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अजगरी वृत्ति त्यागना है

पिछले अक्टूबर माह के अंक में एक विचार व्यक्त किया था कि हमारी आस्थाएं सरिता से सागर और सागर से महासागर बनने की हैं या सरिता से सरोवर एवं सरोवर से तालाब तथा तालाब से डबका बनने की है। इसी विषय पर चिंतन कर रहा था कि वास्तव में हम कुछ बन भी सकते हैं या नहीं। सकर्म का फल सफलता तो होगा ही। हम कर्म भी कर रहे हैं, प्रयत्न भी कर रहे हैं। किसी सीमा तक अध्ययनरत भी रहते हैं। यूनिट्स का भय भी सताता है तो आरोपी के संबंध में प्रतिभूति का आदेश दो तो विभागीय कार्यवाही का भय भी सताता है। कार्य अधिक्यता के कारण गुणात्मक योग्यता का भय सताता है तो वकीलों का व्यवहार और भी सताता है। इन सब भयों से परमसीमा वाला भय, वरिष्ठों का भय है।

विभिन्न अवसरों पर आने वाले प्रशिक्षणार्थियों से समय समय पर बातचीत होती है तो हर समय यही कहते हैं कि "बच के चलो" वाली स्थिति से ही हम काम करते हैं। यह बच के चलो वाला सिद्धांत इस बात को प्रतिलक्षित करता है कि हम निरे डरपोक व्यक्तित्व वाले व्यक्ति हैं, हमारे में आत्म विश्वास की कमी है तथा हम दूषित मनोवृत्ति से पीड़ित हैं कि मानो हम न्यायाधीश नहीं सरकारी सेवक मात्र रह गए हैं। एक ओर जब हमारा यह चिंतन है तो दूसरी ओर हम मुखौटेधारी व्यक्ति हो जाते हैं। हम समाज के प्रत्येक अंग से यह अपेक्षा करते हैं कि वे हमें महान विभूति के रूप में स्वीकार करें। हमारा समाज में व्यवहार भी ऐसा ही रहता है यह भी अनुभव होता रहता है। यह वास्तव में बिडम्बना है, स्वयं का उपहास है एवं स्वय की हताशा है, स्वयं के प्रति छल है। यूं कहें हमारी कायरता है। माननीय मुख्य न्यायाधिपति महोदय श्रीमान माथुर साहेब ने दिनांक 05-1-99 के सत्र में कहा था कि डरपोक एवं कायर व्यक्ति न्यायाधीश के पद को कैसे विभूषित कर सकता है? वह तो सरासर बेईमानी है, अधर्म है, अनीति है एवं न्यायहीनता है। माननीय महोदय ने यह भी कहा था कि जो ईमानदार है उसे आंच नहीं आ सकेगी। आदरणीय महोदय ने यह भी कहा था कि हो सकता है ऐसे व्यक्ति को उसका अपना पारितोषिक कुछ विलंब से मिलेगा लेकिन उसके साथ अन्याय नहीं होगा। कर्म यदि धर्म है तो धर्मावलंबी को कभी भी क्षति नहीं पहुंची है ऐसा भी उद्‌बोधन आपने किया था।

हमारी महान विभूति रूप छवि की व्यापकता, उच्च पदाधिकारिता, प्रतिष्ठा, महत्व, महानता ऐसी कायरता, भय साहसहीनता से नहीं बनेगी यह भी उतना ही सत्य है।

हमारा भय इस सीमा से बाहर न जावे कि हम जिस पद को विभूषित कर रहे हैं उस पद के कर्त्तव्य निर्वाह करने में ही आत्मविश्वास का अभाव हो। दु:साहस नहीं हो यहां तक तो साहस का विलोम माना जा सकता है लेकिन साहस का पर्याय कर्त्तव्य करने से बचना भी नहीं होता है।

वास्तव में भय या साहस या दु:साहस जैसी बातें तो भाववाचक अमूर्त शब्द मात्र है। इन सब बातों का वास्तविक संबंध तो हमारे कर्म के निर्वाह में हमारे ज्ञान की व्यापकता या न्यूनता ही कारणीभूत हो सकेगी। जैसा कि कक्षाओं में अनुभव किया हम सब में मूलभूत रूप से जो कमी खलती है, सालती है वह यह कि हम जिन प्रकरणों में न्यायिक कार्य करते हैं उससे संबंधित विधि का अधकचरा ज्ञान तक नहीं है तथा केवल कल्पनाओं के परों पर उड़ रहे हैं व निर्णय दे रहे हैं। हम में से जो विधि के मूल पाठ को भी नहीं पढ़ते वे ढेर सारे दृष्टांतों के नाम, वर्ष, पृष्ठ आदि बताते हैं। लेकिन उनमें से किसी दृष्टांत के विषय में पूछने पर ज्ञात होता है कि दृष्टांत तक नहीं पढ़ा है या उसकी गर्भित विषय वस्तु क्या है यह भी ज्ञात नहीं है।

बच के चलने का नया सिद्धांत जो हम हमारे कार्य में अपना रहे हैं वह अनुचित तो है ही पलायवाद को पोषक भी है। बचना शब्द का अर्थयान्वय करें तो समझ में आएगा कि हम बच के चलते हैं याने कामचोरी करते हैं, कन्नी काटते हैं, जी चुराते हैं, मुंह मोड़ते हैं, कर्म से भागते हैं, अप्रयत्नशील रहते हैं अकर्मण्य होते हैं, उद्यमहीन हैं, निष्क्रिय हैं तथा आराम पसंदी व आलस्य से मोहित हैं। संभवत: यह सब हमारे कर्म को जामन लगाना है। इसका कारण यह भी तो हो सकता है कि हमें कर्म न करने के परिणाम का भय नहीं है, विपरीत हमारी नौकरी बचा पाने तक काल्पनिक व स्वनिर्मित वातावरण से मात्र भय खा रहे हैं। हम स्वयं ने भय की दीवालें निर्मित कर के रखी हैं।

षड् दोषा: पुरुषेणेह हातव्या भूति मिच्छता।
निद्रा, तन्द्री, भय, क्रोध, आलस्यं दीघसूत्रता।।

जिस किसी को ऐश्वर्य, प्रतिष्ठा, गौरव प्राप्त करना हो उसने अति निद्रा, तन्द्री, भय, क्रोध, आलस्य एवं दीर्घ सूत्रता त्यागना होगी व पुरुषार्थ (कर्मवीरता एवं उद्यम) करना होगा।

पुरुषोत्तम विष्णु नामजोशी

COURAGE IS NOT LACK OF FEAR;
IT IS STANDING YOUR GROUND INSPITE OF IT

सफलता के सूत्र

दिनांक 04-1-99 से अप्रैल 1999 तक चलने वाले व्यवहार न्यायाधीश वर्ग–2 जो 1994 के बैच के न्यायिक अधिकारी हैं के छह सत्रों में से प्रथम सत्र 05-1-99 से प्रारंभ हुआ जो 11-1-99 को समाप्त हुआ। उक्त सत्र का मंगलारम्भ माननीय मुख्य न्यायाधिपति महोदय श्रीमान ए.के. माथुर साहेब ने किया। उन्होंने अपने उद्‌बोधन में कहा कि व्यवहार न्यायाधीश वर्ग–2 न्यायापालिका के पदानुक्रम में आधारभूत कड़ी है तथा उस का उत्कृष्ट कोटि का होना अत्यंत आवश्यक है। न्यायनिष्ठा तथा न्यायिक आचरण से संबंधित मूलभूत विषय पर अपने विचार व्यक्त हुए माननीय माथुर साहेब ने यह अवधारणा प्रतिपादित की कि प्रत्येक न्यायिक अधिकारी को अंग्रेजी का ज्ञान क्यों आवश्यक है। विधिक इतिहास की पृष्ठभूमि का उल्लेख करते हुए आपने कहा कि न्याय व्यवस्था अंग्रेजों के साथ भारत में आई थी तथा उसका संचालन भी अंग्रेजी में होता रहा। आज भी उच्च न्यायालय, सर्वोच्च न्यायालय के निर्णय व अन्य राष्ट्रों के निर्णय भी अंग्रेजी भाषा में ही होते हैं व उन्हें पढ़ने से न्यायाधीश द्वारा व्यक्त विचारों को ज्यों का त्यों समझने में समुचित रूप से लाभ भी होता है। अभिव्यक्ति, विस्तार, विवेचन व पूर्णता की दृष्टि से भी आज समग्र रूप से अंग्रेजी में ही पुस्तकें उपलब्ध हैं।

न्यायिक अधिकारीगणों को मुख्य न्यायाधिपति महोदय माथुर साहेब ने आह्‌वान किया कि वे हिन्दी भाषा का प्रयोग भी शुद्ध रूप से करना सीखें।

उन्होंने यह भी कहा कि आप लोग भविष्य में जब सत्र न्यायालयों के न्यायाधीश बनेंगे तथा उच्च न्यायालय के पदों को विभूषित करेंगे तब अंग्रेजी भाषा नहीं आ रही है तब दुविधा का सामना करना होगा। वर्तमान में भी बहुमुखी ज्ञान प्राप्त करने हेतु भी आधारभूत ग्रंथ अंगेजी में ही उपलब्ध हैं।

माननीय न्यायाधिपति महोदय ने आगे कहा कि हिन्दी व अंग्रेजी भाषा पर प्रभुत्व होना नितांत जरूरी है। भाषा का प्रयोग कौन किस प्रकार से करता है उससे भी किसी व्यक्ति की योग्यता व क्षमता पहचानी जा सकती है, व अभिव्यक्ति आसानी से हो सकती है।

लोक न्यायालय के कार्य एवं विधिक ज्ञान एवं जानकारी के शिविर संचालित करने के विषय में श्रीमान माथुर साहेब ने कहा कि लोक न्यायालय अब न्यायपालिका के माध्यम से नियंत्रित होना है। स्थायी लोक न्यायालय की स्थापना राज्य में संभवतः प्रत्येक जिले में भी होगी। प्रत्येक जिले में यथोचित निर्देश भेजे गए हैं व इस कार्य को गतिमान बनाया जा रहा है जिससे पक्षकारों के अधिकार व दायित्वों का निराकरण पूर्ण संतुष्टि

के साथ हो सके। प्रशिक्षण सत्रों में भी एक–एक व्याख्यान इस विषय पर होना है जिससे प्रत्येक न्यायिक अधिकारी को इस विषय में ज्ञान हो सके। प्रत्येक न्यायिक अधिकारी को लोक न्यायालय के माध्यम से किए कार्य के लिए यूनिट्स देने का भी निर्णय लिया जा चुका है।

अंत में माननीय मुख्य न्यायाधिपति महोदय ने कहा कि कार्य करना है, मर्यादा रखना है तथा न्यूनतम मापदंड से अधिक कार्य करना अपेक्षित है। न्यूनतम मापदंड से कम कार्य तो करना ही नहीं है अपितु न्यूनतम मापदंड इस बात का द्योतक है कि उससे अधिक कितना कार्य हो सकता है। उन्होंने नववर्ष की हार्दिक शुभकामनाएं व्यक्त कीं।

इसके पूर्व माननीय प्रशासनिक न्यायाधिपति एवं न्यायिक अधिकारी प्रशिक्षण संस्थान के चेयरमेन श्रीमान डी.पी.एस. चौहान साहेब ने अतिरिक्त जिला न्यायाधीशों के प्रशिक्षण सत्र को विद्वत्तापूर्ण संबोधन द्वारा मार्ग प्रशस्त किया। आपने सहज संबोधन शैली में न्यायिक अधिकारीगणों को अपने कर्त्तव्यों के प्रति जाग्रत करते हुए कहा कि प्रशिक्षण हेतु पधारे प्रशिक्षुगणों को पदोन्नति प्राप्त हुई है लेकिन इस कारण से यह नहीं समझना चाहिए कि वे विद्वान हो गए है व उन्हें ज्ञान प्राप्त हो चुका है। विधिक ज्ञान एक सतत प्रक्रिया होकर विधि प्रावधानों का तथा न्याय दृष्टांतों का सतत् रूप से पठन पाठन अत्यंत आवश्यक है जिससे न्यायपीठ पर प्रकरण की कार्यवाही का संचालन नियंत्रित रूप से हो सके। ज्ञाता व्यक्ति के साथ निरर्थक रूप से अनुचित बातें करने का साहस कोई नहीं कर सकेगा। प्रकरणों का अध्ययन अग्रिम रूप से होता रहे यह भी कार्यपद्धति का एक हिस्सा है। अधिवक्तागणों की उपेक्षा न करने की सलाह देते हुए माननीय प्रशासनिक न्यायाधिपति श्रीमान डी.पी.एस. चौहान साहेब ने आगे यह भी कहा कि न्यायिक अनुशासन सर्वोपरि है। न्यायालय में न्यायिक कार्य से आवांतर बातें बिल्कुल नहीं होना चाहिए एकांत में किसी से मिलने का कोई औचित्य नहीं है क्योंकि न्यायिक प्रक्रिया खुले रूप से ही होती है।

न्यायालय में शिष्ट संयमी व शालीन व्यवहार की आवश्यकता अनुभव करते हुए माननीय चौहान साहेब ने यह भी कहा कि हमारी भाषा व्यवहार व चिंतन से समाज हमें नापता है, तौलता है। हमारा चरित्र हमारे व्यवहार से सर्वसामान्य को ज्ञात होता है। लिखने के संबंध में आगे चिंतन विकसित करने हेतु माननीय महोदय ने यह भी कहा कि न्यायिक अधिकारी कितने शब्दों में किसी बात को अभिव्यक्त करते हैं इससे भी उनकी योग्यता ज्ञात होती है। अधिकतम बात न्यूनतम शब्दों में बताई जाना चाहिए। ये तभी संभव होगा जब संबंधित विषय के बाबत हमने पूर्ण रूप से तैयारी की है। यदि ऐसा हुआ है तो आदेश या निर्णय संक्षिप्त सागर्भित सूत्र शैली में रहेगा व सुबोधगम्यता बनी रहेगी। अंत में अपने विचारों को विराम देते हुए माननीय न्यायाधिपति महोदय ने यह कहा कि जो

भी गणवेश निर्धारित किया है उसे न्यायालयीन कार्य में अवश्य धारण करना चाहिए जिससे न्यायालय की गरिमा, मान–मर्यादा व प्रतिष्ठा बनी रहती है।

दिनांक 18-1-99 से दिनांक 25-1-99 के कालावधि का द्वितीय सत्र व्यवहार न्यायाधीश वर्ग 2 जो 1994 के एक दल के लिए आयोजित हुआ। दिनांक 19-1-99 को माननीय प्रशासनिक न्यायाधिपति एवं अध्यक्ष न्यायिक अधिकारी प्रशिक्षण संस्था के आशीर्वचन से प्रारंभ हुआ। सुबोध एवं धारा प्रवाहित सम्बोधन में उन्होंने कहा कि यह आयु एवं समय बहुत कुछ सीखने, समझने एवं अनुभव प्राप्ति का है। मन का निग्रह होना बाकी है। रामायण का उल्लेख करके बतायां कि यह मालूम होते हुए की स्वर्ण मृग नहीं होता है मृगतृष्णा का प्रसंग आया है कि मां सीता स्वर्ण मृग की इच्छा करने लगी। इसी प्रकार जीवन में काल्पनिक मृग रोज दिखेंगे लेकिन हर समय मोह संवरण होना आवश्यक है। मनुष्य जन्म से ही समस्याओं का भी जन्म होता है व इसी कारण उसके निदान हेतु समाज बना, विधि व्यवस्था स्थापित हुई चूंकि समाज की समस्याओं के निर्वाह हेतु न्यायिक व्यवस्था है व उसका अधिपति न्यायाधीश है इसलिए उसे संयमित होना होगा। न्यायधन ही उसका सम्मान होना चाहिए व वही उसका आभूषण भी हो। यह प्रक्रिया एक योगाभ्यास होकर सतत् साधना अपेक्षित है। शक्ति प्रेरित करेगी कि न्यायिक कार्य कैसे हो। एक दिव्य दृष्टि, दैविक शक्ति सतत् प्रेरणा देती रहेगी। मन में किसी प्रकार की कुण्ठा, आशा भंग नैराश्य न आने दें।

श्रीमान चौहान साहेब ने अपने सम्बोधन को अविरत रखते हुए आगे कहा कि न्यायाधीश का कार्य, सरकारी नौकरी न होकर एक मिशन के रूप में है, एक आंदोलन के रूप में, जीवन लक्ष के रूप में निष्पादित करना है। न्याय का आध्यात्मिक आधार होना चाहिए ताकि पूर्ण आस्था एवं श्रद्धा भाव से न्यायदान हो सके।

विभिन्न सत्रों में कई विद्वान वक्ताओं ने अपने विचार प्रदर्शित किए थे। माननीय न्यायाधिपति श्रीमान डी.एम. धर्माधिकारी महोदय ने लोक न्यायालय के संचालन के महत्व पर बल देते हुए जन आंदोलन के रूप में उक्त कार्य करना है ऐसा बताया। माननीय पूर्व न्यायाधिपति श्रीमान के.के. वर्मा महोदय, फोरन्सिक साइन्स विभाग की ओर से डॉ. ए.के. गुरू, निदेशक, डॉ. ए.पी. गौतम, श्री एस.के. सूबेदार, श्री वाय.के. शुक्ला, श्री जे. के. अग्रवाल, एडीशनल रजिस्ट्रार सर्वश्री के.सी शर्मा, टी.के. झा, सी.व्ही. सिरपुरकर एव अतिरिक्त जिला न्यायाधीश श्री शिव नारायण खरे ने भी संबोधित किया था।

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CHALLENGES CAN BE STEPPING STONES OR STUMBLING BLOCKS. IT'S JUST A MATTER OF HOW YOU VIEW THEM

जागते रहो !

कार्य के प्रति उपेक्षा वृत्ति

शाम का समय था। काफी ठंड पड़ रही थी। संक्रांति पर्व के कारण त्वरित घर जाने की इच्छा थी घड़ी में पौने पांच बज रहे थे। भृत्य को सामान समेटने को कहा ताकि पांच बजने के पश्चात कार्य से मुक्त हुआ जा सके। इतने में इंटरकॉम पर घंटी बजी। टेलीफोन का चोंगा उठाया व कहा नमस्कार, नामजोशी। उपर से पूछा क्या कर रहे हो। मैंने आवाज तुरन्त पहचान ली। मैंने कहा हुकुम सर! साहेब ने कहा आ जाओ। फिर क्या था। जाना ही था। मन में सोचा वही रोज की बात है देर तो होगी ही घर जाने में। कोट चढ़ाया टाई अटकाई व चल दिया उपर। चेंबर में पहुंचा मंगल कामनाएं व्यक्त की। पैनी निगाह से मेरी तरफ़ देखा गया। कहा बैठो। धन्यवाद कहते बैठा। साहेब दो मिनट – चार मिनट तक तो बोले ही नहीं। मेरी राशि के लिए यह संक्रांति एवं तत्पश्चात का समय अच्छा नहीं है ऐसा उसी दिन समाचार पढ़ा था। भविष्य सही होने जा रहा है ऐसा माननीय महोदय के चेहरे के हाव–भाव से लग रहा था।

जब वे विभिन्न फाइलों में हस्ताक्षर कर के निवृत्त हुए तो पूछा कहिए क्या हालचाल है। तब तक तो चेहरा उदास हो गया था। इस तथ्य को छुपाने हेतु इतना ही कहा कि सुबह से काम करके श्रीमान थक गए होंगे, तो उनकी प्रतिक्रिया थी हां सो तो ठीक है, पर यह फाईल पढ़ो। पढ़ी। फाईल पढ़ी। वास्तव में उसमें पढ़ने लायक कुछ था ही नहीं। मन में सोचा ऐसी फाईल क्यों पढ़ने को दी। उसमें प्रथम दिन की आदेशिका थी। तत्पश्चात निर्धारित तिथि की अंतिम आदेशिका थी। निर्णय भी संलग्न था, चार्ज भी लगा था। धारा 435 भा.द.वि. का प्रकरण था। 1400 रु. लगभग का सामान नष्ट हुआ था। अभियुक्त गणों को निर्दोष मुक्त किया था। मैंने फाईल को देखकर अपने दिल के पास संजोये रखी। पूछा देखी? मैंने कहा हां सर। क्या देखा? कहा त्वरित, बिना विलंब किए निर्णय का एक आदर्श नमूना है। पूछने पर बताया कि 30 मई 1988 को आरोप पत्र दो अभियुक्त गणों के विरुद्ध प्रस्तुत हुआ। उसी दिन आरोप निर्मित हुए तथा 04 जून 1988 की तिथि साक्ष्य हेतु निर्धारित की गई। उस रोज एक साक्षी आया था। ए.पी.पी. नहीं था एक साक्षी के परीक्षण पश्चात् न्यायालय से चूंकि अन्य

साक्षियों के परीक्षण हेतु समय मांगने हेतु ए.पी.पी. नहीं होने से न्यायालय ने प्रमाण समाप्त किया, अभियुक्त परीक्षण हेतु कोई परिस्थिति नहीं थी इस लिए वह नहीं बनाया। अंतिम तर्क सुने, निर्णय दिया आरोपीगणों को निर्दोष मुक्त किया।

अब माननीय महोदय की बारी थी। क्या समझे इससे? ऐसा पूछ कर मेरी ओर उनकी आंखें प्रश्नवाचक चिन्ह के रूप में ऐसी खड़ी हो गईं मानो मेरा सदोष अवरोध अथवा सदोष गतिरोध कर दिया हो। सोचा न्यायपालिका की प्रशंसा करने से मैं बच जाऊंगा। श्रीमान से कहा कि ऐसा त्वरित कार्य यदि हम करने लग जाएंगे तो प्रकरणों का शीघ्र निराकरण भी हो सकेगा व प्रकरणों की संख्या भी कम हो जाएगी तथा "कॉमन कॉज" जैसे निर्णय पढ़ने से भी मुक्ति मिलेगी। मुझसे जानकारी लेने पर मैंने उन्हें कहा कि ये साहब नौकरी में शेष है या नहीं मुझे नहीं मालूम। इतना कहा और उन्होंने यह जोड़ दिया कि यदि होंगे तो लगता है कि जल्दी ही जाएंगे। मुझे आश्चर्य हुआ। मैंने कहा ऐसा क्यों कहते हो साहब। मैंने स्वप्रेरणा से उस फाईल को पुनः पढ़ा। 30 तारीख को प्रस्तुत प्रकरण में बिना कोई कारण व्यक्त किए हुए पांच दिन पश्चात की तिथि साक्ष्य हेतु निर्धारित करने का कोई औचित्य दर्शित नहीं किया था। पांच दिन पश्चात शेष साक्षियों को न आहुत करने हेतु ए.पी.पी. के अभाव में समय न देने का औचित्य प्रगट नहीं किया गया। इस बात का भी खुलासा नहीं था कि किन-किन साक्षियों को समन्स भेजे गए थे किन को निर्वाहित हुए किनको निर्वाहित नहीं हुए। क्या ए.पी.पी. के अभाव में न्यायालय प्रकरण साक्ष्य हेतु निर्धारित नहीं किया जा सकता?

