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संपादकीय

चैतन्य चिन्तन

भाई नामजोशी जी आप प्रशिक्षण कक्षाओं में बार–बार चैतन्य अवस्था शब्दों का प्रयोग करते हो, दादा नामजोशी आप कक्षाओं में हर समय चिन्तन शब्द का प्रयोग करते हो लेकिन उसकी व्याख्या नहीं करते हो। ये बात कई न्यायिक बंधु हर हमेशा कहते हैं। सही है। 'ज्योति' में भी ये शब्द नहीं हों तो पत्रिका की पूर्णता नहीं हो पाती है।

पूर्णता तक किसी बात को पहुंचाना लगभग असंभव है, एक सामान्य व्यक्ति के लिए।

औसत दर्जे के व्यक्ति के लिए ही फिर गढ़ी गई नीति कथाएँ भी हैं। इन कथाओं में जातक कथाएँ, पंचतंत्र, इसाप नीति, हितोपदेश आदि हैं। बिरला व्यक्ति ही होगा जिसने इन नीति कथाओं को नहीं पढ़ा होगा।

खरगोश एवं कछुए की कथा है। कथा काल्पनिक हो सकती है पर उसमें जीवन का निचोड़ है यह वस्तुस्थिति है ऐसा माना जा सकता है।

खरगोश बहुत तेज गति से दौड़ता है एवं कछुआ तो ऐसा चलता है कि मानों वह वृद्ध है एवं गठिया रोग से ग्रस्त है।

जी हां आपकी चालढाल यह शारीरिक स्थिति हो सकती है लेकिन मानसिक स्थिति स्वस्थ एवं परिपूर्ण हो, आत्म विश्वास भरा व्यक्तित्व हो एवं निर्धार हो तो फिर क्या बात है पंगु भी पर्वतारोहण कर सकता है।

यह विश्वास की बात है। सवाल पैरों के गठियाप़न का नहीं है। नापने को तो वामन जैसे लघु आकार वाले ने भी सम्पूर्ण धरती नाप ली बिना प्रयास के।

तो कछुआ चाल चलते हुए भी खरगोश को मात देना यह बताता है कि मनुष्य ने आरम्भ शूर नहीं होना है कि शुरू में तो तीव्रगति रखी व बाद में ढेर होकर सुस्ता गए। कछुआ विश्वास के साथ चला। उसने अपना जमीनी रिश्ता नहीं तोड़ा पैर जमीन पर रहे, उछलकूद नहीं की व अन्तिम लक्ष्य तक पहुंचा।

निर्धार निश्चय संकल्प की भावना है जो हमें अपने लक्ष्य तक पहुंचाती है यही इस नीतिकथा का बोध है।

हम आपकी कितनी ही बड़ी–बड़ी आशाएँ हो सकती हैं। लेकिन छोटी है आशा–आसमानों को छूने की आशा– फूलों व कलियों से मिलने की आशा बस। इतनी ही पर्याप्त है।

इस मनोवांछा, कामना को प्राप्त करना कोई कठिन काम नहीं है। सीधा सादा मार्ग अपनाईये। भटकने की जरूरत नहीं है न मार्ग से पथभ्रष्ट होने की जरूरत है।

पथभ्रष्ट न होने का अर्थ ही है कि जो कार्य हमारे से अपेक्षित है वह कार्य न्याय्य मार्ग से करेंगे।

भर्तृहरि–नीतिशतक में कहते हैं;

निन्दन्तु नीतिनिपुणाः यदि वा स्तुवन्तु,
लक्ष्मीः समविशतु कच्छन्तु वा यथेष्टम।
अद्य एव वा मरणम् अस्तु युगान्तरेवा,
न्याय्यात पथः प्रविचलन्ति पदं न धीराः।।

अर्थात

निंदा करे कोई या प्रशंसा कोई,
लक्ष्मी रहे या न रहे कभी भी।
मृत्यु आए अभी या फिर और कभी,
न्याय मार्ग छोड़ सज्जन जाते नहीं।।

(देखें ज्योति दिसम्बर 1996 पृष्ठ 2)

कछुआ चला और चलता गया। उसके मन में इस बात का मलाल या कटुता नहीं रही कि खरगोश तो कूदता–फांदता, चौकड़िया भरता दौड़ रहा है तो वह जीतेगा। कछुए जैसा धीरज विश्वास, निर्धार ही उसे पार लगाने में सक्षम है। बिचारा निरीह प्राणी यदि बोलता भी हो तो हमें समझ में नहीं आता होगा पर फिर भी वह मौन रहकर असर छोड़ जाता है। कछुए का संदेश है दौड़ो, गति से नहीं, गतिमान होकर चुनौती देते हुए वामन के पैरों की क्षमता पैदा होने दें।

यह मौन ही उसका चिन्तन है, चैतन्य है तो यही उसकी चेतना है।

चिन्तन एवं चैतन्य केवल कोरे शब्द नहीं है। उसमें भाव है, भावना है, आशा है, अपेक्षा है, आर्तनाद है, परहित निहित है।

कक्षा में धारा 148 व्य.प्र.स. पढ़ा रहा था व बता रहा था कि **न्यायालय ने** यदि कोई समय निर्धारित किया है तो उसे बढ़ाने का अधिकार है। आ. 6 नि. 18 एवं आ. 21 नि. 85 की तुलना भी कर के बता रहा था। जिस किसी प्रशिक्षु को प्रावधान पढ़ने को कहता तो वह ऐसे पढ़ता कि मानों पूजा करवाने आए पंडितजी मंत्रोच्चार कर रहे हो या अखंड रामायण का तीव्रगति से पाठ करने वाली मंडली रामायण की चौपाईयाँ पढ़ रही हो। अर्थहीन पढ़ना, भाव रहित पढ़ना ही खरगोशीय वृत्ति है। अर्थात लक्ष्यहीन कृत्य है। उन वाक्यों को कितनी भी बार पढ़ो ओंधे घड़े पर पानी ही पड़ना है।

लेकिन जब हम कहते हैं कि चैतन्य अवस्था में पढ़ो तो पढ़ने वाला पढ़ता है "Where any period is fixed or granted **by the Court**....." तब उसे Court शब्द पर रोक देते हैं व कहते हैं कि इस धारा के बाजू में लिखो **Code**। अब Code शब्द बाजू में लिखाने के पश्चात बताते हैं यदि समय **Code ने निर्धारित किया है** तो समय बढ़ाने का अधिकार Court को नहीं है क्योंकि धारा 148 में Court शब्द आया है Code शब्द Court की जगह स्थानापन्न मत करो। अर्थात जहां Court ने समय निर्धारित किया है या दिया है न कि Code ने तो समय बढ़ाने का अधिकार न्यायालय को है। ये ही चैतन्य अवस्था है। एक और उदाहरण।

आदेश 39 नि. 3 में लिखा है;

a) The Court Shall in all cases,

b) Except where it appears that the object of granting injunction would be defeated by the delay.

c) before granting injunction,

d) direct notice of the application for the same to be given to the opposite party.

अब इस प्रावधान को पढ़ना है तो ऐसा पढ़े। प्रथमतः ए भाग फिर सी, डी भाग। यदि आप एक पक्षीय निषेधाज्ञा नहीं देना चाहते हो तो ये भाग पूर्ण हो गया अब आपको एक पक्षीय अस्थायी निषेदाज्ञा देना नहीं है तो न देने के लिए कोई कारण दर्शाना नहीं है। देना चाहते हो तो ए.सी.डी.बी भाग पढ़ो तो पता लग जाएगा कि एक पक्षीय निषेदाज्ञा देने हेतु क्या आधार है।

उक्त आ. 39 नि. 3 के प्रोव्हिजो में आगे लिखा है Shall record the reason's for its (Court's) opinion अर्थात कौन से ऐसे कारण हैं जिस पर से एक पक्षीय निषेदाज्ञा दी जा रही है उन कारणों को अभिव्यक्त करो। केवल यह नहीं लिखना है कि कारण उचित है अतः..... । कौन से कारण हैं जो न्यायालय के मत में उचित है उन्हें लिखना है। स्पष्ट है कि एक पक्षीय अस्थायी निषेदाज्ञा न देने हेतु किसी भी कारण का उल्लेख करने की आवश्यकता नहीं है। लेकिन प्रावधान को कल्पकता से पढ़ा जावे तो ज्ञात होगा कि हम ठीक उल्टा काम करते हैं।

मित्रों इन्हीं बातों को चैतन्य अवस्था में, चिन्तन करके पढ़ने को ही हम चेतना, स्थित प्रज्ञ अवस्था, साधक अवस्था, अनुभूति की अवस्था, आंतरिक ज्ञान की अवस्था, जागृत अवस्था, मनश्चेतना, अभिज्ञ मन, आदि कहते हैं और इसके विपरीत है अवचेतनमन।

मित्रों ने दूसरा शब्द बताया चिंतन। इसके भी कई पारिभाषिक शब्द हैं। जैसे अवधान (एक चित्त) एकाग्रता, मनन, ध्यान केंद्रण, लीनता, समाधिस्थता आदि।

अतः इन शब्दों का लक्ष्य एवं उद्देश्य यहीं है कि शब्द मात्र ध्वनि करते है प्रतिध्वनि करने की शक्ति कम रखते हैं, वे चुभेंगे जरूर पर प्रेरणा देने का काम तब तक नहीं करेंगे जब तक उस ध्वनि को हम लयबद्ध और संगीत पूर्ण नहीं बनाएंगे। शब्दों का चुभना तो सामान्य बात है उसके लिए लय की आवश्यकता नहीं। जैसे ही शब्दों में लय उत्पन्न होगी वे जीवन को आकार देंगे, गति देंगे, वे मन, मस्तिष्क पटल पर अंकित होंगे।

जैसा कि कहा जाता है रैदास पादत्राण सीते थे। सीना भी ध्यान के कारण ही संभव है। जब उनका ध्यान अवधान हुआ तो रैदास ध्यान की आत्मा में खो गए और स्वरों में डूब गए। लय अर्थात धुन, प्रवाह सुर युक्त स्वर।

दोस्तों यहीं मेरा चैतन्य चिन्तन है। यहीं मेरे लिए चेतना के स्वर है यहीं है जो मुझे पढ़ने–पढ़ाने में सहायक है जैसे ये जीवन है, इस जीवन का यही है रंग रूप। यह जीवन चैतन्य चिंतन से निखरता है चमकता है लेकिन चुभता नहीं है अलख जगाता है।

पुरूषोत्तम विष्णु नामजोशी

दूसरा पहलू

बसंत बहार

शीतकाल बिदा ले रहा है और बसंत ऋतु का आगमन हो गया है। धरती माता ने भी चारों तरफ अपनी चमक–दमक फैला दी है फूलों कलियों एवं खुशबुओं की बहार है। सबसे सुंदर मौसम है न गर्मी की तपन न सर्दी की चुभन। ऐसे में हम सबका मन भी उमंग उत्साह से भर गया है। ऐसा लगता है कि सारा जहां हमारी तरह खुश है।

सही है मौसम का असर हम सबको प्रभावित करता है। मन स्वस्थ हो प्रसन्न हो तो कोई भी मौसम खुशी देता है। हम आप रोज ही इसका अनुभव करते आ रहे हैं यह कोई नई बात नहीं है तो पुरानी बात भी नहीं है। हर दिन नया है हर रात नई है। केवल 1 जनवरी को नया वर्ष मनाने से या 31 दिसम्बर को पुराने वर्ष को बिदाई देकर यदि हम साल की शुरूआत या समाप्ति करते हैं तो यह एक परिपाटी को निभाते भर हैं उसका सही अर्थ नहीं समझते हैं उसका सही उपयोग नहीं करते हैं।

अभी कुछ दिन पूर्व की ही बात है हम दोनों बैठे बात कर रहे थे। मैंने कहा मैं बचपन से देख रही हूं कि पूर्णिमा का चांद, रोज का सूर्योदय व सूर्यास्त, सुबह शाम–रात में कोई परिवर्तन अनुभव नहीं किया। सब कुछ वैसा ही चल रहा है नियमित लयबद्ध तरीके से एक अनुशासन से बंधा हुआ। जबकि जंगल कटने से धरती मां का आंचल छोटा हो रहा है। मकानों व बस्तियों की भीड़ बढ़ रही है इसके कारण जो प्राकृतिक स्त्रोत पानी का है हवा का है वह कम हो गया है इसका असर हमारे पर्यावरण पर पड़ रहा है। असंतुलन के कारण वर्षा कम हो गई है। फसलें प्रभावित हो रही हैं। ठंड का असर भी कम हो गया है। यह सब एक दिन में नहीं हुआ है या इसके लिये कोई एक जिम्मेदार नहीं है हम सब पर इसका दायित्व है।

हम जो जहां जिस स्थान पर जिस पद पर हैं उसको हमें निष्ठा से करना है। जैसे हम सोते हैं, भोजन करते हैं, सुख से रहने की जीने की आकांक्षा में सोचते–विचारते हैं। हमें भी प्रकृति के अनुशासन व नियमितता को अपने जीवन में उतारना है तभी जमीन पर व जीवन में संतुलन कायम रह सकेगा। पर्यावरण को दूषित होने से बचाना है। अपने आपको बचाना है और इसके लिए हमारी सबसे अच्छी शिक्षिका, दोस्त, माता, हमारी प्रकृति हमारी धरती माता, चांद, सूरज, सितारे हैं। जो वर्षों से एक लय में अपना–अपना काम उसी उमंग व उत्साह से कर रहे हैं। जब धरती पर पहली बार सूरज, चांद उगा होगा, पहली बार वर्षा हुई होगी वही आनंद तबसे आज तक कायम है और इसका कारण केवल नियमितता, अनुशासन, निष्ठा अपने कार्य के प्रति ईमानदारी ही है। सोना जितना पहले मूल्यवान था आज भी उतना ही मूल्यवान है। वैसे ही हीरा उसे अपना मूल्य बताने के लिये बोलना नहीं पड़ता वैसा ही मूल्य, योग्यता, क्षमता, मेहनत, परिश्रम, का है ये सब कालजयी हैं। ये कभी नष्ट नहीं होते कभी खत्म नहीं होते हैं ये अखंड ज्योति के समान हैं। हमेशा चमकते हैं।

बसंत के उल्लास भरे वातावरण को हम अपना सहारा बनायें। अपना कार्य, अपने कर्तव्यों को अच्छी तरह पूर्ण करने के लिये अपनी सारी शक्ति, अच्छाई को अपना दोस्त बनायें तो हम अपने जीवन को सार्थक कर सकते हैं। आपने सूखे हुए फूल को देखा होगा चाहे वह गुलाब का हो या जंगली। फूल सूखने के बाद भी उसमें उसका रंग उसकी निजता उसकी सुगंध बनी रहती है। बस यही है बसंत की व जीवन की सार्थकता। प्यारे दोस्तों बसंत की रौनक चमक–दमक आपके जीवन को उत्साह उमंग से भर दे इन शुभकामनाओं के साथ फिर मिलेंगे।

सौ. मंजू नामजोशी

प्रगति की ओर

व्यवहार न्यायाधीश वर्ग 2 सन 1999–2000 के नियुक्त न्यायाधीश गण का प्रशिक्षण का तीसरा व अन्तिम दौर दिनांक 15–10–2000 से 12–1–2002 तक चला। उक्त कालावधि में चार सत्रों में लगभग एक सौ व्यवहार न्यायाधीश प्रशिक्षण हेतु इस संस्था में पधारे। अंतिम दो सत्रों में अधिकांश न्यायाधीश छत्तीसगढ़ क्षेत्र से थे।

उक्त सत्रों में माननीय न्यायाधिपति (सेवानिवृत) श्रीमान आर.पी. अवस्थी साहेब की उपस्थिति सतत् रूप से रही। उनके मार्गदर्शन में व्यवहार प्रकरणों में अभिवचन, वाद प्रश्न निर्मित करना, साक्ष्य लिपिबद्ध की जाना, आदेश एवं निर्णय लेखन जैसे विषयों पर सारगर्भित रूप से चिन्तन हुआ तो अपराधिक प्रकरणों में चार्ज निर्मित करना अभियुक्त परीक्षण, साक्ष्य का लिपिबद्ध किया जाना एवं निर्णय तथा आदेश लेखन जैसे विषयों पर वैचारिक रूप से विचार विनिमय हुआ।

दोनों ही प्रकार के प्रकरणों की आदेशिकाएँ कैसी लिखी जाना है तथा सिविल प्रकरण संस्थित होने पर अभिवचनों का परीक्षण एवं औपचारिक आदेश कैसे लिखना यह बताया गया तो अपराधिक प्रकरणों में प्रस्तुति पश्चात कैसी कार्यवाही की जाएगी ये बताया गया। दोनों ही प्रकार के प्रकरणों में साक्ष्य का क्रमबन्धन, साक्ष्य का मूल्यांकन व परीक्षण किस प्रकार से होता है इस विषय पर स्पष्ट रूप से मार्गदर्शन दिया गया। धीर–गंभीर व विनम्र प्रकृति के धनी माननीय अवस्थी महोदय का मार्गदर्शन बहुत ही सटीक, सुस्पष्ट व चिंतन योग्य रहा है तथा प्रत्येक स्तर के न्यायाधीश बंधुओं ने उनसे ऐसा अलभ्य लाभ प्राप्त किया है।

माननीय न्यायाधिपति श्रीमान एस.एस. झा महोदय की भी अलभ्य उपलब्धि इस संस्था को रही है। उन्होंने जो विचार संस्था में आकर व्यक्त किए थे वे वास्तव में व्यवहारिक थे व प्रत्येक न्यायाधीश के न्यायिक जीवन में आने वाले उतार चढ़ाव से सम्बन्धित थे। देय परिस्थिति में न्यायाधीश ने किस प्रकार से कार्य करना चाहिए ये बात माननीय एस.एस. झा महोदय ने बखूबी बताई। उनके विचारों को **दिसम्बर 2001 की ज्योति पत्रिका में पृष्ठ संख्या 394 से 399** में अविकल रूप से प्रकाशित किया है।

माननीय न्यायाधिपति एवं अध्यक्ष न्यायिक अधिकारी प्रशिक्षण संस्थान श्रीमान व्ही.के. अग्रवाल साहेब ने इस सत्र श्रृंखला का समापन भाषण दिया था जिस के महत्वपूर्ण अंश अगली पत्रिका में प्रस्तुत किए जा रहे हैं। न्यायाधीश का व्यवहार, व्यक्तित्व, सामाजिक स्थिति, दायित्व बोध एवं उसका निर्वाह जैसे गंभीर विषय पर उनके सहज विचार थे।

माननीय न्यायाधिपति श्रीमान नारायण सिंह 'आजाद' महोदय भी प्रशिक्षण सत्र में पधारे थे। माननीय महोदय ने न्यायालय की महत्ता को बताते हुए कहा कि न्यायालयों द्वारा पारित आदेश जब अंतिम रूप धारण कर लेते हैं तो सभी के लिए बाध्य होते हैं। यह बाध्यता राजा एवं रंक में अंतर नहीं करती। ईश्वर के प्रतिनिधि के रूप में न्यायाधीश कार्य करता है इसलिए किसी और व्यक्ति से चाहे वह किसी भी पद पर आसीन हों या न हो तुलना करने की आवश्यकता नहीं है क्योंकि न्यायाधीश के पद की व गरिमा की तुलना किसी से नहीं की जा सकती।

आचरण के सम्बन्ध में माननीय 'आजाद' महोदय ने कहा कि न्यायाधीश का आचरण हमेशा सौम्य हो, शालीन हो। सर्व साधारणजन न्यायाधीश के व्यवहार की तुलना साधु संतों के व्यवहार व आचरण से करते हैं। समय पर न्यायालय में आना, तनाव से मुक्ति, निर्णयों की गुणवत्ता, सौम्य वेशभूषा से सम्बन्धित मुद्दों पर भी चर्चा की। उच्च पदस्थ व्यक्तियों के साथ सम्बन्धों पर (Hobnobing) (Pegorative meaning) भी विचारों को व्यक्त किया व कहा कि ऐसे सम्बन्ध भविष्य में नुकसान पहुंचाते हैं।

प्रकरणों के सुनते समय किसी भी प्रकार की पूर्व धारणा बनाकर न बैठना श्रेयस्कर है ऐसा भी माननीय श्री नारायण सिंह 'आजाद' महोदय ने कहा। न्यायालयों में साक्ष्य का लिपिबद्ध करना, विलेखों का रिकार्ड पर लेना, आदेशों का व निर्णयों का लिखना एवं अन्य प्रक्रिया सम्बन्धी विषयों पर भी सारवान चर्चा कर प्रशिक्षुओं को मार्गदर्शित किया।

माननीय न्यायाधिपति महोदय श्रीमान पी.सी. अग्रवाल साहेब ने दो–दो प्रशिक्षण वर्गों के माध्यम से नियम एवं आदेश सिविल एवं अपराधिक को आधार बनाते हुए व उससे सम्बन्धित नियमों व सिविल एवं अपराधिक प्रक्रिया विधि के प्रावधानों के साथ मेल जोल करके निर्णय कैसे लिखे जाना है, उसका उद्देश्य क्या है, निर्णय क्यों लिखा जाता है व किसके लिए लिखा जाता है जैसे गंभीर शैशिक विषय पर सुबोध व बोधगम्य एवं सूत्रबद्ध सहज रूप से बताया। माननीय अग्रवाल महोदय ने निर्णय की लेखन शैली पर विशेष रूप से विचार प्रगट किए।

प्राध्यापक श्री प्रमोद पाण्डेय महोदय ने ज्यूरिसप्रूडन्स का व्यवहारिक पक्ष, न्यायाधीश वर्ग के लिए उसकी महत्ता, उसका अध्ययन व व्यवहारिक उपयोग इस विषय पर विस्तार से प्रकाश डाला व कहा कि ज्यूरिसप्रूडन्स (न्यायशास्त्र) का अध्ययन ऐसा अध्ययन है जिससे व्यवहारिक क्षेत्र में कार्य करने में एवं विचारों की प्रस्तुति करने में सुलभता होती है।

अधिवक्ता एवं पूर्व लेखा अधिकारी, म.प्र. उच्च न्यायालय श्री पी.के. तिवारी जो अपने विषय में मर्मज्ञ हैं ने भी इस संस्था के माध्यम से न्यायाधीश वर्ग को लेखों के सम्बन्ध में एवं प्रशासनिक कार्य के सम्बन्ध में विद्वतापूर्ण विचार व्यक्त कर मार्गदर्शन दिया।

श्री सी.व्ही. सिरपुरकर अतिरिक्त रजिस्ट्रार, (न्यायिक) म.प्र. उच्च न्यायालय ने दं.प्र.स. की धारा 125 से 128 के प्रावधानों के आधार से भरण पोषण से सम्बन्धित विधि का विश्लेषणात्मक मार्गदर्शन प्रदान किया।

प्रशिक्षण काल में विभिन्न विषयों पर प्रश्नावली बनाकर प्रशिक्षुओं को दी गई थी व उन प्रश्नावलियों के आधार से प्रश्नों से सम्बन्धित विषयों पर विस्तार से बताया गया।

प्रशिक्षुगणों की ओर से बुलाए गए निर्णय, चार्ज, वाद प्रश्न, आदेशिकाएँ आदि का निरीक्षण हुआ व मार्गदर्शन किया गया। यह कार्य भी माननीय न्यायाधिपति श्रीमान आर.पी. अवस्थी एवं मेरे द्वारा किया गया।

प्रसन्नता की बात है कि न्यायाधीशगण, प्रशिक्षण व उसके परिणामों के बीच तालमेल बैठने लगा है यह एक आशा की किरण है। वास्तव में ये ऐसा कार्य था जो बहुत पहले ही होना था लेकिन हो रहा है यही बहुत है ऐसा मानकर प्रगति पथ पर अग्रसर होना ज्यादा लाभदायक है।

हम कौन हैं

रोज सुबह आकाशवाणी पर भजन सुनता हूँ। लाईट रहे या न रहे हम सुनते ही हैं। सुबह के कार्यक्रम में रेडियो हमारा साथी संगी है। भजन सुना, जागो मोहन प्यारे..... ! जागो शब्द के साथ याद आया कि आज से ठीक एक माह बाद फरवरी 2002 की पत्रिका प्रकाशित होना है, संपादकीय, जागते रहो एवं संस्थानिक प्रतिवदेन पूर्ण होते ही पत्रिका का प्रकाशन हो सकेगा। अतः आज जागते रहो लिखने की इच्छा हो गई तो बस प्रारम्भ कर दिया। हमारे यहां स्टाक भयंकर मात्रा में रहता है। आपूर्ति इतनी अधिक होती है कि ऐसा लगने लगता है कि भारतीय खाद्य निगम को. उनके भंडारण गृह भी छोटे पड़ते हैं वैसे ही हमारे मस्तिष्क पटल के स्मरण शक्ति को संग्रहित करने वाले सेलों (कोशिकाओं) की भी कमी हो जाती है। जहां कोई बात या वस्तु अधिकता में होती है तो अर्थशास्त्र की उपयोगिता (यूटिलिटि) का सिद्धांत लागू होता है। अतः जहां हर द्विमासिक पत्रिका में जागते रहो आना है वहां उसका प्रभाव भी उपेक्षापूर्ण ही होता है। ठीक वैसे ही जैसे रेल पटरी के पास निवास करने वालों को दिन रात गुजरने वाली ट्रेनों की आहट तक सुनाई नहीं देती। लेकिन सभी को सौभाग्य कहां कि रेल पटरी के किनारे बसने का अवसर हो। उन्हें तो ठेठ दूर की भी आवाज सुनाई देती है क्योंकि कानों की चुभन कम नहीं हुई है, संवेदनशीलता नष्ट नहीं हुई है।

इसी पत्रिका के माध्यम से **ज्योति अक्टूबर 1999 में पृष्ठ क्रमांक 375 से 381** पर न्यायालयों के नामों के शीर्षक तैयार करके दिए थे। एक ही पीठासीन अधिकारी एक से अधिक स्टेट्स से कार्य करता है। अतः जिस स्टेट्स से वह कार्य करता है उसी स्टेट्स को आदेश पत्रिका में एवं आदेश निर्णयों में लिखना चाहिए। ये बातें तब पत्रिका में लिखने का अवसर इसलिए आया कि एक विशेष न्यायाधीश ने अपने आपको विशेष सत्र न्यायाधीश के रूप में उल्लेख किया जिस कारण एक माननीय न्यायाधिपति महोदय ने मुझे इस सम्बन्ध में विचारों को व्यक्त करने हेतु कहा। एक विशेष न्यायाधीश अतिरिक्त सत्र न्यायाधीश ही होगा यदि वह जिले का जिला न्यायाधीश नहीं है। हां जिले का जिला न्यायाधीश विशेष न्यायाधीश हो तो वह सत्र न्यायाधीश भी होगा। दं.प्र.सं. की धारा 9 एवं 10 का अध्ययन सहायक होगा। अतः जो विशेष न्यायाधीश है लेकिन जो जिले के जिला न्यायाधीश एवं सत्र न्यायाधीश नहीं है वे सब अतिरिक्त सत्र न्यायाधीश के रूप में ही कार्य करेंगे। धारा 9 के तहत सत्र न्यायाधीश की नियुक्ति एवं सिलेक्शन ग्रेड मिलने का आपस में कोई सम्बन्ध नहीं है, यह भी विशेष रूप से ध्यान रखने योग्य है। व्यवहार न्यायाधीश जब अपराधिक प्रकरणों में कार्य करता है तो वह न्यायिक दंडाधिकारी के रूप में कार्य करता है। निवेदन है कि पत्रिका का वह अंक व संदर्भित लेख पढ़ने की कृपा करें।

एक से अधिक अवसर पर यह व्यक्त किया गया है कि निर्णय में सजा अंकित करते वक्त पुस्तक खोलकर प्रावधानों को देखना है, प्रकरण की परिस्थिति, अभियुक्त का चरित्र व प्रकरण में अपराध कारित किए जाने की परिस्थिति को न केवल समझना है अपितु लिपिबद्ध भी करना है। लेकिन ऐसा नहीं होता है। यथा धारा 354 भा.दं.वि. में यदि दो वर्ष की सजा है तब न्यायालय को

कोई भी अधिकार नहीं है कि वह चार वर्ष की सजा दे। इस विषय पर एक न्यायाधीश का कहना था कि ऐसी भूल तो होती रहती है। सम्भव हो उनका कहना वास्तविक एवं सही हो। लेकिन ऐसी भूल जब अभियुक्त के गले पड़ जावे तो क्या होगा। तीन साल या तीन साल से कम की सजा दी जाती है तो सामान्य स्थिति में अभियुक्त को धारा 389 दं.प्र.सं. का लाभ मिलेगा व सजा निलंबित होगी। अन्यथा अपवादात्मक स्थिति में ही तीन साल से अधिक की सजा में आरोपी को ऐसा लाभ दिया जा सकेगा।

आरोपी की आर्थिक संपन्नता, प्रकरण की परिस्थिति, घटना जिन परिस्थिति में कारित हुई आदि बातें ऐसी हैं जो सजा की मात्रा एवं प्रकार को प्रभावित करती है अतः उसे ध्यान से समझना भी है व निर्णय में व्यक्त भी करना है यह ध्यान रहे। शब्दों का लिखना व उन्हें अभिव्यक्ति देना दो पृथक बातें हैं।

जागते रहो शीर्षक में एक बार यह लिखा था कि शिक्षक द्वारा छात्रा के साथ बलात् संग करने के भारी भरकम अपराध की अत्यंत गंभीरता को ध्यान में लेते हुए तीन वर्ष की सजा से दंडित किया। जबकि सामान्य स्थिति में सजा सात साल से कम की नहीं दी जा सकती। एक माननीय न्यायाधिपति ने बुलाकर यह बात बताई थी।

यदि विशेष कारण उल्लेखित हो। (जी हां निर्णय में विशिष्ट शब्दों में दर्शित करना होंगे) तो कम सजा दी जा सकती है। लेकिन फिर भी जेल की सजा अनिवार्य है। ऐसा न हो कि धारा 376 भा.द.वि. में अर्थदंड की सजा एवं धारा 354 भा.द.वि. में निर्धारित से दो गुना जेल की सजा।

आरोपी परीक्षण (अभियुक्त कथन) धारा 313 दंड प्रक्रिया का महत्वपूर्ण अंग है। अभी उसे समाप्त नहीं किया है। प्रत्येक परिस्थिति जो अभियुक्त के विरूद्ध प्रगट हुई है के आधार से पृथक पृथक प्रश्न बनाना होते हैं। लेकिन ऐसा बिलकुल नहीं हो रहा है। प्रशिक्षण सत्रों में एवं अन्यथा ऐसे परीक्षण देखने से ज्ञात होगा कि एक औपचारिकता का निर्वाह मात्र हो रहा है एवं वो भी गले की बियाद (व्याधि) उतारने जैसी। एक एक प्रश्न में चार–चार पांच–पांच प्रश्नों का सम्मिश्रण। फार्मेसी वाले भी टॉनिक की दवा छोड़कर एक दो से अधिक मिश्रण करके दवा नहीं बनाते होंगे। और कमाल तो ये कि जो और जिन शब्दों में ये प्रश्न बनाए गए वे ही अभियोजन के केस के रूप में ज्यों के त्यों ठोक (रख) दिए गए। सजा के प्रश्न पर सुनना भी एक औपचारिकता रह गया है। ये भी नहीं लिखा जाता है न कारण दर्शाए जाते हैं कि प्रोबेशन का लाभ क्यों नहीं देना है। धारा 361 दं.प्र.सं. इस बात की अनिवार्यता को बताती है।

मित्रों यदि ऐसा कार्य वरिष्ठ न्यायाधीश कर रहे हैं तो किसके लिए यह सब किया जावे। वास्तव में ऐसा कर्म अश्रद्धा की एक झलक मात्र है। जहां अश्रद्धा है वहां आत्मीयता से कार्य नहीं हो सकता। न्यायदान की आत्मा ही आत्मीयता है। यदि उसका ही अभाव है तो सोचना यह है कि हम कौन है।

पहरूआ

बेहतर है जान लो

संविदा का विनिर्दिष्ट पालन - अवधि की गणना

(अनुच्छेद 54 मर्यादा अधिनियम)

पुरूषोत्तम विष्णु नामजोशी

परिसीमा अधिनियम 1963 के अनुच्छेद 54 को प्रथमतः हम पढ़ेंगे वो इस प्रकार है :

अनुच्छेद अनुक्रमांक	वाद का वर्णन 1	परिसीमाकाल 2	जब से काल चलना आरम्भ होता है 3
54	किसी संविदा के विनिर्दिष्ट पालन के लिए।	तीन वर्ष	पालन के लिए नियत की गई तारीख या यदि ऐसी तारीख नियत नहीं की गई है तो जब वादी को यह सूचना हो जाए कि पालन से इन्कार कर दिया गया है।

अनुच्छेद को पढ़ने की कला यह है कि अनुच्छेद का भाग 1 को पढ़ने पश्चात भाग 3 पढ़ना चाहिए व तत्पश्चात भाग 2। इस प्रकार संविदा के विनिर्दिष्ट पालन के लिए 2 भागों में मर्यादा काल विभाजित होता है। अर्थात दावे को कारण इस प्रकार उत्पन्न होते हैं :

(1) पालन के लिए नियत की गई तारीख या;

(2) यदि ऐसी तारीख नियत नहीं की गई है तो जब वादी को यह सूचना हो जाए कि पालन से इन्कार कर दिया है।

अतः निश्चित तारीख विनिष्ट पालन हेतु निर्दिष्ट है जैसे 01.3.2002 तो उस दिन व्यवहार पूर्ण होना चाहिए अन्यथा वादी को यह अधिकार होगा कि वह अपना दावा उक्त तारीख से तीन साल के अंदर दावा लग सकता है। इस प्रकार मर्यादा काल 02.3.2002 से 02.3.2005 तक में दावा लग सकता है। (देखें धारा 12 मर्यादा अधिनियम सपठित धारा 9 जनरल क्लॉजेज एक्ट)

जहां समय निर्धारित है ऐसा माना जाता है वहां भी अलग अलग परिस्थितियां सम्भव हो सकती हैं। जैसे एक निश्चित तारीख। जहां एक निश्चित तारीख निर्धारित की हो व उक्त तारीख को नए सिरे से बढ़ाया हो, अथवा भावी घटना के घटित होने के संबंध में कोई शर्त हो जो निश्चित रूप से घटित होने की संभावना हो जिसे हम id certum est auod certum reddi potest अर्थात that is certain which can be rendered certain.

