was responsible for the affairs/conduct of the business of the company, shall be held liable and proceeded against under section 138 of the N.I. Act, with exception thereto being that such an act, if done without his knowledge or after him having taken all necessary precautions, would not be held liable. However, if it is proved that any act of a company is proved to have been done with the connivance or consent or may be attributable to *(i)* a director; *(ii)* a manager; *(iii)* a secretary; or *(iv)* any other officer – they shall be deemed to be guilty of that offence and shall be proceeded against accordingly.

Ex facie, we find that the complainant has not placed any material on record indiating complicity of the present appellant(s) in the alleged crime. Particularly, when the appellant(s) had no role in the issuance of the instrument, which is evident from Form 32 (Exh.P.59) issued much prior to the date on which the cheque was drawn and presented for realisation.

The veracity of Form-32 has neither been disputed by the Respondent nor has the act of resignation simpliciter been questioned. As such, the basis on which liability is sought to be fastened upon the instant appellant(s) is rendered questionable.

The record reveals the resignations to have taken place on 9th December, 2013 and 12th March, 2014. Equally, we find the cheques regarding which the dispute has travelled up the courts to have been issued on 22nd March, 2014. The latter is clearly, after the appellant(s) have severed their ties with the Respondent-Company and, therefore, can in no way be responsible for the conduct of business at the relevant time. Therefore, we have no hesitation in holding that they ought to be then entitled to be discharged from prosecution.

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196. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 143-A r/w/s 148 (1) proviso

(i) Interim compensation – Non-payment – Effect of – It can be recovered by issuing a warrant of attachment and sale of movable property of accused or issuing a warrant to the Collector authorising him to realise it as arrears of land revenue from movable or immovable property or both belonging to the accused – But the right of accused to defend himself cannot be taken away.

(ii) Interim compensation – Grant of – The word "may" used in the provision cannot be construed as "shall" – Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice and violation of Article 14 of the Constitution.

(iii) Interim compensation – Factors to be considered – The Court will have to *prima facie* evaluate the merit of the complainant's case and defence of the accused and also consider the financial distress of the accused – If the Court considers it appropriate to award interim compensation, it has to apply judicial mind to determine such amount – While doing so, the Court will have to consider several other factors such as nature of transaction, relationship between the parties etc. – If the defence appears *prima facie* a plausible one, the Court may refuse to grant the same.

परक्राम्य लिखत अधिनियम, 1881 – धारा 143-क सहपठित धारा 148(1) का परंतुक

(i) अंतरिम प्रतिकर – भुगतान न किया जाना – प्रभाव – इसे अभियुक्त की चल संपत्ति की कुर्की और विक्रय का वारंट जारी करके या कलेक्टर को वारंट जारी कर उसे अभियुक्त की चल या अचल संपत्ति या दोनों से भू-राजस्व के बकाया के रूप में वसूल करने के लिये अधिकृत किया जा सकता है – किंतु स्वयं का बचाव करने के अभियुक्त के अधिकार को छीना नहीं जा सकता।

(ii) अंतरिम प्रतिकर – प्रदान करना – प्रावधान में प्रयुक्त शब्द 'कर सकता है' को 'करेगा' के रूप में नहीं समझा जा सकता – ऐसी व्याख्या अन्यायपूर्ण और निष्पक्षता एवं न्याय की सुस्थापित अवधारणा के विपरीत और संविधान के अनुच्छेद 14 का उल्लंघन होगी।

(iii) अंतरिम प्रतिकर – विचारणीय कारक – न्यायालय को प्रथम दृष्टया परिवादी के मामले के गुण दोष और अभियुक्त के बचाव का मूल्यांकन करना होगा साथ ही अभियुक्त की वित्तीय परेशानियों को भी विचार में लेना होगा – यदि न्यायालय अंतरिम प्रतिकर दिलाना उचित समझता है तो उसे ऐसी राशि निर्धारित करने के लिये न्यायिक विवेक का प्रयोग करना होगा – ऐसा करते समय न्यायालय को अन्य कारकों पर भी विचार करना होगा जैसे कि संव्यवहार की प्रकृति, पक्षकारों के मध्य संबंध आदि – यदि बचाव प्रथम दृष्टया विश्वसनीय प्रतीत होता है तो न्यायालय अंतरिम प्रतिकर देने से मना कर सकता है।

Rakesh Ranjan Shrivastava v. State of Jharkhand and anr.

Judgment dated 15.03.2024 passed by the Supreme Court in Criminal Appeal No. 741 of 2024, reported in (2024) 4 SCC 419

Relevant extracts from the judgment:

In the case of Section 143A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word 'may' is interpreted as 'shall', it will have drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20 percent of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of Article 14 of the Constitution. In a sense, sub-section (1) of Section 143A provides for penalising an accused even before his guilt is established.

Considering the drastic consequences of exercising the power under Section 143A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as a directory and not mandatory. Hence, we have no manner of doubt that the word "may" used in Section 143A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143A is discretionary.

Even sub-section (1) of Section 148 uses the word "may". In the case of ***Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341***, this Court, after considering the provisions of Section 148, held that the word "may" used therein will have to be generally construed as "rule" or "shall". It was further observed that when the Appellate Court decides not to direct the deposit by the accused, it must record the reasons. After considering the said decision in Surinder Singh Deswal (supra), this Court, in the case of ***Jamboo Bhandari v. MPSIDC Ltd., (2023) 10 SCC 446*** in paragraph 6, held thus:

> "What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded."

As held earlier, Section 143A can be invoked before the conviction of the accused, and therefore, the word "may" used therein can never be construed as "shall". The tests applicable for the exercise of jurisdiction under sub-section (1) of Section 148 can never apply to the exercise of jurisdiction under subsection (1) of Section 143A of the N.I. Act.