यह सब देखकर फाईल को मैंने साहेब के टेबल पर रखा। इतने में साहेब भी उठे वे भी चलने को हुए। शुभ संध्या कहा व मैं भी शब्दशः खिसक ही गया। एकदम पलायन कर गया कि कही ऐसा न हो कि वे पुनः बुला लें।

यहां उच्च न्यायालय की न्यायिक सेवा समिति का कार्य भी मुझे देखना होता है। दो प्रकरण सामने आए। प्रथम प्रकरण किसी अतिरिक्त जिला न्यायाधीश के न्यायालय का था जिसमें पक्षकार को विधिक सहायता की आवश्यकता थी। उसके आवेदन पत्र पर विचार कर रहा था, उक्त न्यायाधीश के निर्णय की नकल थी जिसको पढ़ा तो पाया कि उक्त न्यायाधीश ने लिखा था कि उक्त न्यायालय को प्रकरण श्रवणाधिकार नहीं है अतः प्रकरण खारिज किया जाता है। ऐसा क्यों किया यह समझ नहीं पाया। किसी अन्य प्रकरण में मैंने विधिक सेवा अधिवक्ता नियुक्त किया था। उस अधिवक्ता ने वह फाईल वापस

भेज दी। कारण जानने की इच्छा हुई तो उन्होंने विचारण न्यायालय (सत्र न्यायालय) के निर्णय की वह प्रतिलिपि दर्शाई जिसमें जगह–जगह काट–छांट थी लेकिन सत्र न्यायालय के पीठासीन अधिकारी के लघु हस्ताक्षर नहीं है। प्रत्येक पृष्ठ पर गोल सील नहीं थी न पृष्ठों को संयुक्त कर के गोल सील लगाई थी। अंतिम पृष्ठ पर सत्य प्रतिलिपि शब्द के नीचे पीठासीन अधिकारी के हस्ताक्षर थे। वकील साहेब ने बताया कि हम उच्च न्यायालय में कार्यवाही तो कर देंगे यदि इन सब बातों का स्पष्टीकरण देना पड़े एवं काट–छांट और किसी ने की हो तो वह उनके गले पड़ जाएगी। एडीशनल राजिस्ट्रार (जे) से भी ऐसी ही चर्चा हुई तो उन्होंने भी कहा कि उन्हें तो इस विषय पर रोज ही निर्देश देना पड़ रहे हैं। इस संबंध में सबसे बड़ी पराकाष्ठा तब हुई जब माननीय प्रशासिनक न्यायाधिपति महोदय श्री डी.पी.एस. चौहान महोदय ने प्रशिक्षण शिविर के एक सत्र में यही बात बताते हुए कहा कि नकल ऐसी भी दी जा रही है जो पढ़ी ही नहीं जाती। अतः एक प्रकरण में उन्होंने संबंधित पीठासीन अधिकारी को व्यक्तिगत रूप से इस कार्य हेतु आहुत किया था व आदेश का पालन कराया था।

इसी प्रकार के विभिन्न पहलुओं पर एक माननीय महोदय से मैंने करबद्ध रूप से निवेदन किया तो उनकी स्पष्ट टिप्पणी थी, बिना लाग लपेट के निःसंकोच शब्दों में उन्होंने कहा कि यदि न्यायिक अधिकारी न्यायाधीश के अनुरूप गरिमामयी व्यवहार नहीं करेंगे व दायित्वनुभूति नहीं होगी तथा बाहरी चकाचौंध के जीवन से प्रभावित होकर अपने आपको शासकीय सेवक के रूप में ही अनुभव करते रहेंगे तो ऐसा तो उनका भविष्य सुखद नहीं होगा। उनकी यह अपेक्षा थी कि न्यायिक अधिकारी को न्यायाधीश के रूप में जो कार्य करने का पवित्र अवसर मिला है तब उसने गंभीरतापूर्वक कार्य करना है व इस सेवा को अपने जीवन का एक अंग मानना होगा तब ही वह सफल हो सकेगा।

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WHEN WORK IS PLEASURE, LIFE IS A JOY.
WHEN WORK IS DUTY, LIFE IS SLAVERY.
HARDER WE TRY, HIGHER WE FLY.

LEGAL AID

WRIT PETITION NO. 312 OF 1994 SC, DECIDED ON 18-8-1998

SUPREME COURT LEGAL SERVICES COMMITTEE

VS.

UNION OF INDIA

WRIT PETITION (CRIMINAL) 312/94:-

In this matter, after passing numerous interim orders and after adjourning the case from time to time to enable the concerned Authorities to implement the provisions of the Legal Services Authorities Act, 1987, it is now reported that almost all the States have substantially complied with the implementation of the Act. In view of that, no further action is necessary, except to consider the directions as prayed for in the Writ Petition which reads as follows:-

"Issue appropriate writs, orders or directions in the nature of mandamus to each of Respondents directing --

(i) that they will, by issuing administrative orders/instructions ensure that every prisoner/convict is provided with free copy of the judgment of the Sessions Court or the High Court in her/his case or matter within 30 days of the pronouncement of such judgment and that the Registry of the Court concerned will personally endorse such copy to the Superintendent of the Jail for forwarding the same to the petitioner;

(ii) the Superintendent of the Jail concerned to ensure that the judgment of the Sessions Court or the High Court, as the case may be, is read out to the prisoner and explained to him in the language as understood by him;

(iii) that the prisoner will be informed by the Superintendent of every Jail about the availability of legal aid in the High Courts and the Supreme Court and be asked whether he is desirous of exercising his constitutional right to avail of legal aid;

(iv) that every Jail will have to provide at the cost of the State Exchequer copy of Vakaltnama, proforma affidavit in the form as required by the respective High Courts and the Supreme Court for being signed by the prisoner immediately upon expressing his intention to avail of legal aid;

(v) that the Superintendent of the Jail will ensure that complete papers/ records of the case are sent to the Supreme Court Legal Aid Committee or the High Court Legal Aid Committee along with the prisoner forthwith by registered post at the cost of State Exchequer and that if there is any delay in forwarding papers, the reasons for forwarding the papers belatedly will accompany such papers;

(vi) that where the judgment of the Sessions Court and the High Court is in a language other than English, the Superintendent of the Jail will at State's cost arrange to have the same translated before sending the papers to the Supreme Court Legal Aid Committee or the High Court Legal Aid Committee, as the case may be."

The learned counsel appearing for various States submitted that no express direction is necessary as these directions are implied in the implementation of the Legal Services Authorities Act, 1987. None the less, the counsel appearing for various States have no objection to order the above prayer for directions.

Accordingly, we allow the prayer for directions as sought in the Writ Petition. The respondents shall take immediate steps to carry out the above directions. The reference in the prayer for directions to "Legal Aid Committee" must be taken to mean and refer to the corresponding body now functioning.

In view of the above, this petition will stand disposed of accordingly.

WRIT PETITION (C) NO. 637/97 AND CONTEMPT P. (CRL.) NOS. 1-31 IN WRIT PETITION (CRL.) NO. 312/94:

In view of the order passed in Writ Petition (Crl.) No. 312/94, these matters will also stand disposed of.

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INTERPRETATION OF THE SECTION 113-A EVIDENCE ACT REGARDING AN UNMARRIED WOMAN STAYING WITH A MAN

CRIMINAL APPEAL NO. 448/98

BALARAM Vs. STATE OF M.P.

Order was delivered by Hon'ble Shri Justice D. M. Dharmadhikari and Hon'ble Miss Justice Usha Shukla of M.P. High Court, Main Seat at Jabalpur on 8.12.1998

The single judge of the M.P. High Court in the course of hearing of the said appeal of the accused persons against their conviction under Section 306 read with section 498-A of I.P.C. found that the legal question of applicability of presumption under Section 113-A of the Evidence Act against the husband on allegation of abetment of suicide by a woman not legally married to him is a question of law of importance. The case was referred to the Division Bench and the Division Bench answered the question as under:-

Considering the provisions of Section 113-A of the Evidence Act and Section 50 of the Evidence Act, Preamble objects and recent statement of objects and reasons regarding Criminal Law Amendment Act No. 46 of 1983 and considering several Law Reports it was found as under:-

We find no difficulty in holding that on the plain language of Section 113-A. the presumption cannot arise in case of suicide by a woman who was mere concubine, or mistress, a prostitute, a casual visitor or a woman engaged in an illicit affair with a person who is accused of the offences as none of them can claim any relationship based on marriage. This would answer a very interesting and theoretical situation based on imaginary and possible facts posed by learned counsel Shri Surendra Singh. He gave an illustration thus :- suppose a woman 'W' is legally wedded wife of 'A' but has developed illicit

relationship with another married person 'B' and occasionally and frequently lives with both of them. She is later on found to have committed suicide. In relation to such suicide, the question posed is; the presumption u/s 113-A should be raised against 'A' or 'B' and seven years period from the date of marriage is to be reckoned from which date ? No doubt there is a possibility of such a situation in present day society. Obviously, since the woman is only a visitor to the person outside the wedlock and is carrying on an illicit affair with the latter, no presumption can be raised against a person who is not her husband. The presumption may arise against her husband if there is a nexus with him of any alleged cruel treatment met out by him to the woman. Presumption u/s 113-A can be raised only when there is an evidence of cruelty towards the woman.

The period of seven years is to be reckoned from the date of marriage. In order to attract the provision of presumption, there should be evidence of marriage. It is not necessary that such marriage should strictly be valid in accordance with the personal law of the parties. In our considered opinion, there is no reason not to raise presumption against a person in relation to suicide by a woman if that woman has undergone some marriage ceremony with that person and treats that person to her husband. In order to attract the provision, the relationship of husband and wife has to be seen only from the angle of the wife who is the victim of the crime. If the woman who is the victim had undergone a marriage ceremony with a person whom she had been treating as her husband, the presumption must be raised. In this respect, the aims and objects for which the Penal provisions were amended by Criminal Laws Amendment Act. No. 46 of 1983.

The above quoted objects and reasons make it amply clear that the relevant provisions have been introduced in the penal laws for prevention and punishment of offences against married women. Presumption is raised against the husband in case of suicide by the woman married to him because offences of cruelty by husband against the wives are committed within the four walls of houses and most often they are unknown to outsiders. Providing such presumption in the Evidence Act has found necessary against the husband as direct evidence of such crimes is rarely available. The presumption which arises against the husband in case of suicide by wife is dependent on existence of evidence of cruelty and the same rebuttable by direct or circumstantial evidence in defence by the husband.

It is not an inflexible rule that penal statutes must be construed strictly. But they can be construed to interprete the language used in it in a comprehensive manner to best effectuate the intention of the legislature which can be gathered from the aims and objects of the legislation and the subject matter contained therein. In this respect, this court attaches great value and importance to the fact that in proviso below Section 50 of the Evidence Act, the legislature by amendment has not inserted Section 498-A and Section 306 of I.P.C. to exclude admission of opinion evidence in the matter of proof of relationship of marriage between the parties concerning those offences.

That the provision under consideration has to be construed in a manner as to best advance the objects of the law and to suppress the mischief that it intents to achieve. As has been pointed out above the provision brought by amendment to penal statute is with the object of effectively dealing with the increasing crimes by husbands against married women and to bring to book such offences for deterrent punishments. Strict proof of marriage in accordance with the personal law of the parties is neither clearly nor impliedly intended by sec. 113-A. Nor such intention can be gathered from the aims and objects of the Bill which was brought to amend the penal laws. The anxiety of the legislature to effectively meet the increase in offences against married women by their husbands and relatives is apparrent from the provision. The law being on the subject of offence against woman, the relationship of marriage has to be seen from the angle of the woman who was the victim of the crime. If the woman who was the victim of the crime, during her lifetime, had treated the person to whom she was married; as her husband, there is no reason why the presumption u/s 113-A be not raised against the husband-may be that the woman was married to the accused under a bigamous or unlawful marriage not recognisable by personal law of the parties.

The above interpretation does not in any manner militate against the requirement of limit of seven years' period of marriage for raising presumption. For the purpose of attracting presumption u/s 113-A of the Evidence Act, proof of existence of a marriage is an essentiality but not its validity as understood under the personal law of the parties.

After having carefully considered the scope and ambit of Sec. 113-A of the Evidence Act, we are of the opinion that from the plain language with the words employed in it, prima facie the section would not include case of suicide by a woman who has undergone no marriage with the person-accused and is merely leading an adultrous life with him, is a concubine or a mistress, a prostitute, or a mere frequent or occasional visitor to his place in course of an illicit relationship with him. The reason is obvious that to attract the provision of section 113-A of the Evidence Act, existence of marriage and seven years period are two necessary pre-requisites for raising a presumption against the husband.

We do not find any justification, from the language and words employed in the section to exclude from its ambit case of a suicide by a woman who had undergone a bigamous or polygamous marriage. Such marriage of the woman is contemplated by the provision and it need not be strictly a valid marriage in accordance with the personal law of the parties. The presumption raised u/s 113-A merely shifts the onus of rebuttal on the husband. The provision raising such presumption is aimed at effectively preventing and dealing with offences of such cruelty against the married women which have led them to suicide. We find no apparrent reason to exclude from the purview of the Section a relationship arising from re-marriage or a bigamous marriage which may not be strictly valid for want of observance of necessary formalities or rituals under the personal law of the parties or any prohibition in such law.

We, therefore, hold that Sec. 113-A of the Evidence Act would cover with its purview suicide by a woman irrespective of the fact of her marriage being perfect, imperfect, valid or invalid under the personal law applicable to the parties. In our opinion, invalidity of marriage for purpose of raising presumption u/s 113-A, is wholly irrelevant as it is the offence which has to be brought to book and punished. If a woman who has undergone a kind of marriage, legal, customary or otherwise proved to have been subjected to cruelty by a man whom she had been treating as her husband and/or his relatives, and is found to have committed suicide, that would give rise to the presumption and such husband can have no defence that the presumption may not be raised against him because his marriage with the woman was not lawful being not in accordance with the personal law of the parties. The words used in the Section 'Married' and 'husband' in our opinion have to be given a general meaning to effectuate the aims and objects of the provision and can not be assigned a strict legal meaning as understood in the personal law applicable to the parties. As we have stated above the relationship between the accused and the woman has to be understood and construed from the point of view of the woman who is alleged to have been subjected to cruelty and is the victim of the accused is wholly irrelevant and not at all in contemplation of the legislature. All valid, as well as bigamous or polygamous or less formal marriages, customary or otherwise are, therefore, included within the purview of this Section.

We do not find that in construing so we are either reading something into the provision or stretching it language. In dealing with such offences against women which have led to their suicide, there is no reasonable basis or justification to give a differential treatment to a victim who is a legally wedded wife and to other woman who, although married, is not strictly married in accordance with the personal law applicable to the parties. The presumption is raised in offence of cruelty by husband against married woman which has led to suicide by her. The provision deals with the offences and not with the personal law of the parties on marriage and divorce.

The case was directed to be put up before the Single Judge for decision on merits.

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MOTOR VEHICLE ACT
RELEASE OF VEHICLES INVOLVING IN ACCIDENT AFTER FURNISHING SOLVENT SECURITY ETC., ETC.
W.P. NO. 155 OF 1996
N.D. SINGHAL VS. M.P. STATE AND OTHERS

Judgment delivered by Hon'ble the Chief Justice of M.P. High Court Sh. A.K. Mathur and Hon'ble Shri Justice S.S. Jha of M.P. High Court at Gwalior Bench on 10.11.1998.

The whole judgment is reproduced at verbatim for the guidance of the Judicial Officers.

By : **HON'BLE SHRI A.K. MATHUR C.J.:**

1. This is a public interest litigation whereby the petitioner, who is an Advocate of this Court has brought this cause asserting serious problem facing claimants prosecuting their claim petitions before Tribunals. Therefore he has prayed that respondents be directed that whenever an accident takes place and if any criminal case is registered against accused under section 304 A & 279 IPC he be charged for violation of section 196 of the Motor Vehicles Act, 1988 also. It is also prayed that a direction be given to the subordinate Judicial Courts to the effect that at the time of returning of the vehicle on suparatnama the Criminal Courts should ensure that insurance policy of the vehicle is also seized and it should be their duty to see whether the vehicle in question is insured or not and whether the insurance is current or not. It is also prayed that in the event the vehicle is found to be not insured, then the claimant should be paid a sum of Rs. 50,000/- by way of interim compensation by the owner of vehicle in the event of death and injured should be paid an interim compensation in the sum of Rs. 25,000/- by the owner of the vehicle.

2. It is a common experience that with the increase of the traffic, the incidents of road accident have enormously increased. Though sufficient provisions have been made in the Motor Vehicles Act, 1988 for compensating the victims but, there are number of problems which arise in execution and claim cases remain pending on account of non-service of the non-claimants resulting sometimes even in denial of compensation to the claimants. The learned counsel has highlighted some of the difficulties being faced in the courts day to day in claim petitions, it is very difficult to find out the name of owner of the vehicle as well as the driver thereof involved in the accident, and if they are found and arrayed as parties/non-claimants then service on these non-claimants is a another big problem. Similarly the difficulty also arises to find out insurance company whether vehicle is insured or not and if insured then with insurance company and policy amount. These practical difficulties sometimes totally frustrate the claims or sometimes cause undue delay. In order to mitigate these difficulties, and administrative instruction was issued by the High Court on 20th June 1997 which is as under:

> "As directed, I have to request you to instruct all the judicial officers working under you in the district that they will not release seized vehicle on suparatnama unless insurance papers are deposited in the Court alongwith driving licence.
>
> It may be ensured that these directions are strictly complied in future and in case of non-compliance of the aforesaid directions, disciplinary action will be taken against the concerned judicial officers."

3. The learned counsel submits that notwithstanding the above direction to the Courts, the Claimants are facing a great deal of inconvenience in obtaining compensation. Sometimes difficulty arises when the vehicle is not insured in that case it is very difficult to recover compensation amount

inspite of a decree passed by the Claims Tribunal from the owner and the driver. Keeping in view all these difficulties, we propose to issue following directions:

1. The Criminal Courts are directed to see as and when the Criminal case is brought before them arising out of the accident either by heavy vehicle or light vehicle or any three wheeler or two wheeler, they will ensure that the original policy of the insurance of the vehicle in question alongwith driving licence of the person concerned are seized and they shall not be released to the concerned persons unless the photocopies of the insurance policy as well as driving licence are deposited by the concerned accused persons.

2. They shall also ensure that at the time of the delivery of the vehicle involved in the accident on suparatnama in the event of vehicle not insured then solvent security is obtained from the owner of vehicle in question or his agent and alongwith solvent security in case of heavy/ light vehicle a cash security in a sum of Rs. 50,000/- per victim is taken or bank guarantee then alone they will release the vehicle in question on suparatnama. In case of insured vehicle they may obtain the current copy of the insurance policy and the driving licence.

3. In case of two Wheeler or three Wheeler if it is not insured with the insurance company then in that case they will release the vehicle on suparatnama on obtaining solvent security alongwith cash security/ Bank guarantee in the sum of Rs.15,000/- per victim.

4. Shri J.P. Gupta, appearing as amicus-curiae submitted that in case of hit & run State Government should be directed that legal representative of such victim should also be paid compensation of Rs. 50,000/-. This direction cannot be given however we have been given to understand that some amount is reserved by the Collector for such a situation the State Government should consider how best such victims can be compensated as a State social measure.

5. It is brought to our notice that directions are required to be issued to the State Government that if vehicle involved in the accident is not insured, in that case that vehicle will not be released unless it is insured and accused alongwith other criminal charges is also charged u/s 196 Motor Vehicles Act.

6. We direct the State Government to issue directions to investigating agency that they will ensure that as and when such accident takes place it is their responsibility that vehicle in question should be not insured if not insured and in the event the vehicle is not insured accused is also charged under section 196 Motor Vehicles Act.

7. However, so far as State Vehicles as well as vehicles of Central Government are concerned, since they are not insured, therefore, at the time of suparatnama of vehicles cash or solvent security shall not be insisted.

8. Before parting with the case we may regard our appreciation of Shri J.P. Gupta learned counsel who assisted this court and other learned counsel also.

9. Petition is accordingly disposed of with the above directions. Copy of the order be sent to the Government of State of Madhya Pradesh as well as to all the District Judges of the State who, in turn shall apprise regarding this order to all the subordinate Courts and shall see that the directions given above are properly implemented by them in discharging of their duties.

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1998 SUPREME COURT CASE (CRI.) 1031

K.L. VERMA Vs. STATE

SIPS (CRL.) NOS. 3278 AND 3278 OF 1996, DECIDED ON OCTOBER 13,1996.