यदि अनुबन्ध की पूर्ति हेतु विशेष समय निर्धारित नहीं है तो वादी को जब यह ज्ञात हो कि प्रतिवादी अनुबन्ध के पालन करने से इन्कार कर रहा है। ये हिस्सा ऐसा है जो तथ्यात्मक बातों के आधार से निर्धारित किया जाएगा कि प्रथम बार प्रतिवादी ने प्रत्यक्ष या अप्रत्यक्ष रूप से कब ऐसा करने

से मना कर दिया। ***मिट्ठू खान वि. पिपरिया वाली 1985 जे.एल.जे. 169 : 1985 एम.पी.एल.जे. 119*** में कहा गया Where no date has been given in the agreement of sale, it comes under the second category. The suit should be filed within three years from the date of refusal to perform the contract.

स्तम्भ 3 में उल्लेखित द्वितीय भागानुसार कालावधि की गणना करते समय तथ्यात्मक रूप से निर्धारित करना होगा कि मर्यादा काल की गणना प्रारम्भ करने के पूर्व किसी पूर्व शर्त की पूर्णता हो चुकी है या नहीं। यदि हो चुकी है एवं फिर भी प्रतिवादी अनुबन्ध की पूर्ति करने हेतु तत्पर नहीं है तब उस दिन से जिस दिन पूर्व शर्त पूर्ण हो चुकी थी मर्यादा काल प्रारम्भ होगा। जैसे राम, श्याम को संपत्ति इस शर्त पर विक्रय करने हेतु तत्पर है कि उसका भाई अमेरिका से आ जाएगा। यह शर्त अस्पष्ट है। अतः यह निश्चित करना कठिन है कि अनुबन्ध की ऐसी कौन सी तारीख है जिस दिन मर्यादा प्रारम्भ होगी। अतः अमेरिका से भाई आने के पश्चात एवं वादी द्वारा इस संबंध में सूचना पत्र देने पश्चात भी यदि प्रतिवादी विक्रय पत्र निष्पादित करने हेतु तैयार नहीं है तब मर्यादा काल प्रारम्भ होगा। (देखें ***के. मल्लिकार्जुन वि. पररसराधि राव, ए.आई.आर. 1954 मद्रास 742*** एवं ***त्रिलोकी वि. जैतुन निस्सा, ए. आई.आर. 1922 पटना 40*** के दृष्टांत) जहां तिथि निर्धारित नहीं है वहां पर तिथि का निर्धारण (असर्टेन) तय किया जा सकता है।

इस संबंध में स्तरीय पुस्तकों के आधार से विभिन्न दृष्टांतों के संदर्भों को पढ़कर तय किया जा सकता है कि किस देय प्रकरण की परिस्थिति में मर्यादा काल की गणना कब से प्रारम्भ होगी।

रोजस्सरा वि. जानी नरोत्तम दास ए.आई.आर. 1986 सु.को. 1912 का दृष्टांत देखने योग्य है। उक्त प्रकरण में रोजस्सरा ने एक अनुबंध इस आशय का किया था कि राणा मोहब्बत सिंह उसे प्लाट बेचेगा तथा राणा उक्त कृषि भूमि को ग्राम्य भूमि में परिवर्तित करने हेतु कलेक्टर के यहां कार्यवाही करेगा, ऐसा हुआ। अनुमति 26 अगस्त 1958 को प्राप्त हुई। लेकिन आंशिक भूमि की। करार से संबंधित शेष भूमि की अनुमति 10 सितम्बर 1959 को प्राप्त हुई। इस बीच अपीलार्थी ने उक्त भूमि विक्रय करने का अनुबंध उत्तरवादी जानी नरोत्तम दास से किया था। नरोत्तम दास ने विनिर्दिष्ट सहायता चाहते अपीलार्थी के विरूद्ध दावा 6 सितम्बर 1960 को किया। सर्वोच्च न्यायालय ने पाया कि दावा अवधि में है। स्पष्ट है कि जैसे ही कलेक्टर से अंतिम बार 10 सितम्बर 1959 को भूमि को ग्राम्य भूमि के रूप में परिवर्तित करने की अनुमति मिली थी दावा लगाने का अधिकार उत्तरवादी का उत्पन्न हो गया था। सर्वोच्च न्यायालय ने कहा कि ऐसा व्यवहार समाश्रित व्यवहार नहीं है (Contingent Contract)।

कालावधि के अंतिम दिन यदि दावा प्रस्तुत किया है तो इसका यह अर्थ नहीं है कि वादी ने विनिर्दिष्ट सहायता का अपना अधिकार परित्याग कर दिया है। वह अंतिम समय तक न्यायालय से बाहर सहायता प्राप्त करने का प्रयत्न कर सकता है। ***एन. वेंकट रमण्णा वि. एम. नरसिंह ए.आई.आर. 1994 ए.पी. 244***।

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बेहतर है जान लो

आरोपी को निरोध में लेना एवं सजा के प्रश्न पर सुनना

धारा 309, 248(2) एवं 235(2) दं.प्र.सं.

-पुरूषोत्तम विष्णु नामजोशी

इसी पत्रिका में एक लेख आंशिक रूप से इसी विषय पर लिखा है कि आरोपी को सजा पर सुनने हेतु समय देना होगा तथा ***राजदेव चौहान वि. राज्य ए.आई.आर. 2001 पृष्ठ 2231*** के निर्णय का एक अंश भी प्रकाशित किया है।

उसी तारतम्य में यहां पर पूरक विषय पर संक्षिप्त टीप दी जा रही हैं। यदि आरोपी को सिद्ध दोष (गिल्टी) पाते हुए (दोषसिद्ध), दंडित (कनव्हिक्ट) किया जाता है व सजा के विषय पर जब सुनवाई की जाना है तो क्या सजा देने के पूर्व ही अभियुक्त के प्रतिभूति एवं बंधपत्र निरस्त कर उसे निरोध में लेना न्यायोचित है।

यदि आरोपी को किसी अपराधिक प्रकरण में जमानत पर छोड़ा गया है तब उसकी जमानत अन्यथा प्रावधित न हो तो प्रकरण के निर्णय तक की होगी। अर्थात आरोपी का विचारण न्यायालय द्वारा जब तक सजा नहीं होती है अथवा निर्दोष मुक्त नहीं किया जाता है या उन्मोचित नहीं किया जाता है या प्रकरण का उक्त न्यायालय द्वारा अन्यथा उक्त न्यायालय की सीमा तक अन्तिम रूप से निराकरण नहीं किया जाता है तब तक प्रतिभूति बन्ध पत्र अस्तित्व में रहते हैं व तत्पश्चात वे उन्मोचित हो जाते हैं क्योंकि उक्त प्रकरण में आरोपी की अब कोई आवश्यकता उपस्थिति हेतु शेष नहीं रही। यदि प्रतिभूति सशर्त है तो उन शर्तों के अनुसार सीमित कालावधि के लिए हो सकती है व उस अवधि तक अभियुक्त जमानत पर स्वतंत्र रह सकता है।

अभी तक सिद्ध दोष (गिल्टी) ठहराने के पश्चात किसी अपराध में दोष सिद्ध (कन्व्हिक्ट) ठहराने तक व सजा की घोषणा करने तक आरोपी को निरोध में नहीं लिया जा सकता था क्यों कि उसकी जमानत संबंधित न्यायालय में हो रही सुनवाई तक के लिए होती है। जमानत का आदेश करने वाला न्यायालय भी अन्यथा कोई विशेष बात न हो तो ऐसा ही आदेश पारित करता है।

व्ही. चेन्ना रेड्डी वि. एन. विद्यासागर रेड्डी 1982 सीआर.एल.जे. पृष्ठ 2183 के निर्णय के चरण 6 में भी यही बताया गया है। अभी तक यही मान्य सिद्धांत था व यही व्यवस्था थी।

लेकिन अब रामदेव चौहान के प्रकरण (ऊपर उल्लेखित) के न्याय दृष्टांत के कारण परिस्थिति बदल गई है। उक्त दृष्टांत का चरण 50 पढ़ने से ऐसा अनुभव होगा कि गंभीर प्रकार के प्रकरणों में जहां आरोपी का कन्व्हिक्ट (दोष सिद्ध) किया गया है वहां न्यायालय को यह अधिकार है कि वह उसे अभिरक्षा में ले ले चाहे जमानत का आदेश उक्त प्रकरण के, उस न्यायालय द्वारा, अंतिम सुनवाई (निर्णय) तक के लिए क्यों न हो।

राम नारंग वि. रमेश नारंग (1995)2 सु.को.को. पृष्ठ 513 में बताया है कि Judgment becomes complete and appealable only after conviction is recorded and also sentence is awarded. अब दोष सिद्धि (कनव्हिक्शन) की सीमा तक ही आरोपी को जमानत पर रहने का अधिकार हो सकता है ऐसा माना जा सकता है।

अतः बेहतर तो यही होगा कि गंभीर प्रकार के प्रकरणों में अथवा वारण्ट ट्रायल या सेशन्स ट्रायल वाले प्रकरणों में जमानत के आदेश में ही यह लिख देना उचित होगा कि उक्त जमानत का आदेश केवल उस सीमा तक रहेगा कि यदि अभियुक्त उक्त प्रकरण में सिद्ध दोष (गिल्टी) पाया जाकर दोष सिद्ध (कान्व्हिक्ट) किया जाता है तो उसके बन्ध पत्र एवं प्रतिभूति पत्र तत्काल प्रभाव से उन्मुक्त हो जाएंगे एवं निष्प्रभावी होंगे। इस प्रकार बिना किसी कठिनाई या विवाद के कार्य सुचारू रूप से चल सकेगा। व्यवहारिक धरातल पर आप अपने प्रकरणों में यथोचित प्रक्रिया अपना सकते हैं।

रामदेव चौहान के निर्णय का चरण 50 का अंश यहां प्रकाशित किया जा रहा है। सम्पूर्ण निर्णय पढ़ने से विचारों को और गति मिलेगी।

50. The mandate of the Legislature is clear and unambiguous that no adjournment can be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed upon him. In a case punishable with death or imprisonment for life, there is no difficulty for the Court where the sentence proposed to be imposed is alternative sentence of life imprisonment but if it proposes to award the death sentence, it has discretion to adjourn the case in the interests of justice as held in **Sukhdev Singh's case (AIR. 1992 S.C. 2100).** I have no doubt in holding that dispite the bar of third proviso to sub-section(2) of Section 309, the Court in appropriate case, can grant adjournment for enabling the accused persons to show cause against the sentence proposed on him particularly if such proposed sentence is sentence of death. We hold that in all cases where a conviction is recorded in cases triable by the Court of Session or by Special Courts, the Court is enjoined upon to direct the accused convict to be immediately taken into custody, if he is on bail, and kept in jail till such time the question of sentence is decided. After the sentence is awarded, the convict is to undergo such sentence unless the operation of the sentence awarded is stayed or suspended by a competent Court of jurisdiction. Such a course is necessitated under the present circumstances prevalent in the country and is in consonance with the spirit of law. A person granted bail has no right in insist to remain at liberty on the basis of the orders passed in his favour prior to his conviction.

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NO ONE HAS A CORNER OF SUCCESS. IT IS HIS WHO PAYS THE PRICE.

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EVERY JOB IS A SELF PROTRAIT OF THE PERSON WHO DID IT.

एक विचार

सजा के प्रश्न पर अभियुक्त को सुना जाना

-पुरूषोत्तम विष्णु नामजोशी

धारा 248(2) एवं धारा 235(2) दं.प्र.सं. में यह व्यवस्था है कि अभियुक्त को सजा के प्रश्न पर सुना जाएगा व तत्पश्चात ही आरोपी पर सजा आरोपित की जाएगी। ये प्रावधान हिन्दी–अंग्रेजी अनुवाद सहित इस प्रकार हैं।

248. दोषमुक्ति या दोषसिद्धि -

(1) यदि इस अध्याय के अधीन किसी मामले में, जिसमें आरोप विरचित किया गया है, मजिस्ट्रेट इस निष्कर्ष पर पहुँचता है कि अभियुक्त दोषी नहीं है, तो वह दोषमुक्ति का आदेश अभिलिखित करेगा।

(2) जहाँ इस अध्याय के अधीन किसी मामले में मजिस्ट्रेट इस निष्कर्ष पर पहुँचता है कि **अभियुक्त दोषी है, किन्तु वह धारा 360 के उपबन्धों के अनुसार कार्यवाही नहीं करता है, वहाँ वह दण्ड के प्रश्न पर अभियुक्त को सुनने के पश्चात् विधि के अनुसार उसके बारे में दण्डादेश दे सकता है।**

248. ACQUITTAL OR CONVICTION -

(1) If, in any case under this Chapter in which a charge has been framed. the Magistrate finds the accused not guilty, he shall record an order of acquittal.

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

235. दोषमुक्ति या दोषसिद्ध का निर्णय -

(1) बहस और विधि प्रश्न (यदि कोई हो) सुनने के पश्चात् न्यायाधीश के मामले में निर्णय देगा।

(2) यदि अभियुक्त दोषसिद्ध किया जाता है, तो न्यायाधीश उस दशा के सिवाय जिसमें यह धारा 360 के उपबन्धों के अनुसार कार्यवाही करता है, दण्ड के प्रश्न पर अभियुक्त को सुनेगा और तब विधि के अनुसार उसके बारे में दण्डादेश देगा।

235. JUDGMENT OF ACQUITTAL OR CONVICTION -

(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence and then pass sentence on him according to law.

361. Special reasons to be recorded in certain cases.- Where in any case the **Court could have dealt with-**

(a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958, or

(b) a youthful offender the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, **but has not**

done so, it shall record in its judgment the special reason for not having done so.

361. **कुछ मामलों में विशेष कारणों का अभिलिखित किया जाना**-जहाँ किसी मामले में न्यायालय –

(क) किसी अभियुक्त व्यक्ति के संबंध में कार्यवाही धारा 360 के अधीन या अपराधी परिवीक्षा अधिनियम 1958 (1958 का 20) के उपबन्धों के अधीन कर सकता था; या

(ख) किसी किशोर अपराधी के संबंध में कार्यवाही, बालक अधिनियम 1960 (1960 का 60) के अधीन या किशोर अपराधियों के उपचार, प्रशिक्षण या सुधार से सम्बन्धित तत्समय प्रवृत्त किसी अन्य विधि के अधीन कर सकता था,

किन्तु उसने ऐसा नहीं किया है, वहाँ वह ऐसा न करने के विशेष कारण अपने निर्णय में अभिलिखित करेगा।

प्रश्न ये है कि अभियुक्त को सुनवाई का अवसर किस अनुक्रम (स्टेज) में देना है। धाराओं को पढ़ने–पढाने पर प्रशिक्षण शिविरों में कई बार इस विषय पर मत भिन्नता सामने आई है। एक वर्ग का कहना है कि यदि अभियुक्त को परिवीक्षा (प्रोबेशन) का लाभ देना है तो सजा के प्रश्न पर सुनने का अधिकार देने का प्रश्न ही नहीं है लेकिन यदि जेल एवं/अथवा अर्थदंड की व्यवस्था सजा के रूप में करना हो तो सुना जाना चाहिए। दूसरा वर्ग कहता है कि इस संबंध में कोई मत भिन्नता नहीं होना चाहिए। यदि सजा देना है तो सुनना ही होगा। चाहे वह सजा जेल एवं अथवा अर्थदंड की ही क्यों न हो अथवा कि परिवीक्षा पर छोड़ने की ही बात क्यों न हो क्योंकि वह भी तो सजा (सेन्टेन्स) का ही तो हिस्सा है।

धारा 248(2) एवं धारा 235(2) के प्रावधानों का भावार्थ समझा जाना आवश्यक है। परिवीक्षा के आधार पर छोड़ना भी हो तो इसका अर्थ यह तो नहीं है कि अभियुक्त को इस संबंध में नहीं सुना जाना है। अभियुक्त को सुनने का अर्थ यह भी नहीं है कि अभियोजन को नहीं सुना जाएगा ना ही अभियुक्त के अधिवक्ता को ही सुना जाएगा। परिवीक्षा पर छोड़ने हेतु भी परिवीक्षा अपराधी अधिनियम की धारा 3 एवं 4 को देखा जाना आवश्यक है। उसके अनुसार भी अभियुक्त को पूर्व प्रकरणों में इन प्रावधानों का लाभ नहीं मिला हुआ होना चाहिए। दूसरी बात यह कि परिवीक्षा का लाभ देने के पूर्व प्रकरण कि प्रकृति परिस्थिति एवं अभियुक्त का चरित्र (व्यवहार एवं पूर्व चरित्र पूर्ववृत्त) (एन्टि सिडेन्ट्स) परिवार की स्थिति, आर्थिक स्थिति क्या है।) को भी देखा जाना होता है।

यदि हम अभियुक्त, अभियोजन पक्ष को नहीं सुनेंगे तो हमें इन सब बातों को ज्ञात होने का अवसर कैसा रहेगा। दूसरी बात और कि धारा 4 के अंतर्गत लाभ देना है तो हमें निश्चित रूप से परिवीक्षा अधिकारी से रिपोर्ट भी बुलवाना है। बिना उस रिपोर्ट के धारा 4 परिवीक्षा अपराधी अधिनियम के अंतर्गत प्रयोग उचित नहीं माना जा सकता है। धारा 4 की भावनाओं के विपरीत होगा।

यदि ये सब बातें हैं तो हमें अभियुक्त को तब सुनना है जब हम उसे दोषसिद्ध (गिल्टी) पाते हुए उसे सिद्ध दोष (कन्व्हिक्ट) करते/ठहराते हैं उसी के बाद तो सजा का अनुक्रम आएगा।

सजा का जब क्रम आएगा तब ही तो अभियुक्त को हम सुनेंगे। यह मान्य सिद्धांत है कि हम ऐसा कोई निष्कर्ष दोनों पक्षों को सुनकर ही देंगे अर्थात दूसरे पक्षकार की बातों पर भी ध्यान दें; बिना सुनवाई का अवसर दिए किसी को दंडित नहीं किया जाना चाहिए।

भ्रम की स्थिति निर्मित होने का मुख्य कारण 248(2) एवं 235(2) के निम्न हिस्से को पढ़ाने से ज्ञात होगा।

235(2) एवं 248(2) :–

If the accused is convicted, the judge shall **unless he proceeds in accordance with the provisions of section 360,** hear the accused on the question of sentence, and then pass sentence on him according to law.

इस प्रकार ऊपर उल्लेखित हिस्सा "unless he proceeds in accordance with the provisions of S. 360" विभ्रामित करता है।

धारा 360 दं.प्र.सं. के प्रावधान म.प्र. में लागू नहीं होते हैं क्योंकि धारा 19 परिवीक्षा अपराधी अधिनियम के अनुसार वह अधिनियम लागू होगा। धारा 360 अथवा धारा 3–4 परिवीक्षा अपराधी अधिनियम के प्रावधान समझने के पूर्व धारा 361 दं.प्र.सं. के प्रावधान को पढ़ना होगा। उक्त प्रावधान को इस प्रकार पढ़ने से समझने में सुविधा होगी।

361. Special reasons to be recorded in certain cases -

Where in any case the Court could have dealth with,

x x x x x x

x x x x x x

But has not done so, it shall record in its judgment the special reasons for not having done so.

उपरोक्त धारा के "Court could have dealth with - but has not done so" शब्द वृन्द महत्वपूर्ण है। न्यायालय को धारा 361 के भाग **ए** अथवा **बी** के अंतर्गत प्रथमतः कार्यवाही करना चाहिए यदि की जा सकती है, लेकिन नहीं कर रहा है तो उसके कारण विशेष रूप से अभिव्यक्त करेगा। अर्थात ए बी भाग में क्या लिखा है उसे देखें।

(a) an accused person under S. 360 or under the provisions the probation of offenders Act, 1958 (20 of 1958), or

(b) a youthful offender under the Children Act 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders :

अर्थात न्यायालय धारा 361 के भाग **ए** या **बी** का प्रयोग करना चाहेगी या नहीं करना चाहेगी यह निर्धारित करने हेतु प्रथमतः दोनों पक्षों को सुना जाना जरूरी है, आवश्यक है तब ही न्यायालय न्यायसम्मत विवेकानुसार निष्कर्ष निकाल सकेगा।

अब यदि ऐसी बात है तो निष्कर्ष यह निकला कि अभियुक्त को चाहे परिवीक्षा का लाभ देना हो या अन्य लाभ जो धारा 360 सपठित धारा 361 दं.प्र.सं. के अंतर्गत लाभ देना हो उसे सुनना होगा तब या तो उक्त प्रावधानों का लाभ दे या नहीं देना हो तो सजा की व्यवस्था करें। इस प्रकार सजा देने की स्थिति तक पहुँचने के पूर्व धारा 361 की प्रक्रिया का पालन करना अनिवार्य है। वहां नकारात्मक कर्तव्य न्यायालय पर निर्धारित है कि धारा 361 दं.प्र.सं. के प्रावधानों के अंतर्गत न्यायालय यह कारण दर्शित करे कि वह उक्त प्रावधानों के अंतर्गत लाभ क्यों नहीं देना चाहता। न्यायालय ऐसे कारण तो तभी बता पाएगा जब दोनों पक्षकारों को सुनेगा व सुनने के पश्चात तय करेगा कि लाभ दिया जाना

है या नहीं। इस प्रकार धारा 248(1) एवं धारा 235(2) को पढ़ना है। अतः जब उक्त धाराओं का प्रयोग करना है तब हमें धारा 361 के दृष्टिकोण को भी ध्यान रखना होगा।

धारा 309 का तृतीय परन्तुक भी यहां ध्यान में लेना होगा वो इस प्रकार है –

परन्तु यह भी कि कोई स्थगन केवल इस प्रयोजन के लिये नहीं मंजूर किया जाएगा कि वह अभियुक्त व्यक्ति को उस पर अधिरोपित किये जाने के लिए प्रस्थापित दण्डादेश के विरूद्ध हेतुक दर्शित करने में समर्थ बनाए।

इस प्रावधान का भावहीन अर्थ यह हो गया कि सजा के संबंध में सुनने हेतु समय नहीं दिया जाएगा। लेकिन विधि प्रावधानों का शब्दशः अर्थ अथवा भावहीन अर्थ न निकालते हुए भावप्रधान अर्थ निकाला जाना चाहिए जिससे प्रावधान का उद्देश्य पूर्ण हो।

अभियुक्त को परिवीक्षा का लाभ दिया जावे या नहीं ऐसा मौखिक तर्क भी हो सकता है व साक्ष्य के द्वारा भी सिद्ध किया जा सकता है। अभियुक्त का चरित्र पूर्व में परिवीक्षा का लाभ प्राप्त करना, अभियुक्त की आर्थिक स्थिति पारिवारिक स्थिति आदि ऐसी अनेकानेक बाते हैं जिस आधार पर यह निर्धारित करना है कि उसे लाभ दिया जावे या नहीं। इसलिए उसे साक्ष्य हेतु अवसर भी दिया जा सकता है या विलेख प्रस्तुत करने हेतु भी समय दिया जा सकता है जिससे वह अपना पक्ष रख सके व खंडन में अभियोजन अपना पक्ष रख सके। इसी कारण सर्वोच्च न्यायालय ने विभिन्न अवसरों पर यह कहा कि परिवीक्षा का लाभ देने न देने का विचार करने हेतु प्रकरण की सुनवाई स्थगित भी की जा सकेगी ये दृष्टांत इस प्रकार हैं –

अल्लादिन वि. राज्य (1989) 3 S.C.C. 5, अंगुस्वामी वि. राज्य (1989)3 S.C.C. 33: AIR 1989 S.C. 1456; AIR 1991 S.C. मिल्कियत सिंह वि. राज्य (1991)4 S.C.C. 31: AIR 1991 S.C. 1784 जयकरण वि. राज्य 1999(2) जे.एल.जे. 68

सर्वोच्च न्यायालय ने यह भी कहा कि न्यायालय को मृत्युदंड की सजा या आजीवन कारावास की सजा में से एक ही विकल्प चुनना हो तथा मृत्यु दंड का विकल्प नहीं चुना जाना है तो धारा 309 के तृतीय परन्तुक के अंतर्गत सजा के प्रश्न पर सुनने हेतु प्रकरण की सुनवाई स्थगित करने का औचित्य नहीं है क्यों कि न्यायालय न्यूनतम सजा आरोपित कर रहा है जो देना अनिवार्य है। ये दृष्टांत हैं ***रामदेव चौहान वि. स्टेट, ए.आई.आर. 2001 पृष्ठ 2231.*** उक्त दृष्टांत में कुछ सिद्धांत प्रतिपादित किए हैं वे भी इस लेख के अंतर्गत दिए है। जो कुछ अंश इस प्रकार है। इसी दृष्टांत के आधार पर एक संक्षिप्त टिप्पणी और लिखी है वह भी इसी पत्रिका में प्रकाशित है।

AIR 2001 SUPREME COURT 2231

Ram Deo Chauhan alias Raj Nath Chauhan, Petitioner v. State of Assam, Respondent.

(A) Criminal P.C. (2 of 1974), Ss. 235(2), 309(2) - Sentence to be imposed - Obligation of court to hear accused-Adjourning hearing to give sufficient time to accused to show cause-Not necessary in view of clear legislative mandate of S. 309 (2) - Order recording conviction and sentence on same day-Not Illegal-However Court in its discretion would grant adjournment in cases where death sentence is

proposed to be inflicted (Per K.T. Thomas, R.P. Sethi JJ.)

Penal Code (45 of 1860), S. 302.

(B) **Criminal P.C. (2 of 1974), Ss. 235, 309, 437 -** Hearing accused on question of sentence - Necessity to afford opportunity for hearing - Legal position stated vis-a-vis murder accused awarded imprisonment for life or death sentence- Hearing if adjourned convict to be kept in jail till sentence is passed.