Subject to what is held earlier, the main conclusions can be summarised as follows:

1. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall."
2. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.
3. The broad parameters for exercising the discretion under Section 143A are as follows:
    i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a *prima facie* case.

iii. If the defence of the accused is found to be *prima facie* plausible, the Court may exercise discretion in refusing to grant interim compensation.

iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

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197. SPECIFIC RELIEF ACT, 1963 – Section 5 and Proviso to Section 34

Declaratory suit – Consequential relief of possession not claimed – Plaintiff was aware that the defendant is in possession of the suit property – No attempt was made to amend the plaint for seeking relief of recovery of possession – Relief of mere declaration cannot be granted without claiming relief of possession.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 5 एवं धारा 34 का परंतुक

घोषणात्मक वाद – आधिपत्य के पारिणामिक अनुतोष की माँग नहीं की गई – वादी यह जानता था कि वादग्रस्त संपत्ति प्रतिवादी के आधिपत्य में है – आधिपत्य की पुनः प्राप्ति के अनुतोष की माँग करने हेतु वादपत्र में संशोधन का कोई प्रयास नहीं किया गया – आधिपत्य के अनुतोष की माँग किये बिना केवल घोषणा का अनुतोष प्रदान नहीं किया जा सकता।

Vasantha (dead) through LR v. Rajalakshmi alias Rajam (dead) through LRs.

Judgment dated 13.02.2024 passed by the Supreme Court in Civil Appeal No. 3854 of 2014, reported in (2024) 5 SCC 282

Relevant extracts from the judgment:

The learned senior counsel for the appellant has contended that it has been settled by the Courts below that the appellant has been in possession of the subject property since 1976. In view of the proviso to Section 34, the suit of the plaintiff

could not have been decreed since the plaintiff sought for mere declaration without the consequential relief of recovery of possession.

The learned counsel for the respondent, in rebuttal, contended that since at the time of filing of the suit, the life interest holder was alive, she was entitled to be in possession of the property and therefore, the plaintiff not being entitled to possession at the time of institution of the suit, recovery of possession could not have been sought.

Adverting to the facts of the present case, on a perusal of the plaint, it is evident that the plaintiff was aware that the appellant herein was in possession of the suit property and therefore it was incumbent upon him to seek the relief which follows. Plaintiff himself has stated that defendant no. 1 was in possession of the subject property and had sought to transfer possession of the same to defendant no.2, thereby establishing that he himself was not in possession of the subject property. We are not inclined to accept the submission of the learned counsel for the respondent on this issue. We note that after the death of the life-estate holder in 2004, there was no attempt made by the original plaintiff to amend the plaint to seek the relief of recovery of possession. It is settled law that amendment of a plaint can be made at any stage of a suit [***Harcharan v. State of Haryana, (1982) 3 SCC 408***], even at the second appellate stage [***Rajendra Prasad v. Kayastha Pathshala, 1981 Supp SCC 56 (1)***].

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198. SPECIFIC RELIEF ACT, 1963 – Sections 28 and 34

(i) Suit for specific performance of agreement to sell – Readiness and willingness – Plaintiff has to be ready and willing to get the sale deed executed from the date of agreement till passing of decree and then up to execution of sale deed in his favour upon payment of balance sale consideration.

(ii) Decree of specific performance – Time period for performing their respective obligations by parties to the contract – Even if time for payment of balance consideration is not prescribed in the decree, plaintiff/purchaser is obliged to deposit the balance amount within a reasonable period which cannot be more than 3 months – This time can be extended by the Court only for valid reasons upon an application filed by the plaintiff/decree-holder.

(iii) Agreement to sell executed on 24.11.1984 – Suit for specific performance filed on 10.11.1989 – Trial Court decreed the suit on 24.08.1998, however, no time limit was fixed for payment of balance amount of sale-consideration – First appeal was dismissed by the High Court on 16.09.2011 – Application for execution of the decree was filed on 30.11.2011 – Plaintiff deposited balance amount of Rs. 55,000/- in the executing Court on 13.08.2012 – Defendant/ Judgment-debtor filed application u/s 28 of the Act for rescission of contract – Executing Court directed the decree-holder to deposit sale consideration equivalent to the amount calculated as per the guide lines of the years 2012-2013 as against total sale consideration of Rs. 56,000/- – Since continuous readiness and willingness of the decree-holder was found missing, order of executing court upheld. [*Rajindra Kumar v. Kuldeep Singh and ors., (2014) 15 SCC 529*].

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 28 एवं 34

(i) विक्रय अनुबंध पत्र के विनिर्दिष्ट अनुपालन हेतु वाद – तैयारी एवं तत्परता – वादी को विक्रय विलेख निष्पादित कराने हेतु अनुबंध दिनांक से आज्ञप्ति पारित होने तक एवं उसके बाद बकाया विक्रय प्रतिफल की आदयगी के उपरांत उसके निष्पादन तक तैयार और तत्पर रहना चाहिए।

(ii) विनिर्दिष्ट अनुपालन की आज्ञप्ति – संविदा के पक्षकारों द्वारा संबंधित दायित्वों का निर्वहन करने हेतु समय सीमा – बकाया प्रतिफल की अदायगी हेतु आज्ञप्ति में समय सीमा का उल्लेख न होने के उपरांत भी वादी/क्रेता का यह दायित्व है कि वह बकाया राशि युक्तियुक्त समय सीमा के भीतर जो कि तीन माह से अधिक अवधि की नहीं होगी, जमा करे – न्यायालय द्वारा यह समय वादी/आज्ञप्तिधारी द्वारा आवेदन प्रस्तुत किये जाने पर वैध आधारों पर ही बढ़ाया जा सकेगा।

(iii) विक्रय का अनुबंध दिनांक 24.11.1984 को निष्पादित हुआ – विनिर्दिष्ट अनुपालन हेतु वाद दिनांक 10.11.1989 को संस्थित हुआ – विचारण न्यायालय ने वाद को दिनांक 24.08.1998 को डिक्री किया परन्तु बकाया विक्रय प्रतिफल की राशि की अदायगी हेतु कोई समय सीमा निर्धारित नहीं की – उच्च न्यायालय द्वारा दिनांक 16.09.2011 को प्रथम अपील निरस्त की गई – दिनांक 30.11.2011 को आज्ञप्ति के निष्पादन हेतु आवेदन प्रस्तुत किया गया – वादी ने बकाया 55,000/– रूपये की राशि दिनांक 13.08.2012 को निष्पादन न्यायालय में जमा की – प्रतिवादी/निर्णीतऋणी ने अधिनियम

की धारा 28 के अंतर्गत संविदा के विखण्डन हेतु आवेदन प्रस्तुत किया – निष्पादन न्यायालय ने आज्ञप्तिधारी को निर्देशित किया कि वह संपूर्ण प्रतिफल राशि 56,000/– के मुकाबले वर्ष 2012-13 की गाईड लाईन के अनुसार गणना की गई राशि के बराबर राशि विक्रय प्रतिफल के रूप में जमा कराये – चूँकी आज्ञप्तिधारी की निरंतर तैयारी एवं तत्परता नहीं पाई गई, निष्पादन न्यायालय का आदेश यथावत रखा गया। [*राजिंदर कुमार विरूद्ध कुलदीप सिंह एवं अन्य (2014) 15 एससीसी 529* पर विश्वास किया गया]

Narayan Prasad Agrawal v. Smt. Sheela Rani (Dead) thr. LRs.