Criminal Procedure Code, 1973 - Ss. 438 and 197. Order of anticipatory bail does not ensure till end of the trial but it must be of a limited duration - Matter of bail should be left to the regular court - Accused must be given sufficient time to move regular court for bail and in case of refusal by regular court to approach higher court - Grant of anticipatory bail by High Court till 14-10-1996. Subsequently by another order High Court directing to issue notice on question of sanction under S.197 -Notice returnable on 1-11-96 - Held, the High Court not justified to grant stay of further proceedings till decision on question of requirement of sanction under S.197.

An order of anticipatory bail does not ensure till the end of trial but it must be of limited duration as the regular court cannot be bypassed. The limited duration must be determined having regard to the facts of the case and the need to give the accused sufficient time to move the regular court for bail and to give the regular court sufficient time to determine the bail application. In other words, till the bail application is disposed of one way or the other the court may allow the accused to remain on anticipatory bail. To put if differently, anticipatory bail may be granted for a duration which may extend to the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire. It cannot be said that as soon as the accused persons are produced before the regular court anticipatory bail ends even if the court is yet to decide the question of bail on merits.

In the instant case the proper course for the High Court was to decide on the question of the requirement of sanction and if the High Court not do so, to have stayed further proceedings till that vital question was answered.

Salauddin Abdulsamad Shaikh vs. State of Maharashtra, (1996) 1 SCC 667 : 1995 SCC (Cri) 198, explained and followed.

Suggested Case Finder Search Test (inter alia) anticipatory bail

Chronological list of cases cited

1.(1996) 1 SCC 667:1996 SCC (CRi) 198, Salauddin Abdulsamad Shaikh vs. State of Maharashtra.

ORDER

1. These two petitions have been filed against the orders made by a learned Single Judge of the Delhi High Court Dated 9-10-1996 and 11-10-1996; the first being an order directing that in the event of the arrest of the accused persons pursuant to the order of the Chief Metropolitan Magistrate, Delhi, dated 4-10-1996, the accused shall be released on bail on each of them furnishing a personal bond in the sum of Rs. 25,000/- with one surety in like amount to the satisfaction of the arresting officer/superior officer and the duration of this anticipatory bail shall be up to 14-10-1996 when, on that date the accused shall appear before the said learned Magistrate and apply for regular bail which application shall be decided by the Court in accordance with law, By the second order dtd. 11-10-96 the learned Judge in so far as accused K.L. Verma, is concerned, directed notice to issue on the question whether sanction under section 197 of the Criminal Procedure Code (Hereinafter called the Code) was required for taking congnizance in his case since he was at the relevant point of time a public servant and made the notice returnable on 1-11-96. However, the learned Judge refused to grant stay of further proceedings but merely issued notice on the stay application. The effect of this is that the non-bailable warrant issued by the Chief Metropolitan Magistrate would be executed against him also before the Court decides the issues whether or not sanction under section 197 of the Code was a sine qua non for taking congnizance of the offence alleged to have been committed by him.

2. Ordinarily, we would have been loath to here this matter today, but owing to the urgency created by the High Court's order dtd. 9-10-96 whereunder anticipatory bail would ensure up to 14-10-96 i.e. till tomorrow only, and the possibility of arrest on the execution of the non-bailable warrants against the accused persons being real pending decision on the bail applications, and in the case of K.L. Verma, pending decision on his plea that sanction under section 197 of the Code was a must for taking congnizance, we felt constrained to hear the same today.

   We have been constrained to take up the matter today as it cannot wait even till tomorrow since it is a question of liberty of the individuals concerned.

3. We have carefully examined both the orders of 9-10-96 and 11-10-96 and have also heard counsel for the accused as well as counsel for the CBI and we are of the opinion that the proper course for the High Court was to decide on the question of the requirement of sanction and if the High Court could not do so, to have stayed further proceedings till that vital question was answered. On the other question emanating from the order dtd. 9-10-96, we find that the High Court placed reliance on this court's decision in Salauddin abdulsamad Shaikh vs. State of Maharashtra which was a case

in which the High Court, while granting interim anticipatory bail, imposed certain conditions, of the which was that the accused should move for regular, bail before the court which was in session of the case pending against him. The High Court also observed that the application should be disposed of influenced by the observations made in the earlier order. The special leave petition was directed against that order of the High Court. While dealing with that order, this Court observed that under section 438 of the Code, when any person has reasons to believe that he made be arrested on an accusation of having committed a non-bailable offence the High Court or the court of Sessions may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail and in passing that order, it may include such conditions as it may deem appropriate.

This Court further observed that anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be by passed. It was, therefore, pointed out that it was necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted. By this what the Court desired to convey was that an order of anticipatory bail does not ensure till the end of trial but it must be of limited duration as the regular court cannot be bypassed. The limited duration must be determined having regard to the facts of the case and the need to give the accused sufficient time to move the regular court for bail and to give the regular court sufficient time to determine the bail application.

In other words, till the bail application is disposed of one way or the other the court may allow the accused to remain on anticipatory bail. To put it differently, anticipatory bail may be granted for a duration which may extend to the date of which the bail application is diposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire. This decision was not intended to convey that as soon as the accused persons are produced before the regular court the anticipatory bail ends even if the court is yet to decide the question of bail on merits. The decision in Salauddin case has to be so understood.

4. In the above view we think it appropriate to direct that till the High Court decides the question of sanction under Section 197 of the code the further proceedings in the trial court shall stand stayed. The High Court should dispose of the application as early as possible on or soon after the returnable date i.e. 1-11-96. As far as the order of 9-10-96 is concerned, since it proceeds on a misreading of Salauddin case we modify the order by directing that the anticipatory bail will ensure till the regular court decides the question of grant of bail and for a week thereafter so that if the

regular court refuses bail, the accused persons can, if so advised, move the higher court.

5. With these observations, we dispose of both the special leave petitions. A copy of this order is sent to the Registrar, High Court of Delhi, for information.

6. Heard on 13-10-1996 from 4:30 P.M. to 6:30 P.M.

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CONTEMPT

ORDER PASSED BY HON'BLE JUSTICE SHRI R.S. GARG IN C.R. NO. 2329/98 (MAHAVEER AND ANOTHER VS. MEGHRAJ) ON 3-11-98 AT JABALPUR MAIN SEAT OF THE M.P. HIGH COURT 3-11-98

Learned counsel for applicants, Heard,

At the very outset, learned counsel submitted that she is not pressing challenge to the part of the order underwhich the defendants' application filed under Order 13 Rule 10 CPC has been rejected.

In view of the statement made by the learned counsel, it is not necessary to consider that part of the order.

So far as rejection of the application filed under Order 14 Rule 5 CPC is concerned, this Court is of the opinion that the Court below was not unjustified in not framing the said issue because in a suit between the landlord and tenant, the material question for trial is whether there exist a relationship of landlord and tenant between the parties or not. If the plaintiff proves that there does exist relationship of landlord and tenant, then he is entitled to a decree and if he fails to prove the same, then his suit is to be dismissed. The Court below did not commit any jurisdictional error. The revision on the merits is dismissed.

It appears that after the defendants' applications were rejected and the Court was asking the defendants to lead evidence, he filed an application under Section 148 CPC and at about 4.40 had filed another application under Order 17 Rule 1 CPC stating that in the morning the plaintiff came to his shop and asked him to compromise the matter, according to the defendants, the plaintiff informed them that he would pay money to the Presiding Officer and would obtain a judgment in his favour, according to the plaintiff for this reason only three days time was given to the defendants to lead evidence.

It is to be seen from the proceedings that the case was taken up at 12.40; thereafter it was taken up after some time; it was again taken up at 3 p.m.; and lastly it was taken up at 4.40 p.m. up to 4.40 p.m. , the defendants did not move any application to the said Court that the plaintiff was making such allegations. It prima facie appears that to lower down the authority of the Lower Court and to terrorise the learned Presiding Officer such allegations were made by the defendants through their counsel.

The Registry is directed to register a separate criminal contempt case under provisions of Section 2 read with Section 15 of Contempt of Courts Act. A notice be issued to the present applicants and their counsel as to why they should not be prosecuted and punished for making such allegations against the Presiding Officer.

Notices be issued within three days from the Court side. The applicants be informed that if they do not appear on the date fixed under the notice, this Court may issue non-bailable warrants against them to secure their attendance.

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EXTRACT OF THE ORDER IN L.P.A. NO. 439 OF 1998 IN *RAJESH, SON OF RAGHUNATH* *VS.* *DILIP, SON OF JAGANNATH & OTHERS* PASSED BY HON'BLE SHRI JUSTICE B.A. KHAN AND HON'BLE SHRI JUSTICE SHAMBHOO SINGH AT INDORE BENCH OF M.P. HIGH COURT ON 15.12.1998

1. Appellant allegedly suffered a fracture in his right hand and the doctor certified his partial disability at 8%. He filed claim case No. 176/92 and VIth M.A.C.T., Indore awarded him a compensation of Rs. 20,000/-. He felt dissatisfied and filed M.A. No. 648/90 asserting that he was entitled to compensation of fixed-amount of Rs.25,000/- u/s 140(2) irrespective of his 8% disability. His contention was overruled by the First Appellate Court. He has now filed this L.P.A. in a repeat exercise.

2. All that remained to be seen was whether Appellant was entitled to statutorily fixed amount of Rs. 25,000/- though his disability was partial and not permanent. The answer will depend upon the interpretation of sections 140 and 142 of M.V. Act. Relevant portion of these sections are extracted here under for proper appreciation :-

"Liability to pay compensation in certain cases on the principle of no fault.

(1) Whether death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of (fifty thousand rupees) and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of (twenty five thousand rupees).

Permanent disablement : For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving :-

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face."

3. A plain reading of these provisions shows that Section 140(1) provides for liability of the vehicle owner in certain cases on the principle of no fault where the motor accident had resulted only in death or permanent disablement of the accident victim. Sub-section 2 fixes the amount of compensation in such cases at Rs.25,000/-. Similarly section 142 illustrates "permanent disablement and says it shall be deemed to have resulted if such person had suffered injury/injuries involving permanent privation of the sight of either eye or hearing of either ear or (b) privation of any member or joint or (c) destruction or permenent impairing of the powers of any member or joint or permenent disfiguration of the head or face. As would be seen the emphasis is on permanent. The Legislative intent was thus clear to provide fixed compensation on no fault principle only in certain cases including permanent disability to the accident victim of the nature described in Section 142. Such compensation was not naturally awardable mechanically in all cases of injury irrespective of whether these resulted in permanent disablement or not. Where the injury was minor causing only partial disability and not a permanent one the injured cannot claim the fixed amount of compensation as a matter of right. It was perhaps in this context that first appellate Court had referred to 100% disability to convey that it should be permanent.

4. It is not appellant's case that he had suffered any permanent disability of his hand. His case was not, therefore, covered by section 140(2) of the Act. The appeal is accordingly dismissed on perliminary hearing.

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Analyse your problem and gather data carefully, even if it takes extra time. You can work faster and gain from the invested time when you come to a point, where work has to begin on the solutions.

TIT-BITS

1. LABOUR LAW: STANDING ORDERS AUTOMATIC TERMINATION ON THE GROUND OF UNAUTHORISED ABSENCE:-
1998 (6) SCC 538
UPTRON INDIA LTD. VS. SHAMMI BHAN AND OTHERS

Automatic termination on the ground of unauthorised absence is not permissible. Show-cause notice is necessary. Held on facts that the expression "Liable to automatic termination" occurring in the Standing Orders conferred discretion upon the management to terminate or not to terminate services of a confirmed employee who had unauthorisedly overstayed leave. Such discretion could not be exercised capriciously. Principles of natural justice have to be read into the relevant clause and therefore circumstances leading unauthorised absence have to be ascertained before resorting to termination. Consequently, a provision in Standing Orders for automatic termination is bad unless it is related to production in a factory or industrial establishment.

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2. PRECEDENTS:-
(1998) 6 SCC 538
UPTRON INDIA LTD. VS. SHAMMI BHAN AND ANOTHER

Remarks of the Supreme Court in earlier case cannot be treated to be a finding that provision for automatic termination of services can be validly made in the Certified Standing Orders. Even otherwise, a wrong concession on a question of Law, made by a counsel, is not binding on his client. Such concession cannot constitute a binding precedent.

The issue before the court in the present case was whether a provision in Standing Orders for automatic termination of services of an employee was valid. In an earlier case, this issue was considered by the Supreme Court but the counsel appearing on behalf of employee in that case did not contest this point. The Supreme Court endorsed counsel's approach in the following words: "Learned counsel for the respondent (employee) rightly made no attempt to support this part of the High Court's order". Based on these remarks of the Court, it was sought to be contended in the present case that it was permissible in Law to make provision in the Standing Orders for automatic termination. Contention was rejected.

NOTE : This judgment was delivered by the Supreme Court on 6.2.1998 referring in para 22 another judgment of ***Scooters India v. Vijay E.V. Eldred, (1998)6 SCC 549*** which is also cited below:-

"Learned counsel for the petitioner has placed strong reliance upon a decision of this Court in ***Scooters India vs. Vijay E.V. Eldred, (1998) 6 SCC 549*** in support of his contention that any stipulation for automatic termination of services made in the Standing Orders could not have been declared to be invalid. We have been referred to a stray sentence in that judgment, which is to the following effect:

"It is also extraordinary for the High Court to have held clause 9.3.12 of the

Standing Orders as invalid." This sentence in the Judgment cannot be read in isolation and we must refer to the subsequent sentences which run as under:

"Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order. In view of the fact that we are setting aside the High Court's judgment, we need not deal with this aspect in detail."

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3. ART. 226 CONSTITUTION OF INDIA AND SECTIONS 2-A, 10 & 10-A INDUSTRIAL DISPUTES ACT: WRIT PETITION MAINTAINABILITY:- (1998) 6 SCC 549
SCOOTER INDIA AND OTHERS VS. VIJAY E.V. ELDERED

Termination of Service. Service of workman treated automatically terminated on account of unauthorised absence for the specified period (more than 10 days in this case) in terms of a provision in standing orders. Writ petition impugning such termination, held not, maintainable as remedy was available under the industrial Laws.

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4. MOTOR VEHICLES ACT: Ss. 103-A 94, & 95:- (1998) 6 SCC 599
NEW INDIA ASSURANCE CO. LTD. VS. SHEELA RANI (SMT)

The sixth respondent was the owner of a Fiat car bearing Registration No. RSM-9701. The said car was insured with the appellant-Insurance Company for the period 16-6-1976 to 5.6.1977. It appears that the sixth respondent sold the said car to the fourth respondent on 18.6.1976. This transfer was accepted on 24-6-1976 by the R.T.A., Jaipur. The said car met an accident on 10-5-1977. According to the appellant the transfer of the car by the 6th respondent to the 4th respondent was not informed to it by the sixth respondent(transferor) as required under Section 103-A of the Motor Vehicles Act and, therefore, the appellant said that they are not liable. All the Courts below held that the Insurance Company was liable to pay compensation. It is not in dispute that the fourth respondent (transferee) vide letters dated 23-6-1976 and 30-6-1976 had informed the appellant about the transfer of the car, to which there was no reply from the appellant. According to appellant Insurance Company the initimation about the transfer by the transferor was not in accordance with the prescribed form and therefore, it was not taken note by the appellant-Insurance Company.

Referring to judgments in ***Madineni Kondaiah vs. Yaseen Fatima, AIR 1986 AP 62*** and to ***Complete Insulations (P) Ltd. vs. New India Assurance Co. Ltd. (1996) 1 SCC 221*** this court has approved the ratio laid down in the decision of the Full Bench of the Andhra Pradesh High Court in Kodaiah case.

It was further held as under :-

"A careful reading of the judgment of this Court, extracted as above, will clearly show that on the transfer of the vehicle about which intimation was given though not strictly as required under Section 103-A of the Act and in the absence of refusal from the insurer, the policy already given by the Insurance

Company to the transferor will not lapse. As in the case of Complete Insulations in the present case also, the transferee had intimated to the appellant-Insurance Company about the transfer of the vehicle in his favour though not in the prescribed form and sought transfer of the insurance policy. No reply was given by the appellant and in the absence of such reply, the Certificate shall be deemed to have been transferred in favour of the transferee as per section 103-A of the Act.

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5. OUTGOING TEMPORARY APPOINTEE : CHALLENGE REGULAR APPOINTMENTS TO SAVE HIS OWN SERVICES: HE CANNOT SO CHALLENGE :
(1998) 6 SCC 619
COMMISSIONER, ASSAM STATE HOUSING VS. PURNA CHANDRA BORA

Para 4 of the judgment reads as under:

The first respondent was appointed temporarily and until appointment of Accounts Assistant was made on a regular basis. He was discharged from service on the day on which five persons were appointed after selection. It is not for the first respondent to challenge the selection on the ground that no written test was held not was it necessary in these proceedings for the High Court to look at the order-sheet of the selection. The five persons were on probation when appointed, but that did not mean that they were not appointed on regular basis. We find no merits in the case of the first respondent, as upheld by the High Court.

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6. DEPARTMENTAL ENQUIRY: SUPPLY OF DOCUMENTS:-
(1998) 6 SCC 651
STATE VS. SHATRUGHAN LAL

Respondent's grievance was that copies of documents relied on, in the chargesheet were not supplied to him. Appellant-State admitted non-supply of copies but pleaded that it was open to the respondent to inspect those documents. Rejecting this plea, it was held that if the appellant-State did not intend to give copies of documents to the respondent, it should have been indicated to the respondent in writing that he might inspect those documents. Merely saying that the respondent could have inspected the documents at any time is not enough. He has to be informed that the documents, of which copies were asked by him, may be inspected. Access to records must have been assured to him.

Para 9 of the judgment is reproduced below:-

This paragraph of the written statement contains an admission of the appellant that copies of the documents specified in the charge-sheet were not supplied to the respondent as the respondent had every right to inspect them at any time. This assertion clearly indicates that although it is admitted that the copies of the documents were not supplied to the respondent and although he had the right to inspect those documents, neither were the copies given to him

nor were the records made available to him for inspection. If the appellant did not intend to give the copies of the documents to the respondent, it should have been indicated to the respondent in writing that he may inspect those documents. Merely saying that the respondent could have inspected the documents at any time is not enough. He has to inform that the documents of which the copies were asked for by him may be inspected. The access to record must be assured to him.

Statements recorded during preliminary enquiry if charged, employee is required to submit reply to chargesheet without having copies of the statements. But he is deprived of opportunity to effective hearing. Supply of copies is also necessary where witnesses making statement are intended an examination against the employee in regular

Para 10 is reproduced:-

It has also been found that during the course of preliminary enquiry, a number of witnesses were examined against the respondent in the absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge-sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during the preliminary enquiry had not caused any prejudice to the respondent in defending himself.

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7. SECTION 53-A TRANSFER OF PROPERTY ACT READ WITH SECTION 281 INCOME TAX ACT : RULE 11 OF SCHEDULE II OF INCOME TAX ACT, 1961:-
(1998) 6 SCC 658
TAX RECOVERY OFFICER II VS. GANGADHAR

Provisions of Rule 11 of Schedule II, Income Tax Act and analogous to Rules 58,59,60,61 and 63 of Order 21 of CPC (as they stood prior to 1976 amendment) pari material provisions.

The Tax Recovery Officer cannot himself declare a transfer of property made by the assessee in favour of a third party to be void. His position is that of a creditor. Hence, if he finds such transfer to have been effect with intend to defraud the Revenue, he will have to file a suit under Rule 11(6) to have the transfer declared void under S. 281 of I.T. Act.

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8. PROMOTION: SENIORITY CUM MERIT AND MERIT CUM SENIORITY:-
(1998) 6 SCC 720
B.V. SIVAiAH VS. K. ADDANKI BABU

The principle of "merit cum seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight

only when merit and ability are approximately equal. On the other hand, as between the two principles of seniority and merit, the criterion of "seniority-cum-merit" lays greater emphasis on seniority. But an officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

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9. O. 23 R. 3 CPC:-
(1998) 6 SCC 480
RAMSREY VS. DY. DIRECTOR

The appellant Ramasrey averred before the Supreme Court the compromise was entered into between the parties by the lawyer Shri Shrivastava without any authority from the appellant and appellant did not execute any vakalatnama in favour of such Advocate. The Supreme Court directed the District Judge, Faizabad to hold an enquiry and submit a report as to whether the appellant did authorise the Advocate to enter into the compromise and whether the appellants were to be on notice of the compromise by the Advocate, Shri Shrivastava. The District Judge opined that the appellants did not authorise the Advocate to enter into a compromise on behalf of them in the Writ Petition. The District Judge further found that the appellants did not sign the compromise and did not execute vakalatnama in favour of that Shrivastava, Advocate, so as to verify the contents of the compromise. Since the High Court disposed of the Writ Petition as well as a review petition, the Supreme Court set aside the same. The Learned Counsel for appellants argued that the conduct of the respondents here the petitioners before the Supreme Court in the Writ Petition disentitled him to invoke the discretionary jurisdiction of the Court under Act. 226 and, therefore, the Writ Petition should be dismissed by the Supreme Court and the matter may not be remitted to the High Court for redisposal on merits. Though there is sufficient force in the aforesaid contention the Supreme Court thought it appropriate that the High Court to deal with the question and pass appropriate orders there on. It is further held that the High Court would give opportunity to hear to the parties concerned which was left open to the appellants to approach the Bar Council for appropriate action.

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10. SECTION 55 CONTRACT ACT, "ESSENCE OF TIME" AND SECTION 54 LIMITATION ACT:-
(1998) 6 SCC 358
BABU RAM VS. INDRA PAL SINGH

Time is the essence of the contract in a contract of re-conveyance. If a vendore, who agrees to sell his immovable property under an agreement of sale or who executes a sale deed, is given the option to repurchase the property within a particular period, then such an option must be exercised strictly within the said period. The principle stated under Section 55 of the Contract Act that in regard to contracts of sales of immovable property, time is not the essence of the contract does not apply to the contracts of reconveyance. In the present

case the plaintiff exercised his option of repurchase under the agreement within five years from the date of the sale deed stipulated in the agreement. Hence the defendant vendee was bound to reconvey the property by receiving the amount from the plaintiff as stipulated in the contract.