Penal Code (1860), S. 302,

Per Thomas J. : It must be remembered that two alternative sentences alone are permitted for imposition as for the offence under S. 302 IPC-imprisonment for life or death. Thus no court is permitted to award a sentence less than imprisonment for life as for the offence of murder. The normal punishment for the offence is life imprisonment and death penalty is now permitted to be awarded only in the rarest of the rare cases when the lesser alternative is unquestionably foreclosed. The requirement contained in S. 235(2) of the Code. (the obligation of the Judge to hear the accused on the question of sentence) is intended to achieve a purpose. The said legislative provision is meant for affording benefit to the convicted person in the matter of sentence. The legal position regarding the necessity to afford opportunity for hearing to the accused on the question of sentence is as follows :-

(1) When the conviction is under S. 302 IPC (with or without the aid of S. 34 or 149 or 120B of IPC) if the sessions Judge does not propose to impose death penalty on the convicted person it is unnecessary to proceed to hear the accused on the question of sentence. S. 235(2) of the Code will not be violated if the sentence of life imprisonment is awarded for that offence without hearing the accused on the question of sentence.

(2) In all other cases the accused must be given sufficient opportunity of hearing on the question of sentence.

(3) The normal rule is that after pronouncing the verdict of guilty the hearing should be made on the same day and sentence shall also be pronounced on the same day.

(4) In cases where the Judge feels or if the accused demands more time for hearing on the question of sentence (especially when the Judge propose to impose death penalty) the proviso to S. 309(2) is not a bar for affording such time.

(5) For any reason the court is inclined to adjourn the case after pronouncing the verdict of guilty in grave offences the convicted person shall be committed to jail till the verdict on the sentence is pronounced. Further detention will depend upon the process of law.

Note :- In this Case the Judges of the Supreme Court differ in their view. The majority view is taken by R.P. Sethi and S. N. Phukhan JJ and the minority view of K.T. Thomas J. The Judgments are printed in the order in which they are given in the certified copy - Ed.

न्यायदृष्टांत साभार। ए.आई.आर. प्रकाशन, नागपुर

एक विचार

दुर्घटना प्रकरणों में रकम का जमा एवं वितरण करना- एक प्रक्रिया

-जगदीश बाहेती
अति. जिला न्यायाधीश, भोपाल

म.प्र. उच्च न्यायालय (इन्दौर खंडपीठ) द्वारा विविध अपील क्रमांक 661/1998 (***शारदा बाई विरूद्ध मध्यप्रदेश राज्य परिवहन निगम***) के प्रकरण में दिनांक 11-5-2001 को मोटर यान दुर्घटना अधिनियम के संबंध में प्रतिकर राशि जमा होने पर की जाने वाली कार्यवाही के संबंध में दिशा–निर्देश दिया गया है, जिसे प्रदेश के सभी मोटर यान दुर्घटना दावा अधिकरण को मार्गदर्शन हेतु प्रेषित भी किया गया है।

निःसंदेह उक्त हितकारी विधान की भावनानुसार यह भी अधिकरण का कर्तव्य है कि राशि जमा होने पर आवेदक को उसका संपूर्ण लाभ मिल सके, इस बाबत युक्तियुक्त कार्यवाही अधिकरण करें।

इस संबंध में धार (म.प्र.) पद–स्थापना के दौरान हमने ऐसी राशि जमा करने और उसके भुगतान के संबंध में विस्तृत वाऊचर का प्रारूप बनाकर उसका प्रयोग सफलतापूर्वक किया है, जिससे न सिर्फ जमा राशि पर अधिकतम ब्याज मिला है, बल्कि बैंक को, पक्षकार को और अधिकरण को भी अत्याधिक सुविधा और सुगमता रही है।

जो भी राशि अधिकरण को चैक के रूप में प्राप्त होती थी, उसे संलग्न प्रारूप के अनुसार इस निर्देश के साथ बैंक में जमा किया जाता था कि उक्त राशि को संबंधित प्रकरण व पक्षकारगण का नाम उल्लेखित करते हुए आगामी आदेश तक के लिए अधिकरण के नाम व खाते में सावधि जमा किया जाये।

उक्त वाऊचर तीन प्रति में निर्मित किया जाता था, एक प्रति चैक सहित बैंक को भेजी जाती थी, दूसरी प्रति संबंधित प्रकरण में संलग्न की जाती है और तीसरी प्रति वाऊचर–बुक में ही संलग्न रहती है, ताकि अद्यतन रिकार्ड उपलब्ध रहे।

ऐसी राशि का भुगतान शीघ्र हो जाता है, तो बैंक के नियमानुसार नियत अवधि में (सामान्यतः 45 दिन) कोई ब्याज देय नहीं होता है, तब भुगतान आदेश होने पर वह सावधि जमा राशि बिना किसी ब्याज और बिना किसी कटौती के संबंधित पक्षकार को भुगतान कर दी जाती है, किन्तु यदि नियत अवधि के उपरांत भी किसी कारणवश पक्षकार शीघ्र भुगतान प्राप्त न कर सके और ऐसी राशि बैंक में लंबित रहे, तो जितना ब्याज उस सावधि जमा पर अर्जित होता है, वह प्रकरण विशेष की राशि की पृथक सावधि होने से सुगमता से गणना योग्य रहता है और इस रूप में पक्षकार को देय राशि और उस पर अर्जित ब्याज दोनों ही भुगतान करने का आदेश दिया जाता है।

लगभग सभी अधिकरणों के खातों में ऐसे ब्याज की लाखों रुपये की राशि हिसाब–विहीन है और

बैंक उक्त राशि का उपयोग कर रहा है तथा अधिकरण के खाते में ऐसी राशि निरंतर जमा होती रहती है, इस पद्धति का उपयोग करने से अर्जित ब्याज की संपूर्ण राशि संबंधित अधिकारी–व्यक्ति अर्थात पक्षकार को प्राप्त होती है और न सिर्फ उसके हितों का संरक्षण होता है, बल्कि अधिकरण के खाते में कोई अनावश्यक राशि भी लंबित नहीं रहती है।

भुगतान वाऊचर (संलग्न) प्रारूप में भी प्रत्येक आवेदक को अवार्ड के अनुसार देय राशि ब्याज सहित भुगतान करने का निर्देश दिया जाता है और उक्त वाऊचर पर प्राप्तकर्ता अर्थात आवेदकगण के फोटो भी लगवाकर संबंधित अभिभाषक आदि से सत्यापित कराया जाता है। ऐसा फोटो लगा हुआ एक वाऊचर तथा एक साधारण वाऊचर "अन्य निर्देश कालम में यह उल्लेखित करते हुए कि कितनी राशि नगद दी जाना है, या कितनी राशि कितनी अवधि के लिये सावधि जमा की जाना है, अथवा अन्य निर्देश जो अधिकरण समझे, वह उल्लेखित करते हुए भेजे जाते हैं। उक्त वाऊचर की एक प्रति फोटो सहित संबंधित प्रकरण/निष्पादन प्रकरण में लगाई जाती है। इस प्रकार यद्यपि दो फोटो भुगतान के समय पक्षकार को लाना होते हैं, किन्तु वे फोटो सत्यापित होने से जहां बैंक को सुविधा होती है, वहीं धोखा धड़ी के अवसर अत्याधिक अल्प हो जाते हैं, क्योंकि फोटो लगे व्यक्ति की पहचान जिम्मेदार अभिभाषक द्वारा की जाती है और यह अभिलेख का भाग रहता है, जिससे आवश्यकता पड़ने पर ऐसी धोखा–धड़ी सफलतापूर्वक पकड़ी जा सकती है। ध्यान रहे कि रेकार्ड पर संबंधित व्यक्ति का पहचान चिन्ह, हस्ताक्षर/अंगुष्ठ चिन्ह यथास्थान हो एवं अधिवक्ता के हस्ताक्षर के नीचे उसी के हाथ से उसका पूर्ण नाम लिखा हो।

उक्त वाऊचर पद्धति का प्रयोग करने से प्रत्येक प्रकरण के संबंध में भुगतान के समय विस्तृत आदेश पत्रिका लिखाकर कई निर्देशों की पुनरावृत्ति करना पड़ती है, उन निर्देशों को वाऊचर पर ही छपवा दिये जाने से समय की भी बचत होती है और एक बार इस पद्धति का प्रयोग करने पर बैंक का तथा अधिकरण का अभिलेख भी जमा राशि के साथ साथ भुगतान के संबंध में भी परिपूर्ण रहता है।

उक्त पद्धति का प्रयोग करने से माननीय उच्च न्यायालय द्वारा दिये गये निर्देशों का भी पूर्णतः पालन होगा और संभवतः यह पद्धति हर दृष्टि से सुविधा–जनक और पक्षकार के हितों का संरक्षण करने वाली ही है। जिस बैंक में आपके अधिकरण का खाता है वह बैंक आपके अधिकरण हेतु उल्लेखित प्रारूप अनुसार व्हाउचर बुक बनाकर दे सकती है। राशि जमा करने को व्हाउचर पुस्तिका की तिन्होंही परतें भिन्न–भिन्न रंगों की होगी एवं राशि निकालने की पुस्तिका की परतें भी भिन्न–भिन्न रंगों की होगी जिससे कौन सी प्रत किसे देना है। आसानी से समझा जा सकता है।

आवश्यक प्रारूप भी यहां दिए जा रहे हैं जिसका आप अवलोकन कर सकते हैं तथा आवश्यक परिवर्तन, परिवर्धन जैसा भी स्थान विशेष एवं प्रकरण की परिस्थिति हो किया जा सकता है। प्रारूप अगले पृष्ठ पर दिए हैं।

केवल खाते में हस्तांतरित

शाखा प्रबंधक बैंक का नाम स्थान

प्रथम द्वितीय तृतीय अति. मोटर दुर्घटना दावा अधिकरण (स्थान)

(सदस्य श्री .....)

दिनांक .....

क्रमांक .....
(नम्बरिंग मशीन से छपे हुए होंगे)

राशि भुगतान/सावधि जमा करने का आदेश

कृपया निम्नानुसार राशि ब्याज सहित प्राप्त करने वाले के खाते में अन्तरित कर भुगतान करें/निर्देशानुसार सावधि जमा करें।

क्रमांक	क्लेम प्रकरण का क्रमांक व विवरण	भुगतान प्राप्त करने वाले व्यक्ति का नाम व पता पिता/पति के नाम सहित	जमा राशि का दिनांक व चेक का विवरण	देय राशि (अर्जित ब्याज बैंक द्वारा गणना कर अतिरिक्त देय होगा)		अन्य निर्देश
				अंकों में	शब्दों में	

भुगतान प्राप्त करने वाले के हस्ताक्षर/निशानी अंगूठा व उसका प्रमाणित चित्र .....
.....

प्राप्तकर्ता के चित्र को प्रमाणित करने वाले व प्राप्तकर्ता को पहचानने वाले अभिभाषक का नाम व पता तथा हस्ताक्षर व मुद्रा .....
.....
.....

नोट :
1. अधिकरण के आदेश के बिना सावधि जमा राशि पर किसी प्रकार का कोई भार सृजित किया जावे व अन्तिम भुगतान भी निर्देश लेकर ही किया जावे।
2. भुगतान प्राप्तकर्ता के खाते में अन्तरण द्वारा ही किया जावे।
3. सावधि राशि पर आदेशानुसार ब्याज का भुगतान किया जा सकता है।

सदस्य
प्रथम/द्वितीय/तृतीय/अति. मोटर दुर्घटना दावा अधिकरण
स्थान

मुख्य/शाखा प्रबंधक
बैंक का नाम
मुख्य शाखा/कलेक्टर शाखा
स्थान

प्रथम/द्वितीय/तृतीय/अति. मोटर दुर्घटना दावा अधिकरण (स्थान)

(सदस्य श्री .....)

दिनांक .....

क्रमांक .....
(नम्बरिंग मशीन से छपे हुए होंगे)

राशि जमा करने का आदेश

कृपया निम्नानुसार राशि जमा कीजिये तथा उसे आगामी आदेश तक के लिये सावधि जमा कीजिये।

क्रमांक	क्लेम प्रकरण का क्रमांक व विवरण	जिनके हित में भुगतान होगा (आवेदकगण का नाम)	बीमा कम्पनी/भुगतान करने वाले पक्षकार का नाम	चेक/ड्राफ्ट का नम्बर व विवरण	राशि	
					अंको में	शब्दों में

1. उक्त राशि आगामी आदेश तक के लिये सावधि जमा कीजिये तथा सावधि जमा रसीद की फोटाकॉपी अधिकरण को भेजिये।
2. उक्त जमा सावधि राशि का ब्याज सहित भुगतान अधिकरण का भुगतान आदेश प्राप्त होने के पश्चात ही किया जावे।

सदस्य
प्रथम/द्वितीय/तृतीय/अति. मोटर दुर्घटना दावा अधिकरण
स्थान

सुनवाई का अर्थ और दावे का खारिज करना

(आ. 9 नि. 3-4 एवं आदेश 17 नि. 2)

पुरूषोत्तम विष्णु नामजोशी

बहुत बार खिन्नता आती है। आना भी चाहिए। यदि खिन्नता नहीं आएगी तो संभव है मैं सृजनशील न हो सकूंगा। खिन्नता मेरे लिए स्फूरण का काम करती है। यह लेख भी इसी का परिणाम है।

ज्ञात हुआ आ. 26 नि. 9 व्य.प्र.स. का आवेदन पत्र एक न्यायालय में लंबित था। एक ओर न्यायालय में आ. 6 नि. 17 व्य.प्र.स. का आवेदन पत्र लंबित था तो एक न्यायालय में आ. 6 नि. 5 व्य. प्र.स. का आवेदन पत्र लंबित था। तीनों ही न्यायालय म.प्र. के ही हैं। इन सबने उक्त आवेदन पत्रों की सुनवाई के दिन वादी एवं प्रतिवादी की ओर से कोई उपस्थित नहीं हुआ इसलिए दावा खारिज कर दिया। क्लाइमेक्स यहीं समाप्त हो जाय तो भी औसत बुद्धि का व्यक्ति समझ सकता है कि ऐसा भी हो जाता है; ठीक है; चलता है; ऐसा विचार व्यक्ति कर लेगा। लेकिन क्लाइमेक्स यहीं तक सीमित नही रहता है। ऐसे कृत्यों की कोई पराकाष्ठा या चरमोत्कर्ष नहीं होता है। हर कोई एक दूसरे का रेकार्ड तोड़ने में लगा रहता है। इसी तोड़ाताड़ी का एक और उदाहरण।

उपरोक्त उदाहरणों में से किसी एक उदाहरण स्वरूप प्रकरण में वादी ने एक आवेदन पत्र दावा पुनः फाईल पर लेने के लिए दिया। प्रतिवादीगण संख्या में 8–10 जन थे। जिसमें से एक प्रतिवादी की मृत्यु तो दावा खारिज होने के पूर्व हुई थी। आ. 22 नि. 4 व्य.प्र.स. का आवेदन पत्र भी लंबित था। चूंकि दावा दोनों पक्षों की अनुपस्थिति में खारिज हुआ था तो वो आवेदन पत्र आ. 22 नि. 4 व्य.प्र.स. भी रस्ते लग गया।

दो पक्षीय कार्यवाही करने हेतु प्रस्तुत आवेदन पत्र में अब जज साहब कह रहे हैं कि मृतक के प्रस्तावित वैध प्रतिनिधियों को भी आहूत करो व सभी प्रतिवादी गण को भी आहूत करो। ऐसा क्यों करो यह दमदारी से वादी–प्रार्थी के अधिवक्ता पूछ नहीं पाते हैं क्योंकि उन्हें अपने अन्य प्रकरणों की भी चिंता है। फिर भी वे निवेदन करते हैं कि विपक्ष को सुने बिना दावा फाईल पर ले ले व फिर सभी प्रतिवादीगणों को सूचना पत्र भेज देंगे। जज साहब अड़े हुए हैं वकील साहब विधि प्रावधान नहीं दिखा पा रहे हैं।

ये ऐसी स्थिति है जो हमें प्रेरणा प्रदान करे कि हम पुस्तकें खोलें एवं कुछ कुछ पढ़ें। लेकिन जब तक कुछ कुछ होता ही नहीं है तो कोई क्या करे। वे एक दूसरे पर योग्यता के सम्बन्ध में दोषारोपण लगाते हैं। ये बात उड़ते उड़ते मेरे कानों पर आई। मन व्यथित हो गया। होना ही था। बिचारे 'माडसाब' और क्या कर सकते हैं। प्रेरणा देने का प्रयास ही तो हैं जो उनके बस में है। प्रशिक्षण शिविरों में अनेकानेक बार यह बात बताई जा चुकी है कि ऐसा नहीं होना चाहिए। परंतु न्यायपीठ पर हमें ऐसा लगता है कि ये वकील प्रकरण को टल्ला मारना चाहते हैं व इसलिए नहीं आते हैं, इन्हें झटका देना ही पड़ेगा और हम झटका देने के अंदाज में हीरो का नहीं विलन का रोल अदा हो जाता है। ऐसी

प्रतिक्रिया होना बहुत स्वाभाविक है क्योंकि न्यायाधीश भी हुआ तो क्या हुआ आखिर वह भी तो एक औसत व्यक्ति ही तो है। जी हां यह सही है। यह उसकी प्रकृति है। लेकिन तब विधि प्रावधानों को ध्यान में न लेना विकृति होगी। विधि प्रावधानों को ध्यान में रखते हुए कार्य करना उसकी न्यायिक संस्कृति होगी। परंतु जब आदेशिका में जो भी हम लिखेंगे तो वह विधि सम्मत बात होना चाहिए न कि भावुक विचारों की अभिव्यक्ति।

Hearing (हिअरिंग) शब्द व्य.प्र.स. में संम्भवतः प्रत्येक पृष्ठ पर मिल सकता है लेकिन विशेष रूप से आ. 5, 8, 9 एवं 14 में उसका विशेष रूप से प्रयोग भी हुआ है। मोटे रूप से Hearing का सामान्य अर्थ है सुनवाई की तिथि व विशेष अर्थ में साक्ष्य की तिथि जिसमें अंतिम तर्क भी सम्मिलित होते हैं। ये Hearing आ. 9 नि. 7 व्य.प्र.सं. में और भी विस्तार से बताया गया है जिस पर एक लेख **ज्योति** में **ज्योति 1998 (5) पृष्ठ 36** पर है। Hearing शब्द पर दो मार्गदर्शक दृष्टांत भी बार बार बताए जाते रहे हैं वे हैं : ***संग्रामसिंह विरूद्ध इलेक्शन ट्रिब्यूनल ए.आई.आर. 1955 सु. को 425*** एवं ***अर्जुनसिंह विरूद्ध मोहिन्द्र कुमार ए.आई.आर. 1964 सु.को. 933*** उक्त दोनों दृष्टांतों को पढ़ने का समय न भी मिले लेकिन हेड नोट पढ़ने का कष्ट अवश्य करने की कृपा होना अपेक्षित है। सोचने का आधार बदल जाएगा, वैचारिक धरातल बदल जाएगा, विश्लेषण करने की क्षमता में वृद्धि होगी निर्वचन क्षमता बढ़ेगी। संभवतः यही हमारे प्रकरणों की आदेश पत्रिका की गुणवत्ता बढ़ाने की आधार शिलाएं हों।

जब प्रकरण साक्ष्य के लिये निर्धारित नहीं है एवं विविध आवेदन पत्रों पर सुनवाई, श्रवण (Hearing) हेतु है तब यदि दोनों ही पक्षकार एवं उनके अधिवक्ता उपस्थित नहीं है तो आप दावा खारिज करने के बजाय उस लंबित आवेदन पत्र का निराकरण, चाहे गुण दोष पर या खारिज करके जैसी भी स्थिति हो निराकृत करेंगे लेकिन दावा किसी भी कीमत पर खारिज नहीं होगा यह बात पक्के से समझ लें। ये भी ध्यान रखना कि यदि हमने ऐसी स्थिति में (दोनों ही पक्षकारों ही अनुपस्थिति में) दावा खारिज कर दिया है तब प्रकरण को पुनः फाईल पर लेने हेतु आवेदन पत्र आने पर किसी भी विपक्षी को सूचना पत्र की आवश्यकता नहीं है। हां दावा पुनः फाईल पर लेने के पश्चात सूचना पत्र विपक्ष को देने की आवश्यकता है कि प्रकरण पुनः द्विपक्षीय रूप से चलेगा। कृपया **रामचंद्र वि. शादेव ए.आई.आर. 1945 नागपुर 185** के दृष्टांत को अवश्य पढ़ लें। कुछ हिस्सा यहां प्रकाशित कर रहा हूँ।

> Notice of an application for restoration of suit dismissed under order 9, Rule 3, may not be claimable by defendant as of right as no notice is prescribed by O. 9 R. 4, but when the court restores a suit to (its) file and fixes a date for hearing of the case, it does not stand to reason that the defendants should not be given notice of the hearing of the Suit; that if an application for restoration is made and allowed the Court should fix the case for hearing to the otherside; that the court was therefore wrong in proceeding ex-parte against the defendant.

एक और दृष्टांत इसी विषय पर विचारों की अभिव्यक्ति को सुस्पष्ट करने हेतु प्रस्तुत कर रहा हूँ।

हरदत्त विरूद्ध सत्यनारायण 1959 एम.पी.एल.जे. नोट 191 का दृष्टांत देखने योग्य है उसमें ***ए.आई.आर. 1954 मध्य भारत 147*** के दृष्टांत का संदर्भ है। उक्त दृष्टांत में कहा गया है :

Application was for amendment of written statement. Plaintiff was absent on the date fixed for reply. It was held that Court should (may) permit the amendment but ought not to dismiss the suit for default.

एक और दृष्टांत का अवलोकन विचारों को अधिक परिपक्व बनाने में काम आ सके। ***जानकी बाई विरूद्ध जानकीदास 1952 एन.एल.जे. नोट 221*** में कहा है कि :

R. 2 of O. 17 of the C.P.C. does not apply to occasion of interlocutory order. Case closed for orders on application for temporary injunction-Court cannot dismiss suit under rule 2.

और हमारे न्यायिक चरित्र पर प्रतिक्रिया व्यक्त करते हुए ***भीमराज विरूद्ध महिला फूलाबाई ए. आई.आर. 1939 नागपुर 213=1939 एन.एल.जे. 351*** में बताया है कि :

Courts should not lightly dispose of litigation without going into the merits. But courts are bound in certain circumstances to dismiss cases for default. One case is that indicated in order 9, Rule 8. It is true when a case reaches the stage after the issue stage has in part been passed the **court is not compelled to exercise its powers under order 9, Rule 8 but is given power to make another order under O. 17 R. 2, and in any doubtful case the court should so act.**

इसी बात को अन्य दो दृष्टांतों के माध्यम से भी बताया जा सकता है।

घनश्यामदास विरूद्ध फर्म मेसर्स केशवदास छन्नूलाल (1991) 1 एम.पी.डब्ल्यू.एन. 107 (**डी.बी.**) में कहा है कि :–

The trial Court cannot be said to be unjustified in disposing of **the application** even without notice to the respondent.

मनोहरलाल विरूद्ध कैलाशचंद्र 1988(2) एम.पी. डब्ल्यू.एन. नोट 76 में कहा है प्रकरण जब लिखित तर्क प्रस्तुत करने हेतु था तब दावा पक्षकारों के अनुपस्थिति में खारिज नहीं किया जा सकता।

जाहिर है कि जहां पर प्रकरण साक्ष्य हेतु नहीं है तब दावा यूँ ही खारिज नहीं किया जा सकेगा कि पक्षकार/अधिवक्ता उपस्थित नहीं है। ऐसा करना सरासर न्यायिक दृष्टिकोण से अनुचित होगा। यदि भूलवश ऐसा हो ही जाएगा तब बिना परेशानी से त्वरित रूप से दावा पुनः स्थापित किया जाना उचित होगा।

अब हम आ. 9 नि. 3 एवं आ. 9 नि. 4 को देख लें। ये प्रावधान इस प्रकार है :–

आ. 9 नि. 3 : जहां दोनों में से कोई भी पक्षकार उपसंजात नहीं होता है वहां वाद का खारिज किया जाना : जहां वाद की सुनवाई के लिए पुकार होने पर दोनों में से कोई भी पक्षकार उपसंजात नहीं होता है वहां न्यायालय यह आदेश दे सकेगा कि वाद खारिज कर दिया जाए।

आ. 9 नि. 4 : वादी नया वाद ला सकेगा या न्यायालय वाद को फाइल पर प्रत्यावर्तित कर सकेगा : जहां वाद नियम 2 या नियम 3 के अधीन खारिज कर दिया जाता है वहां वादी नया वाद (परिसीमा विधि के अधीन रहते हुए) ला सकेगा या वह उस खारिजी को अपास्त कराने के आदेश के लिए आवेदन कर सकेगा और यदि वह न्यायालय का समाधान कर देता है कि (यथास्थिति, नियम 2

में निर्दिष्ट असफलता के लिए) या उसकी अपनी अनुपसंजाति के लिए पर्याप्त हेतुक था तो न्यायालय खारिजी को अपास्त करने के लिए आदेश करेगा और वाद में आगे कार्यवाही के लिए दिन नियत करेगा।

आ. 9 नि. 8 व्य.प्र.स. के अंतर्गत यह अपेक्षा है कि वादी और उसके अधिवक्ता उपस्थित न हो तथा प्रतिवादी अथवा/एवं उसके अधिवक्ता उपस्थित हो तथा प्रकरण सुनवाई हेतु अर्थात गुण दोष पर विचार के लिए हो **(न कि प्रकरण में किसी अन्य कार्यवाही या आवेदन पत्र के विचारण हेतु)** तो ही न्यायालय दावा खारिज कर सकता है अथवा प्रतिवादी ने यदि दावा पूर्ण या आंशिक रूप से स्वीकार किया हो तो उस सीमा तक का दावा स्वीकार भी करना होगा।

इस प्रकार आ. 9 नि. 3–4, एवं आ. 9 नि. 8 के आधार भिन्न भिन्न है।

बन्धुओं इसी के साथ आ. 17 नि. 2 एवं 3 को भी समझना होगा। संक्षिप्त में उस सम्बन्ध में एक न्याय दृष्टांत द्वारा समझाया जाना उचित होगा।

अब्दुल करीम विरूद्ध रतीलाल गुजराती ए.आई.आर. 1930 नागपुर 152 में कहा है कि :

Rules 2 and 3 are mutually exclusive. R. 3 contemplates the presence of parties and only deals with a case where such party being present has failed to produce his evidence or to take any other steps laid down in the rule. R. 2 applies in the case of the absence of a party or parties whether or not time has been granted them to do any of the acts laid down in R. 3. Where on the date fixed for final disposal of a suit the Court after taking plaintiffs evidence passes a decree ex-parte, an application by the defendant to set aside ex-parte decree is competent.

व्यवहार प्रक्रिया संहिता 1977 का प्रकाशन द्वारा **लॉ बुक कम्पनी** लेखक **एस. राव** में आ. 17 नि. 2 एवं 3 में क्या अंतर है यह सुलभ रूप से बताया है। लेखक व प्रकाशक के आभार व्यक्त करते प्रकाशित कर रहा हूँ। वह इस प्रकार है :

ORDER XVII, RR. 2 AND 3 COMPARED

1. The points of difference between O.XVII, Rr. 2 and 3 may be analysed as follows:-

Rule 2	Rule 3
(a) Applies Generally to all cases whether hearing is adjourned.	(a) Applies only where adjournment is granted (i) at the instance of a party : and (ii) for a particular porpose.
(b) Is confined to cases where the parties or any of them fail to appear.	(b) Not confined to non-appearance (as the language stands at present), and applies where there is failure to do the act for which time was granted.
(c) Court can- (i) Proceed to dispose of the suit in one of the modes directed by Order IX, or	(c) Court may proceed to decide the suit forthwith.

	(ii) make such other order as it thinks fit.	
(d)	Object is to state the consequences of non-appearances. Emphasis is on discretion of Court.	(d) Emphasis is on the Court's power to proceed, so that non-performance, of the act in question need not interrupt the progress of the suit.

2. Cases when the two rules overlap are those where an adjournment is granted (Rule 2) at the instance of a party- (Rule 3), and there is non appearance as well as non performance of the act for which adjournment was sought, so that both the rules are satisfied.

It is these situations which have presented difficulties and raised questions, leading to three different approaches, in cases of nonappearance of the parties or either of them. The three different apporoaches are (i) only rule 2 should be applied; (ii) rule 3 can be applied; (iii) if there are materials on record, rule 3 may apply, otherwise rule 2 applies.

The proposed rule clarifies the position.

एक बात ध्यान रखना। आ. 17 नि. 2 व नि. 3 के सम्बन्ध में **म. प्र. संशोधन व्य.प्र.स.** में इस प्रकार है :–

आ. 17 नि. 3 के पश्चात जोडना है –

"Provided that in a case where there is default under this rule as well as default of appearance under Rule 2, the Court will proceed under Rule 2 (M.P. Gaz. 27.8.1976).