Order dated 08.01.2024 passed by the High Court of Madhya Pradesh in Criminal Revision No. 125 of 2018, reported in ILR 2024 MP 1219

Relevant extracts from the order:

It is well settled that plaintiff has to be ready and willing to get executed sale deed from date of agreement of sale till passing of decree of specific performance and then up to execution of sale deed in his favour upon payment of balance sale consideration, if any.

In view of the law laid down by Hon'ble Supreme Court in the case of ***Rajinder Kumar v. Kuldeep Singh and ors., (2014) 15 SCC 529***, in my considered opinion passing of decree of specific performance in favour of a person having agreement of sale is not an irrevocable license to enjoy the decree even without making any payment/deposit of balance sale consideration for years together. Even if, time for payment of balance consideration is not prescribed in the decree, the plaintiff/purchaser is obliged to deposit the balance amount within a reasonable period, which in my considered opinion cannot be more than 3 months, which is the maximum time limit for filing an appeal, unless the plaintiff is permitted by the Court for the valid reasons permissible in law that too upon filing application in writing by plaintiff/decree-holder, otherwise the plaintiff has to be ready to face adverse consequences, like in the present case.

There is nothing on record to show that after judgment and decree dated 24.08.1998 the plaintiff had ever tried to pay/deposit 14 C.R. No. 125/2018 balance consideration amount of Rs. 55,000/-. If the plaintiff would have deposited said amount, the defendant 1 could have withdrawn it and used the same or returned it to the defendants 2-4 with a view to discharge her liability towards defendants 2-4 even after losing upto Supreme Court.

In the present case, except filing first appeal before the High Court and SLP before Hon'ble Supreme Court no delaying tactics were adopted by the defendants. As such they cannot be held guilty/liable for the delay in execution of decree. For showing *bonafides*, the plaintiff could have filed an application seeking direction of Court to deposit balance sale consideration even after dismissal of first appeal on 16.09.2011 but it was not done and taking benefit of an ambiguous order dated 01.08.2012 passed by executing Court while dismissing application of the defendants 2-4, the plaintiff/decree-holder deposited balance amount of sale consideration, which cannot be considered to have been deposited in pursuance of an order of extension of time. In any case the plaintiff/decree-holder was bound to deposit balance sale consideration upon filing of application for execution on 30.11.2011 and upon failure, it can be said that he was at fault.

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199. SPECIFIC RELIEF ACT, 1963 – Section 34
LIMITATION ACT, 1963 – Article 65

Adverse possession – Suit for declaration of ownership on the basis of adverse possession – There is no equity in favour of a party who seeks to defeat the rights of true owner by claiming adverse possession – The facts constituting the ingredients of adverse possession must specifically be pleaded and proved – Plaintiff failed to prove that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge – Plaintiff is not entitled for decree.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34
परिसीमा अधिनियम, 1963 – अनुच्छेद 65

विरोधी आधिपत्य – विरोधी आधिपत्य के आधार पर स्वामित्व की घोषणा हेतु वाद – ऐसे पक्षकार के पक्ष में कोई साम्या नहीं होती है जो विरोधी आधिपत्य का दावा करते हुए वास्तविक स्वामी के अधिकारों को परास्त करने की माँग करता है – विरोधी आधिपत्य के तत्व को गठित करने वाले तथ्यों को विनिर्दिष्टतः अभिवचनित एवं साबित किया जाना आवश्यक है – वादी यह साबित करने में असफल रहा कि वह मूल स्वामी के ज्ञान में 12 वर्ष से अधिक अवधि से खुले एवं निर्बाध रूप से आधिपत्य में रहा – वादी आज्ञप्ति प्राप्त करने का अधिकारी नहीं।

M. Radheshyamlal v. V. Sandhya and anr.

Judgment dated 18.03.2024 passed by the Supreme Court in Civil Appeal No. 4322 of 2024, reported in AIR 2024 SC 1595

Relevant extracts from the judgment:

To prove the plea of adverse possession:-

(a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;

(b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;

(c) The plaintiff must also plead and establish when he came into possession; and

(d) The plaintiff that his possession was open must establish and undisturbed.

It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.

When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge. These material averments are completely absent in the plaint. Therefore, there is no proper foundation for the plea of adverse possession in the plaint.

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200. STAMP ACT, 1899 – Section 35, Schedule 1-A and Article 23 Expln. (as amended in State of M.P.)

EVIDENCE ACT, 1872 – Sections 61, 63 and 65

(i) Stamp duty – Whether bar of admissibility created by Section 35 of the Stamp Act applies to the agreement to sell dated 04.02.1988 executed by the parties? Held, No – The explanation added vide amendment creates new obligation for party and cannot be given retrospective effect – Since the said document was not chargeable with duty, as no bar could be imposed due to it being not duly stamped.

(ii) Secondary copy of insufficiently stamped document – Section 35 of the Stamp Act forbids letting of secondary evidence in proof of its content of a document if it needs to be stamped or sufficiently stamped – A copy of such document is not acceptable in evidence.