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11. CR. P.C. SECTION 154:-
(1998) 6 SCC 441
RAM GOPAL VS. STATE OF RAJASTHAN

Omission in FIR explained. The FIR is silent about the details of the occurrence. But the skeletal facts revealed in the FIR are consistent with the detailed narration of the eyewitnesses in the evidence. The Lower Courts have rightly pointed out that the non-mention of the details of the occurrence in the FIR is sufficient to jettison the vital documents. Therefore, in the circumstances the non-mention of the details of the occurrence was inconsequential.

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12. CRIMINAL TRIAL : APPRECIATION OF EVIDENCE :-
(1998) 6 SCC 441
RAM GOPAL VS. STATE OF RAJASTHAN

Para 6 of the judgment is reproduced:-

The main argument is that all the eyewitnesses are interested persons being the kith and kin of the deceased. It is true that the prosecution could not examine any independent witness for proving the occurrence, but the situation and time was such that no independent witness could be expected to be present. The venue of the incident was inside the dwelling house of the deceased and the time of the incident was near midnight. In such a situation, the inmates of the house would be the most natural witnesses to such an occurence. Hence they are the most natural witnesses in such circumstance. There is not question of discarding such evidence on the mere premise that they are related to the deceased.

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13. CR.P.C. Ss. 195(1)(b)(I) AND 340 :-
(1998) 6 SCC 352
ARVINDER SINGH VS. STATE OF PUNJAB

Offences under Ss. 193, 194, 211 and 218 IPC committed in, or in relation to, any proceedings in a court. Complaint by court concerned after holding a preliminary enquiry under S. 340 necessary. The Supreme Court cannot direct the CBI to file challan for said offences in the court concerned and direct that court to try those offences. Direction given by the Supreme Court in Punjab and Haryana High Court Bar Association case does not run counter to the provisions of Ss. 195 and 140 as interpreted in Raj Singh case. On facts CBI misunderstood the directions in Punjab and Haryana High Court Bar Association case and instead of filing a challan for offences of abduction and murder filed it for offences under 193, 194, 211 and 218 IPC. Order of taking cognizance of offences under Ss. 193, 194, 211 and 218 IPC quashed and the Court

directed to make a complaint to a Magistrate having jurisdiction in respect of those offences. However, enquiry under S. 340 having already been held by the Supreme Court, which it was competent to undertake under Section 340 (2) process issued by the Designated Court against the accused persons need not be set aside. ***State of Punjab vs. Raj Singh, (1998) 2 SCC 391, Punjab and Haryana High Court Bar Association vs. State of Punjab, (1996) 4 SCC 742,*** explained and harmonised.

It is requested to go through ***State of Orissa vs. Sharat Chandra Sahu, AIR 1997 SC 1*** in which it was held as under :-

Cr.P.C. (2 of 1974), Ss. 155 (4), 198 (1), proviso cl. (c). Quashing of complaint in respect of non-cognizable offence. Complaint comprising of two offences, one cognizable and another non-cognizable and relating to offence concerning marriage. Quashing of complaint on ground of non-filing of complaint by aggrieved party. Not proper. Complaint comprising of cognizable and non-cognizable offences. Under S. 155, Cl. (4), police can, in case of complaint comprising of cognizable and non-cognizable offences, investigate non-cognizable offence also as cognizable offence irrespective of the fact as to who filed it.

In ***State of Punjab vs. Raj Singh and others, (1998) 2 SCC 391*** the Supreme Court in paragraph 2 held as under:-

"We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195 (1)(b)(ii) Cr.C.P. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190(1) Cr.P.C.; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C.. It is of course true that upon the charge-sheet (Challan), if any, filed on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo of Section 195 (1)(b) Cr. P.C., but nothing therein deters the court from filing a complaint for the offence on the basis of FIR (filed by aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 Cr.P.C. The judgment of this Court in ***Gopalkrishna Menon v. D. Raja Reddy (1983) 4 SCC 240: 1983 SCC (Cri) 822 : AIR 1983 SC 1053*** on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the Court could not take cognizance on such a complaint in view of Section 195 Cr.P.C."

Judicial Officers are further requested to go through the ruling of ***Sachidanand vs. State of Bihar, (1998) 2 SCC 493*** the in which it was held that bar under Section 195 (1)(b)(ii) of taking cognizance of offence if offence described under Section 463 or punishment uinder Section 471, 475 and 476 IPC committed in respect of a document produced or given in evidence in a proceeding in a court. The bar is not applicable whether such offence was committed before document was produced in a Court.

Important portions from the ruling are reproduced here :-

B. Interpretation of Statutes - Strict Construction-Provision curbing general jurisdiction of court should normally be strictly construed

C. Interpretations of Statutes - Construction capable of causing mischievous consequences should be avoided

A complaint was filed by the second respondent in the Court of Judicial Magistrate alleging offences, inter alia, under Section 468, 469 and 471 of the Indian Penal Code on the facts that the appellants had forged a document (certified copy of Jamabandi- Rent Roll) and produced it in the Court of the Executive Magistrate which was then dealing with proceedings under Section 145 of the Code. The Chief Judicial Magistrate forwarded the complaint to the police as provided in Section 156(3) of the Code. Police registered an FIR on the basis of the said complaint and after investigation laid a charge-sheet against appellants for those offences. The Chief Judicial Magistrate took cognizance of those offences and issued process to the accused. The appellants then moved the Patna High Court under Section 482 of the Code for quashing the prosecution on the main ground that the Magistrate could not have taken cognizance of the said offences in view of the contained in Section 195(1)(b)(ii) of the Code. Before the High Court the appellant cited the decision of the Supreme Court in ***Gopalakrishna Menon v. V.D. Raja Reddy, (1983) 4 SCC 240.*** But the High Court relying on the Supreme Court's decision in ***Patel Laljibhai Samabhai v. State of Gujarat,*** (1971) 2 SCC 376 dismissed the petition of the appellant. Dismissing the present appeal

Held:

Section 195(1)(b)(ii) Cr.P.C. reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. It is undisputed that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. Again, if forgery was committed with document which has not been produced in a court then the prosecution would lie in the instance of any person. A question arises whether in the latter situation production of such document in Court will make any difference. Now, even if the clause is capable of two interpretations the narrower interpretation has to be chosen. Provision curbing the general jurisdiction of the court must normally receive strict

interpretation unless the statute or the context requires otherwise.

Abdul Waheed Khan v. Bhawani, AIR 1966 SC 1718 : (1966) 3 SCR 617, relied on

That apart it is difficult to interpret Section 195(1)(b)(ii) as containing a bar against initiation of prosecution proceedings merely because the document concerned was produced in a court albeit the act of forgery was perpetrated prior to its production in the Court. Any such construction is likely to ensue unsavoury consequences. It is a settled proposition that if the language of a legislation is capable of more than one interpertation, the one which is capable of causing mischievous consequences should be averted.

Gill v. Donald Humberstone & Co.Ltd., (1963) 1 WLR 929 : (1963) 3 All ER 1803, relied on.

As Section 340(1) of the Code has an interlink with Section 195(1)(b) it is necessary to refer to that sub-section in the present context. No complaint can be made by a court regarding any offence falling within the ambit of Section 195(1)(b) of the Code without first adopting the procedural requirement of Section 340(1). The scope of the preliminary enquiry envisaged in Section 340(1) is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that Court. So the offences envisaged in Section 195(1)(b) must involve acts which would have affected the administration of justice. The offence should have been committed during the time when the document was in custodia legis.

It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records. It must therefore be held that the bar contained in Section 195 (1)(b)(ii) of the Code is not applicable to a case where a forgery of the document was committed before the document was produced in court.

Patel Laljibhai Somabhai v. State of Gujarat, (1971) 2 SCC 376 : 1971 SCC (Cri) 548 : AIR 1971 SC 1935 affirmed

Gopalkrishna Menon v. D. Raja Reddy. (1983) 4 SCC 240 : 1983 SCC (Cri) 822 ,overruled

Mahadev Bapuji Mahajan v. State of Maharashtra, 1994 Supp (3) SCC 748 : 1995 SCC (Cri) 198 : AIR 1994 SC 1549 : ***Raghunath v. State of U.P.*** (1973) 1 SCC 564 : 1973 SCC (Cri) 448 : ***Mohan Lal v. State of Rajasthan,*** (1974) 3 SCC 628 : 1974 SCC (Cri) 118: ***Legal Remembrancer of Govt. of W.B. v. Haridas Mundra.*** (1976) 1 SCC 555 : 1976 SCC (Cri) 67 : (1976) 2 SCR 933, relied on

Harbans Singh v. State of Punjab. AIR 1987 P&H 19 : 1988 Cri LJ 1834: ***T.Govindaraju v. State of Karnatka,*** 1995 Cri LJ 1491 (Kant): ***Alka Bhagwant Jadhav V. State of Maharashtra,*** ILR 1986 Bom64, approved

S.L. Goswami (Dr.) v. High Court of M.P. (1979) 1 SCC 373 : 1979 SCC (Cri) 311,referred to

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14. PREVENTION OF CRUELTY TO ANIMALS ACT, 1960; Ss. 35 AND 29(3) & (4):-
(1998) 6 SCC 520
MANAGER, PINJRAPOLE VS. CHAKRAM

In view of the provisions of Sections 35 of Prevention of Cruelty to Animals Act, 1960 and Section 451 Cr.P.C., it has to be held that unless the owner of the animal in respect of which he is facing prosecution, is deprived of the custody (which can be done only on his conviction under the Act for the second time), no bar can be inferred against him to claim interim custody of the animal.

Section 35(2) vests in the Magistrate the discretion to give interim custody of the animal to a pinjrapole. It does not say that the Magistrate shall send the animals to a pinjrapole. The expression "shall be sent" occurring in Section 35 (2) is a part of the direction to be given by the Magistrate if in his discretion he decides to give interim custody to a pinjrapole. It follows that under section 35 (2), the Magistrate has discretion to hand over interim custody of the animal to a pinjarapole, but he is not bound to hand over custody of the animal to a pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, the pinjrapole has no preferential right.

In deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the pinjrapole, the following factors will be relevant :

(1) the nature and gravity of the offence alleged against the owner.
(2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier;
(3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution;
(4) the condition in which the animal was found at the time of inspection and seizure;
(5) the possibility of the animal being again subjected to cruelty;
(6) whether the pinjrapole is functioning as an independent organisation or under the scheme of the Board is answerable to the Board; and
(7) whether the pinjrapole has a good record of taking care of the animals given under its custody.

In the instant case, although the pinjrapole is prepared to keep the animals in custody without charging any money for their maintenance that cannot be a correct criterion for giving custody of the animals to the pinjrapole particularly when the Court has to decide the competing claims of the owner and the pinjrapole for their custody.

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15. SECTION 32 EVIDENCE ACT :-
(1998) 6 SCC 463
VAJRALA PARIPURNACHARY VS. STATE

Dying declaration was recorded by the Judicial Magistrate. There was a discrepancy regarding exact place of murder. Value of such dying delcaration to be estimated from the preceding utterances of the deceased. Oral dying declaration made by the deceased to her own brother soon after the incident that it was the appellant, her paramour, who set fire to her. Same version told to her father and sister. At the police station also she stated the same thing which was recorded by the police and got signed by her. She repeated the same version to the doctor in the hospital. It was held under the circumstances that the trial court erred in relying the sturdy corroborating declaration given by the deceased to the Judicial Magistrate and also in rejecting other dying declarations. Discrepancy regarding exact place of murder in the dying declaration made to the Judicial Magistrate did not affect credibility of her dying declaration.

Para 10 of the judgment the Supreme Court held as under:-

"One of the main reasons to side-step Ext P-12 is that the deceased told the Magistrate that the incident had happened outside the house". We do not think much can be attached to it as the word "house" used by her need not necessarily be interpreted as the entire building. It could be an interior area of the building or it could be the effect of selecting the equivalent English word for "house" used in her native dialect. Even if it is so does not matter and on that ground the identity of the assailant is not blurred. The exact spot where she was ablaze, whether just outside the building or inside, does not affect the veracity of her dying declaration.

3. SECTION 45 EVIDENCE ACT AND APPRECIATION OF OCULAR VIS-A-VIS MEDICAL EVIDENCE :-
(1998) 6 SCC 439
DYA SINGH VS. STATE OF BIHAR

Statement of eyewitnesses that deceased was hit on his back by the shot fired by the appellant. Evidence of doctor who performed the post-mortem examination that entry wound was on the chest and exit wound was on the back. Evidence of eyewitnesses supported by the evidence of doctor who issued injury certificate soon after examining the injured. The circumstances indicated that the doctor who performed the post-mortem examination was helping the doctor who was compounder in government hospital. Held, in the circumstance there was no inconsistency between ocular evidence and medical evidence.

Para 3 of the judgment is reproduced:-

"This aspect was considered by the trial court and also by the Court and they have rightly rejected the contention. The doctor, who performed the post-mortem examination, has admitted that he had prepared the post-mortem report subsequently in his office on the basis of notes which he had prepared

earlier and which were destroyed thereafter. He also admitted that the appellant was working as a compounder in a government hospital. That explains the reason why there is an inconsistency in the evidence of Dr. Kalwar and of Dr. Singh, who first examined deceased Mahinder Singh PW 6, Dr. Singh, not only in his evidence but also in the injury certificate which he had issued soon after examining Mahinder Singh has described the wound on the back as an entry wound and the wound on the chest as the exit wound. Nothing was elicited in his cross-examination which could create a doubt regarding the correctness of his evidence. An attempt by the doctor who had performed post-mortem examination to help the appellant is quite evident. This cannot be regarded as a case in which because of inconsistency between the ocular evidence and the medical evidence, the evidence of eyewitnesses should have been rejected.

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17. BIAS : DISTINGUISHED FROM PRE-CONCEPTION:-
(1998) 5 SCC 513
STATE OF W.B. VS. SHIVANAND PATHAK

Some parts of the judgment are reproduced here for the convenience of the Judicial Officers to understand the law behind it :-

All judicial functionaries have necessarily to have an unflinching character to decide a case with an unbiased mind. Judicial proceedings are held in open court to ensure transparency. One of the requirements of natural justice is that the hearing should be done by a judge with an unbiased mind. Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner , so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.

Bias has many forms. It may be pecuniary bias, personal bias, bias as to subject-matter in dispute, or policy bias etc. Judges unfortunately, are not infalliable. As human beings, they can commit mistakes even in the best of their judgments reflective of their hard labour, impartial things and objective assessment of the problem put before them. In the matter of interpretation of statutory provisions or while assessing the evidence in a particular case or deciding questions of law or facts, mistakes may be committed bonafide which are corrected at the appellate stage. This explains the philosophy behind the hierarchy of courts.

If a judgment is overruled by the higher court, the judicial discipline requires that the judge whose judgment is overruled must submit to that judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. Even if it was a decision on a pure question of law which came to be overruled. It cannot be reiterated in the same proceedings at the subsequent stage by reason of the fact that the judgment of the higher court which has overruled that judgment not only binds the parties to the proceedings but also the judge who had earlier rendered that

decision. That Judge may have his occasion to reiterate his dogmatic views on a particular question of common law or constitutional law in some other case but not in the same case. If it is done, it would be exhibitive of his bias in his own favour to satisfy his egoistic judicial obstinancy.

As pointed out earlier, an essential requirement of judicial adjudication is that the judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is predisposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a judge. But Frank, J. of the United States in Linahan In re, 138 F 2d 650 says:

"If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions---

Much harm is done by the myth that, merely by ..... taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine."

(See also Girffith and Street, Principles of Administrative Law (1973 Edn.), p. 155; Judicial Review of Administrative Action by de Smith (1980 Edn.), p. 272; II Administrative Law Treatise by Davis (1958 Edn.) p. 130).

These remarks imply a distinction between prejudging of facts specifically relating to a party, as against preconceptions or predispositions about general questions of law, policy or discretion. The implication is that though in the former case, a judge would disqualify himself, in the latter case, he may not. But this question does not arise here and is left as it is.

This Court has already, innumerable times, beginning with its classic decision in ***A.K. Kraipak vs. Union of India, (1969) 2 SCC 262 : AIR 1970 SC 150*** laid down the need of "fair play" or "fair hearing" in quasi-judicial and administrative matters. The hearing has to be by a person sitting with an unbiased mind. To the same effect is the decision in ***S.P. Kapoor (Dr.) vs. State of H.P., (1981) 4 SCC 716 : 1982 SCC (L & S) 14; AIR 1981 SC 2181.*** In an earlier decision in ***Mineral Development Ltd. vs. State of Bihar, AIR 1960 SC 468 : (1960) 2 MPLJ (SC) 16*** it was held that the Revenue Minister, who had cancelled the petitioner's licence or the lease of certain land, could not have taken part in the proceedings for cancellation of licence as there was political rivalry between the petitioner and the Minister, who had also filed a criminal case against the petitioner. This principle has also been applied in cases under labour laws or service laws, except where the cases were covered by the doctrine of necessity. In ***Financial Commr. (Taxation), Punjab v. Harbhanjan Singh, (1996) 9 SCC 281*** The Settlement Commissioner was held to be not competent to sit over his own earlier order passed as Settlement Officer under the Displaced Persons (Compensation & Rehabilitation) Act, 1954. The maxim nemo debet esse judex in propria sua cause (No one can be judge in one's own cause) was invoked in ***Gurdip Singh vs. State of Punjab, (1997) 10 SCC 641: 1997 SCC (L&S) 1742.***

The above maxim as also the other principle based on the most frequently quoted dictum of Lord Hewart, C.J. in **R. v. Sussex JJ., ex p Mc Carthy, (1924) 1 KB 256 : 1923 All ER Rep 233** KB at page 259, that

> "it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

costitute the well-recognised rule against bias.

Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the courts, for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias", de Smith in judicial Review of Administrative Action, 1980 Edn., pp. 262, 264, has explained that "reasonable suspicion" test looks mainly to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities.

In ***Metropolitan Properties Co. v. Lannon, (1968) 1 WLR 815: (1968) 1 All ER 354*** it was observed "whether there was a real likelihood of bias or not has to be ascertained with reference to right-minded persons; whether they would consider that there was a real likelihood of bias". Almost the same test has also been applied here in an old decision, namely, in ***Manak Lal v. Dr. Prem Chand Singhvi, AIR 1957 SC 425 : 1957 SCR 575.*** In that case, although the Court found that the Chairman of the Bar Council Tribunal appointed by the Chief Justice of Rajasthan High Court to enquire into the misconduct of Manak Lal, an Advocate on the complaint of one Prem Chand was not biased towards him, it was held that he should not have presided over the proceedings to give effect to the salutary principle that justice should not only be done, it should also be seen to be done in view of the fact that the Chairman, who undoubtedly was a Senior Advocate and an ex-Advocate General, had at one time, represented Prem Chand in some case. These principles have had their evolution in the field of administrative law but the courts performing judicial functions only cannot be excepted from the rule of bias as the Presiding Officers of the Court have to hear and decide contentious issues with an unbiased mind. The maxim Remo debet esse judex in propria sua causa and the principle "justice should not only be done but should manifestly be seen to be done" can be legitimately invoked in their cases.

Applying these principles in the instant case, it will be seen that although the judgment passed by Mr Justice Ajit Kumar Sengupta in the first writ petition in which he had given a direction that the respondents shall be promoted with effect from 13-3-1980 was set aside, he (Mr Justice Ajit Kumar Sengupta), in the subsequent writ petition between the same parties, gave a declaration that the respondents shall be treated to have been promoted with effect from 13-3-1980. Significantly, such a declaration was not prayed for and what was prayed in the subsequent writ petition was a direction to the State Government to pay arrears of salary of the higher post with effect from 13-3-1980. To put it differently, in the first writ petition, Mr Justice Ajit Kumar Sengupta commanded:

"Promote the respondents with effect from 13-3-1980;" in the second w petition, he directed: "Treat the respondents as promoted with effect from 1 3-1980." There is hardly any difference between the two judgments. In fact, th second writ petition constitutes a crude attempt to revive the directions passe by Mr Justice Ajit Kumar Sengupta in the first judgment and, curiously, M Justice Ajit Kumar Sengupta, sitting in the Division Bench, wrote a second tim a judgment which was already overruled. He garnished the judgment b innocuously providing that arrears would not be payable to the respondents nc will the respondents affect the seniority of others. But the garniture cannc conceal the deceptive innocence as it is obvious, on a judicial scrutiny, that th paramount purpose was to rewrite the overruled judgment.

NOTE: please see bias under the head Art 226 (4) certiorari in shorte constitution of India, 12th Edition (1996) by D.R. Basu from page No. 66 onwards and also see page 1049 of the same book.

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18. SECTIONS 125 (1) AND 127 CR.P.C.:-
1998 (2) V.B. 182
DEO KUMAR JAIN VS. SMT. KAMLA BAI

The wife divorced by mutual consent is entitled to have maintenanc allowances from her husband. ***Vanamala (Smt.) v. H.M. Ranganatha Bhatta*** (1995) 5 SCC 299 and ***Gurmit Kaur vs. Surjit Singh alias Jeet Singh, (1996) 1 SCC 39*** followed. Execution of the order of maintenance should be speedy one. FUTURE SALARY OF THE HUSBAND MAY BE ATTACHED. SOCIAL PURPOSE SOUGHT TO BE ACHIEVED CANNOT BE NULLIFIED. ***Vimal (K) v. Veeraswamy (K), (1991) 2 SCC 375*** followed and case of **1983 JLJ Short Note 8** distinguished.