धारा 141 व्य.प्र.स. का विस्तार :

ऊपर यह बताया गया है कि आ. 9 नि. 4 एवं आ. 9 नि. 8 का विस्तार कहां तक है। कुछ और विस्तार धारा 141 का देखा जाना उचित होगा। प्रथमतः धारा 141 व्य.प्र.स. के प्रावधान को देख लें।

धारा 141 प्रकीर्ण कार्यवाहियां : उस **प्रक्रिया का** जो वादों के विषय में **इस संहिता में उपबन्धित है,** सिविल अधिकारिता वाले किसी भी न्यायालय में की सभी कार्यवाहियों में वहां तक अनुसरण किया जाएगा जहां तक वह लागू की जा सके।

स्पष्टीकरण - इस धारा में 'कार्यवाही' शब्द के अंतर्गत आदेश 9 के अधीन कार्यवाही है, किन्तु इसके अंतर्गत संविधान के अनुच्छेद 226 के अधीन कार्यवाही नहीं है।

उक्त प्रावधान के अंतर्गत कुछ दृष्टांत देखने योग्य हैं।

हाजी रूस्तम अली विरूद्ध इमामुद्दीन ए.आई.आर. 1981 कलकत्ता पृष्ठ 81 में बताया है कि : यदि एक पक्षीय कार्यवाही निरस्त कर द्विपक्षीय कार्यवाही हेतु जो आवेदन पत्र दिया था वह भी अनुपस्थिति के कारण निरस्त हुआ हो तो उसे भी पुनः फाईल पर लेने हेतु आ. 9 के प्रावधान लागू होंगे।

भारतीय उत्तराधिकार अधिनियम के अंतर्गत उत्तराधिकार प्रमाण पत्र, प्रोबेट, लेटर्स ऑफ एडमिनिस्ट्रेशनः

आ. 22 व्य.प्र.स., आ. 1 नि. 10 व्य.प्र.स. धारा 11 व्य.प्र.स. के लिए भी ये प्रावधान लागू होंगे प्रोबेट के संबंध में **ए.आई.आर. 1943 पटना,** जो कि ***(1910) 14 क. विकली नोट्स 924 रमानी वि. कुमुद*** पर आधारित था का निर्वचन यह माना जाना चाहिए कि आ. 9 नि. 9 के प्रावधान दुबारा प्रोबेट आवेदन पत्र प्रस्तुत करने हेतु अवरोध नहीं होंगे। अर्थात आ. 9 नि. 9 में प्रारम्भ में कहे अनुसार वादी के खारिज कर दिए जाने पर वादी उसी वाद हेतुक के आधार से नया वाद नहीं ला सकेगा जैसी रोक प्रोबेट में नहीं होगी। इसका यह अर्थ नहीं कि प्रोबेट के लिए आ. 9 नि. 3–4 या नि. 9 के प्रावधान लागू नहीं होते हैं। आधारभूत दृष्टांत ***बिमलकांता सेनगुप्ता विरूद्ध सरोजिनी कौर ए.आई.आर. 1985 कलकत्ता 275*** देखें। इसी संदर्भ में एक और दृष्टांत ***त्रिवेणी विरूद्ध शंकर, ए.आई.आर. 1971 पटना*** भी बताता है कि धारा 141 के प्रावधान प्रोबेट के संबंध में आ. 9 नि. 13 के आधीन भी लागू होते हैं। उत्तराधिकार प्रमाण पत्र के संबंध में धारा 141 व्य.प्र.स. के प्रावधान लागू होते हैं। देखें ***रामजी साव विरूद्ध जागेश्वरी ए.आई.आर. 1964 पटना 272.***

एच.के. दादा वि. स्टेट ऑफ एम.पी. ए.आई.आर. 1953 सु. को. 221 में आगे यह भी कहा है कि ये प्रावधान सारवान विषय (Substantive Rights) के संबंध में न होकर प्रक्रिया संबंधी (Matters of Procedure) विषय पर लागू होते हैं। यही बात बाद में ***पाटी विरूद्ध एस. चौधरी ए.आई.आर. 1957 सु.को. 540*** में कही गई। धारा 141 के प्रावधान अनुच्छेद 226 भारतीय संविधान विषय में भी लागू नहीं होते हैं।

आ. 9 नि. 3–4 एवं आ. 9 नि. 8 एवं 9 का संयुक्त प्रभाग।

आ. 9 नि. 4 की कार्यवाही यदि वादी/प्रार्थी नहीं करता है तो मर्यादा काल की सीमा के अधीन रहते वादी नया दावा, प्रार्थी नई कार्यवाही प्रस्तुत कर सकेगा। लेकिन आ. 9 नि. 8 के अंतर्गत न्यायालय ने वादी–प्रतिवादी के उपस्थिति के अभाव में दावा खारिज/डिक्री/आंशिक खारिज/डिक्री ले जाता है तो वादी नया दावा नहीं लगा पाएगा जैसा कि आ. 9 नि. 9 में कहा है। नियम 9 यह भी कहता है कि दावे को पुनः फाईल पर लाने की कार्यवाही हो सकती है।

कुछ न्यायदृष्टांत देखें। ***ए.आई.आर. 1983 गौहाटी 67 बसंत कुमार वि. नागचौधरी, ए.आई.आर. 1986 पंजाब 300*** में बताया है कि जहां उभय, पक्ष अनुपस्थित थे आ. 9 नि. 4 के प्रावधान लागू होंगे। (शर्त ये है कि प्रकरण साक्ष्य हेतु नहीं हो)।

ए.आई.आर. 1988 ओरिसा 44 एवं ***ए. आई.आर. 1992 राजस्थान 57*** के दृष्टांतों का संयुक्त प्रभाव यह है कि आ. 9 नि. 4 के अंतर्गत प्रकरण को पुनः फाईल पर लेने हेतु विपक्ष को सूचना पत्र का भेजा जाना आवश्यक नहीं है लेकिन प्रकरण को पुनः फाईल पर लेने पश्चात सूचना पत्र भेजा जाना अनिवार्य है।

यदि विशेष अधिनियम आ. 9 व्य.प्र.स. के प्रावधान लागू करने का अधिकार नहीं देते हैं तो उन न्यायालयों/ट्रियब्यूनलों के अधिकार सीमित है। यहां ***ज्योत्सना वि. बॉम्बे हास्पिटल 1999(2) एम.पी. वि.नो. 145 (सु.को.)*** में यही बात कही गई है कि Consumer Commission has no jurisdiction

to set aside reasoned ex-party order. No such jurisdiction has been provided under consumer protection Act. 1986.

ए.आई.आर. 1964 एम.पी. 171, ए.आई.आर. 1970 पटना 209, ए.आई.आर. 1974 पटना 176, ए.आई.आर. 1991 ओरिसा 283 में कहा है कि धारा 18 भू अर्जन अधिनियम की कार्यवाही में न्यायालय आ. 9 नि. 8 व्य.प्र.स. की कार्यवाही नहीं कर सकती। **ए.आई.आर. 1968 पंजाब 152 पूर्णपीठी। ए.आई.आर. 1988 गौहाटी 30** में कहा है कि इलेक्शन पीटिशन में आ. 9 नि. 8 व्य.प्र.स. की कार्यवाही हो सकती है।

प्रवर्तन कार्यवाहियों में धारा 141 व्य.प्र.स. के प्रावधान लागू नहीं होते है। जैसा कि ***डोक्कू वि. कद्रागड्डा ए.आई.आर. 1962 सु.को. 1886*** में बताया है। ***बालमुकुंद वि. प्रभाकर ए.आई.आर. नागपुर 305*** (खंडपीठ) में कहा है कि "The procedure in regard to suits is not applicable to execution proceedings. So the provisions of O. 9; O. 2 R. 2; O. 17, R. 2-3 etc. do not apply to applications for execution. There is thus no provision in the code of civil procedure setting out the conditions under which an execution application may be dismissed. It is however, clear that decree entitles the judgment crediter (Decree holder) to execute it through the agency of the court which either passed it or the court to which it is transmitted for execution. It thus becames the duty of the appropriate Court to execute the decree when application for that purpose is made. An order dismissing the application, when there is no default on the part of the decree holder, cannot, therefore be upheld, more so when S. 48 of the Code is likely to operate as a bar to making any further application for execution. (ध्यान रहे धारा 48 व्य.प्र.स. के प्रावधान परिसीमा अधिनियम की धारा 28 (1 जनवरी 1964) द्वारा निरसित किए है)। अर्थात जब तक मर्यादा काल रहेगा प्रवर्तन आवेदन पत्र बार बार प्रस्तुत हो सकेगा।

सीताराम वि. बापूराव, ए.आई.आर. 1953 नागपुर 153 आधारभूत सिद्धांत प्रतिपादित करता है। उसमें कहा है कि –

S. 141, C.P.C. does not apply to the proceedings u/s 144 (Restitution). Even assuming it does not then only procedural. part of the provisions of the code would be made applicable to a proceedings u/s 144 and not a provisions like that in order 9, rule 8 which enacts a rule of substantive law.

It is the duty of every court to ensure that it does not injury to a litigant and S. 144 C.P.C. lays down a procedure whereunder effect can be given to that general principle of law. Since the duty is cast on the court it must do it suo motu and the petition of party must be regarded as a reminder. There can be no numerical limitation to such petitions.

Where, therefore, an application for restitution is dismissed for default of the applicant but in presence of the non-applicant a fresh application is not barred.

एक अन्य महत्वपूर्ण दृष्टांत है **ए.आई.आर. 1990 जे.के. 79 एवं ए.आई.आर. 1988 कलकत्ता 358** जिसमें क्रमशः धारा 151 एवं 141 व्य.प्र.स. का चिन्तन करते हुए कहा है कि O. 9 read with

S. 141 applies to application for restoration of the miscellaneous case for restoration of the suit which was dismissed for default. It can be restored under S. 151 C.P.C.

समापन

मैं एक कदम आगे रखकर कहूँगा व करता रहा हूँ व कहूंगा कि दावा किसी भी स्थिति में कार्य के प्रारंभिक समय में ऐसा तो कभी भी नहीं करना चाहिए एवं शाम तक भी ऐसा न करते शाम को जाते जाते आदेश पत्र में लिखा जा सकता है कि इस समय शाम के 4.50 हो रहे हैं सुबह से कई बार पुकार लगाई गई कोई उपस्थित नहीं। प्रकरण उचित आदेश हेतु कल के लिए निर्धारित होता है। जो अधिवक्ता या पक्षकार भूलवश, गलत तिथि नोट करने के कारण बीते कल नहीं आ पाए थे आज आ जाएँगे। सामान्य रूप से अधिवक्ता के मुंशी भी शाम को प्रत्येक कोर्ट में जाकर तारीखें नोट करते हैं तब भी भूल ध्यान में आ सकती है।

दूसरी बात ये कि आप ऐसे प्रकरण खारिज करेंगे तो आप को कुछ भी प्राप्त होना नहीं है, यहां तक की यूनिट्स भी। प्रकरणों की इतनी अधिक संख्या होती है कि ऐसे प्रकरण खारिज करने से समुद्र से एक बिंदु भी कम नहीं होना है। विपरीत इसके खारिज किया प्रकरण पुनः फाईल पर लेने हेतु आवेदन पत्र आएगा व यदि सब बातें सामान्य हो तो प्रकरण पुनः फाईल पर तो आएगा ही। ऐसा करने में हमारी मनोदशा सामने आएगी एवं हमारी अपरिपक्वता को हम अपने हाथों मुट्ठी अपनी मुट्ठी खोलकर उजागर कर रहे होंगे।

एक अन्य लेख आ. 9 नि 9 एवं आ. 9 नि. 13 व्य.प्र.श. के आवेदन पत्र के खारिज होने की स्थिति में मर्यादा काल क्या होगा इस पर लिखा है वह भी इस विषय का पूरक संदर्भ होगा।

एक बात ध्यान रखना। यदि हम दावा खारिज कर दें व उसी रोज आवेदन पत्र आए तो इससे बेहतर सद्भावना और क्या हो सकती है कि दावा पुनः फाईल पर ले लें। विचार सकारात्मक हो नकारात्मक नहीं।

यह भी ध्यान रखना कि आदेश 9 नि. 3 व्य.प्र.स. में दावा खारिज किया जाना अनिवार्य (Shall) नहीं है अपितु वह खारिज किया जा सकता है (May)।

एक अन्य लेख आ. 9 नि. 9 एवं आ. 9 नि. 13 व्य.प्र.स. के आवेदन पत्र के खारिज होने की स्थिति में मर्यादा काल क्या होगा इस विषय पर लिखा है वह भी इस विषय का पूरक संदर्भ होगा। यह लेख भी इसी पत्रिका में प्रकाशित हो रहा है

●

यत्न अपने आप में एक कर्म है।

यत्न की निरन्तरता कभी व्यर्थ नहीं होगी, यही सनातनता है।

अनुच्छेद 137 मर्यादा अधिनियम (आ. 9 नियम 9 एवं आ. 9 नियम 13 के आवेदन पत्रों के, पक्षकारों के अनुपस्थिति के कारण, निरस्त हो जाने के आधार पर पुनः स्थापन हेतु) मर्यादा काल

पुरूषोत्तम विष्णु नामजोशी

प्राक्कथन :

कुछ अवसरों पर कुछ कारणों से दोनों पक्षकारों के अनुपस्थिति में अथवा आवेदक की अनुपस्थिति में आ. 9 नि. 9 एवं आ. 9 नि. 13 व्य.प्र.स. के आवेदन पत्र निरस्त कर दिए जाते हैं। अर्थात गुणदोष पर निराकरण किए बिना ही वे निरस्त अथवा खारिज हो जाते हैं। ऐसा कब करना चाहिए एवं कब नहीं करना चाहिए इस विषय में एक लेख इसी पत्रिका में प्रकाशित हो रहा है उसी तारतम्य में यह प्रस्तुति पूरक रूप से की जा रही है। सुनवाई की तिथि एवं दावों का खारिज करना यह उस लेख का मुख्य मुद्दा है।

पता नहीं अपवादात्मक ठोस परिस्थितियों को छोड़कर हम क्यों करके सामान्य रूप से मूल प्रकरण या विविध प्रकरण तुच्छ आधारों पर पक्षकारों की अनुपस्थिति में खारिज कर देते हैं। यदि ऐसा करते हैं तो उस विषयक उपचारों की जानकारी भी होना चाहिए एवं विधि प्रावधानों की भी जानकारी होना चाहिए।

सम्बन्धित प्रावधानों का खुलासा :

अनुच्छेद 122, 123 एवं अनुच्छेद 137 मर्यादा अधिनियम के प्रावधान यहां त्वरित संदर्भ हेतु प्रस्तुत किए जा रहे हैं। धारा 141 व्य.प्र.स. के प्रावधान पूर्ववर्ती लेख में बताया है। फिर भी यहां दोहराया जा रहा है क्योंकि उसका भी यहां संबंध है। ये प्रावधान इस प्रकार हैं :–

मर्यादा काल

आवेदन का वर्ण एवं अनुच्छेद क्रमांक	परिसीमा काल	वह समय जबसे काल चलना आरंभ होता है।
122. उपसंजाति में व्यतिक्रम के कारण या अभियोजन के अभाव के कारण या आदेशिका की तामील के खर्चे देने में असफलता या खर्चों के लिए प्रतिभूति देने में असफलता के कारण खारिज किए गये **वाद** या **अपील** या **पुनर्विलोकन** या **पुनरीक्षण** के लिए आवेदन का प्रत्यावर्तन कराने के लिए।	तीस दिन	खारिज होने की तारीख।

123. एक **पक्षीय पारित डिक्री** को अपास्त कराने के लिए या **एक पक्षीय डिक्रीत** या **सुनी गई अपील की** फिर से सुनवाई के लिए। स्पष्टीकरण – सिविल प्रक्रिया संहिता, 1908, (1908 का 5) आदेश 5 के नियम 20 के अधीन प्रतिस्थापित तामील इस अनुच्छेद के प्रयोजन के लिए सम्यक् तामील नहीं समझी जाएगी।	तीस दिन	डिक्री की तारीख या जहां कि समन या सूचना की सम्यक् रूप से तामील नहीं हुई थी, वहा जब डिक्री का ज्ञान आवेदक को हुआ।
137. कोई **अन्य आवेदन** जिसके लिए इस खण्ड में **अन्यत्र कोई परिसीमा काल उपबंधित** नहीं है।	तीन वर्ष	जब आवेदन करने का अधिकार प्रोद्भूत होता है।
122. To restore a **suit** or **appeal** or **application for review** or **revision** dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of dismissal.
123. To set aside a **decree passed exparte** or to **re-hear an appeal decreed** or **heard** exparte. Explanation-For the purpose of this article, substituted service under Rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not be deemed to be due service.	Thirty days	The date of the decree or where the summons or notice was not duly served. when the applicant had knowledge of the decree.
137. **Any other application for which no period of limitation is provided elsewhere in this division.**	Three years	When the right to apply accrues.

धारा 141 व्य.प्र.स.

141. प्रकीर्ण कार्यवाहियां- उस प्रक्रिया का जो वादों के विषय में इस संहिता में उपबंधित है, सिविल अधिकारिता वाले किसी भी न्यायालय में की **सभी कार्यवाहियों में** वहां तक अनुसरण किया जाएगा जहां तक वह लागू की जा सके।

स्पष्टीकरण- इस धारा में 'कार्यवाही' शब्द के अंतर्गत आ. 9 व्य.प्र.स. के अधीन कार्यवाही है, किन्तु इसके अन्तर्गत संविधान के अनुच्छेद 226 के अधीन कार्यवाही नहीं है।

141. MISCELLANEOUS PROCEEDINGS-

The Procedure Provided in this Code in regard to suit shall be foliowed as far as it can be made applicable, in **all proceedings** in any Court of civil jurisdiction.

EXPLANATION- In this section, the expression 'proceedings' includes proceedings under O. IX, but does not include any proceeding under article 226 of the Constitution.

प्रावधानों का लागू होना :-

अनुच्छेद 122 एवं 123 को देखा जावे तो वे सीमित कार्यवाहियों के लिए लागू होते हैं यथा अनुच्छेद 122 दावा अथवा अपील अथवा रिक्यू अथवा रिव्हिजन आवेदन पत्र के सुनवाई के लिए उपस्थित न होने के कारण अथवा प्रोसेस–प्रोसेस फीस, खर्चे आदि जमा न करने के कारण।

अनुच्छेद 123 एक पक्षीय रूप से पारित डिक्री को अपास्त करने हेतु या एक पक्षीय रूप से पारित या सुनी गई अपील की फिर से सुनवाई के लिए है।

उक्त प्रावधानों को पढने से किसी भी दृष्टिकोण से यह मीमांसा नहीं की जा सकती की ये प्रावधान आ. 9 नि 9 एवं आ. 9 नि. 13 के अंतर्गत खारिज किए गए आवेदन पत्रों को पुनः फाईल पर लेने हेतु लागू होंगे। यहां महत्वपूर्ण अंतर समझना उचित होगा वो ये कि यदि ऐसे आवेदन पत्र खारिज हो गए हैं तो उन्हें दुबारा फाईल पर लाने हेतु प्रक्रिया (Procedure) वही होगी जो आ. 9 नि. 9 अथवा आ. 9 नि. 13 के आवेदन पत्र की प्रस्तुती हेतु होती है। यह केवल साम्यानुमानिक या सादृश्यमूलक अथवा प्रकारांतर रूप से (ॲनॉलॉजी) मात्र है। लेकिन जहां तक 'कार्यवाहियों' (Proceedings) का प्रश्न है अनुच्छेद 122–123 के प्रावधान लागू नहीं होंगे क्योंकि ऐसे आवेदन पत्र उन प्रावधानों में समाविष्ट नहीं है।

जहां पर अनुच्छेद 122 व 123 लागू नहीं होंगे वहां पर अवशेष अनुच्छेद (रेसि डयूअरी आर्टिकल) 137 मात्र लागू होना चाहिए।

इस संबंध में प्रतिनिधिक स्वरूप दृष्टांत देखने योग्य है। उक्त दृष्टांत पूर्ण रूप से पढने योग्य है। उसमें आ. 9 की कार्यवाहियां एवं धारा 141 में उल्लेखित कार्यवाहियों के संबंध में अंतर करके बताया है कि सारवान अधिकार एवं प्रक्रिया संबंधित अधिकारों को ध्यान में रखना होगा व तब ही प्रावधानों को लागू किया जा सकता है। वास्तव में आ. 9 नि. 9 व्य.प्र.स. या आ. 9 नि. 13 व्य.प्र.स. के आवेदन पत्र उपसंजाति के अभाव में निरस्त हो जाते हैं तो उन्हें धारा 151 व्य.प्र.स. के अंतर्गत ही पुनः फाईल पर लाने हेतु आवेदन देना होता है। उक्त दृष्टांत की कुछ बातें यहां बताई है। दृष्टांत का कुछ भाग यहां प्रकाशित कर रहा हूं।

पूरणचंद वि. कोमलचंद 1961 एम.पी.एल.जे. 1145 जे.एल.जे. 1165 **(डी.बी.) का दृष्टांत नत्थूप्रसाद वि. सिंघई कपूरचंद ए.आई.आर. 1976 म.प्र. पृष्ठ 136** द्वारा **ओव्हररूल्ड** कर दिया है लेकिन विषय वस्तु को समझने हेतु व पृष्ठ भूमि तैयार करने हेतु समझना उचित होगा। ओव्हररूलिंग की सीमा भी किसी हद तक देखने योग्य है लेकिन इस लेख में कुछ अंश प्रावधानों के समझने हेतु बताए जा रहे हैं वादी/प्रार्थी पूरणचंद का दावा 22.4.1959 का उपसंजाति के अभाव में खारिज हुआ।

अतः उक्त प्रकरण को पुनः फाईल पर लेने हेतु आवेदन पत्र दिया जो 03–9–1959 को प्रस्तुत हुआ। वह उपसंजाति के अभाव में खारिज हुआ। अतः पुनः इस आवेदन पत्र को फाईल पर लेने हेतु आवेदन पत्र 30.11.1959 को प्रस्तुत किया।

मर्यादा अधिनियम (1908) के अनुच्छेद 160, 163, 168 एवं 172 (पुराने) (नया अनुच्छेद 122) एवं अनुच्छेद 164.169 (पुराने) (नया अनुच्छेद 123) के लागू होने के संबंध में चिंतन है। नया अनुच्छेद 137 (पुराना 181) के विषय में भी इस दृष्टांत में खुलासा है।

उक्त निर्णय के चरण 6–7–8 व 9 को नीचे दिया जा रहा है वह इस प्रकार है।

Now, if as we think, the dismissal in default of an application for the restoration of a suit under O. 9 R. 9 CPC can be set aside by resort to Section 151 C.P.C. then there is no question of any limitation for an application made to invoke the inherent powers of the Court. Section 151 does not deal with any application; nor does it lay down procedure for any application. It is a provision recognising the inherent power of the Court to act ex debito justitiae. An application invoking this power is not one which a party is required to make under any provisions of the Code for setting in motion any machinery of the Court. Therefore it is not governed by Art. 181 or any other Article of Limitation Act. As has been held by the Supreme Court in ***Shah Mulchand and Co. Vs. Jawahar Mills Ltd. AIR 1953 SC 98.*** Article 181 governs only the applications under the Code of Civil Procedure and has to be read as if the words 'under the Code' were added in the first column of the Article. It follows therefore that the application contemplated by Art. 181 is one which party has to make for the machinery of the Court to be set in motion under the provisions of the Code and the application has to be made within three years from the date when the right to apply accrues.

Learned counsel for the opponent said that an application invoking the inherent powers under section 151 would be subject to the limitation prescribed by Article 163 of the Limitation Act. We do not agree. As an application made to invoke the inherent powers of the Court under Section 151 is not an application under the Code which a party is required to make, Article 163 has no applicability That apart, reading Articles 163 and 164 together it is clear that Article 163 prescribes limitation for an application to set aside the dismissal for default of a suit and not for an application to set aside the dismissal for default of an application for restoration of a suit under O. 9 R. 9 CPC. The view that an application invoking inherent powers of the Court under Section 151 CPC is not goverened by Art. 181 or any other Article of the Limitation Act is fortified by the decision in ***Goverdhan Vs. Hemrajsingh, ILR 1944 Nag 408 Anand Prasad Mitra Vs. Sushil Kumar, AIR 1942 Cal 390*** and ***Shyam Sunder Vs. Nilkantha Das, AIR 1956 Orissa 165.*** Though there is no limitation for invoking the inherent powers of the court under Section 151, the party invoking that jurisdiction must be diligent and not guilty of latches.

For all these reasons, our answer to the question referred to by the learned Single Judge is that the dismissal for default of an application for restoration of a suit under O. 9 R. 9 CPC can be set aside in exercise of the inherent powers of the Court under Section 151 CPC and that the exercise of inherent powers is not fettered by any rule of limitation.

उपरोक्त दृष्टांत के अतिरिक्त धारा 151 व्य.प्र.स. के आधार पर विचार किया जा सकता है। **व्य.प्र.स. के सन् 2000 का अंग्रेजी संस्करण** का **लेखक सरकार एवं मनोहर- प्रकाशक वाधवा एण्ड कम्पनी नागपुर** के आभार व्यक्त करते हुए पृष्ठ 711 का कुछ भाग प्रकाशित कर रहा हूं। वह संपादित भाग है व किसी सीमा तक परिपूर्ण भी।

Limitation- An application under's 151 invoking inherent powers of the court is neither an application within the Limitation Act nor one under the Code so as to attract Art. 137 of Limitation Act, though Art 137 will have to be read in a comprehensive manner to include all applications without the limitation of application under the Code (***Beeravu v. Kathiymma, A 1973 K 227*** (***R.K. Kajaria v. C Engineering &c, A 1972 C 381 rel on***). ***Dataram Jaganath Firm H U F v. M S Jagi, A 1990 Orissa (60, 164)*** A revision petition is not original proceedings. It is a proceeding of a civil nature and a petition to implead the legal representatives can be filed under S 151 applying the residuary article of the Limitation Act. [***Islamia College of Science and Commerce v. Gh. Hassan Balkhi, A 1989***) **J & K 35, 36**]. There is no limitation for invoking the inherent powers under's 151 but a party invoking that jurisdiction must be diligent and not guilty of laches **(Somar v. Kapil, A 1974 P 289** (***Pooranchand v. Kamalchand, A 1962 MP 64; Biswanath v. Amar, A 1962 C 110*** and ***Minnielal v. Majadeo, A 1949 P 112*** rel on). An application for restoration of an appeal dismissed for default for non compliance of the provisions of High Court rules is maintainable under s 151 and Art 122 and no art 137 Limitation Act applies to such application (***Bimala v. Patitapaban, A 1973 Or 169 FB***). An application under s 151 can be filed for restitution of an application to restore a suit dismissed for default (***B S Lamba v. M A Kanth, A 1990 J & K 79, 80***).

An application for substitution of heirs of the deceased in revision is in effect an application under S. 151 CPC and as such limitation therefor would be governed under Art. 137 of the Limitation Act (***S.K. Mcsood v. Wahid Ahmad Ansari,*** **1998 AIHC 602, 604 (All).** Order under S. 151 is not appealable. Revision is maintainable (***Zakinaben v. Babubhai, AIR 1999 Guj 118, 119***). Article 137 of the Limitation Act is not applicable to an application by the creditor requesting the court to appoint Auditor to arrive at amount payable by the debtor (***Jane Andrew Austin v. Branch Manager, State Bank, AIR 1999 Ker 136, 138***). The words "at any time" occuring in this section are meaningful and make clear that there is no period of limitation prescribed for filing such an application (***Surya v. Baldeva, 1999 AIHC 71, 73 (P&H)***.

ए.आई.आर. 1988 कलकत्ता 358 (विशेष पीठ) (***महिला नूरनाहर वि. रविन्द्रनाथ***) का दृष्टांत भी देखने योग्य है। उसमें भी **ए.आई.आर. 1976 मध्यप्रदेश 136** (पूर्व पीठ) (***नत्थू प्रसाद वि. सिंघई कपूरचंद***) का एवं उपर उल्लेखित **पूरणचंद वि. कोमलचंद** का संदर्भ भी दिया है।

प्रथमतः ***संतसिंह वि. मदनदास*** के दृष्टांत के चरण 15–16 को देखें जिसे ज्यों का त्यों प्रस्तुत किया जा रहा है। उसे समझा जा सकता है। उक्त हिस्सा इस प्रकार है :–

15. In our opinion, there is nothing in the wording of Order 43, Rule 1 (c), Civil P.C. to restrict it to rejection on merits. The words "rejecting an application" are comprehensive enough to include dismissal for default on rejection in any other situation whatever.

16. In ***Pooranchand v. Komalchand, AIR 1962 Madh Pra 64*** the Division Bench observed thus:

"It seems to us unnecessary to examine some decisions in which it has been held that an appeal lies under O. 43, R. 1 (c) from an order rejecting for default an application under Rule 9... These decisions and others... overlook the position that when an appeal is preferred against an order rejecting for default an application under Rule 9 for the restoration of a suit, the appeal is not against the order to set aside the dismissal of a suit within the meaning of O. 43, R. 1 (c), that Section 141 deals with procedure alone and not with any substantive rights, and that the remedy under O. 9, R. 9, Civil P.C. is not a matter of procedure but is a substantive right."

with greatest respect, it must be said that the Division Bench was not right when it said: "appeal is not against an order to set aside the dismissal of a suit". Indeed, clause (c) of Rule 1, Order 43, does not make appealable an order to set aside dismissal of a suit. In terms it applies to an order under Order 9, Rule 9 rejecting an application, and the phrase "for an order to set aside the dismissal of a suit" qualifies such "application". To put it differently, when an application is made for an order to set aside the dismissal of a suit and such an application is rejected by an order under O. 9 R.9 CPC in terms it falls under clause (c). Now when a suit is dismissal for default and an application is made for an order to set aside the dismissal, it is an application under Order 9, Rule 9, and an order passed on it is also under Order 9, Rule 9. However, there is one argument which we found attractive at first. That argument is this. Rule 9 of Order 9 provides :-

"If he satisfies the Court that there was sufficient cause for his non-appearance.... the Court shall make an order setting aside the dismissal".

It is necessarily implicit in this language that if he is unable to satisfy the Court that there was sufficient cause for his non-appearance, the Court shall reject his application. In other words, either there is satisfaction that there was sufficient cause, or there is satisfaction that there was no sufficient cause, and in either case, satisfaction will be on merits. However, on further reflection, we would not accept this argument inasmuch as the decision of the application will depend upon the satisfaction or want of satisfaction. Now, want of satisfaction can be either when the fact alleged in 'disproved' and also when it is 'not proved'. to employ the language of Section 3 of the Evidence Act. Therefore, when an application is dismissed for default, it is also a case where there is want of satisfaction of the existence of the alleged sufficient cause.