स्टॉम्प अधिनियम, 1899 – धारा 35, अनुसूची 1–क एवं अनुच्छेद 23 स्पष्टीकरण (मध्यप्रदेश राज्य मे यथा संशोधित)
साक्ष्य अधिनियम, 1872 – धाराएं 61, 63 एवं 65

(i) स्टाम्प शुल्क – क्या स्टाम्प अधिनियम की धारा 35 द्वारा सृजित ग्राह्यता का वर्जन पक्षकारों द्वारा दिनांक 04.02.1988 को निष्पादित विक्रय अनुबंध पर लागू होगा? अभिनिर्धारित, नहीं – संशोधन द्वारा जोड़ा गया स्पष्टीकरण पक्षकार के लिए नवीन दायित्व सृजित करता है और इसे भूतलक्षी प्रभाव नहीं दिया जा सकता – चूंकि उक्त दस्तावेज सशुल्क प्रभार्य नहीं था अतः इस पर सम्यक् रूप से स्टाम्पित नहीं होने के कारण वर्जन अधिरोपित नहीं किया जा सकता।

(ii) अपर्याप्त मुद्रांकित दस्तावेज की द्वितीय प्रतिलिपि – स्टाम्प अधिनियम की धारा 35 ऐसे दस्तावेज, जिसका स्टाम्पित या पर्याप्त रूप से स्टाम्पित होना आवश्यक था, की अंतर्वस्तु के प्रमाण हेतु द्वितीयक साक्ष्य प्रस्तुत करने से निषेधित करती है – ऐसे दस्तावेज की प्रतिलिपि साक्ष्य में स्वीकार्य नहीं है ।

Vijay v. Union of India and ors.

Judgment dated 29.11.2023 passed by the Supreme Court in Civil Appeal No. 4910 of 2023, reported in 2024 (2) MPLJ 334

Relevant extracts from the judgment:

A Constitution Bench of this Court in ***CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1*** reiterated this principle that the amendments that create rights and obligations are generally prospective in nature. It is a well-established principle of law that clarification or Explanation must not have the effect of imposing an unanticipated duty or depriving a party of an anticipated benefit.

Hence, in our considered view, the Explanation inserted in Article 23 of Schedule I-A contained in the Act creates a new obligation for the party and, therefore, cannot be given retrospective application. Thus, it will not affect the agreement(s) executed prior to such amendments.

We may now consider Section 35 of the Stamp Act which forbids the letting of secondary evidence in proof of its contents. The section excludes both the original instrument and secondary evidence of its contents if it needs to be stamped or sufficiently stamped. This bar as to the admissibility of documents is absolute. Where a document cannot be received in evidence on the ground that it is not duly stamped, the secondary evidence thereof is equally inadmissible in evidence.

We may now consider Section 35 of the Stamp Act which forbids the letting of secondary evidence in proof of its contents. The section excludes both the original instrument and secondary evidence of its contents if it needs to be stamped or sufficiently stamped. This bar as to the admissibility of documents is absolute.

Where a document cannot be received in evidence on the ground that it is not duly stamped, the secondary evidence thereof is equally inadmissible in evidence.

In relation to secondary evidence of unstamped/insufficiently stamped documents, the position has been succinctly explained by this Court in ***Jupudi Kesava Rao v. Pulavarthi Venkata Subha Rao, (1971) 1 SCC 545*** wherein it dealt with an issue, i.e., 19-Civil Appeal No. 4910 of 2023 whether reception of secondary evidence of a written agreement to grant a lease is barred by the provisions of Sections 35 and 36 of the Stamp Act and answered it in affirmative. It observed:

> "The Indian Evidence Act, however, does not purport to deal with the admissibility of documents in evidence which require to be stamped under the provisions of the Indian Stamp Act. ……

The first limb of Section 35 clearly shuts out from evidence any instrument chargeable with duty unless it is duly stamped. The second limb of it which relates to acting upon the instrument will obviously shut out any secondary evidence of such instrument, for allowing such evidence to be let in when the original admittedly chargeable with duty was not stamped or insufficiently stamped, would be tantamount to the document being acted upon by the person having by law or authority to receive evidence. Proviso (a) is only applicable when the original instrument is actually before the Court of law and the deficiency in stamp with penalty is paid by the party seeking to rely upon the document. Clearly secondary evidence either by way of oral evidence of the contents of the unstamped document or the copy of it covered by Section 63 of the Indian Evidence Act would not fulfil the requirements of the proviso which enjoins upon the authority to receive nothing in evidence except the instrument itself. Section 25 is not concerned with any copy of an instrument and a party can only be allowed to rely on a document which is an instrument for the purpose of Section 35. "Instrument is defined in Section 2(14) as including every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

There is no scope for the inclusion of a copy of a document as an instrument for the purpose of the Stamp Act. If Section 35 only deals with original instruments and not copies, Section 36 cannot be so interpreted as to allow secondary evidence of an instrument to have its benefit."

Thus, if a document that is required to be stamped is not sufficiently stamped, then the position of law is well settled that a copy of such document as secondary evidence cannot be adduced.

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PART – III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 16.07.2024 REGARDING REFERENCE OF NEW CRIMINAL LAWS

S.O. 2790(E). — In pursuance of section 8 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby notifies that where any reference of the Indian Penal Code (45 of 1860), or the Code of Criminal Procedure, 1973 (2 of 1974) or the Indian Evidence Act, 1872 (1 of 1872 or any provisions thereof is made in any—

(a) Act made by Parliament; or

(b) Act made by the Legislature of any State;

(c) Ordinance;

(d) Regulations made under article 240 of the Constitution;

(e) President's order;

(f) Rules, regulations, order or notification made under any Act, Ordinance or Regulation,

for the time being in force, such reference shall respectively be read as the reference of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) (*BNS*), the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023) (*BNSS*) or the Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023) (*BSA*), and the corresponding provisions of such law shall be construed accordingly.

[F. No. 13(12)/2024–Leg.I]

DIWAKAR SINGH, Addl. Secy.