Paras 9 to 12 of the judgment are reproduced here :-

9. The Apex Court, while out-lining the object and purpose of section 125 Cr.P.C. in the case of ***Vimla (k) v. Veeraswamy (K), reported in (1991) 2 SCC 375*** observed in para 3--

   "3. Section 125 of the code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the desarted wife....." (Emphasis supplied)

10. "Speedy remedy" would certainly include within its ambit speedy execution of the order of the grant of maintenance. Otherwise, it would be nothing but a mockery of the law, if in a given case a wife gets an order in order of grant of maintenance in her favour within months, but does not get the amount of maintenance for years together.

11. As in the present case, the petitioner, who was regularly paying maintenance amount for about 8 years has stopped making payment of the amount of maintenance, deliberately on his own, no useful purpose would have been served by asking the hapless divorce wife to run from piller to post for the recovery of maintenance amount from her husband. Therefore, in the

peculiar facts and circumstances of the present case, this Court is of the opinion that the impugned order does not suffer from any such illegality so as to warrant interference by this Court. It is rather in the interest of justice and fulfils the object and purpose of section 125, of the Cr.P.C. as stressed by the Apex Court in the above quoted dictum.

12. The petitioner is reported to be in regular employment. He was and is getting his salary regularly. He has made default, in making the payment of amount of maintenance, deliberately. The petitioner, being guilty of wilful disobedience of the order of the Court, does not deserve any sympathy from the Court. Therefore, in the opinion of this Court, the short noted decision reported in 1983 JLJ SN 8, is not of much help to the petitioner.

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19. L.P.A. NO. 87 OF 1997 : ADVERSE REMARKS :-
1998 (2) V.B. 159 (D.B.)
A.K. BHARADWAJ VS. NATIONAL TEXTILE CORPORATION

Remarks in service book whether they are adverse or not depends upon its tone and its tenor and its probable fall out, if it is harmful, results in some injury and was capable of stigmatising it is "adverse". "Adverse" means contrary, hostile, hurtful, injurious, acting in contrary direction and opposing. Adverse remark in service book affecting his service interests and having a deleterious impact and his career and prejudices him some way. It would surely be adverse and need to be communicated. Remarks of "not fit for promotion" recorded in confidential roll is an adverse remark and should be communicated. **1983 (1) SLR 139 distinguished.**

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20. SPECIFIC RELIEF ACT : SECTIONS 16 (C) AND 22 : TIME ESSENCE OF AGREEMENT :-
1998 (2) V.B. 134
CHHABILAL VS. GANESH PRASAD

Plaintiff not taking any step within the time. Readiness and willingness to perform his part of agreement not proved. Suit rightly dismissed. Earnest money should be refunded. The appeal was dismissed.

Paragraphs 8 and 9 of the judgment are reproduced:-

"We have gone through the record and perused the statements of witnesses. We are satisfied that the view taken by the learned Single Judge does not appear to be erroneous so as to be reversed. The statements of witnesses are not consistent and it is also a fact that a sum of Rs. 3,000/- which was required to be paid on the date of application for seeking permission was also not paid. Secondly, time was essence of the contract and if the plaintiff was really deligent about execution of the agreement, then he could have insisted on the plaintiff within a month from 3-6-1981 or he may have given a notice before expiry of one month of his willingness to purchase the property. But it appears that he gave notice on

15-10-1981 and before that defendant No. 2 for purchase of the propert in September 1981. It was only when the plaintiff came to know about th so called alienation to defendant No. 2 that he woke up to give notice o 15-10-1981 by which time, it was too late. Therefore, looking to th circumstances of the case, we are of the opinion that the view taken by th learned Single Judge appears to well justified and does not warrar inference.

Now the question is with regard to refund of the earnest money c Rs. 3,000/- paid by the plaintiff-appellant to defendant No. 1. Since th property has been purchased by defendant No. 2 and Shri Patel, Counsel fo defendant No. 2 has volunteered that the defendant No. 2 will make th payment of Rs. 3,000/- to the plaintiff, that is a good gesture. We hope tha defendant No. 2 who has made a solemn commitment before us, will abide b it within a month from today."

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21. SECTION 60 EVIDENCE ACT AND SECTION 302/149, 304 Pt II REAI WITH SECTION 149 AND SECTION 100 I.P.C. :-
1998 (2) V.B. 137
VISHER VS. STATE

Eye witnesses injured in same incident are reliable. Accused persons i possession of land and they cultivated and sown the crops. Complainant part forcibily cut the crops. Lathis used by both parties. One of the complainan party dying. It was held that right of private defence exceeded and therefor offence falls under S. 304 Pt. II read with Section 149.

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22. SECTIONS 304/34, I.P.C. : MURDER :-
1998 (2) V.B. 152
PHOOL SINGH VS. STATE

Eye witnesses after the incident immediately disclosing names of th accused to the other witnesses. Report was also timely lodged showing th names of the accused persons. Enimity was aslo proved. Therefore offenc under Section 302 I.P.C. has made out.

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23. SECTION 154 CR.P.C. SECTION 60 EVIDENCE ACT AND SECTION 302, 304, Pt. II I.P.C. :-
1998 (2) V.B. 170
KESHAR SINGH VS. STATE OF M.P.

Names of the eye witnesses not mentioned in FIR. Their evidenc otherwise believable. Their evidence cannot be disbelieved if it is consisten so far its core is concerned. A school going boy his presence on spot canno be disbelieved on the basis of marking his presence in school register. Som students run out after their presence is marked. Experience tells that som persons had come forward for giving evidence in respect of incident. Singl

)low of axe inflicted on head out of heat blow not repeated nor part like neck :hoosen. Case falls under Section 304 Pt. II and under Section 302 I.P.C.

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4. O. 39 Rr. 1 AND 2 CPC AND COURT FEES :-
1998 (2) V.B. 177
M.P. TOURISM DOVELOPMENT CORPORATION LTD. V. M.P.E.B.

Injuction sought against recovery of electricity charges. Question of dequate court fees raised by the defendant. Such question has to be decided rst befor deciding application for interim injunction. Smt. Comolata Dutta vs. hwar Industries Ltd., AIR 1966 MP 169 and Mangilal Jain vs. M.P.E abalpur 1977 Vol II MPWN Note 480 explained.

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5. PREVENTION OF CORRUPTION ACT: SECTION 19, SANCTION MODE OF PROOF:-
1998 (2) MPLJ 629
LOK NATH VS. STATE

Section 91 Cr.P.C. and section 19 prevention of corruption Act

Application under Section 91 of the Code of Criminal Procedure fo oduction of report submitted by Chief Vigilance Officer in the matter of grant sanction sought to be produced by the accused. Prayer for calling for the tesheet and other documents rejected as not justified.

Application under Section 91 of the Code held not tenable.

Grant of sanction under Section 19 (1) of the Prevention of Corruption Act, 88 is a sacrosanct act and is intended to provide a safeguard to the Public rvant against frivolous and vexatious litigation and an order or sanction nnot be passed in a mechanical manner. Satisfaction of the sanctioning thority is essential to validate an order granting sanction. The burden is on prosecution and in order to show that the sanction has been accorded in a id manner as per law, it must prove that the Competent Authority had isfied itself that case for sanction has actually been made out. ***Major mnath vs. Union of India' 197[illegible] Cr.L.J. 1422, Mohd. Iqbal Ahm[illegible] vs. ite of Andhra Pradesh' AIR 1975 [illegible]077, D. Venkatesan vs. State [illegible]997 L.J. 1287' Ayyasamy and another vs. State, 1996 Cr.L.J. 119 and [illegible] jendran vs. State, 1996 (2) Crimes*** relied

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HINDU MARRIAGE ACT: APPLICATION OF THE ACT TO GONDS AND QUANTUM OF PROOF FOR MARRIAGE AND CUSTOM:-
1998 (2) MPLJ 584
KUMARI BAI VS. ANANDRAM

Provisions of Hindu Marriage Act have no application to Gonds. They are erned by the local customs with regard to marriages. Among them it is now l accepted that ceremony of marriage need not be performed as formally as hastrik Hindu Law. They have their customary forms of marriages. At least

in second marriages which are common among them, they follow the custo of offering Churi to the bride by bridegroom. There is also accepted custom leaving the wife and this results in divorce when there is an expresse agreement to divorce. The Gonds are governed by their personal custon which vary on different aspects. Divorces are rather common and secon marriage of the wife is one of the indicators of end of marriage with previo husband. It is also common that a person keeps more than one wife amon these Gonds.

The second marriage by Churi in the life time of first wife will not be a voi marriage. It will still be a marriage.

Cr.P.C.: Section 125:-

The revisional Court held that the petitioner's wife was not legally wedde wife and that she had not been divorced by her first husband. It was held the parties being Gonds governed by local custom, conduct of respondent i marrying petitioner in Churi form suggested that her relationship with earli husband had come to an end. There was sufficient evidence for purpose c section 125, Criminal Procedure Code to hold that there was a customar marriage between petitioner and Respondent and two children were born fro that marriage when marriage between them subsisted.

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27. HIGH COURT: NON COMPOUNDABLE OFFENCE, JURISDICTION O THE HIGH COURT TO COMPOUND THE SAME:-
1998 (2) MPLJ 530
RAJ KUMAR VS. STATE

Offence under section 498-A being non-compoundable under section 32 of the Code of Criminal Procedure, the High Court in exercise of its inheren jurisdiction cannot grant permission for compounding same. Every legal powe has its own limitations. There is nothing like unlimited power. If an offence i non-compoundable and does not fall in the purview of section 320 of the Code the High Court in exercise of its inherent jurisdiction cannot grant permissio for compounding. ***Maheshchandra vs. State of Rajasthan, AIR 1988 S 2111, Annamdevula Srinivasa Rao and another etc. vs. State of Andhr Pradesh and etc., 1995 Cr.L.J. 3964 and State of M.P. Saud, Crimina Appeal No. 15/91*** were relied on.

The High Court in exercise of its inherent jurisdiction cannot grant permissio for compounding (an offence which is non-compoundable).

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28. MOTOR VEHICLES ACT: BREACH OF CONDITIONS OF POLICY: SECTION (2)(a)(i)(c):-
1998 (2) M.P.L.J. 551
SHIV PRASAD VS. SMT. SHYAMBAI

In a goods vehicle 19 persons were taken as passengers. Two passenger died and other injured in the accident. Few passengers had carried their own

oods along with them. Bare to carry passenger in insurance policy. Insurance ompany not liable for the claim. Insurance Company rightly exonerated of ability to indemnify the owner.

From the pleadings and evidence, the clear inference is that the vehicle was being used for carrying passengers. They were carrying their own goods which were not to be carried in the goods vehicle. The main purpose was not carrying of the goods, but was carrying of the passengers. It is only when the goods are carried that the hirer of the vehicle may travel in the goods vehicle or his employee may so travel and be still covered by risk under the policy. When the main purpose is carrying the passengers, the mere fact that the passenger carries some goods, belongings as some personal effects, it does not mean that he has hired the vehicle for carrying the goods. He would not be covered within them ambit of covered risk. This had been prohibited. It is not a case where the owner of the truck had done every thing in his power to abide by the terms of the policy. IT APPEARS THAT HE WAS EARNING PROFITS FROM THE BREACH OF THE TERMS. IT IS NOT A CASE WHERE IT CAN BE SAID THAT HE MUST BE DEEMED TO HAVE DIRECTED HIS DRIVER NOT TO TAKE ANY PASSENGERS. SO THERE WAS BREACH OF TERMS OF POLICY COMMITTED BY THE INSURER IN THIS CASE. The breach is within the scope of being fundamental as communicated by the Supreme Court after reading down the meaning of breach of such term of insurance, as examined in the case of ***Skandia Insurance Company Ltd. vs. Kokila Ben Chandrabadan, 1987 MPLJ (SC) 347 = AIR 1987 SC 1184***. So the liability of the insurance Company has rightly been absolved.

29. SECTION 22, SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985

1998 (2) MPLJ 535

KESHARI STEELS VS. M.P. ELECTRICITY BOARD

Petitioners, Sick Industrial Units by filing petition under Article 226 of the Constitution prayed for quashing of letter dated 24.2.1997 issued by Senior Accounts Officer, M.P. Electricity Board to the State Bank of Indore, Dewas for encashment of five Bank Guarantees mentioned in the said letter, for non-payment of arrears of electricity charges for energy consumed by petitioner. According to petitioners, the Board for Industrial and Financial Reconstruction (BIFR) was seized of the matter and no recovery proceedings can be initiated against the petitioners in view of the protection available to them under section 22 of the Sick Industrial Companies (Special Provisions) Act.

The High Court held that Section 22 of the Act clearly stipulates that recovery proceedings, or, for enforcement of any security against the said Industrial Company, shall not be maintainable in respect of any loans, or advance granted to the Industrial Company. There is no order passed as contemplated under sub-section (3) of section 22 of the Act, in favour of petitioners by BIFR, restraining recovery of the amounts due and outstanding

against the petitioners, towards electrical charges. Arrears of electricity due would neither be loan, nor an advance, granted to the Industrial Company Electrical charges are payable by an undertaking as per the Agreement entered into between the parties. By no stretch of imagination, it will fall in the category of either loan or advance, granted to the said undertaking under the umbrella of section 22 of the Act. Petitioners have no right to claim, that even, such an amount cannot be recovered on the ground, that petitioners' units are sick Industrial units. Consequently, no such relief with regard to restraining the Respondents/Board from encashment of the Bank Guarantees can be granted Invocation of Bank Guarantee cannot amount to initiation, or, continuation of legal proceedings, such as execution, distress or like against the properties of the company. ***Indian Maize and Chemicals Ltd. vs. State of U.P. & Ors. (1997) Vol. 89 Company Cases 420 and U.P. State Sugar Corporation vs M/s Sumac International Ltd., AIR 1997 SC 1644*** referred.

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30. INDIAN SUCCESSION ACT, SECTION 372(1)(C) : PRESUMPTION OF MARRIAGE:-
1998 (2) MPLJ 648
MUNNI DEVI VS. ANGURI DEVI

MARRIAGE : Where the parties consistently, continuously and openly lived as husband and wife, cohabited together for a long period had five children and were regarded and recognised by friends and relatives as husband and wife, it furnishes a clear evidence of marriage raising the presumption of a marriage in law unless it is shown that the connection started is mere concubinage. The presumption in favour of a marriage cannot be rebutted in case the husband himself admits the marriage and such an admission has to be accepted as conclusive especially in the absence of any material to indicate that the admission had been obtained in a manner not recognised by law. The presumption in regard to marriage on the basis of evidence of habit and repute cannot be raised in a case where no valid marriage is possible or permissible under the law as no amount of evidence in regard to habit and repute could establish it in such a case.

SUCCESSION ACT, SECTION 372 (1)(c):-

The expression "near relatives" as used in section 372 of the Indian Succession Act, must refer to the persons who would be entitled to succeed the person who had died intestate on the principle of nearer excluding the remoter The "family" may comprise of the husband and wife and their minor children either being sons or unmarried daughters for the purpose of the law. The omission in question does not appear to be a fatal one so as to vitiate the entire proceedings especially when the publication of the notice referred to herein above ensures and secures notice of the proceedings to every person having a claim or interest in the estate left by the deceased. The requirement in question is only directory.

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31. COURT FEES: APPEAL UNDER SECTION 11, REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY ACT
1998 (2) MPLJ 658 (F.B.)
UNION OF INDIA VS. SMT. KANTI SHARMA

Court fee in an appeal under section 11, Requisitioning and Acquisition of Immovable Property Act is payable advalorem under section 8 of the Court Fees Act. **Misc. Appeal No. 165 of 1985**, decided on 3.9.1985, ***Mukund Das Maheshwari vs. Union of India***, Overruled. ***C.G. Ghanshamdas and others vs. Collector of Madras, AIR 1987 SC 180, Indore Development Authority vs. Tarak Singh and other, AIR 1995 SC 1828*** followed. ***Union of India through the Defence State Officer, M.P. Circle, Jabalpur Cantt vs. University of Saugor and others, 1986 MPLJ 679 State of M.P. vs. Goverdhandas, 1993 MPLJ 536 = AIR 1993 MP 70.***

NOTE: Judicial Officers are requested to go through the full text of the judgment.

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32. SECTION 397 CR.P.C. AND SECTIONS 494,109 AND 114 I.P.C.
1998 (2) MPLJ 674
DEVENDRA VERMA VS. SMT. NIDHI SHRIVASTAVA

A complaint was filed by wife for offences punishable under sections 494, 495, 496, 498-A and 120-B of the Indian Penal Code. It was alleged by the complainant that she was married to the accused on 11.5.1993 but her relations with the accused became stained and therefore he filed an application for divorce. It was further alleged by the complainant that her husband performed his second marriage on 9.12.1996 without obtaining divorce from her. It was also alleged by her that the petitioners who were close relatives of the accused were present in the second marriage. The Magistrate was not satisfied with the sufficiency of evidence produced by the complainant and found that there was no ground for proceeding against the petitioners. The order of Magistrate was challenged in revision and the same was set aside by the Additional Sessions Judge and the complaint was ordered to be registered against them under section 494,109 and 114, Indian Penal code. In revision by the said accused challenging the order.

The High Court held that hear-say evidence adduced by the complainant could not be accepted and acted upon, even for registering the complaint and proceeding against the petitioners/accused. It was incumbent on the complainant to have placed admissible evidence if she wanted the same should be acted upon by the Magistrate. She having failed to discharge the obligation as above the complaint was rightly dismissed as against the petitioners. Therefore, no interference in exercise of powers of revision could have been made by the Additional Sessions Judge in the order of J.M.F.C. as had been done by him. Therefore the impugned order was grossly unjust and had resulted in miscarriage of justice. Order of the Trial Magistrate dismissing the complaint against the relatives restored. ***M/s Pepsi Food Ltd. vs. Special Judicial Magistrate,*** 1998 (1) MPLJ = AIR 1998 SC 128, relied. ***Chandra Deo***

vs. Prakash Chandra, AIR 1963 SC 1430 and *Durvasa vs. Chandrakala 1994* Cri.L.J. 3765 referred.

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33. PROBATE: CERTIFIED POWER TO ADDITIONAL DISTRICT JUDGES:-
1998 (2) MPLJ 679
ASHOK KUMAR VS. SMT. RAM PYARI BAI

Additional District Judge has jurisdiction to entertain application for grant of probate under section 264 of the Succession Act. Additional District Judge is District Judge within meaning of section 264 of Act.

An Additional District Judge is also a Judge of principal Civil Court of original jurisdiction and has power to entertain the probate proceedings and he will be the District Judge within the meaning of section 264 of the Indian Succession Act. Under section 8, the Court of Additional Judge can exercise power of District Judge even in the absence of general and special order. The District Judge, for the purpose of section 264, is not a **persona designata. Misc. App. No. 1439 of 1996 decided on 4.4.1997** and ***Satyaprakash and another vs. Jwalaprasad and others, 1960 MPLJ Note 121*** referred, ***Vinod Kumar Jajodia and others vs. Brij Bhushan Agrawal, 1993 MPLJ 603 = 1993 JLJ 565,*** relied.

NOTE : The Judicial Officers are requested to go through the Bitufucatuibs u/s 10 of the Civil Courts Act, 1958 published in 'JOTI JOURNAL' Vol. III Part IV (August 1997) issue at Page 35.

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34. DISCONNECTION OF TELEPHONE FOR DEFAULT OF RELATIVES : LEGALITY? SECTION 7-B TELEGRAPH ACT READ WITH TELEGRAPH RULES, R. 443:-
1998 (2) MPLJ 718
PRADEEP KUMAR VS. UNION OF INDIA

Authorities cannot disconnect the telephone connection of a subscriber on the ground that a relative of such subscriber is a defaulter. It is manifestly illegal. Mahesh Agrawal vs. Union of India and others, 1998 (1) MPLJ 643 = 1998 (1) MPJR 228 and ***Chand Dutta (Smt.) vs. Union of India and others, 1997 (2) MPLJ 523*** relied on.

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35. SECTION 34 (1) CPC AND ITS PROVISO :-
1998 (2) VIDHI BHASVAR 69
STATE BANK OF INDIA VS. CHANDRA SEKHAR

The brief facts which are necessary for disposal of this appeal are that in 1980, the plaintiff appellant had sanctioned a loan of Rs. 1,50,000/- to the defendant No.1. respondent for the purchase of the truck. The defendant No.2 had guaranteed recovery of the loan amount from the defendant No.1. The rate of interest chargeable under the terms of the relevant contract was 5½ below the State Bank advance rate with minimum of 11% per annum rising and falling

therewith calculated respectively on the daily balance of the amount due subject to further enhancement as provided in the contract. The trial Court decreed the suit of the plaintiff and awarded a decree for a sum of Rs. 1,34,871.92 p. with 6% interest from the date of institution of the suit till realisation.

The appellant State Bank filed first appeal against the judgment and decree. The submission of the learned counsel was that under the provisions of Section 34 of the Code of Civil Procedure the Bank is entitled to claim interest on contractual rates by virtue of proviso attached to sub-section 34.

In L.P.A. the High Court held as under:-

The Court should always be vigilant while awarding interest on commercial transaction and a proper message should go in the mind of litigants that their inability to pay principal sum might visit them with higher rate of interest. Therefore, it is necessary that in a commercial transaction wherever the question of awarding interest comes up for consideration, the Court should keep in view proviso attached to sub-section (1) of Section 34 of the Code and in case, the Court does not want to award the interest according to the contractual rate or in absence of a contractual rate, the lending rate by nationalised bank, a reason should be assigned. However we may observe that a higher rate of interest could be levied under the provision and the Court, in a commercial transaction wherever declines to grant higher rate of interest than 6%, shall record a reason for not doing so.