नत्थूप्रसाद वि. सिंघई कपूरचंद के दृष्टांत द्वारा ***पूरणचंद विरूद्ध कोमलचंद*** का निर्णय यद्यपि ओव्हररूल्ड कर दिया है परन्तु ये दोनों दृष्टांत व्य.प्र.स. सन् 1908 (पुराना अधिनियम) पर निर्भर रहे हैं। जबकि नए व्य.प्र.स. (1976) में संशोधित हुआ तथा धारा 141 का स्पष्टिकरण 01.02.1977 से लागू हुआ है की और विशेष रूप से ध्यान देते हुए ***ए.आई.आर. 1988 कलकत्ता 358 (स्पेशल बेंच) महिला नूरनहार वि. रविन्द्रनाथ*** में विचार किया गया है जो निर्णय के चरण 9 से भी ज्ञात होगा। मर्यादा काल के संबंध में विस्तार से खुलासा चरण 12 में किया गया है। **महिला नूर नहार** के दृष्टांत (**ए.आई. आर.**

1988 कलकत्ता 358) में पुनः सारवान अधिकार व प्रक्रिया संबंधी अधिकार पर चर्चा की गई है। **नूरनहार** के प्रकरण के चरण 10, 11 एवं 12 के कुछ अंश **ए.आई.आर. प्रकाशक** के आभार व्यक्त कर के यहां प्रस्तुत कर रहा हूँ। उससे ज्ञात होगा कि आ. 9 नि. 9 अथवा आ. 9 नि. 13 व्य.प्र.स. का आवेदन पत्र उपसंजाति के अभाव में खारिज होने पर उन्हे पुनः फाईल पर लेने हेतु आवेदन पत्र संस्थित हो सकेगा व मर्यादा काल अनुच्छेद 137 के अंतर्गत ही लागू होगा न कि अनुच्छेद 122 के अंतर्गत। उक्त दृष्टांत निश्चित ही अध्ययन योग्य है जो 1976 के सी.पी.सी. के संशोधन पश्चात का है। ***धर्मनारायण वि. उपेन्द्रनाथ ए.आई.आर. 1994 कलकत्ता 231*** का दृष्टांत भी यही बात कहता है। उक्त दृष्टांत में भी कहा गया है कि आ. 9 नि. 9 का आवेदन पत्र निरस्त हो जाने पर भी उस आवेदन पत्र को पुनः फाईल पर लेने हेतु आवेदन पत्र धारा 151 व्य.प्र.स. के अंतर्गत दिया जा सकता है। धारा 141 व्य.प्र. स. का स्पष्टिकरण 01.02.1977 से लागू हुआ है।

एक अन्य दृष्टांत ***सईदा बेगम वि. अशरफ हुसैन ए.आई.आर. 1980 म.प्र. पृष्ठ 12*** भी देखने योग्य है जिसमें किस प्रकार के प्रकरणों में अनुच्छेद 137 मर्यादा अधिनियम लागू होने की बात बताई है। उक्त दृष्टांत का कुछ हिस्सा इस प्रकार है।

C.P.C. S. 141, O.9 R. 13 and O. 22 - Application for restoration, of suit dismissed indefault. Death of applicant - substitution of L.Rs. O. 22 C.P.C. not applicable and Limitation U/A 137 applicable and not U/A 120 of the Limitation Act.

नूर नहार वि. रविन्द्रनाथ ए.आई.आर. 1988 कलकत्ता पृष्ठ 358 विशेष पीठ के दृष्टांत के कुछ अंश इस प्रकार हैं –

Civil P.C. (5 of 1908), O.9, Rr. 4, 9 13, S. 141 - Ex parte decree of dismissal of suit. Application for setting aside of miscellanceous case arising out of application i.e. under Rr. 4, 9 or 13 of O. 9 dismissed for default. Application for restoration of such miscellaneous case is maintainable under O.9 read with S. 141 of Civil P.C. Limitation for such application for restoration would be governed by Art. 137. However High Court observed that amendment should be made so that such application would be governed by Art. 122 of Limitation Act. [Limitation Act (36 of 1963), Arts. 122, 137].

Where a miscellaneous case of setting aside ex parte decree or order of dismissal of suit, arising out of an application under Rr. 4, 9 or 13 of O. 9 was dismissed for default, the application for restoration of such miscellaneous case would be maintainable under O.9 read with S. 141. Whatever may be the nature of the proceedings initiated under O.9 of such proceedings are to be treated as miscellaneous proceedings within the meaning of S. 141 as amended in 1976. The 'proceedings' referred to in S. 141 are not confined to only original proceedings. The 'proceedings' under S. 141 are of wider amplitude. Also the conflict as to whether or not a proceeding under O. 9 will be miscellaneous proceedings as contemplated to S. 141 has now been set at rest by the Amendment Act of 1976. An explanation has been added to S. 141 by the Amendment Act of 1976 and within the expression "proceedings", the proceedings under O.9 have been specifically included. For such inclusive definition, it is immaterial whether the proceedings initiated on the basis of an application under O. 9 partakes the character of a substantive right or procedural matter.

As regards the limitation for filing the aforesaid application for restoration there is no specific provision in the Limitation Act 1963 and therefore such application for restoration would be governed by Art. 137 of the Act and be filed within a period of three years as prescribed therein. Although the period of limitation for making an application for restoration of a suit dismissed for default under O.9 is thirty days from the date of the order of dismissal the application for restoration of miscellaneous case arising out of such application under O. 9, when such Misc. Case is dismissed for default, is not governed by the provisions of Art. 122 of the Limitation Act in view of the fact that expressly in terms of the said Art. 122, the miscellaneous case arising out of an application under O. 9 is not attracted.

However, the High Court observed that when the period of limitation for making an application under O. 9 for setting aside an ex parte decree is only thirty days from the date of the impugned order, it is highly inequitable to allow a party to avail long period of three years under Art. 137 of the Limitation Act to make an application under O. 9 for setting aside the order of dismissal of an application made under O. 9 for setting aside ex parte decree. A party in whose favour an ex parte decree has been made cannot but suffer serious prejudice if the fate of the ex parte decree is allowed to hang indefinitely for three years by allowing the other party to make an application for setting aside the order dismissing the application for setting aside ex parte decree at any time within three years. Therefore Art. 122 of the Limitation Act requires suitable amendment so as to bring the application for setting aside the order of dismissal of the application made under O. 9 for setting aside ex parte decree within the scope and ambit of Art. 122.

समापन :

इस प्रकार इस विषय पर तार्किक दृष्टिकोण से व न्याय दृष्टांतों के आधार से विचार करने पर यह कहा जा सकता है कि आ. 9 नि. 9 अथवा आ. 9 नि. 13 का आवेदन पत्र गुण दोष से भिन्न स्थिति में किसी कारण खारिज हो जाने से उसे पुनः फाईल पर लेना हो तो धारा 141 के स्पष्टिकरण सहित सपठित धारा 151 व्य.प्र.स. के सिद्धांत के अंतर्गत आवेदन पत्र प्रस्तुत हो सकता है एवं उसके लिए मर्यादा काल अनुच्छेद 137 मर्यादा अधिनियम के अंतर्गत तीन वर्ष का होगा। ये सही है कि अनुच्छेद 122 मर्यादा अधिनियम का विस्तार संशोधन कर के ऐसे आवेदन पत्रों के लिए जो धारा 141 सपठीत धारा 151 व्य.प्र.स. के अंतर्गत ही प्रस्तुत किए जा सकते हैं तीस दिन का किया जाना न्याय संगत हो सकता है। धारा 141 एवं उसका स्पष्टिकरण सारवान अधिकार सम्बन्धी विधि के लिए अथवा केवल प्रक्रिया सम्बन्धी अधिकार के लिए लागू हो या न हो अथवा इस सम्बन्ध में धारा 104 एवं आ. 43 व्य.प्र.स. का विस्तार क्या है इस सम्बन्ध में अति तकनीकी बातों पर विचार करने के बजाय वास्तविक स्थिति क्या है इस विषय पर अधिक ज़ोर देना चाहिए क्योंकि 1976–77 के द्वारा धारा 141 में स्पष्टिकरण जोड़ देने से धारा 141 का विस्तार एवं क्षेत्र क्या है यह स्पष्ट कर दिया है। अतः वर्तमान में धारा 141 सपठित धारा 151 व्य.प्र.स. के अंतर्गत मर्यादाकाल ऐसे आवेदन पत्रों के लिए तीन वर्ष है ऐसा मानना अधिक तर्क युक्त लगेगा ऐसा कहा जा सकता है।

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प्रशिक्षण सत्र में प्रश्न

प्रशिक्षण सत्रों में व्यवहार न्यायाधीश वर्ग–2 के न्यायाधीशों को कुछ पत्र बनाकर दिए थे ताकि उन प्रश्नों के माध्यम से भी उन्हें उचित प्रशिक्षण मिल सके। बानगी के रूप में यहां दो प्रश्न पत्र प्रस्तुत है। हम भी उन्हें पढ़ें समझे, उत्तर तैयार करें व यथा संभव मार्ग दर्शित करते रहे।

प्रश्न दिखने में आसान साधारण अथवा तुच्छ कोटि के लग सकते हैं लेकिन प्रश्नों के अंदर जो गहराई छुपी हुई है उसे भापना है समझना है व हर दृष्टिकोण से प्रश्न को देखना है। समग्र रूप से प्रश्न का उत्तर इस प्रकार से तैयार करना है कि उस प्रश्न उल्लेखित पूरक विषयों का भी अध्ययन हो सके। प्रशिक्षण सत्रों में प्रशिक्षार्थियों द्वारा दिए उत्तर वास्तव में प्रशंसनीय थे व उत्साहवर्धक थे लगा कि वे अच्छी तैयारी कर रहे हैं। उन्हें शुभकामनाएं। यदि ऐसे ही प्रश्नपत्र प्रतियोगी परीक्षा के लिए तैयार किए जावे तो कितना अच्छा होगा। सम्भवतः उम्मीदवारों का सही मूल्यांकन होने में सहायक हो।

निम्न प्रश्नों के उत्तर दीजिये

प्रश्न 1. वादी का एक आवेदन पत्र सम्पत्तिक वाद में आ. 22 नि. 4 व्य.प्र.स. का लंबित था। सुनवाई के दिन 12 बजे तक, 1 बजे तक व 3 बजे तक कोई नहीं आया। न वादी की ओर से न प्रतिवादी की ओर से। न्यायालय क्या आदेश पत्रिका लिखेगा। आप स्वयं विधि के किन सिद्धांतों का पालन करेंगे।

प्रश्न 2. एक पीठासीन अधिकारी ने उपरोक्त प्रकरण में दोपहर तीन बजे किसी के भी उपस्थित न होने से दावा ख़ारिज कर दिया। दोपहर चार बजे वादी के अधिवक्ता ने एक आवेदन पत्र प्रकरण पुनः फाईल पर लेने हेतु प्रस्तुत किया। आवेदन पत्र में दिए कारण उचित व पर्याप्त हैं। आप क्या करेंगे व किन प्रावधानों के अंतर्गत ऐसा करेंगे।

प्रश्न 3. वादी ने व्यवहार वाद में आ. 39 नि. 1–2 का एंक आवेदन पत्र एवं एक और आवेदन पत्र आ. 39 नि. 3 के अंतर्गत प्रस्तुत किया। आपके दृष्टि से एक पक्षीय अस्थायी निषेधाज्ञा देने हेतु पर्याप्त कारण नहीं हैं। आप क्या आदेशिका लिखेंगे।

प्रश्न 4. वादी ने विवादित सम्पत्ति का मूल्यांकन रूपये 10,000 करके व्यवहार न्यायाधीश वर्ग 2 के न्यायालय में दावा संस्थित किया। प्रतिवादी की आपत्ति है कि सम्पत्ति का मूल्य रू. 30,000 है। यह भी निवेदन किया कि यह वाद प्रश्न प्रारम्भिक वाद प्रश्न के रूप में निर्धारित किया जावे। आप क्या वाद प्रश्न बनाएँगे व कैसे निर्धारित करेंगे। यदि इसी प्रश्न में आप मानते हैं कि मूल्यांकन रूपये 20,000 होना चाहिये। आप ऐसा किस स्टेज पर किस आधार पर मानेंगे। यदि धारा 15 व्यवहार न्यायालय अधिनियम (म.प्र.) के अंतर्गत कार्य विभाजन पत्रक के अनुसार आपको आर्थिक श्रवणाधिकार रूपये 15,000 तक का ही दिया है तो आप क्या करेंगे ?

प्रश्न 5. प्रतिवादी को उत्तरवाद प्रस्तुत करने हेतु आप अब कोई और समय नहीं देना चाहते हैं। आपकी आदेशिका कैसे लिखी जाएगी।

प्रश्न 6. आप श्रवणाधिकार के अभाव में दावा वापस करना चाहते हैं। प्रक्रिया बताएँ। यदि वादी यह नहीं बताता है कि दावा किस न्यायालय में भेजा जाना है तो आप क्या करेंगे ?

प्रश्न 7. दावा पारित करते समय आप वादी को वाद व्यय दिलाना चाहते हैं। घोषणात्मक सहायता एवं स्थायी निषेधाज्ञा हेतु वाद है तथा दावे का मूल्यांकन क्रमशः रूपये 300 एवं 100 रू. है। ये बताइये कि खर्चे हर्जे की आदेशिका आप कैसी लिखेंगे एवं वादी ने दावे में कितनी कोर्ट फीस वर्तमान लागू दर से संदाय की होगी।

प्रश्न 8. वादी ने प्रतिवादी को 28 फरवरी 1998 को रू. दो हजार नगद उधार दिए। प्रतिवादी ने यह रकम 15 अप्रैल 1998 को लौटाने का वादा किया व प्रोनोट निष्पादित कर दिया। वादी ने मर्यादा काल के अंतिम दिन दावा प्रस्तुत किया। वह अंतिम दिन कौन सा था। प्रोनोट पर स्टाम्प ड्यूटी/कोर्ट फीस किस प्रावधान के अंतर्गत देय होगी।

प्रश्न 9. वादी के साथ प्रतिवादी ने विवादित सम्पत्ति विक्रय करने हेतु अनुबन्ध 1–11–1998 को किया व कहा कि 1–12–1998 को या उसके पूर्व वह वादी के पक्ष में विक्रय कर देगा। वादी के पक्ष में प्रतिवादी ने ऐसा नहीं किया। वादी यदि दावा लगाना चाहता है तो दावा लगाने हेतु अंतिम दिन कौन सा होगा। इस बीच प्रतिवादी किसी अन्य से विक्रय अनुबंध करना चाहता है। दावे की प्रकृति क्या होगी। सम्पत्ति का मूल्य 15,000 रू. है। दावे का मूल्यांकन क्या व कैसे हो सकेगा ?

प्रश्न 10. प्रतिनिधि दावे में एवं अवयस्क बालक की ओर से राजीनामा (समझौता) किया जाना है। क्या प्रक्रिया होगी।

प्रश्न 11. प्रतिवादी ने उत्तरवाद में यह आपत्ति की है कि प्रोनोट साक्ष्य में ग्राह्य नहीं है। उसके अनुसार प्रोनोट पर रू. 1 का टिकिट (रसीदी) लगना चाहिए लेकिन टिकिट 20 पैसे वाला रसीदी लगा है। वाद प्रश्न क्या बनेगा व प्रोनोट को क्या इम्पाउंड किया जा सकेगा ? ड्यूटी पेनल्टी क्या हो सकेगी ?

प्रश्न 12. मारपीट के साधारण अपराध में पुलिस ने धारा 323 भा.दं.वि. एवं धारा 3(1) XI S.C. S.T. (P. of A) Act के अंतर्गत आपके न्यायालय में आरोप पत्र प्रस्तुत किया। उचित किया अथवा अनुचित। आपको न्या.द.प्र. श्रे. के अधिकार है। आरोपी ने प्रतिभूति हेतु आवेदन पत्र प्रस्तुत किया। आप क्या करेंगे। यदि पुलिस रिमांड हेतु पुलिस निवेदन करती तो आप क्या करते?

प्रश्न 13. धारा 279–338 के अंतर्गत आरोपी अपराध स्वीकार करना चाहता है। 01–11–01 को उसने वाहन क्र. एम.पी. 04–1234 उपेक्षा या उतावले पन से चलाया व गगन को साधारण उपहति कारित की। चार्ज/आरोप विवरण बनाएँ एवं प्ली रिकार्ड करें व दंडादेश लिपिबद्ध करें।

प्रश्न 14. धारा 324 भा.द.वि. के अंतर्गत पुलिस आरोपी का पुलिस रिमांड केवल एक दिन के लिए लेना चाहती है। न्या.द.प्र.श्रे. एवं द्वि. श्रे, का क्या अधिकार व कर्तव्य है।

प्रश्न 15. प्रकरण अंतिम रूप से निराकृत हो चुका है। दावा प्रोनोट के आधार पर था। वादी ने मूल प्रोनोट जो प्रदर्शित हुआ था वापसी हेतु न्यायालय में आवेदन पत्र प्रस्तुत किया। आप क्या प्रक्रिया अपनाएँगे।

प्रश्न 16. प्रकरण अंतिम रूप से निराकृत हो चुका है। विक्रय पत्र वादी ने प्रस्तुत किया था। वह वादी वापस लेना चाहता है। आप क्या प्रक्रिया अपनाएँगे। यदि प्रकरण अंतिम रूप से निराकृत नहीं हुआ है लेकिन विक्रय पत्र प्रदर्शित हुआ है तो/नहीं हुआ है तो क्या प्रक्रिया अपनाना है ?

प्रश्न 17. मगन ने गगन के सम्बन्ध में, एक समाचार पत्र के माध्यम से जो कि जबलपुर से प्रकाशित होता है दिनांक 1–11–2001 को अपमान जनक बातें प्रकाशित कराई कि गगन एक अपराधिक प्रवृत्ति का व्यक्ति है जो हत्यारा है व चोरी डकैती भी करता है। ऐसी अपमान जनक बातों के आधार से गगन परिवाद पत्र प्रस्तुत करता है। चार्ज पूर्व साक्ष्य लिपिबद्ध की गई व चार्ज लगाने लायक साक्ष्य है। आप क्या चार्ज लगाएंगे ? मगन बम्बई में रहता है। गगन इन्दौर में। गगन को यह तथ्य भोपाल में ज्ञात हुआ था। परिवाद किस शहर में प्रस्तुत हुआ होगा? जबलपुर–बम्बई–इन्दौर–भोपाल में से कहां कहां प्रस्तुत नहीं हो सकता? अभियुक्त का कहना है कि यह समन्स ट्रायल होने से प्रकरण समन के रूप में चलावें। परिवादी सहमत हैं। आप क्या करेंगे ?

प्रश्न 18. अभियुक्त शरण को पुलिस ने आरक्षी केंद्र पर चोरी करने की शंका पर से रोक के रखा लेकिन गिरफ्तार नहीं किया। पूछताछ के दौरान अभियुक्त शरण ने पुलिस को साक्षियों के सन्मुख एक कथन लिपिबद्ध कराया। पुलिस ने उक्त कथन इस प्रकार लिपिबद्ध किया :

"मैं कल रात करण के घर में चोरी करने हेतु चुपचाप दरवाजा धकेल कर घुसा था एवं वहां से एक रेडियो सेट एवं मोबाइल टेलीफोन उठाकर लाया था वह सहाय को रूपये दो सौ में बेच दिया है, चलो उसके घर से दिलवा देता हूँ ।"

पुलिस का यह कृत्य पूर्णतः या किस सीमा तक उचित है ? उचित–अनुचित का कारण बताएँ।

किसी एक न्यायिक दंडाधिकारी ने इसे साक्ष्य में ग्राह्य करते विलेख के आधार से साक्ष्य भी लिपिबद्ध की। उसने क्या साक्ष्य लिपिबद्ध की होगी – उपरोक्त कथन के सम्बन्ध में।

प्रश्न 19. मगन एक आदेशिका वाहक गगन के घर राजवाड़ा, इन्दौर में आदेशिका निर्वाहित कराने दि. 01–11–2001 को विधिवत गणवेश में गया। सुबह 10 बजे का समय था। गगन ने कहा दफ्तर जाने का समय है सुबह सुबह क्यों आए हो व उसे धक्का देकर गिरा दिया। चार्ज/आरोप विवरण बनाओ। यदि चार्ज नहीं बनता है तो डिस्चार्ज बावत क्या आदेशिका लिखेंगे ?

प्रश्न 20. एक आदिवासी महिला मंगली को सामान्य वर्ग की महिला सोमवती ने चाकू से साधारण चोटें पहुंचाई थी। पुलिस ने आपके न्यायालय में आरोप पत्र प्रस्तुत किया। आपने अपने निर्णय द्वारा अभियुक्त को धारा 324 भा.दं. वि. के अंतर्गत अपराधी पाते (सिद्ध दोष) पाते दंडित (दोष सिद्ध) किया एवं धारा 04 प्रोबेशन ऑफ ऑफेन्डर्स एक्ट का लाभ भी दिया। अभियुक्त कभी भी निरोध में नहीं रहा था अतः आपने धारा 428 दं.प्र.सं. के प्रावधान के अंतर्गत विवरण भी रेकार्ड पर तैयार करके सम्मिलित कर दिया। निर्णय पूर्ण कर लिया। मूलभूत त्रूटियां फिर

भी रह गई है। वे क्या थी? क्या करना शेष था व क्यों कर के। दंड के विषय में सुना भी गया था।

प्रश्न 21 धरम को करम ने स्वेच्छया एक उपहति लाठी से सर पर एवं एक उपहति चाकू से हाथ पर पहुंचाई। घटना 01–11–2001 की शाम 5 बजे की कोतवाली के सामने की है। आरोप निर्मित करें।

प्रश्न 22 उपरोक्त प्रश्न के घटनाक्रम, स्थान आदि को मानते हुए एक चार्ज इस बात का लगाएं कि रमण को एवं मगन को गगन ने क्रमशः सर पर व हाथ पर साधारण उपहति कारित की। उपहति चाकू से कारित की।

प्रश्न 23 आ. 9 नि. 13 का एक आवेदन पत्र दि. 01–11–2000 को प्रार्थी/प्रतिवादी की अनुपस्थिति में खारिज हो गया। उक्त आवेदन पत्र पुनः फाईल पर लेने हेतु आवेदक ने एक आवेदन पत्र धारा 151 व्य.प्र.स. के अंतर्गत प्रस्तुत किया। वह आवेदन पत्र 01–11–2001 को प्रस्तुत हुआ। अनावेदक/वादी को सूचना पत्र भेजने पर उसने आपत्ति की कि धारा 151 व्य.प्र.सं. के अंतर्गत ऐसा आवेदन पत्र पोषणीय नहीं है व मर्यादा बाहर है। आप इन दो आपत्तियों के विषय में अपने निष्कर्म लिखें।

प्रश्न 24 प्रतिवादी किसी एक तिथि पर अनुपस्थित रहा तो एक पक्षीय कार्यवाही हो गई। प्रकरण साक्ष्य हेतु चलते चलते एक वर्ष भी हो गया। अब प्रतिवादी दो पक्षीय कार्यवाही करने हेतु आवेदन पत्र देता है, कारण उचित है लेकिन एक वर्ष व्यतीत हो चुका है। आपका आदेश क्या होगा?

प्रश्न 25 प्रतिवादी को प्रतिरक्षा म.प्र.स्था.नि.अ. के अंतर्गत समाप्त हो जाने पश्चात–प्रतिवादी के अधिकारों का वर्णन करें।

निम्न प्रश्नों के उत्तर दीजिये

प्रश्न 1. वादी ने अपने दावे के अभिकथनों में सहायता खंड के अंतर्गत वाद व्यय की सहायता के अतिरिक्त इस बात की सहायता चाही कि उसे रूपये 50 टाइप व्यय, रू. 50 विलेखों के फोटो कॉपी कराने के खर्चे, 50 रूपये प्रमाणित प्रतिलिपियां प्रस्तुत करने के व रू. 10 प्रमाणित प्रतिलिपियों पर कोर्ट फी टिकिट लगाने के दिए जावें। वादी द्वारा यह तथ्य सिद्ध करने हेतु वादी स्वयं को परीक्षित किया। इस साक्ष्य पर प्रतिवादी ने आपत्ति की लेकिन न्यायालय ने इस विषय पर आपत्ति का निर्धारण सुरक्षित रखा। वादी के उत्तरों को न्यायालय ने लिपिबद्ध कर लिया था। आप क्या करेंगे ? प्रावधान क्या है?

अ : आपत्तियों को स्वीकार/अस्वीकार करेंगे ? प्रावधान क्या है?

ब : प्रश्न सुसंगत थे ?

स : इन समस्त व्ययों को स्वीकार किया जा सकता है ? इस संबंध में क्या प्रावधान हो सकते हैं ?

प्रश्न 2. जिला न्यायालय के नाज़िर ने काफी बड़ी संख्या में जप्त चल संपत्ति न्यायालय के आदेश से नीलाम की। अन्तिम बोली एक लाख रूपये की न्यायालय स्वयं ने मान्य की। रू. 25,000 जो कि 1/4 रकम है नीलाम में क्रय करने वाले ने जमा की। शेष रकम जमा करने हेतु अधिकतम कितनी कालावधि क्रेता को है तथा न्यायालय कितना ओर समय दे सकता है ?

प्रश्न 3. न्यायालय ने अवशेष कोर्ट फी देने हेतु प्रथमतः दस दिन का समय दिया। पुनः दस दिन का समय दिया। पुनः समय मांगने पर यह आदेश पत्र लिखा कि अगली तिथि पर या उसके पूर्व कोर्ट फीस संदाय नहीं की तो दावा खारिज होना मान लिया जाएगा। लेकिन उस दिन भी कोर्ट फीस नहीं दी अतः दावा खारिज कर दिया गया। वादी ने उसके पश्चात एक आवेदन पत्र प्रस्तुत किया कि वह कोर्ट फीस दे रहा है अतः दावे को पुनः फाईल पर लिया जावे। कृपया प्रावधानों सहित बताइये।

प्रश्न 4. दिनांक 01–01–1998 को प्रतिवादी ने कर्जा (प्रोनोट से) रू. 2,000 वादी से लिया। प्रतिवादी ने वादी को 01–01–1999 को रू. 500 कर्ज पेटे संदाय किए। वादी ने उक्त रकम के विषय में कहीं कोई हिसाब किसी भी प्रकार से नहीं रखा न प्रतिवादी के पास इस संबंध में कोई प्रमाण है। लेकिन वादी यह तथ्य अस्वीकार नहीं करता कि प्रतिवादी ने रू. 500 दिए थे। दावे में अभिवचन है तथा न्यायालय में कथन भी दिया है। वादी शेष रकम वसूल करने हेतु दावा लगाना चाहता है तो उसके लिए वह कौन सा अंतिम दिन होगा जिस दिन दावा मर्यादा वाह्य नहीं होगा। स्मरण रहे वादी को रू. 500 संदाय नहीं किए ऐसी प्रतिवादी की प्रतिरक्षा है।

प्रश्न 5. रू. 1000 प्रतिवादी ने वादी से प्रोनोट के आधार से प्राप्त किए। यह रकम 01–01–1998 को प्राप्त की। रकम मांग पर देय थी। दिनांक 01–01–1999 को विधिवत सूचना पत्र देकर रकम की मांग प्रतिवादी से वादी ने की। प्रतिवादी ने सूचना पत्र के उत्तर में ऐसे किसी भी प्रकार के व्यवहार से इन्कार किया। वादी को अंतिम दिन कौन सा है जिस दिन कि दावा लग सकता है।

प्रश्न 6. निष्कासन के दावे में प्रतिवादी वादी को अपना मकान मालिक नहीं मानता, न इस कारण किराया जमा कर रहा है। वादी प्रतिवादी की प्रतिरक्षा समाप्त करने हेतु आवेदन पत्र देता है। न्यायालय क्या करेगा। यदि आप उसकी प्रतिरक्षा समाप्त कर भी दे तो ऐसा आदेश क्या व किस सीमा तक प्रभाव रखेगा ?

प्रश्न 7. भागतः सम्पत्ति का अधिपत्य भावी क्रेता को भावी विक्रेता ने विनिर्दिष्ट सहायता के अनुबंध के अंतर्गत दे दिया। लेकिन भावी विक्रेता सम्पत्ति का विक्रय नहीं करना चाहता है। विपरीत इसके वह वादी उक्त सम्पति को अन्य को विक्रय करने का करार देता हैं, भावी क्रेता के पास तत्काल ऐसी कौन सी रेमिडी (उपंचार) है जिसके अंतर्गत उसे दावा लगाया होगा ? कोर्ट फीस क्या दी होगी ? सम्पत्ति का मूल्य 20,000 रू. है। उसने विनिर्दिष्ट सहायता हेतु वह दावा नहीं लगाया है। क्या ऐसा दावा लगाना आवश्यक था ? यदि हां तो क्या ऐसी सहायता का दावा मात्र पर्याप्त है?

प्रश्न 8. प्रतिवादी के विरूद्ध प्रस्तुत वाद में उसने वादी के इस कथन को अस्वीकार कर दिया कि उसे प्रोनोट पेटे रू. 500 प्रतिफल मिला है एवं यह भी कहा कि छलकपट द्वारा प्रतिवादी के हस्ताक्षर जबरन प्रोनोट पर करवा लिए थे। प्रतिवादी ने दावे की कालावधि के विषय में आपत्ति उपस्थित नहीं की है यद्यपि दावा 01–11–2001 किया जब कि व्यवहार 01–11–1998 का था। वाद प्रश्न बनाईये एवं दावे की मर्यादा सीमा के संबंध में छोटी टीप प्रस्तुत करें।

प्रश्न 9. रू. 2000 प्रतिवादी ने वादी से 01–01–1996 को लेना कहा जाता है। यह भी कहा जाता है कि वादी प्रतिवादी के बीच यह अनुबंध था कि प्रतिवादी वादी को उक्त रकम दिनांक 01–10–1996 को या उसके पूर्व संदाय करेगा। संदाय नहीं की वह रकम, वादी को प्रतिवादी ने। परिणामतः मांग करते हुए सूचना पत्र 01–11–1996 का निर्गमित किया जो प्रतिवादी को दिनांक 05–11–1996 को प्राप्त हुआ। वादी ने दावा प्रस्तुत किया लेकिन मर्यादा काल के अंतिम दिन। दावा किस तारीख को प्रस्तुत हुआ होगा।

इसी उदाहरण में प्रतिवादी की प्रोनोट ग्राह्यता की आपत्ति निरस्त कर दी थी। रसीदी टिकिट/या स्टाम्प ड्यूटी इंप्रेस्ड/एड्हेसिव स्टॅम्प किस प्रावधान के अंतर्गत हो सकता है।

प्रश्न 10. प्रतिवादी ने बैंक से रूपये 20,000 कर्ज प्राप्त किया एवं कर्ज की सुरक्षा हेतु अपना मकान बंधक रखा। बंधक व्यवहार मकान के विलेख निक्षेप (Deposit of Title Deed) के आधार से हुआ। निक्षेप लेख पंजीकृत नहीं किया एवं अनुप्रमाणन साक्षियों के रूप में साक्षियों के हस्ताक्षर भी नहीं हो पाए। दावे में उपस्थित इस आपत्ति का आप किस प्रकार निराकरण करना चाहेंगे स्पष्ट करेंगे।

प्रश्न 11. आ. 21 नि. 85 व्य.प्र.स. के अंतर्गत नीलाम में क्रयकर्ता को 3/4 रकम जमा करना थी। आखिरी दिन वह 3/4 रकम लेकर न्यायालय में उपस्थित हुआ लेकिन पीठासीन अधिकारी बोर्ड पर 4 बजे विराजमान हुये क्यों कि किसी पार्टी में वे व्यस्त थे। 4 बजे उन्होंने आवेदन पत्र पर निर्देश दिया कि जिला नाज़िर यह रकम सी.सी.डी. में जमा करें। नाज़िर ने ऐसा करने से असमर्थता व्यक्त की। ऐसा क्यों हुआ। नीलाम सम्पत्ति क्रेता का क्या उपचार है ?