का.आ. 2790(अ).– केन्द्रीय सरकार, साधारण खण्ड अधिनियम, 1897 (1897 का 10) की धारा 8 के अनुसरण में यह अधिसूचित करती है कि जहां भारतीय दण्ड संहिता (1860 का 45) या दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) या भारतीय साक्ष्य अधिनियम, 1872 (1872 का 1) या उसके किन्हीं उपबंधों का कोई निर्देश तत्समय प्रवृत्त निम्नलिखित में किया जाता है-

(क) संसद् द्वारा बनाया गया अधिनियम; या

(ख) किसी राज्य के विधानमंडल द्वारा बनाया गया अधिनियम;

(ग) अध्यादेश;

(घ) संविधान के अनुच्छेद 240 के अधीन बनाए गए विनियम;

(ङ) राष्ट्रपति का आदेश;

(च) किसी अधिनियम के अधीन बनाए गए नियम, विनियम, किया गया आदेश या अधिसूचना, अध्यादेश या विनियम,

वहां ऐसा निर्देश क्रमशः भारतीय न्याय संहिता, 2023 (2023 का 45) (बीएनएस), भारतीय नागरिक सुरक्षा संहिता, 2023 (2023 का 46) (बीएनएस) या भारतीय साक्ष्य अधिनियम, 2023 (2023 का 47) (बीएनएस) के निर्देश के रूप में पढ़ा जाएगा और ऐसी विधि के तत्स्थानी उपबंधों का अर्थ तदनुसार लगाया जाएगा।

[फा. सं. 13(12)/2024-वि.-1]

दिवाकर सिंह, अपर सचिव

"A person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially. No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially."

– **H.L. Dattu, J.** in ***Narinder Singh Arora v. State (Govt. of NCT of Delhi), (2012) 1 SCC 561,*** para 6

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

मध्यप्रदेश इलेक्ट्रॉनिक आदेशिका (जारी किया जाना, तामीली तथा निष्पादन) नियम, 2024

क्रमांक आर–2176161/2024/बी–1/दो, मध्यप्रदेश राज्य के लागू हुए रूप में भारतीय नागरिक सुरक्षा संहिता, 2023(2023 का 46) की धारा 64 की उप–धारा (1) तथा धारा 530 के खण्ड (एक) तथा समस्त अन्य सामर्थ्यकारी धाराओं द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, मध्यप्रदेश शासन, एतद्द्वारा, निम्नलिखित नियम बनाता है, अर्थात्:–

नियम

1. संक्षिप्त नाम तथा प्रारंभ.–

(1) इन नियमों का संक्षिप्त नाम मध्यप्रदेश इलेक्ट्रॉनिक आदेशिका (जारी किया जाना, तामीली तथा निष्पादन) नियम, 2024 है।

(2) यह मध्यप्रदेश राजपत्र में इनके प्रकाशन की तारीख से प्रवृत्त होंगे।

2. परिभाषाएं:–

(1) इन नियमों मे जब तक कि संदर्भ से अन्यथा अपेक्षित न हो, –

(क) ''जमानत बंधपत्र'' से अभिप्रेत है, प्रतिभूति के साथ रिहाई के लिए वचन बंध;

(ख) ''सी सी टी एन एस'' से अभिप्रेत है, अपराध तथा अपराधी निगरानी तंत्र एवं प्रणाली (क्राइम एण्ड क्रिमिनल ट्रैकिंग नेटवर्क एण्ड सिस्टम), डेटा के संग्रहण तथा निर्देशों के निष्पादन के लिए पुलिस द्वारा उपयोग किया जाने वाला एक सिस्टम साफ्टवेयर;

(ग) ''सी आई एस'' से अभिप्रेत है, प्रकरण सूचना प्रणाली (केस इन्फर्मेशन सिस्टम), डेटा के संग्रहण तथा निर्देशों के निष्पादन के लिए जिला न्यायपालिका द्वारा उपयोग किया जाने वाला एक सिस्टम साफ्टवेयर;

(घ) ''इलेक्ट्रॉनिक संसूचना'' से अभिप्रेत है, कोई लिखित, मौखिक, चित्रमय जानकारी या वीडियो सामग्री, जो किसी इलेक्ट्रॉनिक उपकरण, जिसमें सम्मिलित है, टेलीफोन, मोबाईल फोन, अथवा अन्य वायरलैस दूरसंचार उपकरण या कम्प्यूटर या आडियो वीडियो प्लेयर या कैमरा या ऐसा कोई अन्य इलेक्ट्रॉनिक उपकरण या इलेक्ट्रॉनिक स्वरूप, जैसा कि उच्च न्यायालय द्वारा विनिर्दिष्ट किया जाए, द्वारा प्रसारित या अंतरित (चाहे एक व्यक्ति से दूसरे व्यक्ति को या एक उपकरण से दूसरे उपकरण को या किसी व्यक्ति से किसी उपकरण को या किसी उपकरण से किसी व्यक्ति को) की जाए;

(ड.) ''इलेक्ट्रॉनिक हस्ताक्षर'' से अभिप्रेत है किसी ग्राहक या न्यायालय द्वारा किसी इलेक्ट्रॉनिक अभिलेख का सूचना प्रोद्योगिकी अधिनियम, 2000 (2000 का 21) की दूसरी अनुसूची में विनिर्दिष्ट तकनीक के माध्यम से प्रमाणीकरण और इसमें सम्मिलित है, इलेक्ट्रॉनिक हस्ताक्षर। साथ ही, जब इलेक्ट्रॉनिक रूप में जनित (जनरेटेड) किसी आदेशिका या रिपोर्ट का इलेक्ट्रॉनिक हस्ताक्षर के माध्यम से

प्रमाणीकरण किया जाता है, तो वह इलेक्ट्रॉनिक हस्ताक्षर करने वाले व्यक्ति के हस्ताक्षर द्वारा प्रमाणीकृत समझा जाएगा;

(च) ''उच्च न्यायालय'' से अभिप्रेत है, मध्यप्रदेश उच्च न्यायालय;

(छ) ''ज्ञात इलेक्ट्रॉनिक मेल एड्रेस'' से अभिप्रेत है, किसी व्यक्ति अथवा संगठन का ऐसा मेल एड्रेस, जो इंटरनेट पर संदेश (मैसेज) भेजने और प्राप्त करने के लिए उपयोग किया जाता है, जो कि ऐसे व्यक्ति या संगठन द्वारा या तो व्यक्तिगत रूप से अथवा किसी वेबसाईट या पोर्टल पर स्वीकार किया गया उपयोग किया गया या प्रदान किया गया दर्शाया गया है;