36. O. 8R. 10,CPC:
1998 (2) V.B. 96
RAM DULARI (SMT) VS. SMT. TARABAI

The applicant filed the suit for eviction against non-applicants. Non-applicants though served did not file written statement for quite some time and an application IA I, was filed by the plaintiff-applicant under section 13 (6) of the M.P. Accommodation Control Act, for striking out the defence. The Court in its order dated 26.9.1994 noted that the defendant has not filed reply to IA I nor the written statement and observed that the defendants have lost their opportunity to file written statement and found it a fit case to proceed under Order 8 Rule 10 CPC. The Court further observed that since no time is left for writing order on IA I and Judgment, hence the case was adjourned to 1.10.1994.

In the meanwhile defendant on 29.9.1994 while replying IA I and also filed written statement. The counsel for appellant challenged before the High Court that since the Court fixed the case for orders of IA I and for judgment the trial Court had no jurisdiction to entertain the reply filed by the defendant to the application No. IA I.

The High Court held that Order 8 Rule 10 applies where the case is fixed for filing written statement. In this case it was only an application under section

13 (6) of the M.P. Accommodation Control Act was filed and the case was fixed for reply of the said application, as well as for written statement. There was no application filed by the plaintiff for passing judgment under Order 8 Rule 10 CPC. In fact, the Court while adjourning the case itself has intimated that it will pass order on IA I. Regarding IA I an order could have been passed by which the application could have been rejected or could have been allowed. Therefore, it was not a case covered under Order 8 Rule 10 CPC.

It further held, referring to ***Sangram Singh vs. Election Tribunal,*** AIR 1955 SC 525 that the procedural law is designed to facilitate justice and to further its ends.

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37. REVISION BY PRIVATE PARTY AGAINST THE ACQUITTAL OF THE ACCUSED: JURISDICTION OF THE SESSIONS COURT: SECTION 397/ 401 CR.P.C.:
1998(2) V.B. 116
PREM SHANKAR VS. KAUSHAL PRASAD

Revision by private party against acquittal was challenged. No evidence left for consideration. No inadmissible evidence was considered. The case was based on appreciation of evidence. No interference is permissible. Revision under Section 397/401 of the Cr.P.C. against the order of the acquittal by a private party. Acquittal by ignoring probative value of FIR and without considering material evidence on record. Interference by the High Court is possible.

Case Law referred:-

1. ***Chinna Swamy Reddy vs. State of A.P., AIR 1962 SC 1788,***
2. ***Ayodhya Dubey vs. Ram Sunder, AIR 1961 SC 1415*** and
3. ***Bansi Lal and others vs. Laxman Singh, AIR 1986 SC 1721*** were followed.

Judicial Officers are requested to go through the judgment in whole. They are also requested to go through the following judgments also regarding the jurisdiction of the sessions court in cases of revision by private party against the acquittal of accused. ***Durga Das vs. State, 1990 (2) MPWN 158 and Shridhar vs. Prakash vati, 1990 (2) MPWN 185.***

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38. COURT FEES ACT: SECTIONS 7 (iv) (c) (d) AND SCH. II ART. 17 AND SUIT VALUATION ACT SECTION 8:-
1998 (2) V.B. 100
ADHIR KUMAR HUI VS. RAVINDRA NATH

Suit for declaration is governed by Article 17 of 2nd Schedule. Fixed court fees of Rs. 30/- is payable. Relief of injunction flowing from relief of declaration. Court fees on such relief of injunction is payable under section 7 (iv) (d) and not under S. 7 (iv) (c). ***Badrilal vs. State of M.P., 1963, JLJ 674*** and ***Motiram vs.***

Daulat and others, AIR 1939 Nagpur 50 (F.B.) relied on. Valuation of the suit for pecuniary jurisdiction and for payment of court fees would be the same. Valuation put in sale deed sought to be nullified is proper. No need to value according to market value at the time of filing the suit.

NOTE: Judicial Officers are requested to go through the whole judgment.

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39. SECTION 304 PART I AND PART II I.P.C. AND COMPENSATION UNDER SECTION 357 OF THE CR.P.C.:-
1998 (2) V.B. 119
TIRRU VS. STATE OF M.P.

Incident emerging all of a sudden. Accused catching hold neck and pressing but not till death. Offence falls under Part II of Section 304 of the I.P.C. ***State of Maharashtra vs. Rajendra, AIR 1994 SC 474*** followed and ***Baijnath vs. State of Bihar, AIR 1993 SC 2323*** distinguished. The trial Court had awarded Rs. 8,000/- as compensation to PW 1 Durgi Bai, the widow of the deceased. The order regarding payment of compensation under Section 357 of the Cr.P.C. was upheld by the High Court.

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40. HINDU SUCCESSION ACT: SECTION 8:-
1998 (2) V.B. 93
SHAITAN BAI VS. SMT. PREM BAI

Male Bhumiswami's death after enforcement of the Act. His widow and daughter would acquire Bhumiswami rights equally. Sale deed with respect to ones own share is valid.

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41. EVICTION SUIT UNDER SECTION 12(1) M.P. ACCOMMODATION CONTROL ACT:-
1998 (2) JLJ 385
JAGDISH PRASAD VS. SMT. DROPATIBAI

Eviction suit can be maintained by a co-owner-landlord. ***Sri Ram Pasricha vs. Jagannath and others, AIR 1976 SC 2335*** followed. The landlord had a large family of 27 members. Co-owner-coparcener was resided in rented accommodation.

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42. SECTIONS 146 (1) AND 145 (1) CR.P.C.:-
1998 (2) JLJ 390
KARTIK VS. JAGTU

No written statements were filed. No change since passing of preliminary order shown. No recent police report called. SDM not showing case of emergency. No order of attachment can be passed simply on application of one party.

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43. SECTIONS 154 AND 313 CR.P.C. AND SECTIONS 3 AND 11 EVIDENCE ACT:
1998 (2) JLJ 324 (S.C.)
KASHIRAM VS. STATE

Chowkidar informed the police of the incidence immediately. Police came on spot. Delay in recording F.I.R. on return is immaterial. Plea of alibi in murder case. There was no suggestion to prosecution witnesses put about alibi. Suggestion to one prosecution witness about attack on him by complainant party. Presence not denied even in the examination under Section 313 Cr.P.C. Plea was not said to be established. Plea of alibi not taken in the statement of the accused under section 313. Plea not proved.

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44. CR.P.C. SECTIONS 317 AND 313: EXAMINATION OF WITNESSES:-
1998 (2) JLJ 346
RAMESHWARI DEVI VS. STATE OF M.P.

Exemption from personal appearance was allowed by the Court. The Court should exercise the discretion carefully. It should be under the interest of justice. Accused were ladies and also aged persons. Main person was also aged. Coming from far places. No question of identification was involved. Exemption from appearance should be granted. If accused persons are exempted from personal appearance the Court may record evidence in the absence of the accused persons.

NOTE : Judicial Offices are requested to go through the provisions of Section 273 Cr.P.C. and in general from 272 to 283 of the Cr.P.C. also.

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45. MARRIAGE: CRUELTY-DEGREE:-
1998 (2) JLJ 379
AGNEL VALENTINE D'SOUZA VS. MRS. BLANCHIE AGNEL

Decree of breakage of marriage tie on ground of cruelty. Acts and omissions of erring partner should be sufficiently grave and weighty. Ordinary 'wear' and 'tear' of life not sufficient. In Christian Marriage Act 1872 under Section 60(3) and Section 9 man and woman willing to marry have to say in the presence of licensed person under section 9 in the name of Lord Jesus Christ that they take each other as a wedded Wife or husband, Wedding ring has same sanctity as "Sindhoor and Mangalsutra" to a woman in Hindus. Desertion can be inferred from previous conduct. Desertion for more than statutory period without lawful excuse is sufficient to pass a decree for judicial separation.

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46. NEGOTIABLE INSTRUMENTS ACT, SECTION 138 AND 142 (b):-
1998 (2) JLJ 321
PREM LATA VS. SURENDRA KUMAR

Cheque can be presented so many times till it becomes stale. Every subsequent presentation gives fresh cause of action for serving demand notice. Offence is continuing and subsists till amount is paid. ***Fire Works***

Industries vs. K.V. Shivrama Krishnan, 1995 Cr.L.J. 1384 (F.B.), G. Enkatappa vs. State of Karnatka, 1997 Cr.L.J. 1274 and Laloo Lal Agrawal vs. Damodar Prasad Gupta, 1997 Cr.L.J. 1545 were relied on.

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47. SECTIONS 306 AND 107 I.P.C. :-
1998 (2) JLJ 354
SURENDRA VS. STATE

Nothing has been pointed out on behalf of the respondent to show that the appellant's act of not making any endeavour to save life of the deceased is against law or the appellant was under an obligation by law to prevent such incident. Individuals act differently in same situation. It may be possible that the appellant seeing the flames got so shocked that he did not react or he might not have attempted to put off the fire apprehending danger to his life. The Court held that the act of the appellant does not come within the expression 'illegal omission' and accordingly he cannot be held guilty for abetment of the offence.

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48. SECTION 302 I.P.C. AND SECTIONS 32 AND 27 I.P.C. :-
1998 (2) JLJ 350
ARJUN SINGH VS. STATE

Three inconsistent dying declarations cannot sustain against the accused. Offence of murder not made out. Accused is entitled to the benefit of doubt. Recovery of weapon of offence not found stained with blood. The recovery is of no avail.

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49. SECTIONS 306 AND SECTIONS 498-A I.P.C. :-
1998 (2) JLJ 393
HARISH CHANDRA VS. STATE OF M.P.

Husband making every endeavour to persuade wife to live with him. No dowry demand established by cogent evidence. Wife committed suicide. Husband cannot be held responsible when there is no evidence of ill-treating, the wife.

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50. SECTION 138 NEGOTIABLE INSTRUMENTS ACT:-
1998 (2) MPWN 60
DEVENDRA SINGH VS, VARINDER SINGH

Ground of return of cheque is fully irrelevant. Signatures not talying is also excluded under the provision. Presumption under Section 138 of Act may be rebutted by the accused during the trial.

SECTIONS 4,5,79 AND 80 NEGOTIABLE INSTRUMENTS ACT:-

Promissory note as defined under Section 4 does not loose its characteristics if rate of interest is also mentioned therein. Interest in such situation can be ascertained by mere calculation. ***Goel Industries & another vs. Om Prakash Mittal, 1994 (1) Vidhi Bhasvar 104*** approved. ***Raghunath Prasad vs. Mangi***

Lal, AIR 1960 Rajasthan 20, Bal Mukund Jainarayan & another vs. Ambadas Damodhar & others, AIR 1946 Nag. 81 and Lakshminath vs. Benares Bank Ltd. & others, AIR 1929 Patna 136 relied on.

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51. PRE-EMPTION :
(1998) 8 SCC 83
A. RAZZAQUE SAJANSAHEB VS. IBRAHIM HAJI MOHAMMED

The plaintiff-respondent claiming a right of pre-emption on the ground of being "Shafi-i-jar" and "Shafi-i-sharik" filed a suit in the Court of Civil Judge, Senior Division, Sholapur being Special Civil Suit No. 376 of 1990 and prayed for a decree of pre-emption and also for a direction to the appellants to sell the suit property for the price mentioned in the sale deed executed by their sisters in his favour. The trial court on appreciation of the evidence led by the parties held that the respondent was no longer a cosharer, as in the suit filed by the sisters for partition, a decree was passed in their favour and in the execution proceedings, Suit House No. 85 went to the two sisters and the appellant became the owner of House No. 84-B. The trial court, therefore, held that the appellants did not fall in Class I of the persons who are entitled to claim pre-emption under the Mohmedan law. It further held that the appellants who were defendants in the suit have also their property adjoining House No. 85 and, therefore, they are also entitled to claim the right of pre-emption. As the respondent and the appellants belong to the same class, both are entitled to half share in the suit property. Accordingly, it partly decreed the suit. The respondent was directed to deposit Rs. 92,500 in the Court and appellants were directed to execute a sale deed for half the suit property.

Feeling aggrieved by the judgment and decree passed by the trial court, the appellants preferred an appeal to the High Court. No appeal or cross-objections were filed by the respondent. The High Court dismissed the appeal on the ground that it was without any substance. The appellants have therefore, filed this appeal challenging the judgment and order passed by the High Court.

The contention of the learned counsel for the appellants is that the only ground on which the plaintiff's suit has been decreed is that he being a "Shafi-i-jar" was entitled to claim the right of pre-emption. He submitted that this Court in ***Bhau Ram vs. Baij Nath Singh, AIR 1962 SC 1476 : 1962 Supp (3) SCR 724*** and in ***Sant Ram vs. Labh Singh, AIR 1965 SC 314; (1964) 7 SCR 756*** has held that the law of pre-emption based on vicinage is void. Unfortunately, attention of the High Court was not drawn to these two decisions of this Court, and, therefore, the High Court did not consider this aspect. As the very basis of the claim has been held to be unconstituional by this Court, the suit filed by the plaintiff ought to have been dismissed. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and dismiss the suit filed by the respondent. It will be open to the respondent to withdraw the amount deposited by him in the Trial Court. There shall be no order as to costs.

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52. RECOVERY OF ARMS : NO INDEPENDENT WITNESSES : EFFECT OF: FAILURE OF PROSECUTION : T.A.D.A SECTION 5 AND ARMS ACT SECTION 25 :-
AIR 1999 SC 49
SANS PAL SINGH VS. STATE OF DELHI

On 5.2.1991, Head Constable, Sat Pal Singh P.W. 5 and S.I., Mahipal Singh, PW-6 together with some constables were on duty to check vehicles at G.T. karnal Road near Model Town police Post. A vehicle was stopped wherefrom alighted the appellant. He swiftly walked towards Gujrawala Town Road which arose suspicion in the minds of the police officers. He was stopped and his search was conducted by the aforenamed two police officials. As a result, a country-made pistol was recovered from the right pocket of his trousers as also two live cartridges. It is on that basis that the appellant was ultimately charged before the Designated Court, convicted and sentenced, as aforesaid.

Inter alia, it has been urged by learned counsel for the appellant that it would not be safe to maintain the conviction because the recovery of illicit arms did not inspire confidence, supported as it is, by the evidence of two police officials alone, unassociated by the testimony of any independent witness. It has also been urged that witnesses of the public were available and neither were they associated nor was any explanation given at the trial as to why they were not associated. From the evidence of PW-5 Head constable, Sat Pal Singh, it is clear that the police party did not ask any public witness to be witness at the time of search of the accused. Likewise, P.W.6 Sub-Inspector, Mahipal Singh has also stated that no public witness was joined at the time of search of the accused even though a number of persons were passing through at the time when recovery was being effected. It is thus evident that public witnesses were available and could have been associated to witness the recovery. It would have been a different matter altogether had there been no public witness available or none was willing to associate. Here, as said before public witnesses were available but no explanation on these lines is forthcoming. Thus, we got to the view that it would be unsafe to maintain the conviction of the appellant for the offences charged. We therefore, order his acquittal. He is in jail. He be set at liberty forthwith.

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53. EXECUTION OF LEASE DEED : SECTION 107 T.P. ACT :-
AIR 1999 SC 37
RAJENDRA PRATAP SINGH VS. RAMESHWAR PRASAD

Execution of lease deed signing of instrument by both lessee and lessor is not essential. What is necessary is joint execution.

A lease of immovable property for term exceeding one year created a registered instrument cannot be said to be invalid merely because the said instrument was not signed by both the lessor and lessee. The third paragraph of S. 107 requires that execution of the lease through a registered instrument

shall be a joint endeavour of both lessor and lessee. But there is no stipulation that the instrument must be signed by both parties. The requirement is that when the lease is made by registered instrument, "such instrument shall be executed by both the lessor and lessee." what is underlined in it is that the creation of a lease is not a unilateral exercise of one of the parties but a bilateral endeavour of both the lessor and the lessee. An instrument is usually executed through multifarious steps of different sequences. At the first instance, the parties might deliberate upon the terms and reach an agreement. Next the terms so agreed upon would be reduced to writing. Sometimes one party alone would affix the signature on it and deliver it to the other party. Sometimes both parties would affix their signatures on the instrument. If the document is required by law to be registered, both parties can be involved in the process without perhaps obtaining the signatures of one of them. In all such instances the instrument can be said to have been executed by both parties thereto. If the instrument is signed by both parties it is presumptive of the fact that both of them have executed it, of course it is only rebuttable presumption. Similarly if an instrument is signed by only one party it does not mean that both parties have not executed it together. Whether both parties have executed the instrument will be a question of fact to be determined on evidence if such a determination is warranted from the pleadings of the particular suit. Merely because the document shows only the signature of one of the parties it is not enough to conclude that the nonsigning party has not joined in the execution of the instrument.

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54. MOTOR VEHICLES ACT SECTION 103-A:-
AIR 1999 SC 56
THE NEW INDIA ASSURANCE CO. LTD. VS. SMT. SHEELA RANI

Accident took place after transfer of motor vehicle. Intimation about transfer was given to the insurer by transferee of vehicle. Though information was not given in the prescribed formate yet certificate shall be deemed to have been transferred when no reply was given by the insurer.

Extract of para 10 from the judgment is as under:-

A careful reading of the judgment of this Court, extracted as above, will clearly show that on the transfer of the vehicle about which intimation was given though not strictly as required under Section 103-A of the Act and in the absence of refusal from the insurer the Policy already given by the Insurance Company to the transferor will not lapse. As in the case of ***Complete Insulations (p) Ltd. vs. New India Assurance Co. Ltd.*** (1996) 1 SCC 221 : (1995 AIR SCW 4520) (and Kondaih's case AIR 1986 Andh Pra 62) and in the present case also the transferee had intimated to the appellent Insurance Company about the transfer of the vehicle in his favour though not in the prescribed form and sought transfer of the Insurance Policy. No reply was given by the appellant and in the absence of such reply the Certificate shall be deemed to have been transferred in favour of the transferee as per Section 103-A of the Act.

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55. CONSUMER PROTECTION ACT SECTION 2(c) AND CONTRACT ACT SECTION 230 :-

AIR 1999 SC 80

MARINE CONTAINER SERVICES VS. GOGO GARMENTS

The order that is under appeal was passed by the National Consumer Disputes Redressal Commission. It says:

"In our opinion, Section 230 of the Contract Act in terms will apply only to suits instituted before a regular Civil Court and not to complaints filed under the Consumer Protection Act which is a special legislation intended to protect consumers in India against the exploitation of manufacturers, traders and providers of service by supply of defective goods or by deficiency in service resulting in loss to the consumer."

The National Commission took the view that in as much as respondent was pursuing the remedy available to it under the provisions of the Consumer Protection Act and had claimed that it had hired the services of the appellant and there was deficiency in rendering such services, its complaint was maintainable, for the protection given to an agent under Section 230 of the Contract Act was available only when the action arose out or in relation to the enforcement of a contract.

We are not a little surprised to read that the Contract Act does not apply to complaints filed under the Consumer Protection Act. The Contract Act applies to all, litigants before the Commission under the Consumer Protection Act included. Whether in proceedings before the Commission or otherwise, an agent is entitled to invoke the provisions of Section 230 of the Contract Act and, if the facts found support him, his defence based thereon cannot be brushed away.

The District Consumer Disputes Redressal Forum, Madras before whom the respondent had instituted the claim, had found in favour of the appellant, both on the basis of Section 230 of the Contract Act as also on the issue of limitation. The State Consumer Disputes, Redressal Commission, Madras, in appeal, upheld the decision of the District Forum based on Section 230 of the Contract Act and, therefore, found it unnecessary to consider the aspect of limitation. The National Forum, as aforesaid, took the contrary view on the applicability of Section 230 of the Contract Act on the mistaken basis referred to above as also by reliance on third clause of the presumptions to the contrary in Section 230, that is to say that an agent is bound by a contact entered into by his principal who, though disclosed, cannot be sued. That the principal here is some company in Taiwan situated far outside the jurisdiction of the consumer Courts in India" does not mean that it could be inferred, for it had not been so found by the District or State Commissions, that it could not be sued.

The judgment and order of the National Commission is erroneous. It must be set aside and the order of the State Commission restored.

The appeal is, accordingly, allowed.

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56. **CRIMINAL TRIAL : NON- EXAMINATION OF WITNESSES : DOWRY DEATH : SECTIONS 304-B & 498-A I.P.C. : NON-PRODUCTION OF EVIDENCE EFFECT OF**
(1998) 9 SCC 1
RAM KUMAR VS. STATE

Mere non production of certain letter allegedly written by the deceased to her parents were not produced before the Court. But this does not falsify the prosecution case. Section 231 Cr.P.C. was referred.

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57. **CRIMINAL TRIAL -POST-MORTEM: SECTION 149 I.P.C. AND SECTION 174 CR.P.C.**
(1998) 9 SCC 3
BANWARI RAM VS. STATE OF U.P.

Once it is held that the accused were also members of an unlawful assembly. They will be liable for the unlawful activites of the members of the said assembly even if they might not have actually fired the guns. It is well settled that if an offence is committed by some members of an unlawful assembly then the other members of the assembly are also liable for the offence under Section 149 I.P.C.

Failure to hold inquest or post-mortem examination is inconsequential when death of 12 persons on account of indiscriminate firing by the accused persons established. Dead bodies recovered from the spot itself and necessary death certificates issued by the medical authority. Under such circumstances non-holding of inquest or post-mortem examination immediately.

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58. **EVIDENCE ACT SECTION 32: DYING DECLARATION:-**
(1998) 9 SCC 15
BHOLA TURHA VS. STATE OF BIHAR

The conviction was solely based on dying declaration that dying declaration was made within 2 hours of time of the incident. It reveals that how the deceased came to be injured by the appellants. There was no inconsistency found between dying declaration and other evidence on record. It was held that courts below were justified in relying upon such dying declaration.