प्रश्न 12. आ. 9 नि. 7 का आवेदन पत्र प्रतिवादी ने न्यायालय के सामने प्रस्तुत नहीं किया। प्रकरण में अंतिम तर्क मात्र होना शेष था। प्रतिवादी अंतिम तर्क हेतु एक दिन का समय चाह रहा था लेकिन वादी का कहना था कि;

(ए) आ. 9 नि. 7 का आवेदन पत्र प्रस्तुत होना चाहिए;

(ब) प्रतिवादी के विरूद्ध एक पक्षीय कार्यवाही किए तीन वर्ष से भी अधिक समय हो चुका है; अतः कार्यवाही में भाग नहीं ले सकता;

(स) प्रतिवादी एक पक्षीय हो चुका है, इस कारण भी कार्यवाही में भाग नहीं ले सकता। अतः आप क्या करेंगे।

इसी प्रकरण में प्रतिवादी एक आवेदन पत्र प्रस्तुत करना चाहता है कि न्यायालय यदि समय नहीं देना चाहता है तो वह यह आवेदन पत्र आ. 9 नि. 7 के तहत् प्रस्तुत करना चाहेगा।

ऐसी स्थिति में वादी इस बात से भी सहमत है कि भारी हर्जाना दिलाया जावे तो मर्यादा विषयक आपत्ति पर मौन धारण कर लेगा। बताएँ क्या हल है ?

प्रश्न 13. 279–427 भा.द.वि. के अंतर्गत आरोपी ने अपराध स्वीकार करने की इच्छा व्यक्त की कि तेजगति से वाहन चलाया एवं एक कुत्ते को उपहति कारित की जिसका मूल्य 51 रूपये था। आप किन धाराओं में आरोप विवरण/चार्ज लगाएंगे एवं किस प्रकार अपराध की स्वीकृति लिपिबद्ध करेंगे। सजा संबंधी क्रियाशील भाग किस प्रकार लिखेंगे। सुसंगत प्रावधानों को व्यक्त करें।

प्रश्न 14. अनुसूचित जाति के परिवादी ने एक रिपोर्ट आरक्षी केंद्र पर प्रस्तुत की जिसके आधार से एक आरोप पत्र दो अभियुक्त गण के विरूद्ध धारा 325–341 भा.द.वि. के अंतर्गत प्रस्तुत हुआ। एक आरोपी सामान्य वर्ग का है तो दूसरा पिछड़ी जाति का। दोनों ही आरोपीगण को न्यायालय ने दंडित किया। सवर्ण अभियुक्त को प्रोबेशन का लाभ दिया एवं पिछड़ा वर्ग के अभियुक्त को जेल की सजा व अर्थदंड किया। अर्थदंड रू. 500 किया गया। क्षतिपूर्ति क्या दी जा सकती है एवं किस अभियुक्त से नहीं दिलाई जा सकती, किस प्रावधान के अंतर्गत दी या नहीं दिलाई जा सकती है इस विषय में अभियुक्त व परिवादी की ओर से तर्क भी प्रस्तुत किए गए। आप क्षतिपूर्ति के संबंध में विधि की अवधारणा बताएँ।

प्रश्न 15. आरोपी की यह आपत्ति है कि प्रकरण समन केस है एवं न्यायालय को वारण्ट केस के रूप में प्रकरण चलाने का अधिकार नहीं है अतः उसे वारण्ट केस से परिवर्तित कर समन के रूप में चलाया जावे। आप क्या करेंगे। वास्तव में वह केस समरी ट्रायल का ही है।

प्रश्न 16. मगन ने शरण को चाकू से सर में व लाठी से पीठ में मारा। उपहति साधारण थी। चार्ज आरोप विवरण क्या व क्यों बनेगा। यदि अभियुक्त अपराध स्वीकार करना चाहता है तो प्ली किस प्रकार रिकार्ड की जाएगी ? दोष सिद्धि, सिद्ध दोष एवं दंडादेश क्या होगा?

प्रश्न 17. उपरोक्त उदाहरण में अपराध स्वीकृति की स्थिति में आगे का क्रियाशील भाग आप क्या लिखेंगे ?

प्रश्न 19. रू. 500 नगद उधार प्रतिवादी को वादी ने दिए। यह रकम 01–01–1996 को दी। प्रोनोट लिखा गया। 01–01–2000 तक प्रतिवादी ने रकम नहीं चुकाई। अतः मांग का सूचना पत्र प्रतिवादी को वादी ने 01–02–2000 को दिया। प्रोनोट मांग पर देय थी। प्रतिवादी ने सूचना पत्र के उत्तर में लेन देन स्वीकार किया व कहा कि आर्थिक स्थिति अच्छी नहीं थी अतः रकम दे नहीं सका। उसने आगे यह भी कहा कि रकम मर्यादा बाहर है अतः आप वसूल नहीं कर सकते। वादी ने इसे अभिस्वीकृति मानते हुए इस अभिस्वीकृति के आधार से एक दावा 01–03–2000 को प्रस्तुत किया। प्रतिवादी एक पक्षीय हो गया। वादी चाहता है कि आ. 8 नि. 10 के अंतर्गत न्यायालय वादी के पक्ष में निर्णय पारित करे। आप क्या करेंगे ? यदि आप साक्ष्य हेतु प्रकरण निर्धारित करना चाहते हैं तो वादी स्वयं को परीक्षित करता है व प्रोनोट, सूचना पत्र एवं उसके उत्तर को विधिवत सिद्ध करता है। निर्णय का क्रियाशील भाग लिखें।

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LEAVE VACANCY APPOINTMENTS

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Administration is often confronted with the question of making Leave Vacancy Appointments. Often exigencies of PUBLIC INTEREST demand appointing some one by direct recruitment or by promotion so that work of Govt. may not suffer. But the constraints of rules that no two or more persons can draw salary in respect of the same post for pension create hurdle. It baffles the authorities and poses insurmountable problem.

Generally in such situations double charge is resorted to under FR 49, so that some competent officer may look after the work of two or more posts in addition to that of his own post. Such expedients are short term arrangements.

Real difficulty arises when the incumbent is on long leave like study leave or leave preposory to retirement (leave which touches the date of retirement) or on long extra ordinary leave. In such a situation work cannot be allowed to suffer. Public interest is paramount. Question arises what is the solution to such a situation.

Every Govt. servant is generally accommodated in a cadre. Cadre represents strength of a service. Now what are the constituents of a cadre. By and large, a cadre is composed of substantive posts and officiating posts+leave reserve. The total of the three constituents should not exceed the sanctioned strenth of the cadre.

In the case of All India Services, the amplitude of cadre constituents is largest. Besides substantive officiating and leave reserve posts, it consists of Training posts and deputation reserve also.

A cadre may comprise direct recruits and promotees in a suitable prescribed quota and appointments in leave vacancies can be made provided the leave reserve is not exceed as also that total sanctioned strength of the cadre is not exceeded. If these conditions are fulfilled authority competent to make appointments by direct recruitment and/or promotion and subject to availability of sanction to posts of the cadre or continuation thereof and within the limits of sanction and limits of period thereof, can make appointments in leave vacancies.

Arrangements of leave vacancy appointments should be reversed by reversion or termination as soon as the incumbent of the post returns to duty and joins the post (except in cases of leave preposory to retirement unless such person is recalled to duty).

Double charge appointment should be for limited short period because it may cause overstrain to Govt. servant. Increase of power due to holding more than one post may also tend to indulgence in corruption because power corrupts.

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FLASH

1. (1) COURT FEES ACT S. 7 (IV) C,D, AND SCHEDULE 2 ART 17 PT. 3.
(2) SUIT VALUATION ACT S. 3, 7., AND *8. DHARMARAJ SINGH VS. VAIDYA NATH PRASAD.*
SUIT FOR DECLARATION SIMPLICITER VALUATION AND COURT FEES-LAW EXPLAINED.
C.R. NO. 1963/2001 DECIDED ON 11.12.2001 BY HON'BLE JUSTICE SHRI S.P. KHARE

(1) This is a revision by the plaintiff against order dated 8.9.2001 of the 1st Additional District Judge, in Civil Suit by which he has been directed to value the suit for purposes of court fee at Rs. 82,500/- and pay advalorem court fee.

(2) The relevant averments in the plaint are that the defendant No. 1 granted sub-lease of a portion of the plot shown in red colour in the plaint map to the plaintiff by lease-deed dated 29.7.1995 and placed him in possession thereof: the **plaintiff is in possession of this land** and has raised some construction thereon; the defendant. No. 1 has got surrender deed dated 31.12.1999 in respect of this land registered in his favour in which a consideration of Rs. 85.500/- has been shown; the **plaintiff has not signed on this deed and he is not a party to** it; it is forged and the defendant No. 1 is threatening to dispossess the plaintiff from that plot. The plaintiff has claimed the **relief of declaration** that the said **surrender deed is void** and of **permanent injunction for restraining the defendants** from interfering with his possession on this plot.

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

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

(5) **For claiming the relief of permanent injunction the court fee payable is as per Section 7 (iv) (d) of the Act. The plaintiff is at liberty to put his own valuation** on such a relief. of course. It should not be wholly unreasonable on arbitrary. This has been clarified in ***Raj Kaur Vs. Kinetic Gallery 2000 (2) MPLJ 72*** that in cases falling within paragraph (iv) of Section 7. the plaintiff is entitled to put his own valuation. The Court normally accepts the valuation put by the plaintiff if it is not too low or high. In the present case the plaintiff has valued the suit for the purpose of injunction under Section 7 (iv) (d) of the Act and that valuation is Rs. 20,000/- He has paid the court fee accordingly. **The market value of the property is not the criterion for valuation under any of the Clauses of Section 7 (iv) of the Act. It is the value of the relief sought that is the basis.** The plaintiff has correctly valued the suit for injunction. This would also be the value for purposes of pecuniary jurisdiction of the Court for the relief of injunction as per Section 8 of the Suits Valuation Act. In ***Sabina Vs. Mohd. Abdul 1997 (1) MPLJ 554*** it has been held that. Section 7 (iv) (d) would be applicable for valuing the relief of injunction and Article 17 of schedule II will apply in respect of court fee payable for declaration. That is also the view taken in ***Ambaram Vs. Pramilabai 1997 (1) MPLJ 13.***

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

(7) In a suit in which fixed court fee is payable as per Article 17 Schedule II of the Court Fees Act, the market value of the immovable property, is normally the criterion for purposes of the pecuniary jurisdiction. In the present case the suit for purposes of pecuniary jurisdiction has been valued at Rs. 85.500/- so far as the relief of declaration is concerned, and it cannot be said to be improper. The plaintiff is not required to pay the court fee on the valuation for the purpose of pecuniary jurisdiction. The trial judge has wrongly directed the plaintiff to pay the court fee on the value of Rs. 85.500/- and that order is set aside. **The trial judge is advised to study the law relating to the court fee and suits valuation** by referring to the statutory provisions and the case law on those provisions and then should proceed to decide the question of valuation of the suit for purposes of court fee and jurisdiction.

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

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2. ARBITRATION AND CONCILIATION ACT, 1996, SECTION 11(2), (4), (5) AND (6) : APPOINTMENT OF ARBITRATOR :-
2001 (1) M.P.L.J. 483
CHHATTISGARH MINES AND MINERALS Vs. MANAGING DIRECTOR :-

Period of 30 days prescribed in sub-section (4) and (5) not applicable when appointment procedure agreed upon by parties for appointment of arbitrator.

Arbitrator appointed by respondent No. 1 as per agreement before filing of petition under section 11 and arbitrator seized with the matter, there is no question of appointment of another arbitrator merely because respondents did not issue appointment order of arbitrator within 30 days as requested by petitioner holding subsequent appointment as ineffective.

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3. ARBITRATION ACT, SECTIONS 2(A), 30 AND 33 : VARIATION CLAUSE : HOW TO BE INTERPRETED AND NON SPEAKING AWARD : EFFECT OF CONTRACT: WORK CONTRACTS : GENERALLY :- INTEGRITY OF CONTRACT, UNLIMITED POWERS TO ONE OF THE PARTIES TO THE CONTRACT : EFFECT OF :-
(2000) 8 SCC 343
NATIONAL FERTILIZERS Vs. PURAN CHAND NANGIA

In relation to variation clauses in works contracts, power of employer to vary terms relating to quantum of work, held, cannot be unlimited. Any clause giving absolute power to one party to modify contractual terms would amount to interfering with the integrity of the contract. This is because in contracts relating to major works, the estimates of work at the time of tenders are invited can only approximately. But, it was also realised that the power of the employer to vary the terms relating to the quantum of work cannot be unlimited.

Under the general law of contracts, once the contract is entered into, any clause giving absolute power to one party to override or modify the terms of the contract at his sweet will or to cancel the contract - even if the opposite party is not in breach, will amount to interfering with the integrity of the contract. In the present case 25% plus minus clause was found to be not vitiated by any serious error in law.

NON-SPEAKING AWARD :- On facts it was held that award cannot be faulted merely because the increase in the contract rate allowed was at a flat rate (50% of escalation claimed). The non-speaking award not permissible for the court to probe into mental process of the arbitrator.

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4. ARBITRATION ACT, SECTIONS 14(2) AND 30 : LIMITATION OF FILING OF OBJECTIONS TO AN AWARD IS 30 DAYS :-
2) LIMITATION ACT, ARTICLE 119 : NOTICE - HOW TO BE INTERPRETED :-
(2000) 8 SCC 626
DEO NARAYAN CHOUDHURY Vs. SHREE NARAIN CHOUDHURY

Notice regarding filing of the award must be some act of the Court even though it need not be in writing. Intimation by arbitrator is not sufficient for the purposes of S. 14(2). The filing of the award does not absolve the Court of its statutory duty to give notice under

failing which the jurisdiction to initiate any proceedings for contempt is lost. Section 5 of the Limitation Act is not applicable.

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10. CONSTITUTION OF INDIA, ARTICLE 299 AND EVIDENCE ACT, SECTION 115 : DOCTRINE OF PROMISSORY ESTOPPEL :-
2001 (1) JLJ 64
SURESH SETH Vs. STATE OF M.P.

Doctrine of promissory estoppel is applicable against Government and public bodies even in the absence of formal contract in terms of Article 229.

The promissory estoppel is a rule of equity. It is a doctrine evolved by equity to prevent injustice where a promise is made.

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11. CONSTITUTION OF INDIA, ART. 342 "HALBA KOSHTI" CASTE IS NOT A SUB-TRIBE WITHIN THE MEANING OF ENTRY 19 HALBA/HALBI OF CONSTITUTION (S. TS.) ORDER : 'KOSHTI' CASTE IS NOT COVERED BY MAHARASHTRA ENTRY NO. 19 HALBA/HALBI :-
2001 (1) M.P.L.J. 1 (SC)
STATE OF MAHARASHTRA Vs. MILIND

It is not permissible to say that a tribe or sub tribe, part or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Orders, if not so specifically mentioned.

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12. CONTRACT ACT, SECTIONS 60 AND 37 :-
2) WORDS AND PHRASES -"DISCONNECTION" AND "TERMINATION"-MEANING :
3) ELECTRICITY : GENERALLY : MINIMUM CHARGES :-
(2000) 8 SCC 560
BIHAR STATE ELECTRICITY BOARD Vs. UMI SPECIAL STEEL LTD.

Obligations of parties continue till contract is determined according to its terms. The example of the present case is reproduced to understand the case law. Agreement would terminate as per agreement after period of 12 months following dis-connection and respondent was liable to pay the minimum charges demanded. Disconnection is not the same as termination of agreement.

Agreement continues till determined by parties according to its terms. Therefore, during its continuance minimum charges are payable. Agreement clearly stipulating that minimum charges were to be paid even for periods of non-consumption and also that minimum notice period for termination was twelve months and notice was to be in writing. Respondent requesting disconnection (w.e.f. 1-3-1975) which appellant Board carrying out. Appellant then submitting bill in respect of minimum charges for deemed notice period (1-3-1975 to 28-2-1976). Respondent refusing to pay; filing suit contending that contract had been terminated w.e.f. date of their letter of request (24-2-1975). Trial Court dismissed the suit. It was held that agreement would terminate as per agreement after period of twelve months following disconnection and respondent was liable to pay the

minimum charges demanded. High Court erred in allowing respondent's appeal on the basis of Section 60 of Contract Act, it was held there was no novation of contract.

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13. COURT FEES : QUESTION OF VALUATION :-
2001 (1) JLJ 122
HARICHARAN AND OTHERS Vs. M. OJHA

The question of valuation is to be decided on the averment of plaint. It is a matter between plaintiff and State. Defendant cannot be allowed to obstruct the plaintiff. The jurisdiction in revision exercised by the High Court under S. 115 of the Civil Procedure Code is strictly conditioned by Cls. (a) to (c) thereof.

It is graphically clear that the averments in the plaint are to be taken note of and not that of the written statement. It is absolutely clear that it is the valuation as put forth by the plaintiff would be the valuation of the suit in the matter like this and the averments in the written statement are of no consequence.

The Court-fees Act was passed not to arm a litigant with a weapon to technically against his opponent, but to secure revenue for the benefit of the State. It is not competent to a defendant in a suit to utilise the provisions of the Act at the appellate stage, not to safeguard the interests of the State, but to obstruct the plaintiff. ***Sathappa Chettiar Vs. Ramanathan Chettiar, AIR 1958 SC 245*** followed. ***Rachappa Subrao Jadhav Desai Vs. Shidappa Venkatrao Jadhav Desai, AIR 1918 PC 188*** relied on.

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14. COURT FEES ACT, SECTION 7(iv) :-
2001 (1) JLJ 81 (FB)
SUBHASH CHAND JAIN Vs. CHAIRMAN M.P.E.B.

Real money value ascertainable from the plaint. Plaintiff made liable to pay specified amount, of court fees. Advalorem court fees has to be paid on such amount.

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15. C.P.C., O. 3 Rr. 1, 2 AND 3: WITNESS : POWER OF ATTORNEY HOLDER WHETHER CAN TESTIFY
2001 (1) JLJ 39
SAMSUDDIN Vs. JAGDISH

The impact created by provisions under will have to be taken together. Holder of general power of attorney may be examined as a witness for the party. ***Ram Prasad Vs. Hari Prasad, AIR 1998 Raj 185*** dissented from and ***Mangaliya Vs. S. Prabhu 1999 (1) MPWN 178*** relied on

NOTE :- Judicial Officers are requested to go through **1998 Joti Journal December issue at page 67 Tit Bit No. 55** the citation ***Virendra Vs. Smt. Ramkatori Devi, 1998 (2) MPLJ 410*** in which it was held that Eviction suit by landlady. Suffered brain haemorage resulting in physical disability. Could not appear as witness. Her son, holding power of attorney was examined. Exemption was granted by the rent controller proper. No adverse inference against her could be drawn.

It was further held that :

*A general power-of attorney holder can appear, plead and act on behalf of the party,

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

On perusal of that judgment of the Rajasthan also it will be clear that a general-power-of-attorney holder cannot be allowed to appear as witness on behalf of in the capacity of the plaintiff. Therefore it seems that power of attorney holder may appear as a witness and depose if he has personal knowledge, he can state an affirmation about his information in relation to the case.

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16. C.P.C., O. 5, R. 19-A : ADDITIONAL PROVISION : SERVICE OF SUMMONS :-
2001 (1) M.P.L.J. 57
BASANT SINGH Vs. ROMAN CATHOLIC MISSION

Service of summons by Registered Post is an additional and not an alternative mode.

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17. C.P.C., O. 32, R. 15 : PROTECTION OF INTEREST OF INCAPABLE PERSONS - PROCEDURE LAID DOWN :-
2001 (1) M.P.L.J. 35
KASHI BAI Vs. KASHI RAM

Persons incapable of protecting their interest whom the Court may find incapable to protect their interest because of any mental infirmity as referred to in O. 32, Rule 15, inquiry should be made by the Court. The enquiry to be conducted would depend upon the facts and circumstances of each case.

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18. C.P.C., O. 47, R. 1 : SCOPE OF REVIEW :-
2001 (1) M.P.L.J. 72
STATE OF M.P. Vs. S.S. BHADAURIA

An error which is not self evident and has to be detected by the process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its powers of review under O. 47 R. 1 CPC.

PRACTICE :-

Statements as to what transpired at the hearing - Judgment conclusive of facts stated.

It is well settled principle that statements of fact as to what transpired the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. This is the only way to have the record connected. If no such step is taken, the matter must necessarily end there.

NOTE :- Please refer to ***2000 (2) JLJ 312 Rahish Mohd. Qureshi Vs. State of M.P.*** in which the word "Judge is explained".

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19. 1) C.P.C., SECTION 100 : SECOND APPEAL, FINDINGS OF COURT BELOW : EFFECT OF
2) C.P.C., O. 7 R. 7 AND SECTION 9 :-
3) SPECIFIC RELIEF ACT, SECTION 34 : RELIEF NOT CLAIMED WHETHER CAN BE GRANTED :-
2001 (1) M.P.H.T. 381
KASHI PRASAD Vs. BANSHIDHAR

The exercise of jurisdiction to grant such declaratory reliefs beyond the terms of that Section shall depend upon the facts of each case. Such a declaration may be granted when it is essential as a step to a relief in some other case or when a declaration in itself is a substantial relief and has immediate coercive effect. The courts must exercise sound judgment while granting or refusing such reliefs. Danger to involve the opponent in vexatious litigation should be carefully avoided.

Where both the Courts below have recorded finding on the basis of evidence, available on record that plaintiff has 1/7th joint share in the property, the learned Appellate Court should not have refused the same on technical ground that it was not specifically sought for in the relief clause of plaint, particularly, in order to avoid further vexatious litigation between the parties, the First Appellate Court should have exercised discretion in the interest of justice.

NOTE : Judges are requested to go through J.O.T.I. (2001) II April. Page 137

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20. C.P.C., SECTION 100 :
SPECIFIC RELIEF ACT, SECTION 34 : RELIEF OF POSSESSION IMPLICIT : SUIT FOR SPECIFIC PERFORMANCE OF AGREEMENT OF SALE AND FOR RECOVERY OF POSSESSION :-
2001 (1) M.P.H.T. 337
GAJANAND Vs. RAMNATH

During the pendency of the suit the defendant executed the sale-deed in favour of the plaintiff. Trial Court without recording evidence of parties dismissed the suit as the defendant No. 1 had executed sale-deed. First Appellate Court also dismissed the appeal. In the second appeal it was held that merely by execution of sale deed, the suit which was filed for recovery of possession also does not become infructuous. In a suit for specific performance relief for possession is implicit. Suit is clearly based on title and is maintainable before Civil Court for recovery of possession.

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21. C.P.C., O. 6 R 17 :
2) M.P. ACCOMMODATION CONTROL ACT, SECTION 12(1)(F) :-
2001 (1) M.P.H.T. 396
SWARNJEET SINGH Vs. ASHRAM GAMNE

After the death of original plaintiff/landlord legal representatives sought amendment in the plaint. It was stated that there was an oral partition in respect of property. Accommodation in question had fallen to the share of the non-applicant 1-D and the suit accommodation was required bona fide for him to commence business. Following **AIR 1997 SC 2399** and relying on **AIR 1993 MP 98** and **1984 MPLJ SN 15,** it was held that :

In the present case as has been exposited after the death of the original landlord the legal representatives have been brought on record and the claim has been advanced that the property in question has fallen to the share of Neelkanth and he has the bona fide need of the premises to run a Kirana shop. If the bona fide need continues and there is an averment that there has been partition there is no reason for not allowing the amendment.

If a suit is filed by the landlord for eviction on the ground that an accommodation was required for occupation of sons and family and during the pendency of the suit, the suit accommodation fell to the share of a son, as a result of partition of joint family property the son can make an application under O. 6 R. 17 of the Code and Order 22 Rule 10 of the Code seeking to be added as a plaintiff and seeking amendment of the plaint in order to add the ground of his own requirement seeking defendant's eviction.

Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son.

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22. C.P.C., O. 18 R. 3A : PROVISION IS DISCRETIONARY AND DIRECTORY :-
2001(1) MPWN NOTE NO. 79
SAPHI MOHAMMAD Vs. RAM JIYAWAN

The provision is discretionary and directory. Party may examine himself later on even if no previous leave has been obtained in writing.

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23. C.P.C., O. 9 R. 13 : APPLICATION FOR SETTING ASIDE THE EX PARTE DECREE FOR DIVORCE :-
2001 (1) M.P.H.T. 384
DR. SURESH KUMAR VERMA Vs. SMT. HEMLATA VERMA

An application under O. 9 R. 13 was filed for setting aside the ex parte decree. Along with it an application under Section 24 of the Hindu Marriage Act was also filed. Section 24 of the Hindu Marriage Act reads as, "In any proceedings under this Act" and therefore, it is clear that though CPC is applicable subject to the other provisions in the Act but it would engulf in ambit and sweep of a proceeding under O. 9 R. 13 of the Code and that would eventually attract the provision of Section 24 of the Act.

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24. C.P.C, O. 8 R. 6A AND O. 2 R. 2
2) LIMITATION ACT, ARTICLE 58 : CAUSE OF ACTION :-
2001 (1) MPWN 86
JAGDISH KUMAR Vs. HARISHANKAR

Cause of action arising before filing of counter claim and was also in existence before filing of written statement is not barred.

Sale deed was challenged as illegal and void in written statement. Defendant was also in possession, of suit property. Counter claim for Cancellation of sale deed in favour of plaintiff not barred by limitation when defendant is not even party to the deed.

Note :- Please refer to ***Ram Charan Vs. Daulat Munni Ram, 1996 MPLJ page 192, Gurubachan Singh Vs. Bhag Singh, 1996 MPLJ 861 (SC).*** Please also go through ***Santi Rani Das Vs. Dinesh Chandra Dev (1997) 8 SCC 174, Mahendra Kumar Vs. State of***

M.P., AIR 1987 SC 1395 and Jag Mohan Vs. Dera Radhaswami, (1996) 6 SCC 996, and *Ram Pyari Verma Vs. Darshanlal, 1999 (2) Vidhi Bhashwar 89.*

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25. C.P.C., O. 8 RR. 6 AND 6-A : SET OFF AND COUNTER- CLAIM : DISTINCTION EXPLAINED :- 2001 (1) M.P.L.J. 344
VXL INDIA LIMITED Vs. KESHAV BRIJ BHUSHAN DAS AGGARWAL

With the courtesy of M.P.L.J. publishers following portion is reproduced :-

There can be no manner of doubt that "set-off" and the "counter-claim" are not the same. "Set-off" is a ground of defence and if established it affords an answer to the plaintiffs claim wholly or protanto. A "counter-claim" on the other hand is in effect a weapon of offence. Order VIII, Rule 6, Civil Procedure Code however, does not make a "set-off" as wide as a counter-claim. It should not be however lost sight of that the provision of Order VIII Rule 6, Civil Procedure Code are not exhaustive and an equitable "set-off" may be pleaded if the defendant's claim is shown to have arisen out of the same transaction and further that the said transaction do not take away any right to set-off whether 'legal' or 'equitable' which the party would have independently of the Code. A legal 'set-off' requires a Court Fee because it is a claim that might be established by a separate suit in which the Court Fee would have to be paid. But there is no such fee required in the case of **equitable 'set-off'** which is for an amount that may equally be deducted from the claim of the plaintiff where a Court Fee had been paid on the gross amount. The equitable "set-off" cannot be claimed as a matter of right and the court has the discretion to refuse or allow it.

The defendant had only come up with a plea of "equitable set-off" in the written statement as originally framed. No Court Fee was paid and raising a 'counter-claim' in the written statement was never intended, specially when the defendant had already filed a suit for the recovery of the said amount which suit was pending on the date when the written statement was filed. The defendant faced with the present decree against it had come forward with a counter-claim which was sought to be included, in the written statement as originally framed by amending the same. The present application seeking permission to amend the written statement at this belated stage when the trial of the suit giving rise to the present appeal was over, setting up a counter-claim especially when the suit for the recovery of the amount claimed to be due from the plaintiff had already been filed by the defendant long back in the year 1992 which was still pending cannot be treated to be a bona fide application. The defendant should not be permitted at such a belated stage to convert the plea of 'equitable set-off' into a "counter-claim" which will require protracted enquiry for the determination of the sum due and such a course ought to be avoided when the matter is under appeal, the trial being over. (Paras 17, 22, 24 and 29)

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26. C.P.C., O. 9 R. 7 : CASE PENDING BEFORE RENT CONTROLLING AUTHORITY UNDER S. 23 (e) OF M.P.A.C. ACT :-
2001 (1) MPWN S.N. 32
UPICA HANDLOOM LTD. Vs. SHRI TECKCHAND KESHWANI

Cash pending before Rent Controlling Authority under Section 23-E of the M.P. Accommodation Control Act. The record does not show that parties were heard on the said

application. Court did not care to see the legal provisions and rejected the application. Material prejudice caused to the rights of the applicant.

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27. 1) C.P.C., O. 41, R. 27 AND SECTION 100
2) M.P. ACCOMMODATION CONTROL ACT, SECTION 12(1)(F)
2001 (1) M.P.H.T. 136
GANGA RAM Vs. CHOUDHARY JAI KUMAR

Non-mentioning of disputed documents in the judgment cannot be said (in itself) that it was not considered by the Court. A suit was filed for eviction on the ground of bonafide need. It was challenged on the ground of alleged family partition. The trial Court decreed the suit. Appellant/defendant sought partition to file alleged partition deed as personal evidence. He was permitted to file the document. The First Appellate Court dismissed the appeal and confirmed the decree of eviction. Therefore, the second appeal was filed.