(ज) ''आदेशिका'' में सम्मिलित है, समन वारंट या ऐसे परिवर्तनों के साथ, जैसे कि प्रत्येक प्रकरण की परिस्थितियां अपेक्षा करें, संहिता में यथा उल्लिखित संबंधित प्रयोजनों के लिए जारी, संहिता की द्वितीय अनुसूची में उपवर्णित, कोई अन्य प्रपत्र;

(झ) ''नियम तथा आदेश'' से अभिप्रेत है, मध्यप्रदेश नियम तथा आदेश (आपराधिक);

(ञ) ''संहिता'' से अभिप्रेत है, भारतीय नागरिक सुरक्षा संहिता, 2023 (2023 का 46);

(ट) ''मुद्रा'' से अभिप्रेत है, न्यायालय की मुद्रा की छवि;

(ठ) ''राज्य'' से अभिप्रेत है, मध्यप्रदेश राज्य;

(ड) ''समन'' से अभिप्रेत है, संहिता के अध्याय छह के अधीन जारी कोई समन;

(ढ) ''वारंट'' से अभिप्रेत है तथा उसमें सम्मिलित है, जमानती वारंट एवं गैर जमानती वारंट।

(2) इन नियमों में प्रयुक्त तथा परिभाषित नहीं किए गए शब्दों तथा अभिव्यक्तियों के वही अर्थ होंगे, जो भारतीय नागरिक सुरक्षा संहिता, 2023 (2023 का 46), भारतीय न्याय संहिता, 2023 (2023 का 45) तथा सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का 21) में उनके लिए समनुदेशित किए गए हैं।

3. न्यायालय, ऐसे परिवर्तनों के साथ, जैसे कि प्रत्येक प्रकरण की परिस्थितियां अपेक्षा करें, संहिता की दूसरी अनुसूची में यथा उपवर्णित ऐसे प्ररूपों में सी आई एस/एन एस टी ई पी के माध्यम से इलेक्ट्रॉनिक पद्धति में आदेशिका जनित (जनरेट) तथा जारी कर सकेंगे तथा उन्हें किसी पुलिस अधिकारी द्वारा या उसे जारी करने वाले न्यायालय के किसी अधिकारी द्वारा या अन्य लोक सेवक द्वारा तामील किए जाने के लिए निर्देशित किया जा सकेगा।

4. संहिता के अधीन इलेक्ट्रॉनिक संसूचना के रूप में जारी प्रत्येक आदेशिका, सामान्यतः न्यायालय की भाषा में लिखी जाएगी तथा इलेक्ट्रॉनिक संसूचना के कूट (एन्क्रिप्टेड) या किसी अन्य रूप में होगी तथा उस पर न्यायालय की मुद्रा की छवि और/या डिजिटल हस्ताक्षर होंगे।

5. इलेक्ट्रॉनिक रूप से जारी की गई प्रत्येक आदेशिका में इलेक्ट्रॉनिक हस्ताक्षर इस रीति में होंगे, कि न्यायालय का नाम या वह हैसियत, जिसमें हस्ताक्षरकर्ता या ग्राहक कार्य करता है, स्पष्ट रूप से उल्लिखित किया जाना चाहिए। इलेक्ट्रॉनिक

रूप में जनित (जनरेटेड) समन में न्यायालय की मुद्रा की छवि होगी या यथास्थिति न्यायालय के लिपिक या रीडर या इस संबंध में लिखित में प्राधिकृत किसी व्यक्ति के डिजिटल हस्ताक्षर होंगे। इलेक्ट्रॉनिक रूप में गिरफ्तारी का प्रत्येक वारंट, न्यायालय के पीठासीन अधिकारी के इलेक्ट्रॉनिक हस्ताक्षर द्वारा जारी किया जाएगा तथा उस पर न्यायालय की मुद्रा भी लगी होगी।

6. जहां इलेक्ट्रॉनिक रूप में जनित (जनरेटेड) आदेशिकाएं किसी सुरक्षित प्रणाली के माध्यम से इलेक्ट्रॉनिक संसूचना के कूट (एन्क्रिप्टेड) या किसी अन्य रूप से सी सी टी एन एस पर प्राप्त होती हैं, तो उसे न्यायालय द्वारा जारी किया गया माना जाएगा। यह और कि, ऐसी आदेशिका के किसी प्रिन्टआउट का वही प्रभाव होगा, मानो कि वह उसके निष्पादन के प्रयोजन के लिए मूल रूप से जारी किया गया है।

7. पुलिस थाने का भारसाधक अधिकारी यह सुनिश्चित करेगा कि यथास्थिति आरोपी या गवाहों द्वारा उपयोग किया गया पता, ज्ञात इलेक्ट्रॉनिक मेल एड्रेस, फोन नम्बर तथा मैसेजिंग एपलीकेशन से संबंधित सत्यापित ब्यौरे गिरफ्तारी, अन्वेषण या जाँच के दौरान अभिलिखित किए जाएं तथा सीसी टी एन एस में दर्ज किए जाएं। ऐसे ब्यौरे, संहिता की धारा 64 की उप–धारा (1) के अनुपालन में पुलिस थाने पर संधारित रजिस्टर में भी दर्ज किए जाएंगे। यदि ऐसे कोई ब्यौरे उपलब्ध नहीं हैं, तो पुलिस थाने का भारसाधक रजिस्टर में इस आशय का पृष्ठांकन करेगाः

   परन्तु ऐसे किसी ब्यौरे को किसी और सत्यापन के आधार पर या ऐसे व्यक्ति द्वारा आवेदन के आधार पर संशोधित किया जा सकेगा।

8. जहां कोई मामला व्यक्तिगत परिवाद के आधार पर दायर किया जाता है, वहां परिवादी (शिकायतकर्ता) परिवाद के साथ आरोपी और साक्षियों के पते, ज्ञात इलेक्ट्रॉनिक मेल ऐड्रस, फोन नम्बर, मैसेजिंग एप्लीकेशन से संबंधित ब्यौरे दर्ज करेगा। यदि इनमें से कोई जानकारी उपलब्ध नहीं है, तो परिवादी (शिकायतकर्ता) इस आशय का पृष्ठांकन करेगा।