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59. **CRIMINAL TRIAL-MEDICAL JURISPRUDENCE - GUN SHOT AND SECTION 32 EVIDENCE ACT DYING DECLARATION:-**
(1998) 9 SCC 23
NISHAR AHMED VS. STATE OF GUJARAT

Gun shot injury no definite opinion was expressed by the expert regarding distance from which the shot was fired. Hence, plea that there was discrepancy between medical evidence and ocular evidence as regards distance from which the shot was fired untenable.

para 9 of the judgment is reproduced:-

The fifth contention is that there is discrepancy between the medical evidence and the ocular evidence. It is contended by the learned counsel that the medical report shows that firing could not have taken place from a short distance and the person, who fired the pistol should have been far away and therefore the witnesses could not have identified the said person. It is pointed out by the High Court that there cannot be a definite opinion regarding the distance from which the shot was fired. As per the evidence of PW 22, a Senior Scientific Officer in Forensic Science Laboratory, Ahmedabad, on examination of the skin samples, it could not be said with certainty whether the firing was from a particular distance. According him, the blackening of the skin would be there in a case of pistol or revolver fired from a distance of about 2 feet to 3 feet while powder marks could be detected even from a distance of 20 feet in cases of those two weapons. He has also stated:

"I do not agree that as the range increases tattooing from the powder more spare until no trace of powder marks are found which normally beyond a yard."

Thus there is no discrepancy between the medical evidence and ocular evidence. This contention is also rejected.

Dying declaration mentioning the name of the appellant in the presence of the doctor who gave him preliminary treatment. Doctor's evidence found very clear and not shaken in any manner in the cross-examination. The dying declaration was relied on.

CRIMINAL TRIAL : APPRECIATION OF EVIDENCE:-

Witnesses having known the accused for a long time and their presence at the scence of occurrence quite natural. Hence, no serious infirmity was made out with the delay caused in disclosing names of accused.

SECTION 391 CR.P.C. :-

Additional evidence at appellate stage was moved after a lapse of seven years from the date of occurrence and in the given case looking to the circumstances the High Court rightly rejected the application.

EVIDENCE ACT SECTION 114 III. (A) AND CRIMINAL TRIAL INTERESTED WITNESSES :-

Non-examination of independent witnesses. Statement of such witnesses recorded under Section 162 Cr.P.C. found not being against the prosecution held that no adverse inference should be drawn. Witnesses sought to be interested but there was nothing on record to indicate any enimity or motive on their part to speak against the accused. Mere professional and service affinity not enough to dub them as interested persons. In ***Rajendra Singh vs. State of Bihar, (1998) 9 SCC 16*** it was held that the sister and mother were the witnesses for the prosecution. It was held that the evidence cannot be discarded on the ground of their relationship with the deceased.

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NOTIFICATION

Govt. of Inida Ministry of Health & Family welfare No. V-150 11/1/96 PH. 17-8-1998 endorsed by High Court of M.P. No. B/10541/III 2-18/ 94 dtd. 30-11-98.

Sub: Use of New terminology by Courts as provided under the Mental Health Act, 1987

I am directed to say that the Mental Health Act, 1987 passed by the parliament received the assent of the President of India and notified on 22nd May, 1987 and came into force from 1st April, 1993 vide notification dated 11th January, 1993 in all the States and Union Territories of the country. The Indian Lunancy Act, 1912 and the Lunancy Act, 1977 had been repealed vide Act 98(1) of the Mental Health Act, 1987. A copy each of the Act and Rules framed there under are enclosed herewith for your ready reference.

The Members of the Central Mental Health Authority established in exercise of the powers conferred by the Mental Health Act, 1987 and the Central Mental Health Authority Rules, 1990 in its Annual Meeting held on 13th November, 1997 have noted with great concern that in many judicial proceedings terminology and clauses of the Old Indian Lunancy Act, 1912 are still being used. The terms like "Lunatic", "Idiot", "instance", "criminal lunatic", "mental asylum" are obsolete and have been replaced by the terms like "Mentally ill person", "mentally ill prisoner" and "Psychiatric hospital" in the Mental Health Act, 1987, which are also less stigmatising and more, acceptable.

You are, therefore, requested to bring the above matter to the notice of all the Hon'ble Courts and Judges.

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HIGH COURT CIRCULARS

Memorandum No. B/271/III-6-6/64 JBP dtd. 11th Jan. 1999.
Addressed to all the District and Sessions Judges in M.P.

Sub : Regarding transfer of the Cases under the Prevention of Food Adulteration Act to Additional Chief Judicial Magistrate and Judicial Magistrate First Class.

On the subject mentioned above, I am directed to enclose here with a copy of notification dated 30-11-98 received from the M.P. Govt. Public Health and Family Welfare Department, Bhopal enclosed and to request you to transfer all the cases under Prevention of Food Adulteration Act pending in the Court of Chief Judicial Magistrate to other Judicial Magistrates First Class Posted at the Head Quarter and also at the outlying stations (if there are more Magistrates than one) in an equitable manner for their expeditious disposal.

ADDITIONAL REGISTRAR

●

मध्यप्रदेश शासन

लोक स्वास्थ एवं परिवार कल्याण विभाग

मंत्रालय, वल्लभ भवन

अधिसूचना

भोपाल, दिनांक 30/11/98

कमांक एफ. 19-12/98/मेडि–एक/17 :- खाद्य अपमिश्रण निवारण अधिनियम (1954 का संख्याक–27) की धारा 16–क द्वारा प्रदत्त शक्तियों को प्रयोग में लाते तथा अधिसूचना कमांक 3369–सत्रह–चिकित्सा चार–तारीख 11 अक्टूबर, 1977 को अतिष्ठित करते हुए राज्य सरकार, एतद् द्वारा,

1. समस्त मुख्य न्यायिक मजिस्ट्रेट,
2. समस्त अपर मुख्य न्यायिक मजिस्ट्रेट, और
3. समस्त न्यायिक मजिस्ट्रेट, वर्ग –एक

को उक्त अधिनियम की धारा –16 की उपधारा (1) के आधीन राज्य में समस्त अपराधों का संक्षिप्त तौर पर विचारण करने के लिये सशक्त करती है।

मध्यप्रदेश के राज्यपाल के नाम से तथा

आदेशानुसार

उप सचिव

●

GOVERNMENT OF MADHYA PRADESH
PUBLIC HEALTH & FAMILY WELFARE DEPARTMENT
MANTRALAYA, VALLABH BHAWAN

NOTIFICATION

Bhopal, Dated 30/11/98

No.F.19-12/98/M-1/17 :- In exercise of the powers conferred by Section 16-A of Prevention of Food Adultration Act] 1954 (No.27of 1954), and in supersession of notification no. 3369-XVII-Med, IV dated 11th October 1977 the State Government hereby empowers:-

1. All Chief Judicial Magistrates,
2. All Additional Chief Judicial Magistrates, and
3. All Judicial Magistrates of the First Class,

to try all offences under sub-section (1) of Section 16 of the said Act, in summary way, in the State.

By order and in the name of the
Governor of Madhya Pradesh
Sd/-
Deputy Secretary

●

SCIENTIFIC REASONS OF DECOLOURISATION OF COLOURED PHENOLPHTHALEIN SOLUTION ENCOUNTERED IN TRAP CASES AFTER PROLONGED STORAGE

Dr. M.P. Goutam, Joint Director
&
Dr. A.K. Guru, Director
State Forensic Science Laboratory, Sagar M.P.

INTRODUCTION

Phenolphthalein is commonly used in anticorruption /trap cases. It is used in smearing the currency notes and sodium carbonate solution is used for washing the hands/pockets after bribe is accepted by the accused. The colourless sodium carbonate solution turns pink or red when it comes in contact with the object having traces of phenolphthalein. This solution is commonly submitted to Forensic science laboratory to confirm the presence or absence of phenolphthalein and to identify alkali. Oftenly in the courts it has been experienced by the Forensic experts that the pink colour of the solution which they had initially examined is found colourless. Questions regarding this change are raised during cross examination by the defence counsel or they try to convince the court that there was no coloured solution at all and thus there was no contact between the powdered currency notes and accused, Scientific explanations regarding this change or fading of colour from pink to colourless are available in the scientific literature but here it is felt worth while that before discussing this explanation, Chemistry of colour development should also be understood. It is as follows.

Sodium Carbonate-Phenolphthalein Test-

This test depends upon the fact Phenolphthalein is turned pink by soluble carbonates and colourless by soluble bicarbonates. hence if the carbon di oxide liberated by dilute acids from carbonates is allowed to come into contact with Phenolphthalein solution coloured pink by sodium carbonate solution, it may be identified by the decolourisation which takes place.

$$CO_2 + Na_2CO_3 + H_2O = 2NaHCO_3$$

The concentration of the sodium carbonate solution must be such as not to be decolourised under the conditions of the experiment by the carbon dioxide in the atmosphere.

When phenolphthalein comes into contact with alkaline solution a pink colour is developed. Various theories has been given for this colour development. According to Ostwald the indicators have different colour in non ionised and ionised state.

Phenolphthalein is a weak acid and ionises as below.

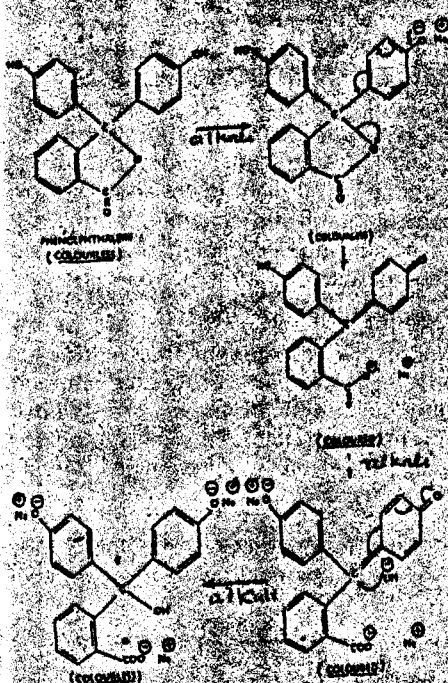
$$H\,ph \rightleftharpoons H^+ + ph^-$$

(Colourless) (Pink)

In acidic medium i.e. in presence of increased H+ ions the dissociation of H Ph will be suppressed and the concentration of Ph ions will be very small. Consequently in acidic medium phenolphthalein will produce no colour. In the alkaline medium, the OH- ions from the alkali will combine with the H+ ions from H Ph forming feebly ionised water. Hence the equilibrium will be shifted towards right and the concentration of Ph+ ions will be too much. Consequently a pink colour will be produced in alkaline solution.

DEVELOPMENT OF PINK COLOUR (MODERN VIEW)

According to mode in view the change of colour of phenolphthalein is not due to its ionisation but due to change in the structure with the change in the pH of the solution. The phenolphthalein consists of equilibrium mixture of two or more tautometric forms one of these exists in acidic solution and the other in the alkaline solution. In one form the substance is non electrolyte and in the other form it is a weak electrolyte capable of ionisation. Ordinarily one form is benzenoid form usually possess a deeper colour.



EFFECT OF PROLONGED STORAGE :

Phenolphthalein is known to give pink colour in alkali at a concentration as low as 0.005 X 10-3% (5 micrograms per 100ml). The coloured

phenolphthalein solution also has a tendency to gradually fading away with passage of time varying upto several months, its intensity may considerably decrease. On the other hand, if the alkaline solution of the phenolphthalein was only pink to light pink initially, it may become almost colourless after a passage of several weeks to months. In the later case when this physical evidence is finally produced in the court (often several months to over a year after the trap), the alkaline solution may be almost colourless. As the court place reliance on the visual appearance of red colour of the alkaline solution of phenolphthaline as a proof, its absence complicates matters.

CHEMICAL BREAKDOWN OF PHENOLPHTHALEIN

For the above reason it is explained here that phenolphthalein in saturated alkali solution after prolonged storage gave rise to certain break down products. These have been isolated and identified as 2(4-hydroxy benzoy)-benzoic acid and phenol. These compounds are colourless.

One another explanation of change in colour is due to formation of trisodium salts of phenolphthalein. Phenolphthalein a white powder, treated with alkali, it undergoes an interesting colour change, it turns red first but on addition of excess of alkali it turns colourless again.

On the basis of above facts, it is evident that the pink colour solution which was examined in the initial stage in the crime investigation can be colourless due to chemical breakdown of phenolphthalein and this fact can be applied in confirming the presence of phenolphthalein in stored and decolourised alkaline solutions of phenolphthalein when produced before the court at the time of expert evidence.

References for further reading-

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संक्षिप्त परिचय

विदेशी मुद्रा विनयमन

भारत सरकार के वित्तमंत्रालय के अंतर्गत विदेशी मुद्रा विनियम अधिनियम के अधीन प्रवर्तन निदेशालय 36, गांधी नगर, सिगरा, वाराणसी 221010 द्वारा निर्गमित परिपत्र टी/21/1/वारा/98/1073 दिनांक 16.11.98 जिसे म.प्र. उच्च न्यायालय द्वारा पृष्ठांकन क्र. सी/78/3/तीन-10-40/78 (आर्थिक अपराध) जबलपुर दिनांक 07.12.98 द्वारा निर्गमित किया।

विदेशी मुद्रा विनियमन, 1973 के महत्वपूर्ण उपबंधों और प्रवर्तन निदेशालय के कार्यचालन के संबंधित प्रक्रियाओं/पद्धतियों को अभिव्यक्त करने वाला विस्तृत परिपत्र

प्रवर्तन निदेशालय विदेशी मुद्रा विनियमन अधिनियम भारत सरकार नई दिल्ली द्वारा जारी.....

प्रवर्तन निदेशालय,

विदेशी मुद्रा विनियमन अधिनियम, भारत सरकार,

छठा तल, लोकनायक भवन, खान मार्किट, नई दिल्ली-3,

स. टी-22/43-समन्वय/98 दिनांक 23 अक्तूबर, 1998

विदेशी मुद्रा विनियमन अधिनियम, 1973 के महत्वपूर्ण उपबंधों और प्रवर्तन निदेशालय के कार्यचालन से संबंधित प्रक्रियाओं/पद्धतियों को अभिव्यक्त करने वाला विस्तृत परिपत्र,

विदेशी मुद्रा विनियमन अधिनियम, 1973 की पृष्ठभूमि/प्रारंभ

विदेशी मुद्रा विनियमन अधिनियम, 1973 भारत की मुद्रा नियंत्रण की वर्तमान प्रणाली को सांविधिक आधार प्रदान करता है। विदेशी मुद्रा के विनियमन के लिए यह एक विधान है और यह भारत में रहने वाले व्यक्तियों तथा विदेश जाने वाले भारतीय नागरिकों द्वारा विदेशी मुद्रा में लेन-देन पर विभिन्न प्रतिबंध लगाता है। भारत में सन 1939 में भारतीय रक्षा नियमावली में से प्राप्त होने वाली आपातकालीन शक्तियों के अंतर्गत विदेशी मुद्रा नियंत्रण आरम्भ किया गया था। बाद में आपातकालीन शक्तियों संविधान में नामतः विदेशी मुद्रा विनियमन अधिनियम, 1947 के रूप में अधिनियमित की गई। बाद में एक नया अधिनियम मौजूदा विदेशी मुद्रा विनियमन अधिनियम 1973 में पारित किया गया था जिसमें भारत में विदेशी मुद्रा कारोबार के लिए विनियमन एवं नियंत्रण के लिए व्यापक उपबंधों का समावेश है और यह अधिनियम 1.1.1974 से लागू किया गया।

विदेशी मुद्रा विनियमन अधिनियम, 1973 की प्रस्तावना :

"देश के विदेशी मुद्रा के स्त्रोतों के संरक्षण के लिए और देश के आर्थिक विकास के हित में उनके उपयोग के लिए कुछ संदायों, विदेशी मुद्रा और प्रतिभूतियों के व्यवहारों, अप्रत्यक्ष रूप से विदेशी मुद्रा को प्रभावित करने वाले संव्यवहारों तथा करंसी और बुलियन के आयात और निर्यात का विनियमन करने वाली विधि का समेकन संशोधन करने के लिये अधिनियम"

विदेशी मुद्रा विनियमन अधिनियम, 1973 की व्यापक योजना :

भारतीय रिजर्व बैंक विदेशी मुद्रा विनियमन अधिनियम के अंतर्गत विनियामक कार्यों का निष्पादन करता है। केन्द्रीय सरकार आर्थिक कार्य विभाग के जरिए मुद्रा नियंत्रण कानून से संबंधित नीति बनाती है और प्रवर्तन अधिनियम के अतिक्रमणों के मामलों में कार्यवाही करता है।

मूलभूत उपबंध :

प्रारंभ में यह उल्लेख किया जाता है कि विदेशी मुद्रा विनियमन अधिनियम, 1973 के अंतर्गत ऐसा कोई निर्बाध प्रतिषेध नहीं है, वस्तुतः यह अधिनियम विदेशी मुद्रा के निर्गमन/अर्जन/उपयोग/अभ्यर्पण से संबंधित अनेक कारोबारों/कार्यकलापों पर कुछ प्रतिबंध लगाता है। इसके अतिरिक्त, इस अधिनियम के उपबंध भारत में रहने वाले तथा विदेशों में रहने वाले सभी भारतीय नागरिकों पर लागू होते हैं, जिसमें भारत में पंजीकृत अथवा निगमित कम्पनियां और विदेशों में उनकी शाखाएं शामिल हैं। इस अधिनियम के कुछ उपबंध भारत में रहने वाले विदेशी नागरिकों और विदेशी कम्पनियों की भारतीय शाखाओं पर भी लागू होते हैं।

विदेशी मुद्रा विनियमन अधिनियम, 1973 के निम्नलिखित महत्वपूर्ण उपबंध प्रवर्तन निदेशालय द्वारा लागू किए जाते है:

धारा 6 :

धारा 6 के अंतर्गत भारतीय रिजर्व बैंक विभिन्न बैंकों को विदेशी मुद्रा के "प्राधिकृत डीलरों" के रूप में कार्य करने के लिए लाइसेंस प्रदान करता है।

धारा 7 :

धारा 7 के अंतर्गत भारतीय रिजर्व बैंक कुछ व्यक्तियों को "मनी चेंजर्स" के रूप में कार्य करने के लिये प्राधिकृत करता है।

अधिनियम की धारा 6 और 7 के अंतर्गत भारतीय रिजर्व बैंक द्वारा प्राधिकृत व्यक्तियों के अतिरिक्त कोई भी विदेशी मुद्रा में व्यापार नहीं कर सकता।

धारा 8 :

धारा 8 विदेशी मुद्रा में व्यापार पर, विदेशी मुद्रा का गैरकानूनी तौर पर अभिग्रहण और भारतीय रिजर्व बैंक द्वारा निर्धारित विनियम दरों से भिन्न दरों पर मुद्रा के गैर कानूनी तौर पर परिवर्तन पर प्रतिबंध लगाती है और इस उद्देश्य के लिए विदेशी मुद्रा प्रदान की गई है उससे भिन्न उद्देश्यों के लिए उसका उपयोग इस धारा में प्रतिबंधित है।

धारा 9 :

यह धारा भारत से बाहर रहने वाले किसी व्यक्ति को भुगतान देने अथवा लेने अथवा भारत से बाहर रहने वाले किसी व्यक्ति के नाम पर अथवा आदेश के द्वारा भुगतान की प्राप्ति पर कुछ प्रतिबंध लगाती है। ऐसे भुगतान जो प्रतिपूरक अथवा भुगतान के नाम से जाने जाते हैं और विदेशों में रहने वाले भारतीयों को अपनी आय गैर कानूनी रास्तों से भारत में भेजने के लिए आश्रय देते हैं।

धारा 13 :

धारा 13, केन्द्रीय सरकार द्वारा अनुज्ञाप्त सीमा को छोड़कर किसी भी व्यक्ति द्वारा किसी भी विदेशी मुद्रा में अथवा भारतीय मुद्रा में आयात और निर्यात को प्रतिबंधित करती है। इस धारा के उपबंध सीमाशुल्क विभाग द्वारा लागू किए जाते है।

धारा 14 :

धारा 14, एक व्यक्ति द्वारा प्राप्त अथवा अधिग्रहीत मुद्रा के लिए भारत में आने के बाद तीन महीने की अवधि के अन्दर भारत में विदेशी मुद्रा के प्राधिकृत डीलर के समक्ष संपर्क की अपेक्षा करती है अन्यथा वह दण्डनीय कार्यवाही के योग्य है।

धारा 16 :

धारा 16 में प्रावधान है कि वे सभी निर्यातकों को उनके निर्यात किए गए माल की विक्रय आय निर्धारित अवधि के अन्दर लानी होगी अन्यथा भारतीय रिजर्व बैंक की अनुमति प्राप्त करने के हकदार हैं उन्हें वह विदेशी मुद्रा देश में लानी होगी।

धारा 18 :

धारा 18 में प्रावधान है कि सभी निर्यातकों को उनके द्वारा निर्यात किए गए माल की विक्रय आय निर्धारित अवधि के अन्दर लानी होगी अन्यथा भारतीय रिजर्व बैंक की अनुमति प्राप्त करनी होगी।

धारा 19 :

धारा 19 में प्रावधान है कि निवासियों और अनिवासियों के बीच प्रतिभूतियों का हस्तांतरण और विदेशी प्रतिभूतियों के अधिग्रहण और धारण करने के लिए भारतीय रिजर्व बैंक की अनुमति अपेक्षित है।

धारा 25 :

धारा 25 के अंतर्गत, भारत में रहने वाला कोई भी व्यक्ति भारतीय रिजर्व बैंक की अनुमति के बिना भारत से बाहर स्थित अचल सम्पत्ति अधिग्रहीत नहीं कर सकता।

धारा 28 :

धारा 28 के अंतर्गत, भारत में एजेंटो अथवा प्रबंध सलाहकारों के रूप में कुछ व्यक्तियों और कम्पनियों की नियुक्ति के लिए भारतीय रिजर्व बैंक की अनुमति अपेक्षित है।

धारा 29 :

धारा 29 के अंतर्गत भारतीय रिज़र्व बैंक की अनुमति के बिना निर्गमित निकायों सहित भारत से बाहार रहने वाला व्यक्ति भारत में कोई व्यापार स्थापित नहीं कर सकता।