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28. 1) C.P.C., SECTION 115 AND O. 7 R. 11 :
2) PARTNERSHIP ACT, SECTION 69(3) :
2001 (1) M.P.H.T. 203
PRAKASH JAIN Vs. VIJAY SAXENA

Suit against unregistered firm is maintainable for rendition of accounts. Embargo created by provision under Section 69 of the Act would not be attracted. Action maintainable for dissolution of a firm includes reference of dispute to arbitration. ***Smt. Premlata and another Vs. M/s. Ishar Dass Chaman lal and others AIR 1995 SC 714*** referred to.

On a bare reading of the aforesaid provision it is quite vivid that a suit against the unregistered firm would be maintainable for rendition of accounts.The embargo created by the provision would not be attracted. An action is maintainable for dissolution of a firm and that would include reference of dispute to arbitration. Quite apart from the above an action for rendition of accounts is also maintainable against the dissolved firm. It is categorically averred in the plaint that the firm has been dissolved and, therefore, relief has been sought for rendition of accounts, grant of injunction and appointment of receiver. The prayer for injunction and appointment of receiver being anciliary, in my considered opinion the same shall also be tenable.

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29. C.P.C., O. 39 RR. 1 AND 2 AND O. 43 R. 1 (r) : POWERS OF THE APPELLATE COURT :-
2001 (1) JLJ 58
NEERAJ DARBARI Vs. MANOJ SHUKLA

A discretionary order under O. 39 Rr. 1 and 2 cannot be interfered by appellate Court when such discretion has not been exercised arbitrarily, capriciously or perversely.

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30. C.P.C., SECTION 20 : TERRITORIAL JURISDICTION :-
2001 (1) M.P.L.J. 455
SUBODH MITTAL Vs. CHAIRMAN & MANAGING DIRECTOR, ALLAHABAD BANK

In view of the explanation to section 20 unless cause of action arises within the jurisdiction of Branch, suit cannot be filed where Branch Office is situated.

If no part of the cause of action accrues at the place of the Branch Office, the mere fact of the corporation having a branch office at the place will not give jurisdiction to the Court where the Branch Office is situated.

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31. C.P.C., SECTION 100 : APPELLATE COURT, DUTY OF :-
2001 (1) MPWN S.N. 44 (SC)
SHASHI KANTA RUIA Vs. INDO MINERALS

The High Court not considering relevant pleadings and findings thereon. Only on the basis of surmises and conjectures interfered with conclusions of the lower appellate Court about questions of facts. High Court committed serious error in exercising jurisdiction under.

●

32. C.P.C., O. 8 RR. 1 AND 2 : FAILURE TO FILE WRITTEN STATEMENT : EFFECT
2001 (1) M.P.L.J. 301
SURAJ PAL Vs. MANDIR MAHADEOJI AND RAM JANKI

Failure of defendant to file written statement. Defendant has right to demolish the plaintiff's case on the evidence brought on record by the plaintiff or by leading evidence in rebuttal. No evidence in rebuttal is permissible which purports to be in support of any fact which may amount to setting up a special plea. Defendant given liberty to file application giving details of evidence sought to be led in rebuttal. ***Rajrani and others Vs. Yadav Chaurasia and other, 1979 JLJ 172*** and ***Sangram Singh Vs. Election Tribunal, Kotah and another, AIR 1955 SC 425*** relied on.

Paragraph 16 of the judgment is reproduced :

This Court in its decision in case of ***Rajrani and others Vs. Yadram Chaurasia and other, 1979 JLJ 172*** has already clarified that in a case where the written statement has not been filed and the issues have also not been framed, the defendant could cross-examine the plaintiff's witnesses only on such facts which may not amount to special pleas which could have been raised had a written statement filed but such a defendant could lead evidence in rebuttal in respect of the matter which fell beyond the purview of any special pleas but had the effect of demolishing the plaintiff's case. Thus, a very limited type of evidence is permissible to be led in rebuttal. The observation of the trial Court that no evidence in rebuttal could be led at all does not appear to be correct.

NOTE :- Judicial Officers are requested to go through the ruling of AIR 1955 SC 425 and AIR 1964 SC 993.

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33. C.P.C., O. 6 R. 17 : CASE CLOSED FOR JUDGMENT : AMENDMENT APPLICATION FILED : IT IS TO BE ENTERTAINED :-
2001 (1) M.P.L.J. 253
PHOOL KUNWAR Vs. DEEPCHAND

Application for amendment of written statement filled after close of plaintiff's evidence. Order rejecting application set aside. Amendment allowed on payment of cost.

Law on the issue of amendment is well settled. If the proposed amendment does not change the nature of defence already taken in the written statement, if the same does not result in withdrawing any material admission already made in the written statement, and if it is not necessary for the proper adjudication of real issue which is subject matter of suit,

then the Court should allow such amendment, if the amendment is introduced during trial may be after the close of plaintiff's evidence, but if it is otherwise found necessary, then in that event the Court should impose cost on the defendants. How much cost to be imposed is the discretion of the court, which varies from case to case and also depends upon the valuation of suit, nature of relief claimed etc.

NOTE :- Judges are requested to go through ***1993 MPLJ 710, Narendra Singh Sengar Vs. Multi Devian.*** The same point distinguished the ruling of ***1993 MPLJ 607 Virendra Vs. State Bank of India.*** The words used under O. 6 R. 17 are "at any stage of the proceedings and proceedings include the date of judgment also" where as under O. 9 R. 7 the words used are "or before date of hearing". The date of hearing does not include the date of judgment.

●

34. C.P.C., O. 41 R. 3A CPC AND SECTION 100 :
2) LIMITATION ACT, SECTION 5
2001 (1) M.P.H.T. 186
SHIV KUMAR Vs. PADUM

Appellant/plaintiff did not file application for condonaton of delay along with memorandum of appeal. First Appellate Court dismissed the appeal as barred by time. Hence second appeal was filed. Memo of appeal should be accompanied by application for condonation of delay supported by an affidavit setting forth facts showing sufficient cause for not preferring appeal within time limit. Question of limitation could not be decided on oral prayer. It should be decided at the outset prior to admission of appeal after hearing parties, and hence appeal was dismissed.

It is inherent in the nature of Section 5 of the Limitation Act that the sufficient cause must be pleaded in writing so that the opposite party may have a right to rebut it in writing and by leading evidence. An application for condonaton of delay cannot be opposed on vague oral pleas made by the person who had filed the appeal.

NOTE :- Please refer to ***State of M.P. Vs. Pradeep Kumar, 1999 (1) MPWN 41, Chimanlal Chopra Vs. Ashok Kumar, 1999(2) Vibha 182.*** Please also refer to ***Dharmaveer Vs. Leela Narayan Das. 1996 JLJ 328 (FB), Mrs. Lucy Vs. Fernandis, AIR 1954 Mysore 86, Avasarala Kamaraju Vs. Basva Suramma, AIR 1942 Mad 604*** and ***Ratan Singh Vs. Vijay Singh, AIR 2001 SC 279.***

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35. C.P.C., SECTION 97 : SCOPE OF, R/W/O. 20 R. 18 : APPEAL AGAINST PRELIMINARY DECREE (APPEAL FROM FINAL DECREE WHERE NO APPEAL FROM PRELIMINARY DECREE PREFERRED) EFFECT OF :-
2001 (1) M.P.L.J. 263
LAXMINARAYAN Vs. TULSABAI

Decree for partition of residential house. However it not being possible to divide the house it was found necessary to sell the house which accordingly was sold in auction. After the final decree attained finality, objection raised before the executing Court that plaintiff being a widow was not having right to claim partition. Said objection was not raised at the stage of preliminary decree. Question could not be gone into after passing of final decree. Revision petition challenging order rejecting objection rejected.

●

36. C.P.C., SECTION 94 : SUPPLEMENTAL PROCEEDINGS : PURPOSE OF GRANTING INJUNCTION (2) SERVICE LAW - PROMOTION :-
2001 (1) M.P.L.J. 194
HASSAN KHAN Vs. STATE OF M.P.

Paragraphs 12A, 13 and 14 are reproduced :

12-A. It should not be lost sight of that it is well known rule of practice and procedure that at an interlocutory stage a relief which is asked for and is available only at the disposal of the matter is not granted unless there is any special reason or any such compelling circumstance which may render the entire proceedings infructuous. It may further be observed that the purpose of interlocutory orders is to preserve in status quo the rights of the parties so that the proceedings do not become infructuous by any unilateral overt act by one side or the other during its pendency. However, the interlocutory orders may be justified to prevent land slide changes rendering the proceedings ineffective or infructuous.

13. The learned counsel for the petitioner has tried to assert that the other constable, Udaibhan Singh, who had been granted out of turn promotion along with the petitioner had been granted a further promotion to the post of Assistant Sub-Inspector treating his promotion to the post of Head Constable granted in similar circumstances wherein the petitioner had been granted the promotion. The contention urged is that the impugned action in such a circumstance is ex facie discriminatory.

14. So far as this aspect of the matter is concerned the learned Government. Advocate has pointed out that there is no such pleading in the writ petition. The plea of discrimination has not been set up while challenging the impugned order.

SERVICE LAW : GENERALLY : RELIEF UNDER SIMILAR SITUATION WHEN NEED NOT BE GRANTED :-

Paragraph 15 of the Judgment is reproduced :-

15. It may be noticed that in its decision in the case of ***Chandigarh Administration and another vs. Jagjit Singh and another***, reported in **AIR 1995 SC 705,** it had been clearly indicated that generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. It was further indicated that the order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.

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37. C.P.C., SECTION 115 AND O. 39 RR. 1 AND 2 : MANDATORY INJUNCTION : STATUS QUO ANTE :-
2001 (1) M.P.L.J. 503
JAGANNATH Vs. DHARAM JEET SINGH

Mandatory injunction.Trial Court by the order of mandatory injunction directed the

defendant to remove certain portion of the construction as the same was constructed after passing of status quo order. Findings of the trial Court based on different photographs and sale-deed with notice issued by the Municipal Corporation. Order of the trial Court confirmed by the Appellate Court. In the facts and circumstances of the case no infirmity in the orders passed by courts below.

Party can be out to original position.

●

38. CRIMINAL TRIAL :-
2) LEGAL MAXIMS : RES IPSA LOQUITUR :- MEANING AND SCOPE OF :-
2001 (1) MPWN 66 (SC)
MOHAMMAD AYNUDDIN Vs. STATE OF A.P.

It is not only the rule of evidence to determine onus of proof in actions of negligence applicable only when nature of accident reasonably leads to brief that accident would not have occurred in absence of negligence.

I.P.C., SECTION 304-A : BURDEN OF PROOF :-

Motor Accident of such a nature is would prima facie show that it cannot be accounted to anything other than the negligence of the driver, may create a presumption of negligence. Driver has to explain how it happened without his negligence.

●

39. CRIMINAL PRACTICE, Cr.P.C., SECTION 309 :-
2001 (1) JLJ 158
HAFIZ KHAN Vs. STATE OF M.P.

Cross-examination of prosecution witness should not be postponed for a long time. Such case should be adjourned for couple of days (if required).

Mandate of the provision should be strictly adopted. No adjournment should be granted to give chance for winning over or threatening a witness.

Witness in a session case should be examined day to day. Investigating officer should also remain present to assist the prosecution.

EVIDENCE ACT, SECTION 33 :-

FIR and dying declaration of person dying in a later incident are not evidence for the purpose of this provision. Such evidence should be recorded in judicial proceedings.

●

40. CRIMINAL TRIAL : DUTY OF COURT TO DISENGAGE THE TRUTH FROM FALSEHOOD (SIFTING) :-
(1995) 5 SCC 187
RAJENDRA Vs. STATE OF HARYANA

Falsus in uno falsus in omnibus (principle) does not apply to criminal trials and it is the duty of the court to disengage the truth from falsehood instead of taking an easy course of rejecting the evidence in entirely, solely on the ground that some is not acceptable in respect of some of the accused.

Meaning of the term Falsus in Uno falsus in omnibus means false in one thing is false in everything (एक बात में मिथ्या तो सब बातों में मिथ्या)

This principle does not apply to criminal trials and it is the duty of the court to separate the grain from the chalf. Falsity of testimony in one material particular would not ruin it from beginning to end. This principle should also not be invoked blindly. See ***Bheram Vs. State of Haryana, AIR 1980 SC 957*** and ***Bhagwan Tana Patil Vs. State of Maharastra, AIR 1974 SC 21.***

PRACTICE :- CIVIL- CRIMINAL - ORDERING OUT OF COURT :- (WITNESSES)

The Court has inherent power to order all the witnesses to withdraw from the Court except the one underexamination. The order does not usually extend to a witness who is a party; but when there are more than one plaintiff or defendant and all of them are intended to be examined, the rule should be applied.

See Sarkar on Civil Court Practice, 1997 Edition, page 183 under the head 'Ordering out of Court'.

●

41. CRIMINAL TRIAL : APPRECIATION OF EVIDENCE : CHILD WITNESS : RAPE CASE :-
2001 (1) M.P.L.J. 202
GAJRAJSINGH Vs. STATE OF M.P.

When a minor, the child witness is giving evidence against her very near relative and that too in context with commission of heinous crime, the Court has to examine evidence of such child witness with utmost caution because if such evidence is accepted and acted upon, it ruins the future life of the accused. In the case of such evidence Court has to search for reliable corroborative evidence either oral or documentary as a matter of prudence after getting satisfied that the evidence as such child witness is itself free from infirmity and is sterling sound. In rape cases it is utmost necessary.

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42. CRIMINAL TRIAL : SENTENCE : DUTY OF THE COURT
2001 (1) MPWN NOTE NO. 71 (SC)
STATE OF A.P. Vs. POLAMALA RAJU

Imposition of grossly inadequate sentence particularly against mandate of legislature is not only injustice to victim but encourages a criminal. It is the duty of the sentencing court to consider all the relevant facts and circumstances bearing on question of sentence to impose sentence commensurate with gravity of offence. "The adequate and special reasons" if present, reasons need to be disclosed in the order/judgment itself so that the appellate Forum knows what weighed with Court in awarding less than prescribed sentence.

●

43. CRIMINAL TRIAL- DEATH SENTENCE- WHEN TO BE AWARDED :-
(1997) 11 SCC 720
A. DEVIENDRAN Vs. STATE OF TAMIL NADU

The Supreme Court held that the death is diabolical, ghastly or gruesome. Such Sentence is awarded and there should be proof of extreme culpability to attract extreme penalty. The number of persons died in the incident is not the determinative factor for deciding whether the extreme penalty could be awarded or not.

●

44. CRIMINAL PRACTICE :-
2001 (1) VIDHI BHASVAR 45
SANTOSH SINGH Vs. STATE OF M.P.

If no charge is framed and the accused is convicted if ingredients are proved accused can be convicted. If no charge is framed, conviction not vitiated in the absence of prejudice to the accused.

●

45. CRIMINAL TRIAL : APPRECIATION OF EVIDENCE OF WITNESSES :-
2001 (1) M.P.L.J. 515
STATE Vs. SARNAMSINGH

Witnesses giving evidence in court after lapse of number of years. Fallibility of human memory has to be given its due weightage. Variance in their evidence on fringes itself assures credibility, of witnesses.

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46. CRIMINAL PRACTICE :-
2001 (1) MPWN S.N. 30
N.T.C. LTD. Vs. MOHAN SINGH SISODIA

Every prosecution indicates annoyance, expenditure, torture and hardship. Accused feels himself to be under a hanging sword.

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47. CRIMINAL TRIAL : INVESTIGATION BY GOVERNMENT AGENCY : SPONSORING AID BY COMPLAINANT PARTY : NOT PERMISSIBLE :-
2) CR.P.C., SECTIONS 156 & 157 AND 2(H) :-
(2000) 8 SCC 323
NAVINCHANDRA N. MAJITHIA Vs. STATE OF MEGHALAYA

The statutory investigating agency cannot be directed to obtain financial assistance from private parties for meeting the expenses required for conducting the investigation.

The official investigation has to be totally extricated from any extraneous influence. The police investigation should necessarily be with the fund supplied by the State. It may be possible for a rich complainant to supply any amount of fund to the police for conducting investigation into his complaint. But a poor man cannot afford to supply any financial assistance to the police. **Somebody who incurs the cost of anything would normally secure its control also.** In our constitutional scheme, the police and other statutory investigating agency cannot be allowed to be hackneyed by those who can afford it. All companies shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint.

Financial crunch of any State treasury is no justification for allowing a private party to supply funds to the police for conducting such investigation. Augmentation of the fiscal resources of the State for meeting the expenses needed for such investigation is the lookout of the executive. Failure to do it is no premise for directing a complainant to supply funds to the investigating officer. Such funding by interest private parties would vitiate the investigation contemplated in the Code. A vitiated investigation is the precursor for miscarriage of criminal justice. Hence any attempt, to create a precedent permitting private

parties to supply financial assistance to the police for conducting investigation, should be nipped in the bud itself. No such precedent can secure judicial imprimatur.

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48. Cr.P.C., SECTIONS 319, 161, 164 AND 397 : STATEMENT ON OATH - 2001(1) M.P.H.T. 215
DURYODHAN Vs. STATE OF M.P.

Importance of statement made by witness on oath should be given higher priority than the report of the Investigating Officer.

By the impugned order the A.S.J. has exercised its power under Section 319 and found that the applicants are also liable to be prosecuted along with other co-accused persons. Against it, revision was preferred. Regarding Evidence on record and exercise of power under Section 319, the High Court held that if the Court was convinced from the evidence on record that there was a prima facie case for exercise of jurisdiction against the applicants, it would not be possible to interfere with at this stage in this revision, and dismissed the revision. ***Gulam Mondal Vs. Nazam Hossain and others, 1987 Cr.L.J. 729, Joginder Singh and another Vs. State of Punjab and another, AIR 1979 SC 339*** and ***Narmada Prasad Pandey Vs. State of M.P., 1998 (II) MPWN 226*** referred to.

●

49. Cr.P.C., SECTION 438 : ANTICIPATORY BAIL : CONSIDERATIONS :- 2001 (1) MPWN 84
CHANDRA KANTA (SMT.) Vs. STATE OF M.P.

No hard and fast rules can be laid down for grant or refusal of Anticipatory bail. It is a discretionary matter. Court should be trusted to act objectively and in consonance with recognised principles. They should not be divested of their discretion by laying down inflexible rules of general application. The nature and seriousness of proposed charges, context of events, reasonable possibility of applicant's absence during trial, reasonable apprehension that witness may be tampered with, 'larger interests of the public or the state' are some of the considerations for deciding application.

In the present case the accused was to be prosecuted under Section 304-B and 498 A IPC r/w/s 3/4 Dowry Prohibition Act. Time enough for prosecution to have collected possible evidence in view of case-diary, evidence in support, age and illness of the applicant. Application was allowed.

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50. Cr.P.C., SECTION 439 : BAIL : CONSIDERATION FOR :-
2) EVIDENCE ACT, SECTION 32 : STATEMENT OF VICTIM, WHEN DEEMED TO BE DYING DECLARATION :-
2001 (1) M.P.W.N. 70
ASHOK Vs. STATE

Interest of society at large, availability of fair course of trial are to be kept in mind while granting bail to the accused.

Victim expecting death when statement was recorded and also died thereafter. The statement of the victim shall be deemed to be a dying declaration.

●

51. Cr.P.C., SECTIONS 231(1), 242(3), 309 AND 378 :-
2) M.P. EXCISE ACT, SECTIONS 13, 16, 34, 36 AND 37 : FAILURE TO EXAMINE EYE WITNESSES BY THE COURT :EFFECT OF :-
2001(1) M.P.H.T. 377
STATE OF M.P. Vs. BRIJNARAYAN

Summons were issued for the date 27-1-1993. On 27-1-1993, the witnesses were present before the Trial Court but they could not be examined as the Magistrate was busy in some other matter. Case was adjourned to 6-2-1993. On 6-2-1993, two witnesses were present before the Court, the Magistrate asked them as to how they were present without there being summons/warrants.Their statements were not recorded and the acquittal is recorded on the ground that the prosecution has failed to produce witnesses after giving so many opportunity. Against it, State/appellant preferred appeal. It was held that acquittal recorded on that ground is liable to be set aside. Hence, order of acquittal passed by the Trial Court set aside. Case was remitted back to the Trial Court for retrial. Appeal allowed and judgment of the lower court set aside.

Jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference can be made with the order of acquittal unless the approach made by the Lower Court is vitiated by some manifest illegality but where the approach made by the Lower Court, is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously, the interference has to be made by the Appellate Court.

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52. Cr.P.C., SECTIONS 457 AND 482 :
2) MOTOR VEHICLES ACT, SECTIONS 66, 192 AND 207 :
3) M.P. KRISHIK PASHU PARIRAKSHAN ADHINIYAM, 1959 : POWERS OF THE MAGISTRATE UNDER SECTION 457 :-
2001 (1) M.P.H.T. 166
BHAWANI TRADERS Vs. STATE OF M.P.

Magistrate has jurisdiction to consider the application for getting the truck released on supurdnama. ***Sharangdhar Sharma Vs. The State of Bihar and others, 1992 Cr.L.J. 2063*** dissented from.

This is the settled law that unless the jurisdiction of a Court is specifically excluded by a competent legislation, such Court shall have authority to exercise such jurisdiction vested in it by the law. Since the trial Court has been vested with jurisdiction to consider the application under Section 457 Cr.P.C. and since such jurisdiction has not specifically been excluded by the provisions of Section 207 of the Act.

●

53. Cr.P.C., SECTION 125 AS AMENDED IN M.P. : APPLICABILITY OF AMENDED PROVISION - FROM WHICH DATE IT IS APPLICABLE :-
2001 (1) M.P.L.J. 304
RAMFOOL MOOLCHAND Vs. SMT. JAGRATI RAMFOOL

17. In view of the aforesaid decisions and in the light of the Statement of Objects and Reasons the aforesaid amendment should be applicable on the pending proceed-

ings and in the cases where the orders are passed after 30th May, 1998 the Magistrate has powers to enhance the amount of maintenance from Rs. 500/- upto Rs. 3,000/-. The language used in the Statement of Objects and Reasons clearly intends that this amendment is applicable on the pending proceedings. The reason, since the existing amount of maintenance allowance has become insufficient in the present day circumstances, and the amendment further says that in view of the above it has been decided to amend section 125 of the Code of Criminal Procedure, 1973. Therefore, from the plain reading of Statement of Objects and Reasons it is clear that the intention of the legislature is to consider the present day circumstances in which the amount of maintenance allowance of Rs. 500/- has become insufficient and to provide benefit to the destitutes and when the legislature wants to take into consideration the present day circumstances, it would clearly mean that the amendment shall be applicable though prospectively with effect from 30th May, 1998 when it was first published in the Madhya Pradesh Gazette (Extraordinary) but would amount to be applicable on the present day pending proceedings. The intention of the Madhya Pradesh Legislature is very clear to provide benefit to the members of the weaker section of the society like wife, children or the old parents who are not having any source of income and are unable to maintain themselves. Having regard to this social object the amended provisions have to be given a liberal construction to fulfil and achieve this intention of the Legislature, because dominant purpose behind the benevolent provisions is that the wife, child and parents should not be left in helpless state of distress, destitution and starvation. Therefore, looking to the intention spelled out by the Statement of Objects and Reasons, this Court is of the view that the amendment is applicable to the pending proceedings and the Magistrate have power to enhance the amount of maintenance in the cases in which the orders are passed after 30th May, 1998.

18. In view of the aforesaid discussions it is clear that looking to the language of the Statement of Objects and Reasons used in the Amendment Act, 1997 (No. 10 of 1998) the amendment is intended to be applicable to the pending proceedings. Accordingly the trial Court and the first revisional Court have rightly awarded the enhanced amount of compensation @ Rs. 1,000/- per month. Looking to the present day circumstances the existing amount of Rs. 500/- as maintenance allowance has become insufficient. Therefore, there is no jurisdictional error in the orders and I also do not see any illegality or irregularity in the orders passed by the Courts below.

OBJECT OF PROCEEDINGS UNDER SECTION 125 CR.P.C.

Object of proceedings under section 125 is to prevent vagrancy and not to determine legal rights of parties.

Provisions of Chapter IX of the Code of Criminal Procedure are not in the nature of penal provisions but are only intended for the fulfilment of a duty to avoid vagrancy and section 125 of the Code does not finally determine the rights of the parties. The proceedings may be treated as quasi criminal and quasi civil proceedings. Therefore, the strict procedure which is applicable to the criminal cases is also not applicable to these proceedings. **AIR 1975 SC 83, AIR 1986 SC 984, AIR 1978 SC 1807** referred to.

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54. Cr.P.C., SECTION 173 : FINAL REPORT (KHATMA) : REPORT SANCTIONED BY THE MAGISTRATE : COGNIZANCE HOW TO BE TAKEN :-
2001 (1) M.P.H.T. 218
SHRIKANT PANDEY Vs. STATE OF M.P.

Initially a case was registered for offence under Section 380 IPC against the applicant. Thereafter, a final report (khatma) was filed before the CJM as no case made out against the applicant. But by the impugned order the C.J.M. has taken cognizance of an offence under Section 409, IPC and criminal case has been registered against the applicant after recording the evidence. Against it, the revision was filed. Whether after filing of the final report under section 173 Cr.P.C., the Court below should have registered an offence under section 409 IPC against the applicant on the basis of the evidence of the witnesses recorded by it, was a question before the High Court and the High Court held that the case cannot be registered. The impugned order was set aside.

NOTE :- Judicial Officers are requested to go through the provisions of Section 190 (b) and (c) r/w/s 191 Cr.P.C. The provisions are relating to final report, though one relating to filing of charge sheet and the second relating to Khatma are embodied in 172 of Cr.P.C. Please also go through the provisions of Rules 96 to 102 of the M.P. Rules and Orders (Criminal). Please also see ***1998 (6) SCC 551, State Vs. Raj Kumar*** for knowing the direction for further investigation how to be made. A separate brief article may be written in near future on this topic.

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55. Cr.P.C., SECTION 125 R/W/S 7 MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, & SECTION 128 OF THE CR.P.C. :-
2001 (1) M.P.L.J. 312
MUNNI BEGAM Vs. ABDUL SATAR

Proceedings under section 128 of the Criminal Procedure Code to enforce order under Sections 125 and 127 of the Code passed prior to enforcement of the Act not prohibited.

The provisions of section 7 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 do not prohibit the proceedings under section 128 of the Code of Criminal Procedure to enforce any order under Section 125 or 127 of the code passed prior to enforcement of the Act. The Legislature has not included section 128 of the Code in section 7 of the Act. Therefore, the execution under section 128 of the Code is not prohibited by the Act.

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56. Cr.P.C. SECTION 401 : SCOPE OF REVISION IN A CASE AGAINST JUDGMENT OF ACQUITTAL :-
2001 (1) M.P.L.J. 329
ASHOK Vs. RAMSEWAK

Though there is no bar as such for private parties to prefer a revision petition against order of acquittal recorded by trial Court the revisional jurisdiction of High Court has got to be exercised only in exceptional cases where it appears that there has been some miscarriage of justice on account of manifest error on a point of law committed by trial Court. It falls upon the High Court to see that the finding of acquittal is not converted into

a finding of conviction indirectly by passing an order of remand directing for re-trial of the case, when it itself is forbidden to convert a finding of acquittal into a finding of conviction. **AIR 1962 SC 1788** referred to.

NOTE :- Please refer to Section 401 Cr.P.C. also

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57. Cr.P.C. SECTION 397 (2) :-
2001 (1) VIDHI BHASVAR 60
UNION OF INDIA Vs. BHANWARLAL

Every order is not interlocutory order if it is not final order. There are orders which may be termed as intermediate orders. Revision is not barred against such orders.

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58. Cr.P.C. : SECTIONS 239 AND 482 :- QUASHING THE PROCEEDINGS :-
(2000) 8 SCC 547
K. RAMAKRISHNA Vs. STATE OF BIHAR

Question regarding the sufficient or reliability of the evidence to proceed further are not required to be considered by the trial court under Section 239 and High Court under Section 482. However, if upon the admitted facts and documents relied upon by the complainant or prosecution, without sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed.

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59. Cr.P.C., SECTIONS 437, 438 AND 439 : POWERS OF THE MAGISTRATE TO GRANT BAIL IN CASE OF NON-BAILABLE OFFENCES :-
(2001) 4 SCC 280
PRAHALAD SINGH Vs. NCT, DELHI

Magistrate can grant bail only when there is no reasonable ground to believe that the accused is guilty of offence punishable with sentence of death or life imprisonment, unless the accused is covered by the provisios to S. 437 (1). Merely because accused was initially granted anticipatory bail under section 438 for lesser offence, i.e. under section 306 and 498-A that would not entitle him to grant of regular bail under section 437 when latter he was found to be involved in greater offence like murder under Section 302. It was held that Magistrate erred in granting bail under Section 437 when accused was charged with offence under S. 302.

NOTE :- Judicial Officers are requested to go through **1996 Joti Journal December Part at page 10 "Cancellation of bail in non-bailable offences"** and ***Kalyan Singh Vs. State of M.P., 1989 Cr.L.J.***

Para 8 of the judgment is reproduced :-

The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be

kept in mind that for the purpose of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of a bail can only satisfy it (sic itself) as the whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

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60. Cr.P.C., SECTIONS 437(5) 438 :- CANCELLATION OF BAIL BY MAGISTRATE - 1989 CRI.L.J. 512

KALYAN SINGH Vs. STATE OF M.P.

Accused enlarged on bail for a non-bailable offence. Subsequently offence converted to more serious one. Court has power to cancel bail and take back accused in custody.

While dealing with the application for bail as nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations arise when a court is asked for bail in a non-bailable offence.

Ordinarily, enlargement of co-accused on bail would be a sufficient ground for not denying similar concession to other co-accused provided that the nature of accusation and availability of evidence is also similar and in the matter of other considerations such as age, likelihood of the accused facing the trial etc., also the cases are similar. Otherwise, it cannot be followed as a matter of rule that the enlargement of co-accused on bail should implicity blind the court in enlarging other co-accused on bail. Distinguishing features may entail distinct results. **1962 (1) Cri.L.J. 215 (SC)** followed. So also power to cancel bail and take back an accused in custody who has been enlarged on bail though has to be exercised with care and circumspection, yet the power, though extraordinary one is meant to be exercised in appropriate sense. Refusal to exercise the wholesome power in cases few though they may be, will reduce it to a dead letter and will suffer the Courts to be silent spectators to the subversion of the judicial process.