9. पते, ज्ञात इलेक्ट्रॉनिक मेल एड्रेस, फोन नम्बर और मैसेजिंग एप्लीकेशन से संबंधित ब्यौरा इलेक्ट्रॉनिक प्रारूप में दिए जाएंगे ओर सीआईएस में अनुरक्षित रखे जाएंगे और आदेशिकाएं जारी किए जाने के लिए उपयोग किए जा सकेंगे। ऐसी डिजिटल जानकारी संहिता की धारा 64 के अधीन रजिस्टर का हिस्सा बनेगी।

10. संहिता की धारा, 230 तथा 231 के अधीन प्रतियां प्रदान करते समय अभियुक्त को साक्षियों के ज्ञात इलेक्ट्रॉनिक मेल एड्रेस, फोन नम्बर और मैसेजिंग एप्लीकेशन से संबंधित ब्यौरे प्रदान नहीं किए जाएंगे। पुलिस थाने का भारसाधक यह सुनिश्चित करेगा कि ऐसे ब्योरे संहिता की धारा 193 की उप–धारा (8) के अधीन तैयार की गई प्रतियों का हिस्सा न बनें।

11. न्यायालय द्वारा इलेक्ट्रॉनिक संसूचना के रूप में जारी किए गए समन की प्राप्ति पर पुलिस थाने का भारसाधक या उसके द्वारा प्रतिनियुक्ति कोई अधीनस्थ अधिकारी, समन किए गए व्यक्ति के ज्ञात इलेक्ट्रॉलिनक मेल एड्रेस, फोन नम्बर या मैसेजिंग ऐप्लीकेशन पर समन अग्रेषित कर सकेगा।

12. (1) जहां समन इलेक्ट्रॉनिक मेल के माध्यम से तामील किए जाते हैं, वहां इलेक्ट्रॉनिक मेल सेवा प्रदाता इस रीति में उपयोग किया जाएगा, ताकि अभिस्वीकृति जनित (जेनरेट) की जा सके तथा ऐसी अभिस्वीकृति तामीली की रिपोर्ट का हिस्सा बनेगी।

(2) जब कोई आदेशिका किसी व्यक्ति या संगठन के ज्ञात इलेक्ट्रॉनिक मेल एड्रेस पर भेजी जाती है, तब, जब तक कि इलेक्ट्रॉनिक मेल का परिदान किसी भी कारण से बाधित नहीं होता या वापस नहीं आ जाता या मेल सर्वर से ''रिटर्न टू सेंडर'' मैसेज, ''बाऊन्स्ड बैक मैंसेज'' या ''एरर मैसेज'' प्राप्त नहीं होता, तब तक तामीली प्रभावी मानी जा सकेगी और जब तक कि विपरीत न साबित कर दिया जाए, वह उसी समय प्रभाव में आया माना जाएगा जिसको कि ई–मेल के सामान्य अनुक्रम के कोई इलेक्ट्रॉनिक मेल परिदान किया गया होता।

स्पष्टीकरण: ई–मेल, का सामान्य अनुक्रम सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का 21) की धारा 13 के अनुसार अवधारित किया जा सकेगा।

13. (1) जहां समन किसी अन्य इलेक्ट्रॉनिक संसूचना के माध्यम से तामील किया जाता है, जिसमें मैसेजिंग एप्लीकेशन भी सम्मिलित है, वहां अभिस्वीकृति तामीली की रिर्पोट का हिस्सा होगी और रिर्पोट में मोबईल नम्बर, मैसेजिंग एप्लीकेशन और संसूचना के परिदान (डिलेवरी) को दर्शाने वाले स्क्रीनशॉट/एप्लीकेशन के फोटो सहित ब्यौरे अंतर्विष्ट होंगे।

(2) ऐसा परिदान (डिलेवरी) समन/आदेशिका की सम्यक तामील माना जा सकेगा और तामील की रिपोर्ट के साथ ऐसे समन/आदेशिका की एक प्रति समन/आदेशिका की तामीली के सबूत के रूप में अभिलेख में रखी जाएगी।

स्पष्टीकरण: इस नियम 13 या नियम 14 के अधीन अभिस्वीकृति में निम्नलिखित द्वारा दी गई अभिस्वीकृति सम्मिलित है,–

(क) पाने वाले द्वारा कोई संसूचना, स्वचालित या अन्यथा; या

(ख) प्रवर्तक को यह संकेत करने के लिए पर्याप्त, पाने वाले का कोई आचरण, कि इलेक्ट्रॉनिक अभिलेख प्राप्त किया गया है।

14. समन किए गए व्यक्ति से संबंधित ई–मेल एड्रेस, फोन नम्बर या मैसेजिंग एप्लीकेशन के सत्यापित ब्यौरे उपलब्ध न होने की दशा में, पुलिस थाने का भारसाधक अधिकारी या उसके द्वारा प्रतिनियुक्त कोई पुलिस अधिकारी, उस संबंध में प्रविष्टि करेगा और इलेक्ट्रॉनिक माध्यम से जारी किए गए समन की द्विप्रतिक प्रिन्टआउट लेने के पश्चात्, संहिता के अध्याय–छह के अधीन विहित प्रक्रिया के अनुसार उसका निष्पादन करेगा।

15. जब समन इलेक्ट्रॉनिक मेल या इलेक्ट्रॉनिक संसूचना की अन्य पद्धतियों द्वारा तामील नहीं होते हैं या प्रदाय किसी अन्य कारण से बाधित होता है और वापिस हो जाता है, तो पुलिस थाने का भारसाधक अधिकारी या उसके द्वारा प्रतिनियुक्त कोई पुलिस अधिकारी, मोबाइल नम्बर, मैसेजिंग एप्लीकेशन और स्क्रीनशॉट/एप्लीकेशन के फोटो सहित समस्त ब्यौरे अंतर्विष्ट करते हुए, उसके

संबंध में एक प्रतिवेदन तैयार करेगा तथा समन के निष्पादन हेतु नियम 15 के अनुसार कार्यवाही कर सकेगा।