धारा 31

धारा 31 में प्रावधान है कि ऐसा व्यक्ति जो भारत का नागरिक नहीं है और कोई कम्पनी जो भारत में निगमित नहीं है अथवा जिसमें अनिवासी का हित 40 प्रतिशत से अधिक है, वह भारतीय रिजर्व बैंक की अनुमति के बिना भारत में कोई अचल सम्पत्ति अधिग्रहित नहीं कर सकता अथवा उसे बेच नहीं सकता।

विदेशी मुद्रा विनियमन अधिनियम, 1973 के उपबंधो को प्रवर्तित करना

चूंकि केन्द्रीय सरकार अर्थात आर्थिक कार्य विभाग, वित्त मंत्रालय, भारत सरकार नई दिल्ली और भारतीय रिजर्व बैंक मुद्रा नियंत्रण विभाग, मुम्बई विदेशी मुद्रा विनियमन अधिनियम, 1973 के उपबंधों के अंतर्गत नीतियां बनाता है तथा आवश्यक अनुमति/ छूट प्रदान करता है, इसलिए धारा 13 तथा 18 जो कि सीमा शुल्क विभाग द्वारा प्रवर्तित की जाती है, के कुछ विशिष्ट उपबंधों के अतिरिक्त इस अधिनियम के उपबंधों को प्रवर्तित करने का कार्य प्रवर्तन निदेशालय को सौंपा गया है।

प्रवर्तन निदेशालय

प्रवर्तन निदेशालय मुख्यत: विदेशी मुद्रा विनियमन अधिनियम के उपबंधों को लागू करवाने विदेशी मुद्रा के बाहर जाने को रोकने से संबंधित है जो सामान्यतया निम्नलिखित गलत तरीकों के माध्यम से होता है :–

1. विदेश में भारतीयों द्वारा सामान्य बैंक चैनलों से भिन्न माध्यमों से अर्थात प्रतिपूरक भुगतान के माध्यम से पैसा भेजना।
2. विदेशी पर्यटकों से भारत में व्यक्तियों द्वारा गैर कानूनी तरीके से विदेशी मुद्रा का अभिग्रहण।
3. निर्यात किए गए माल की आय को देश में वापस न लाना।
4. विदेशों में अप्राधिकृत खाते रखना।
5. निर्यात के कम मूल्य के बीजक देना और आयात से अधिक मूल्य के बीजक देना और बीजक में किसी अन्य प्रकार की हेरा–फेरी करना।
6. झूठे और जाली आयात के माध्यम से विदेशी मुद्रा को बाहर ले जाना।
7. हवाला के माध्यम से विदेशी मुद्रा का गैर–कानूनी अभिग्रहण।
8. विदेशों में दलाली को गुप्त रखना।

निदेशालय को उल्लंघन के मामलों का पता लगाना है और ऐसे गलत कार्यों को रोकने के लिए ठोस न्याय निर्णयन भी करने हैं।

संगठनात्मक ढांचा

प्रवर्तन निदेशालय के दिल्ली स्थित मुख्यालय सहित बम्बई, कलकत्ता, दिल्ली, जालधर, मद्रास, अहमदाबाद और बंगलोर स्थित सात क्षेत्रीय कार्यालय हैं। निदेशक, प्रवर्तन इस संगठन के प्रमुख हैं। क्षेत्रीय कार्यालयों के प्रमुख उप निदेशक हैं। इस निदेशालय के आगरा, श्रीनगर, जयपुर, वाराणसी, त्रिवेन्द्रम, कालीकट, हैदराबाद, गुवाहाटी, और गोवा स्थित नौ उप क्षेत्रीय कार्यालय हैं जिनके प्रमुख सहायक निदेशक हैं।

निदेशालय की एक इकाई मदुरै में भी है जिसके प्रमुख मुख्य प्रवर्तन अधिकारी हैं। इसके अतिरिक्त तीन विशेष प्रवर्तन निदेशक, एक अपर प्रवर्तन निदेशक हैं, जो प्राय: न्यायनिर्णयन कार्य को देखते हैं।

स्टॉफ

सभी श्रेणियों के कर्मचारियों की कुल स्वीकृति संख्या 798 है इसका विवरण निम्न प्रकार हैं :–

श्रेणी	"क"	अधिकारी	वर्ग–I अधिकारी	54
श्रेणी	"ख"	अधिकरी	वर्ग–II अधिकारी	152
श्रेणी	"ग"	अधिकारी	वर्ग–III अधिकारी	426
श्रेणी	"घ"	अधिकारी	वर्ग–IV अधिकारी	166

कार्य

निदेशालय के मुख्य कार्य निम्न प्रकार हैं :-

(क) विदेशी मुद्रा विनियमन अधिनियम के उपबंधों के उल्लंघन से संबंधित आसूचना तैयार करना और एकत्र करना और इसके दौरान मामले की परिस्थितियों के अनुसार निम्न कार्यवाही करना :–

(1) अभिशंसी सामग्री (भारतीय और विदेशी मुद्रा संलिप्त सहित) को जब्त करने के लिए संदिग्ध व्यक्तियों, वाहनों और परिसरों की तलाशी लेना और/अथवा

(2) विदेशी मुद्रा विनियमन अधिनियम के उपबंधों के संदिग्ध उल्लंघन की जांच और खोजबीन करना और इसके लिए यदि आवश्यक हो तो संदिग्ध व्यक्तियों को गिरफ्तार करना :

(ख) विदेशी मुद्रा विनियमन अधिनियम के उल्लंघन के लिए विभागीय तौर पर जुर्माना लगाने के मामलों में और उल्लंघन में संलिप्त राशि को जब्त करने के लिए भी न्यायनिर्णय देना :

(ग) न्यायालयों में अपराधियों पर अभियोजन चलाना :

(घ) विदेशी मुद्रा विनियमन अपीलीय बोर्ड और न्यायालयों समक्ष मामलों का पक्षपोषण करना :

(ड) विभागीय न्याय–निर्णयन में लगाई गई शास्तियों की वसूली करना :

विदेशी मुद्रा विनियमन अधिनियम से संबंधित उपयुक्त कार्य के अतिरिक्त निदेशालय विदेशी मुद्रा संरक्षण और तस्करी निवारण अधिनियम (1974 का 52) जो अन्य बातों के साथ–साथ विदेशी मुद्रा के संवर्धन और संरक्षण के लिए प्रतिकूल तरीके में कार्य करने से उसे रोकने के उद्देश्य से व्यक्ति को नजरबंद करने के लिए

उपबंध के अंतर्गत आदतन अपराधियों को नजरबंदी के लिए मामलों की अनुशंसा करता है और उन पर कार्यवाही करता है।

प्रक्रियात्मक उपबंध

विदेशी मुद्रा विनियमन अधिनियम, 1973 की विभिन्न धाराओं के उपबंधों को लागू करने के लिए प्रवर्तन निदेशालय के अधिकारी निम्नलिखित कार्य करते है :-

(१) **आसूचना/सूचना एकत्र करना तथा विकसित करना :** प्रवर्तन निदेशालय के प्रत्येक अधिकारी को अधिनियम के सन्देह वाले उल्लंघनों से संबंधित सूचना एकत्र करने तथा उसे विकसित करने की शक्तियां प्राप्त है।

(२) **संदिग्धों पर निगरानी रखना :** इसके अतिरिक्त, प्रवर्तन निदेशालय के प्रत्येक अधिकारी को संदिग्ध व्यक्तियों, परिसरों, गाड़ियों की निगरानी रखने की शक्तियां प्राप्त हैं।

(३) **व्यक्तियों/गाड़ियों की तलाशियां :** अगर प्रवर्तन निदेशालय के सहायक प्रवर्तन अधिकारी या इससे उच्च स्तर के किसी अधिकारी को यह लगता है कि विदेशी मुद्रा विनियमन अधिनियम के अधीन जांच के लिये कोई दस्तावेज/सामग्री किसी व्यक्ति/गाड़ी के मालिक द्वारा छुपाई जा रही है, या ले जाई जा रही है तो वह अधिकारी संबंधित व्यक्ति या संबंधित गाड़ी के मालिक को दो निष्पक्ष गवाहों की उपस्थिति में अपनी पहचान बताने के पश्चात ऐसे व्यक्ति/गाड़ी की तलाशी ले सकता है तथा इसके परिणामस्वरूप विदेशी मुद्रा विनियमन अधिनियम, 1973 की धारा 34/36 के अधीन उसके परिणामस्वरूप बरामद किये गये आवश्यक पंचनामा/अभिग्रहण ज्ञापन, जिसमें तलाशी/अभिग्रहण के ब्यौरे दिये गये हों—जो संबंधित व्यक्ति गवाहों द्वारा विधिवत अधिप्रमाणित हों, तैयार करने के पश्चात ऐसी कोई सामग्री/दस्तावेज बरामद और जब्त कर सकता है। ऐसा पंचनामा उस मामले में भी बनाना उपेक्षित होगा जिस मामले में तलाशी के दौरान कुछ भी बरामद न हुआ हो। पंचनामा की एक प्रति उस संबंधित व्यक्ति को भी उपलब्ध कराई जानी चाहिए जिसे तलाशी आरम्भ होने से पहले तथा इसके समापन पर तलाशी लेने वाले अधिकारियों की तलाशी लेने का अधिकार है, यह इसलिए कि कहीं अधिकारी अनाधिकृत रूप से कुछ ले तो नहीं जा रहे।

(4) **परिसरों की तलाशी :** अगर प्रवर्तन निदेशालय के सहायक निदेशक या इससे उच्च स्तर के अधिकारी को यह लगता है कि विदेशी मुद्रा विनियमन अधिनियम के अधीन जांच के लिए कोई दस्तावेज/सामग्री किसी परिसर में छुपाई गई

है, जिसे उपयुक्त परिसर की तलाशी के बिना कब्जे में नहीं लिया जा सकता. अधिनियम की धारा 37 के अधीन वह उपयुक्त परिसर की तलाशी के लिए प्रवर्तन निदेशालय के किसी अधिकारी को प्राधिकृत करते हुए अपेक्षित सहायता के साथ वारंट जारी कर सकता है तथा सक्त अधिकृत अधिकारी उपयुक्त पंचनामा /अभिग्रहण ज्ञापन के अधीन जिसमें तलाशी, बरामदी तथा अभिग्रहण के पूर्ण ब्यौरे बताये जाते हैं, तलाशी के परिणामस्वरूप बरामद किये गये दस्तावेज/सामग्री का अभिग्रहण कर सकता है। उपर्युक्त अधिकारी द्वारा यह तलाशी अपनी पहचान बताए जाने के पश्चात तथा ऐसे परिसरों के स्वामी/दखलदार की उपस्थिति में या परिसरों के ऐसे स्वामी/दखलदार के किसी प्राधिकृत प्रतिनिधि की उपस्थिति में की जानी अपेक्षित है। पंचनामा/अभिग्रहण ज्ञापन संबंधित व्यक्ति तथा गवाहों से अधिप्रमाणित कराया जाना है, तथा उसकी एक प्रति उपर्युक्त व्यक्ति को दी जानी है जिसे तलाशी आरंभ होने से पहले तथा समापन पर तलाशी लेने वाले अधिकारियों की तलाशी लेने का अधिकार है, यह इसलिए कि अधिकारियों द्वारा कोई आपत्तिजनक कार्यवाही न की जाये।

(5) **गवाही देने के लिए तथा दस्तावेज प्रस्तुत करने के लिए व्यक्तियों को सम्मन देना :** किसी मामले की जांच करते समय प्रवर्तन अधिकारी या इससे उच्च स्तर का अधिकारी अधिनियम की धारा 40 के अधीन सम्मन भेज सकता है, जिसमें किसी व्यक्ति को गवाही देने के लिये और/या जांच के लिए सम्बद्ध दस्तावेज प्रस्तुत करने हेतु उनके समक्ष उपस्थित करने की अपेक्षा हो। कोई व्यक्ति जिसे इस प्रकार सम्मन दिया जाता है वह तथ्यों की सच्ची तथा सही जानकारी देने के लिए कानूनी तौर पर बाध्य होगा तथा जो कुछ वह जानता है उसे छुपायेगा नहीं। इसी प्रकार ऐसे दस्तावेजों/सूचना जो भी उसके पास होगी उसे, प्रस्तुत करने के लिये बाध्य है। ये कार्यवाही भारतीय दंड संहिता की धारा 193 तथा 228 के अर्थ में न्यायिक कार्यवाही होगी। अधिनियम की धारा 40 के अधीन दिये गये बयान अधिनियम के अधीन किसी कार्यवाही में गवाह के रूप में स्वीकार्य होते हैं।

(6) **व्यक्तियों के निरीक्षण की शक्तियाँ :** धारा 40 के अतिरिक्त, प्रवर्तन अधिकारी तथा उससे उच्च स्तर के अधिकारी को भी धारा 39 के अधीन तथा परिस्थितियों की जानकारी रखने वाले किसी व्यक्ति के निरीक्षण की भी शक्तियां प्राप्त हैं वह जांच या कार्यवाही से सम्बद्ध किसी दस्तावेज को प्रस्तुत करने के लिए या देने के लिए बुला सकता है।

(7) **सूचना/दस्तावेज मंगाने की शक्तियां :** मुख्य प्रवर्तन अधिकारी या उससे उच्च स्तर के अधिकारी को धारा 33(2) के अधीन किसी ऐसे व्यक्ति को किसी सूचना/दस्तावेज मंगाने की शक्तियां प्राप्त है। जिसके पास अधिनियम के अधीन की जा रही जांच/कार्यवाही के संबंध में ऐसी सूचना में ऐसी सूचना/दस्तावेज है या उसके लिए यह प्राप्त करना या प्रस्तुत कर सकता है वह इस अपेक्षा के लिए बाध्य होगा।

(8) **दस्तावेज आदि जब्त करने कि शक्तियां :** धारा 34,36 तथा 37 के अधीन शक्तियां तथा कार्यों के अतिरिक्त सहायक प्रवर्तन अधिकारी या उससे उच्च स्तर के अधिकारी को भी धारा 38 के अधीन ऐसे दस्तावेज या वस्तुएं जब्त करने की शक्तियां भी प्राप्त हैं, जो अधिनियम के अधीन किसी जांच या कार्यवाही से सम्बद्ध हो या उसके लिए उपयोगी समझी जाए।

(9) **गिरफ्तार करने की शक्तियां :** अधिनियम की धारा 35 के अधीन प्रवर्तन अधिकारी या उससे उच्च स्तर के अधिकारी को ऐसे व्यक्ति को गिरफ्तार करने की शक्तियां प्राप्त हैं जिसके बारे में यह समझता है कि (उपर्युक्त व्यक्ति) अधिनियम के अधीन दण्डनीय अपराध के लिए दोषी है, ऐसी गिरफ्तारी का आधार बताकर गिरफ्तार कर सकता है। इस प्रकार गिरफ्तार किए गए प्रत्येक व्यक्ति को बिना अनावश्यक विलम्ब के मजिस्ट्रेट के समक्ष प्रस्तुत किया जायेगा। इसके साथ-साथ प्रवर्तन अधिकारी तथा उससे उच्च स्तर के अधिकारी को ऐसे व्यक्ति की जमानत पर या अन्यथा छोड़ने की शक्तियां भी प्राप्त हैं जो शक्तियां अपराध दण्ड संहिता के अधीन किसी पुलिस स्टेशन के अधिकारी प्रभारी को भी प्राप्त हैं।

(10) **दस्तावेजों को रखने की अवधि :** धारा 41 के अधीन प्रवर्तन के किसी अधिकारी द्वारा अधिनियम की धारा 33 या 39 या 40 या 34 या 37 के अधीन प्रस्तुत या अधिकारी द्वारा जब्त किया गया कोई दस्तावेज, अगर वह समझता है कि उपयुक्त दस्तावेज इस अधिनियम के किसी उपबंध के उल्लघन का साक्ष्य होगा, छह माह की अवधि के लिए अपने संरक्षण में रख सकता है, तथापि प्रवर्तन निदेशक अगर समझते हैं कि उपर्युक्त दस्तावेजों के संबंध में जांच छह माह की निर्धारित अवधि में पूरी नहीं हो सकती और यह कि उपर्युक्त दस्तावेजों की और आगे जांच आवश्यक तथा उचित होगी तो वह लिखित आदेश जारी करके यह अवधि अगले छह माह तक बढ़ा सकता है। तथापि, उन दस्तावेजों को जिनको कि पहले ही किसी शुरू की गई न्याय निर्णयन या अभियोजन

कार्यवाही में साक्ष्य के रूप में सम्मिलित किया जा चुका है, उसके बारे में उक्त अवधि लागू नहीं होगी।

(11) **प्राधिकृत डीलरों/मुद्रा परिवर्तन करने वालों के रिकार्डों की जांच :** सहायक प्रवर्तन निदेशक या उससे उच्च स्तर के अधिकारी को, जिन्हें प्रवर्तन निदेशक ने लिखित रूप में विशेष रूप से अधिकृत किया है, धारा 43 के अधीन प्राधिकृत डीलरों या मुद्रा प्रवर्तन करने वालों की लेखा की पुस्तकों तथा अन्य दस्तावेजों की जांच की शक्तियां प्राप्त हैं।

(12) **न्याय-निर्णयन तथा अपील (धारा 50-51 तथा 52) :** सहायक प्रवर्तन निदेशक तथा उच्च स्तर के अधिकारी को अधिनियम के उपबंधों के उल्लंघन के मामलों में न्याय–निर्णयन देने की शक्तियां प्राप्त हैं, ये कार्यवाही जो कि अर्ध न्यायिक प्रकार की होती हैं, कारण बताओ नोटिस के जारी होने के साथ आरंभ होती है। अगर नोटिस पाने वाले द्वारा बताया गया कारण संतोषजनक नहीं पाया जाता तो आगे कार्यवाही की जाती है, जैसे कि व्यक्तिगत सुनवाई जिसमें नोटिस पाने वाले को आगे अपना पक्ष रखने का अधिकार होता है या तो स्वयं या किसी प्राधिकृत प्रतिनिधि के माध्यम से, इन कार्यवाहियों के समापन पर न्याय–निर्णय प्राधिकारी को जांच करनी होती है तथा रिकार्ड पर साक्ष्य का पूर्णतया से विचार करना होता है तथा अगर आरोप साबित नहीं होते तो नोटिस पाने वाला दोषमुक्त हो जाता है और अगर आरोप सिद्ध हो जाते हैं तब जो जुर्माना उपर्युक्त समझा जाता है, यह जुर्माना ज्यादा से ज्यादा पांच हजार रूपये या उल्लंघन में अंतर्ग्रस्त राशि का पांच गुना जो भी अधिक हो लगाया जा सकता है। इन उल्लंघनों में अंतर्ग्रस्त राशि के जब्ती के आदेश भी पारित किए जा सकते हैं, यदि उक्त राशि निदेशालय के कब्जे में है। इस प्रकार किया गया जुर्माना न्यायनिर्णयन आदेश कि प्राप्ति की तारीख से 45 दिन के भीतर निदेशालय के संबंधित कार्यालय में जमा करवाना होता है। न्याय–निर्णय प्राधिकारी के आदेशों से पार्टी अगर दुखी होती है तो वह विदेशी मुद्रा विनियमन अपील बोर्ड के समक्ष अपील कर सकती है। विदेशी मुद्रा विनियमन अपीलीय बोर्ड के आदेश के विरूद्ध केवल विधि के प्रश्न/मुद्दों वाले मामलों में अन्य अपील उच्च न्यायालय में स्वीकार्य होती है।

(13) **अभियोजन :** धारा 56 के अधीन न्यायनिर्णयन के या तो एक साथ या बाद में या पहले विदेशी मुद्रा विनियमन अधिनियम के उपबंधों का उल्लंघन करने वाले व्यक्तियों को कैद करने के लिए न्यायालय में भी मुकदमा चलाया जा सकता

है। विदेशी मुद्रा विनियमन अधिनियम, 1973 के उपबंधों के उल्लंघनों के अपराध गैर–संज्ञय प्रकार के होते हैं न्यायालय द्वारा दोषी सिद्ध ठहराए जाने पर अपराधी को सात वर्ष की कैद होती है। (एक लाख से अधिक मूल्य के अपराधों के लिए) या दो वर्ष की कैद होती है (एक लाख रूपए तक के अपराधों के लिए), और/या जुर्माना।

जुर्माना न दिए जाने पर (धारा 57 के अधीन) मुकदमा भी चलाया जा सकता है। धारा 56 तथा 57 के अधीन प्रवर्तन अधिकारी या उससे उच्च स्तर के अधिकारी द्वारा मुकदमे के लिए शिकायतें फाईल की जा सकती है।

लोक शिकायत तंत्र

प्रवर्तन निदेशालय अपने अधिकारियों/कर्मचारियों पर लगातार नजर रखता है। किसी के अवांछनीय कार्यकलाप में लिप्त पाए जाने पर कड़ी कार्यवाही की जाती है। निदेशालय का सतर्कता सेल प्रवर्तन निदेशक के सीधे देखरेख में कार्य करता है और फिलहाल दो बहुत ही वरिष्ठ अधिकारी इसमें सम्मिलित किए गए हैं। किसी व्यक्ति को यदि कोई वास्तव में शिकायत हो वह इन अधिकारियों से सम्पर्क कर सकता है जिनके पते तथा टेलीफोन नंबर निम्नानुसार हैं :–

1.	श्री एम.के. बेजबरूआ प्रवर्तन निदेशक	प्रवर्तन निदेशालय, 6 ठा तल लोकनायक भवन, खान मार्किट, नई दिल्ली 5–110003	टेलीफोन 4693577
2.	श्री एम. सी. जोशी विशेष निदेशक		4690615
3.	श्री अभिजीत चक्रवर्ती अपर निदेशक		4640466

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Listen carefully, many a good idea was lost in the distance between a speaker's mouth and a listener's ear.