16. वारंट या कोई अन्य आदेशिका इलेक्ट्रॉनिक माध्यम में जारी किए जाने की दशा में, पुलिस थाने का भारसाधक अधिकारी या उसके द्वारा प्रतिनियुक्त कोई पुलिस अधिकारी वारंट या आदेशिका का प्रिंट आउट लेगा और उस संबंध में संहिता तथा नियमों के अनुसार उसे निष्पादित करेगा।

17. जहां कोई आदेशिका अन्यथा इलेक्ट्रॉनिक माध्यम से तामीलया निष्पादित की जाती है, पुलिस अधिकारी, तामील या आदेशिका का निष्पादन करने के दौरान प्राप्तकर्ता की अभिस्वीकृति प्राप्त करेगा तथा फोटोग्राफ्स ले सकेगा, जो तामीली के प्रतिवेदन का भाग होगी।

18. वारंट की सम्यक तमील या तामील न होने पर, संबंधित पुलिस थाने का तामीलीकर्ता अधिकारी जमानत बन्धपत्र, फोटोग्राफ, अभिस्वीकृति, यदि कोई हो, सहित सुसंगत दस्तावेजों के साथ तामील सी सी टी एन एस/एन एस टी ई पी के माध्यम से, इलेक्ट्रॉनिक रूप में, संबंधित न्यायालय को पारेषित करेगा और ऐसी तामीली/निष्पादन प्रतिवेदन को भौतिक रूप से भी अग्रेषित कर सकेगा।

19. नियम 19 के अधीन इलेक्ट्रॉनिक रूप में प्रतिवेदन प्राप्त करने के पश्चात् न्यायालय ऐसे प्रतिवेदन पर कार्रवाई कर सकेगा। ऐसा प्रतिवेदन या ऐसे प्रतिवेदन का प्रिंटआउट आदेशिका की तामील/निष्पादन के समाधान के प्रयोजन के लिए मूल प्रति के रूप में पर्याप्त होगा।

20. जहां कोई आदेशिका भारतीय न्याय संहिता, 2023 (2023 का 45) की धारा 64 से 71 के अधीन अपराधों अथवा महिला या बच्चे के विरूद्ध अपराधों से संबंधित प्रकरणों में जारी की गई है, वहां पुलिस थाने का भारसाधक अधिकारी यह युनिश्चित करेगा कि तामील या निष्पादन के दौरान किसी भी रीति में पीड़ित की पहचान प्रकट न हो। यह और कि, भौतिक रूप में तामील प्रतिवेदन न्यायालय में मुहरबंद लिफाफे में प्रस्तुत की जाएगी।

21. इन नियमों में की कोई भी बात, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2)के अधीन प्रकरणों में, इन नियमों के अधीन आदेशिकाओं की तामील या निष्पादन को जनित (जनरेट) करने और निर्देश देने की न्यायालयों की शक्तियों को सीमित करने वाली नहीं समझी जाएगी।

22. ये नियम, न्यायालय द्वारा आदेशिका के जारी, तामील और निष्पादन किए जाने के लिए तत्समय प्रवृत्त मध्यप्रदेश उच्च न्यायालय द्वारा बनाई गई किसी अन्य विधि या नियमों के अतिरिक्त होंगे।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,

गौरव राजपूत, सचिव।

भोपाल, दिनांक 13 अगस्त 2024

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मध्यप्रदेश गौवंश वध प्रतिषेध (संशोधन) अधिनियम, 2024

[*दिनांक 14 अगस्त, 2024 को राज्यपाल की अनुमति प्राप्त हुई; अनुमति ''मध्यप्रदेश राजपत्र (असाधारण)'' मे दिनांक 16 अगस्त, 2024 को प्रथम बार प्रकाशित की गई।*]

मध्यप्रदेश गौवंश वध प्रतिशेध अधिनियम, 2004 को और संशोधित करने हेतु अधिनियम।

भारत गणराज्य के पचहत्तरवें वर्ष में मध्यप्रदेश विधान मण्डल द्वारा निम्नलिखित रूप में यह अधिनियम हो :–

संक्षिप्त नाम और प्रारंभ – 1. (1) इस अधिनियम का संक्षिप्त नाम मध्यप्रदेश गौवंश वध प्रतिषेध (संशोधन) अधिनियम, 2024 है।

(2) यह राजपत्र में इसके प्रकाशन की तारीख से प्रवृत्त होगा।

धारा 11 का संशोधन – 2. मध्यप्रदेश गौवंश वध प्रतिशेध अधिनियम, 2004 (क्रमांक 6 सन् 2004) की धारा 11 में,–

(एक) उपधारा (5) में, निम्नलिखित परंतुक अंतःस्थापित किया जाए, अर्थात्:–

''परंतु इस धारा के अधीन अधिहरण का कोई भी आदेश तब तक नहीं किया जाएगा जब तक कि कलेक्टर द्वारा अभिगृहीत किए गए वाहन, गौवंश और गौ–मांस के अधिहरण के लिए कार्यवाही प्रारंभ करने के संबंध में, विहित प्रारूप में कोई संसूचना, उस अपराध जिसके मद्दे अभिग्रहण किया गया है, पर विचारण की अधिकारिता रखने वाले न्यायालय को न भेज दी जाए।

(दो) उपधारा (5) के पश्चात्, निम्नलिखित उपधारा जोड़ी जाए, अर्थात्:–

''(6) इस अधिनियम या तत्तसमय प्रवृत्त किसी अन्य विधि में अन्तर्विष्ट किसी प्रतिकूल बात के होते हुए भी, धारा 4, 5, 6, 6–क एवं 6–ख के अंतर्गत आने वाले किसी अपराध के, जिसके मद्दे ऐसा अभिग्रहण किया गया है, विचारण करने की अधिकारिता रखने वाले न्यायालय, अभिगृहीत वाहन, गौवंश और गौ–मांस के अधिहरण करने के लिए कार्यवाहियों को प्रारंभ करने के बारे में, उपरोक्त उपधारा (5) के अधीन कलेक्टर की ओर से उसे प्राप्त हुई किसी संसूचना के पश्चात् अभिगृहीत किए गए वाहन, गौवंश और गौ–मांस के व्ययन, अभिरक्षा आदि के बारे में कोई भी आदेश नहीं करेगा।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
आर. पी. गुप्ता, अवर सचिव.

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