Where the accused were granted liberty of bail under S. 439 Cr.P.C. for offence under S. 365 IPC and at a later point of time, the offence was converted to one under S. 364 IPC. The Chief Judicial Magistrate held was fully justified in exercising the powers under S. 437 (5) Cr.P.C. and cancelling the bail with a direction to the accused to surrender before the court because the concession of bail was granted while the accusation did not go beyond S. 365 IPC, but the investigation and discovery of new material pointed out to the commission of a more heinous crime under S. 364 IPC.

The accused persons were charged with an offence of a grave nature. There was prima facie evidence available connecting the accused with the commission of the crime of kidnapping of a boy returning from school to his home in broad day light from within the populated area of a township and holding him to ransom under threat of death. Each of the accused applicants had played a substantial role in commission of the crime. It was not a fit case where the accused-applicants could be extended the privilege of bail, more so when it was one of the anticipatory bail and when they had been able to successfully violate order of the Court requiring them to surrender before it on certain date. The likeli-

hood of the accused applicants being not available for trial looking to the seriousness of the accusation and the likelihood of their tampering with the witnesses who are young school-going children could not also be ruled out.

There is no rule of universal application that once an accused has been enlarged on bail for a non-bailable offence and thereafter if he is found to have committed a more serious offence to which the accusation or charge is altered, he must necessarily be bailed out. The considerations which prevail with a Judge granting bail at an earlier point of time when the accusation was of a comparatively minor and less heinous offence would naturally be different from the considerations which would prevail in the mind of the Judge when the question of enlarging an accused on bail in connection with a comparatively more serious offence is posed before him.

NOTE :- Judicial Officers are requested to go through **1996 Joti Journal December part at page 10, 1997 Joti Journal August part at page 29** and **1997 Joti Journal December part at page 41.**

Please also refer to ***Prahlad Singh Vs. N.C.T. Delhi AIR 2001(S.C.) Page 1444.***

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61. EVIDENCE ACT, SECTIONS 27 AND 156, AND 2) Cr.P.C. SECTIONS 154 AND 157 AND 3) CRIMINAL TRIAL : APPRECIATION OF EVIDENCE :-
2001 (1) JLJ 72
RAVINDRA PRASAD VERMA Vs. STATE OF M.P.

Recitals never put to maker or writer during their cross-examination. They cannot be questioned. Contradictions and improvements of prosecution witnesses not demolishing story relating to actual offence committed. Such contradictions and improvements are immaterial.

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62. EVIDENCE ACT, SECTIONS 8 AND 27 : DISCOVERY MEMO AND RECOVERY :-
2001 (1) VIDHI BHASVAR 54
JITENDRA SINGH Vs. STATE OF M.P.

Discovery memo prepared on information of accused. Accused pointing out house in which he stored contraband article which was actually recovered, also. Conduct of accused pointing of out house is admissible under section 8 of the Act.

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63. EVIDENCE ACT, SECTION 45 : EXPERT'S OPINION : APPRECIATION BY THE COURT :-
2001 (1) VIDHI BHASVAR 45
SANTOSH SINGH Vs. STATE OF M.P.

Two injuries found by the doctor. Eye-witnesses deposing infliction of four injuries. Court is not precluded to examine successive blow on the same spot by considering width and length of wounds.

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64. EVIDENCE ACT, SECTION 50 R/W/S 494 IPC : BIGAMOUS MARRIAGE MUST BE PROVED
2001(1) M.P.H.T. 389
GOPAL SINGH Vs. SURAJBHAN SINGH

Bigamous marriage must be proved that the alleged second marriage was solemnised according to the customs and circumstances. That is a sine qua non to prove the offence of bigamy punishable under section 494 IPC. While appreciating the evidence in such a case the approach of the Court must be pragmatic and not pedantic. It is well known that a bigamous marriage is performed secretly at place away from the place where the first wife is residing. It becomes an uphill task for the first wife to prove due observance of essential rites and ceremonies of the second marriage. Therefore, whatever evidence she is able to collect and produce before the Court must be examined in right perspective. The evidence adduced to establish the second marriage must be dependable and of the nature required in a criminal case.

The proviso to Section 50 of the Evidence Act enacts only this much that the opinion evidence of the nature mentioned, which is otherwise made relevant by the main body of Section 50 of the Act for the purpose of proving existence of relationship, shall not be sufficient to prove a marriage in a prosecution under Section 494 IPC. The proviso does not make the opinion evidence relating to the marriage either irrelevant or inadmissible. Therefore, the only effect of the Proviso is that on the basis of the opinion evidence alone, the Court cannot hold in a prosecution under Section 494, IPC that the factum of the marriage has been proved.

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65. EVIDENCE ACT, SECTIONS 133, 114 (B) : APPRECIATION OF EVIDENCE :- 2) PREVENTION OF CORRUPTION ACT, SECTIONS 2, 5(1) (D) AND 5(2) :- EMPLOYEE OF M.P.E.B. CANNOT BE CONSIDERED AS A PUBLIC SERVANT FOR PROSECUTION UNDER THE SECTION :-
2001 (1) M.P.H.T. 330
BIMAL KUMAR Vs. SPECIAL POLICE ESTABLISHMENT LOKAYUKT

The law is well settled on the point that in case of accepting the bribe, the position of the complainant is that of an "accomplice witness" and his statement cannot be accepted on any fact in absence of corroboration as a matter of prudence and practice.

The prosecution and trial initiated against the appellant considering him a public servant is vitiated and the accused appellant on this very ground deserves acquittal of the alleged charges under the Act of 1947 and 161 of the IPC.

It emerged that before taking the search of the accused as also the search of the house, the members of the trap party on the persons conducted the search did not give their personal search before the appellant. As such, in the circumstances the possibility of plantation of the currency notes in the almirah and its recovery during the search cannot be ruled out.

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66. EVIDENCE ACT, SECTION 138 : CROSS EXAMINATION - A MATTER OF SUBSTANCE
2001 (1) JLJ 106
SHIVCHARANLAL Vs. MUNICIPAL CORPORATION, GWALIOR

Matter of cross examination is a matter of substance, not merely a matter of procedure. Statement of witness gone unchallenged, has to be accepted as it is.

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67. **1) EVIDENCE ACT, SECTIONS 45, 114 ILL. (E) AND 27**
2) CR.P.C., SECTIONS 100 (5), 161 & 162
3) I.P.C., SECTIONS 376/34 AND 304 PT. II/34
APPRECIATION OF MEDICAL EVIDENCE AND WITNESSES ON MEMORANDUM : REQUIREMENT OF SECTION 27 EVIDENCE ACT :-
(2001) 1 SCC 652
STATE GOVT. OF N.C.T. OF DELHI Vs. SUNIL

A. **Evidence Act, 1872 - S. 45 -** Medical evidence - Discrepancy between opinions of two doctors - Post-mortem examination report - Correctness of, cannot be doubted merely because it did not conform to the noting made in Medico-Legal Certificate by the doctor who had initially checked up the deceased in the hospital without making any detailed examination and had pronounced her dead.

B. **Criminal Procedure Code, 1973 - Ss. 100(5), 161 & 162 - Evidence Act, 1872 - S. 27 -** Recovery of article (bloodstained knickers of deceased) on the basis of statement made by accused before police - Held, seizure memo need not be attested by any independent witness - Mere absence of independent witness when investigating officer recorded the statement of the accused and the article was recovered pursuant thereto is not sufficient ground to discard the evidence - Evidence of police officer regarding the recovery at the instance of the accused should ordinarily by believed - It is for the accused to show that such evidence is unreliable - However, position is different when search is made under Ch. VII CrPC. (Process to compil the production of things).

C. **Evidence Act, 1872 - S. 114 Ill. (e) -** Official acts of police should be presumed to be regularly performed - Archaic notion to approach actions of police with initial distrust should be discarded.

D. **Penal Code, 1860 - Ss. 376/34 and 304 Pt. II/34 -** Committing rape and causing death of a female child aged 4 years by two respondents - Prosecution case based on circumstantial evidence - Circumstances found established on the basis of evidence of PWs - Post-mortem examination report showing that the child was violently and bestially ravished, molested, raped and sodomised - Child died due to "intracranial damage consequent upon surface force impact to the head"-Trial court convicting the accused under Ss. 364, 376, 377 and 302 r/w S. 34 on the basis of established circumstances and sentencing the first respondent to life imprisonment and the second respondent to death for murder and awarding lesser sentences for the remaining counts - But High Court acquitting both the respondents - Held on facts, though accused-respondents cannot be convicted on charge of murder but they had knowledge that the acts done by them on the child of tender age were likely to cause her death - Hence both of them are liable to be convicted under Ss. 376 and 377 r/w S. 34 and S. 304 Pt. II r/w S. 34 and sentenced to life imprisonment.

On the day of occurence, mother (PW 10) of the victim, a female child aged 4 years, went to factory for work leaving the child in the custody of PW 8 who was residing close by. Accused-Respondent 1 (A-1), who was known to PWs 10 and 8, took the child and her clothes and untensils by about noon during the short time when PW 8 had gone out to fetch milk. When PW 10 came home in the night, she learnt from PW 8 that her daughter

had been taken by A-1. So she went to A-1's house at about 9 p.m. There she found her child lying completely nude next to accused-Respondent 2 (A-2) on the second floor of the house, who was then deep in his sleep. Then A-1 who was found in an inebriated condition, hurled a remark that he had despatched the deceased to heaven. It was then she realised that her child was not breathing. PW 10 Sharda then took the child to the hospital. The doctor who initially examined her noted only "multiple bruises all over the body" in the Medico-Legal Certificate (MLC) and pronounced her dead. But the doctor (PW 1) who conducted autopsy on her body gave full details in his post-mortem report about the features noticed by him on the dead body. The corpse was full of abrasions and contusions. The prominent among them were counted by the doctor as 25 in number and he described the situs and dimensions of all of them. Among them, oval fashioned multiple abrasions on the left cheek appeared to him as marks of biting. Both the upper and lower lips of the child were bruised violently. Marks of violent handling of both the thighs, lower abdomen and pubic region were also described by the doctor. The doctor noted that the vaginal orifice was so badly mutilated that one middle finger could easily admitted into it. Even the tongue was not spared in that violence. The doctor also examined the head injury and opined that the child died "due to intracranial damage consequent upon surface force impact to the head". The Sessions Court accepted this medical report as reliable. It found that the prosecution had established the following circumstances: (1) A-1 had taken the child from the house of PW 8 by about noon on the fateful day; (2) the child was recovered from the house of A-1 and she was then found breathless; (3) the child was lying naked by the side of A-2 who was in deep sleep when PW 10 lifted her up; (4) A-1 who was then in an inebriated condition, blurted out that the child was sent to heaven; (5) the bloodstained knickers of the victim were later recovered from the house of A-2 on the basis of the statement given to the police. The trial court concluded on the strength of those circumstances that both the respondents are liable to be convicted for murder, rape and unnatural offence, while A-1 was additionally liable for kidnapping the child for murder. Accordingly the trial court convicted both the respondents under Sections 364, 376, 377 and 302 r/w Section 34 IPC and sentenced A-2 to death and A-1 to life imprisonment on the charge of murder and awarded lesser sentences for the remaining counts. However, the High Court doubted the correctness of the medical report of PW 1 in view of the entry made in the MLC by the doctor who had first examined her. The High Court also found discrepancy in the evidence of PWs 8, 10 and 12 (a neighbour). The High Court also declined to place any weight on the circumstances relating to recovery of bloodstained knickers of the victim on the ground that the seizure memo was not attested by any independent witness. Thus the High Court declined to believe the police version as true and consequently it acquitted the two accused-respondents. Disposing of the State's appeal, the Supreme Court.

Held :

The doctor who made the entry in the MLC was not examined as a witness in the Court. Apparently that doctor was not disposed to conduct a detailed examination on the dead body either because he was pretty sure that the body would be subjected to a detailed autopsy or because the doctor himself was in a great hurry. Whatever be the reason, no court could afford to ignore the report of the doctor who conducted the autopsy with meticulous precision about all the features noticed, merely on the strength of what an-

other doctor had scribbled in the MLC at the initial stage. The evidence of the doctor (PW 1) who had conducted the autopsy was not even controverted by the defence as no question was put to him in the cross-examination by the defence counsel. His testimony ought to have been given due probative value particularly when nothing was shown to doubt the evidence of that medical practitioner. Hence the court has to proceed on the premise that whatever PW 1 found on the dead body were the actual position noticed by him during autopsy. The Sessions Judge has rightly accepted that evidence and no exception can be taken thereto.

When the above premise is so certain the task of the Court is narrowed down to the limited area i.e. were the two respondents the rapists or is there any reasonable scope to think that somebody else would have done those acts.

True there were discrepancies in the evidence of PWs 8, 10 and 12 but there was no discrepancy worth quoting for consideration as they are immaterial. Such discrepancies are common features in the testimony of any two witnesses. It was too much of a strain for the judicial mind to ferret out some minor discrepancies as between the testimony of those three witnesses. Thus Circumstances 1 to 4 are established on the basis of their evidence.

The circumstance relating to the recovery of the bloodstained knickers is a formidable one. Mere absence of independent witness when the investigating officer recorded the statement of A-2 and the knickers were recovered pursuant to the said statement, is not a sufficient ground to discard the evidence under Section 27 of the Evidence Act.

There is no requirement either under Section 27 of the Evidence Act or under Section 161 CrPC, to obtain signature of independant witnesses on the record in which statement of an accused is written. The legal obligation to call independant and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. A search is made to find out a thing or document about which the searching officer has no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts the search would have to meddle with lost of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code.

Transport Commr., A.P., Hyderabad v. S. Sardar Ali. (1983) 4 SCC 245 : 1983 SCC (Cri) 827 : AIR 1983 SC 1225, relied on

State v. Ramesh 1988 Cri LJ 4233 (Del.), reversed

Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the investigating officer contemporaneous with such recovery must necessarily be attested by the independant wit-

nesses. Of course, if any such statement leads to recovery of any article it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tained and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

Thus on consideration of the entire evidence in this case, there is no doubt that the trial court had come to the correct conclusion that the two respondents were the rapists who subjected the child to such savage ravishment. The Division Bench of the High Court has grossly erred in interfering with such a correct conclusion made by the trial court as the reasons adopted by the High Court for such interference are very tenuous. Nonetheless, it is difficult to enter upon a finding that the respondents are equally guilty of murder of the child. The opinion of PW 1 that the child died due to "intracranial damage consequent upon surface force impact to the head" was made with reference to the subdural haematoma which resulted in subarachnoid haemorrhage. Such a consequence happened during the course of the violent ravishment committed by either both or by one of the rapists without possibly having any intention or even knowledge that their action would produce any such injury. Even so, the rapists cannot disclaim knowledge that the acts done by them on a little infant of such a tender age were likely to cause its death. Hence they cannot escape conviction from the offence of culpable homicide not amounting to murder. In the result the impugned judgment of the High Court is set aside and the conviction passed by the trial court under Sections 376 and 377 read with Section 34 IPC is restored. The trial court awarded the maximum sentence to the respondents under the said counts i.e. imprisonment for life. The fact-situation in this case does not justify any reduction of that sentence. The respondents are also liable to be convicted under Section 304 Part II, read with Section 34 IPC though it is unnecessary to award any sentence

thereunder, in view of the sentence of imprisonment for life awarded to the respondents under the other two counts.

State v. Ramesh, 1998 Cri LJ 4233 (Del.), reversed.

Courtesy - SCC and Eastern Book Company, Lucknow 226001.

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68. ESSENTIAL COMMODITIES ACT, SECTIONS (7) AND SECTION 10(A) : NATURE OF OFFENCE : IF THE OFFENCE IS BAILABLE ANTICIPATORY BAIL APPLICATION NOT TENABLE :-
2001 (1) M.P.H.T. 213
DINESH KUMAR DUBEY Vs. STATE OF M.P.

Essential Commodities (Special Provisions Act, 1981, Section 10A referred to and the law discussed.

By the Essential Commodities (Special Provision) Act, 1981 Section 10-A of the original Act of 1955 was amended and after the word 'cognizable', the words 'and non-bailable' were introduced. The said Act of 1981 was to remain in force for a period of five years only from the date of commencement of 1981 Act. Thereafter, by the Essential Commodities (Special Provisions) Continuance Act, 1987 para 2 of the preamble of 1981 to the Essential Commodities (Special Provisions) Act, 1981 was amended and in place of five years period of 10 years was substituted. Thereafter by Third Amendment, the said period of continuance was made for fifteen years. After expiry of fifteen years no amendment Act was brought into force but certain ordinances were issued. The last of the ordinance was issued in the year 1988, which lost its life and efficacy by lapse of time thereafter no Act or ordinances have been issued to continue the provisions of 1981 Act.

If 1981 Act has lost its life then any amendment incorporated by the said Act, which was to remain in force for a period of five, ten or fifteen years would come to an end and additional words, "and non-bailable" shall become non-est and otios. Section 10-A without the said amendment shall now be read as "Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under the Act shall be Cognizable".

In view of the above legal provisions the offence is not non-bailable. Cognizance of such an offence can be taken but in the absence of any other provisions showing the offence to be non-bailable, the offence would continue to be bailable in view of Schedule II to the Code of Criminal Procedure, 1973.

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69. 1) HINDU MARRIAGE ACT, SECTIONS 24 AND 26
2) EVIDENCE ACT, SECTION 112 : ENTITLEMENT OF LITIGATION EXPENSES:-
2001 (1) M.P.L.J. 43
YASHPAL Vs. ANJANA

Wife getting salary of about Rs. 4725/- per month. Application filed by wife claiming litigation expenses in divorce proceedings. Trial Court granted Rs. 2,500/- towards expenses of litigation. The order was set aside.

In the present application wife claimed grant of maintenance, to the Minor son. Husband disputed parentage of the child. No evidence had been adduced and the parties

agreed for blood grouping of the child but the same had not been done. Presumption under section 112 of the Evidence Act would arise in favour of the wife. Grant of maintenance allowance for the child at Rs. 600/- per month towards monthly maintenance allowance allowed from the date of order and not from the date of filing of the application. ***Devesh Pratap Vs. Sunita Singh, AIR 1999 MP 174, Shankar Lal Vs. Smt. Krishan Tiwari, 1995 Vol. I.D. & M.C., 492*** relied on and ***Vinay Kumar Vs. Smt. Mithilesh Bai,*** 1995 Vol. IID. & M.C. 133 not applicable.

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70. HINDU MINORITY AND GUARDIANSHIP ACT, SECTION 6 :
2) GUARDIANS AND WARDS ACT, SECTION 19(B) : MOTHER CAN BE GUARDIAN DURING THE LIFE TIME OF THE FATHER :-
2001 (1) M.P.H.T. 349
KAMAL KISHORE Vs. RAMSWARUP

Joint family property does not belong to minor alone, therefore, permission of the Court is not necessary.

In all situations where the father is not in actual charge of affairs of the minor either because of his indifference or because of an agreement between him and the mother of the minor (oral or written) and the minor is in the exclusive care and custody of the mother or the father for any other reason is unable to take care of the minor because of his physical and/or mental incapacity, the mother, can act as natural guardian of the minor and for all her actions husband would be deemed to be 'absent' for the purpose of Section 6 of the Hindu Minority and Guardianship Act and Section 19(b) of the Guardians and Wards Act.

Property in question was joint family property of several persons not the individual property of minor alone. They were having only the undivided share in the property. Thus the provisions of Section 8(2) of the Hindu Minority and Guardianship Act has no application to the instant case.

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71. HINDU MINORITY AND GUARDIANSHIP ACT, SECTION 8(2) : JOINT FAMILY PROPERTY IN WHICH MINOR HAD INTEREST : SALE BY FATHER : PROVISIONS NOT APPLICABLE :-
2001 (1) M.P.L.J. 98
KAMAL KISHORE Vs. RAMSWARUP

In order to attract Section 8 (2) of the Hindu Minority and Guardianship Act, the property should be the property of minor and not the property of the family. When the land sold by father of the minor was joint family property of several persons and not the individual property of the minor alone, the provisions of section 8(2) did not apply to the case. ***Gullu Vs. Bhagchand,*** **MPWN 1982 SN 68** relied on.

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72. HINDU SUCCESSION ACT : SECTION 8 : ENTITLEMENT OF ILLEGITIMATE CHILD TO INHERIT SELF ACQUIRED PROPERTY OF THE DECEASED FATHER :
2001 (1) M.P.L.J. 39
KHUMAN Vs. BARELAL

Son begotten from mistress whose husband was already alive at the time and the

person from whom the child was born had his wife then living not entitled to claim any share in the self acquired property of the deceased father. Such illegitimate son stands excluded from the rights of a son in the matter of inheritance in view of the definition of 'son' in the General Clauses Act which does not include an illegitimate son. ***Reshamlal Vs. Balwant Singh, 1994 MPLJ 446*** and ***Ramkali Vs. Mahila Shyamwati and others, 2000 (3) M.P.L.J. 361 = AIR 2000 MP 288*** referred to.

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73. HINDU LAW : ALIENATION BY COPARCENOR (VINDHYA PRADESH REGION)
2001 (1) M.P.L.J. 249
BHAGWANDAS Vs. STATE OF M.P.

Alienation by co-parcener. Banaras School of Mitakshara Law applicable in Vindhya Pradesh Region. Co-parcener cannot alienate the land without the consent of the other co-parcener even to the extent of his own share. Plaintiff had obtained suit property by survivorship after death of his father. Admittedly, plaintiff was the son of the deceased and suit property was the ancestral property. Suit property could not be alienated without consent of his son. Suit by son challenging alienation by father was decreed. ***1997 (2) M.P.L.J. 202, Diwan Singh Vs. Bhayyalal*** relied on.

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74. I.P.C., SECTIONS 364 AND 362 : ABDUCTION FOR MURDER : QUANTUM OF PROOF REQUIRED :-
2) I.P.C., SECTION 300 : MURDER : WHETHER BODILY INJURY WAS SUFFICIENT IN THE ORDINARY COURSE OF NATURE TO CAUSE DEATH : QUESTION NOT PUT BY PUBLIC PROSECUTOR TO THE DOCTOR : EFFECT OF : DUTY OF THE COURT - EXPLAINED :-
3) CRIMINAL TRIAL : IDENTIFICATION CORPUS DELICIT : CIRCUMSTANTIAL EVIDENCE : RECOVERY OF SHIRT OF THE DECEASED ON THE BASIS OF THE STATEMENT MADE BY THE ACCUSED - EFFECT OF :
4) EVIDENCE ACT, SECTIONS 114, 101 AND 106 : APPLICABILITY AND PRESUMPTION :-
5) PRACTICE AND PROCEDURE (CRIMINAL) : COURTS SHOULD WHILE ORDERING ACQUITTAL ORDINARILY DESIST FROM CASTIGATING THE INVESTIGATION :-
(2000) 8 SCC 382
STATE OF W.B. Vs. MIR MOHAMMAD OMAR

A. Abduction of a person should be shown to have been done with the objective of murdering him-FIR lodged after the incident of abduction, when fact of murder had not come to light, referring to accused as saying that he would finish off the deceased-On facts, held, prosecution succeeded in establishing that the abduction was for committing murder.

It was held as under :-

Abduction takes place when a person is compelled by force (or such person is induced by any deceitful means) to go from any place. The important task for the prosecution to establish the offence under Section 364 IPC is to demonstrate that abduction of a person was for murdering him. Even if the murder did not take place, the offence would be

complete if the abduction was completed with the said objective. Conversely, if there was no such objective when the abduction was perpetrated, but later the abductors murdered the victim, Section 364 IPC would not be attracted, though in such a case the court may have to consider whether the offence of culpable homicide (amounting to or not amounting to murder) was committed.

In the FIR lodged by the PW after the abduction, the PW stated that while taking away the deceased the abductors were saying that they would kill the deceased. When the FIR was given PW had no reason to believe that the deceased was not alive. All the broad features of a this case eloquently support the version of the witnesses to conclude that the words attributed to the accused were really uttered by them. Thus it must be held that all the accused abducted the deceased in order to murder him.

B. Criminal Trial-Identification of corpus delicti-Indentification of a mangled body lying in hospital-Medical evidence-Deceased, a Hindu, aged 29 years - A junior doctor of the hospital, by mere looking at the dead body, opining that it was of a person aged about 40 years and that the penis had undergone "religious circumcision"-On the other hand, a senior doctor of the hospital, a specialist in Forensic Medicine, who conducted post-mortem examination, not finding any such thing in the body - Moreover, kith and kin of the deceased clearly identifying the dead body as that of the deceased-Held, evidence of the junior doctor was slipshod and unreliable - There was no inconsistency in evidence regarding identification of the deceased.

HELD FURTHER THAT :

The junior doctor who was only a stripling in the profession having just completed his internship after his graduation had said in his evidence that when he examined the patient he found "the glans penis exposed; foreskin was rolled back; thus it appeared to be a case of early circumcision". He also estimated that the dead body was of a person aged 40 years. On the other hand the doctor who conducted the post-mortem examination was a senior person, being a Reader in Forensic Medicine. He did not find any evidence of such circumcision on the dead body. Therefore, such a slipshod observation regarding such a vitally important identification mark opined by the junior doctor, cannot be taken as a seriously observed feature. Similarly, the age estimated by this novice medical practitioner without conducting any medical tests in that regard is hardly sufficient to conclude that the dead body was that of a person aged 40. Even otherwise the approximation of the age made by looking at the dead body is not enough to offset the age spoken to by the kith and kin of the deceased. There was little scope even to doubt the possibility of some other dead body being mistakenly treated as that of the deceased while conducting the post-mortem examination. The relatives and friends of the deceased saw the same dead body and they had no doubt at all that it was that of the deceased.

C. Penal Code, 1860 - S. 300 - Whether the bodily injury was sufficient in the ordinary course of nature to cause death - That question was not put by Public Prosecutor to the doctor who conducted the post-mortem examination - Doctor opining that the deceased was murdered and that death had resulted from multiple injuries and injuries on vital organs-From the nature of the injuries it could be concluded that injuries were responsible for causing death - Held, trial court itself could have come to the same conclusion and hence mere non-mention by the doctor that the injuries were sufficient in the ordinary course of nature to cause death would be inconsequential.

The post-mortem report made by the doctor (PW 30) shows that the victim was murdered. He noticed as many as 45 injuries on the dead body which included fracture of 5 ribs (2 to 6) on the left side towards sternal end, fracture of some of the fingers and extravasation of blood on the right side of occipital region and also on the situs of the rib fractures. The remaining injuries included a few lacerated wounds, contusions and aberrations. There was just one minor incised wound on the left pinna. The right lung was congested. The doctor opined that death of that deceased had resulted from multiple injuries and injuries of vital organs and it was homicidal in nature. The Sessions Judge concluded thus on the said issue: "There being no evidence on record to show that the injuries were sufficient in the ordinary course of nature to cause death, it cannot be said that the injuries noticed by the autopsy surgeon (PW 30) were responsible for causing the death of the deceased Mahesh."

The trial court made a fallacious conclusion regarding the death of the deceased on the premise that the public prosecutor did not elicit from the doctor as to whether the injuries were sufficient in the ordinary course of nature to cause death.

No doubt it would have been of advantage to the court if the public prosecutor had put the said question is not enough for the court to reach wrong conclusion. Though not an expert as PW 30, the Sessions Judge himself would have been an experienced judicial officer. Looking at the injuries he himself could have deduced whether those injuries were sufficient in the ordinary course of nature to cause death. No sensible man with some idea regarding the features of homicidal cases would come to a different conclusion from the injuries indicated above, the details of which have been stated by the doctor (PW-30) in his evidence.

D. Criminal Trial - Circumstantial evidence - Shirt worn by deceased recovered on the basis of statement made by accused indicating the place where he had concealed the same - Held, it would reveal a circumstance that the accused had concealed the said shirt - Evidence Act, 1872,S. 27.

E. Criminal Trial - Circumstantial evidence - Shirt recovered on the basis of statement made by accused before police - Shirt, on being subjected to serological examination at **Forensic Science Laboratory, found to be stained with human blood - However, that circumstance was not put to the accused when they were questioned by Sessions Judge under S. 313 CrPC** - Held, that circumstance cannot be used against the accused.

F. Evidence Act, 1872 - Ss. 114, 101 and 106 - Applicability - Presumption versus burden of proof - Presumption, when and how can be drawn - Inference regarding existence of one fact against accused can be drawn from another set of proved facts - Burden lies on accused to rebut such inference by virtue of his special knowledge about such fact - Where prosecution proved that deceased was abducted with the object of murdering him and was taken out of the place where he was staying by the accused persons and thereafter deceased could not be seen until his dead body was found in mangled condition soon after the incident, what had happened to the deceased so long he was with the accused persons was known to them alone which they failed to explain - In the circumstances, held, presumption can be drawn that accused had murdered the deceased.

It was held that :

The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercise a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

In this context the principle embodied in Section 106 of the Evidence Act can be utilised. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.

Shambhu Nath Mehra v. State of Ajmer, AIR 1956 SC 404 : 1956 SCR 199 : 1956 Cri LJ 794, relied on

In the present case, the facts which the prosecution proved including the proclaimed intention of the accused, when considered in the light of the proximity of time within which the victim sustained fatal injuries and the proximity of the place within which the dead body was found are enough to draw an inference that victim's death was caused by the same abductors. If any deviation from the aforesaid course would have been factually correct only the abductors would know about it, because such deviation would have been especially within their knowledge. As they refused to state such facts, the inference would stand undisturbed.

G. Practice and Procedure - Courts should while ordering acquittal ordinarily desist from castigating the investigation - Criminal Procedure Code, 1973, S. 156 - Castigation of investigation if justified on acquittal of accused.

Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit the accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts

to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. The court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above.

Courtesy :- S.C.C.and Eastern Book Company Lucknow (U.P.)

NOTE :- Judicial Officers are requested to go through this judgment as it is of important nature. They are also requested to go through para 38 of the judgment with reference to a judgment in ***Shamboonath Mehra Vs. State of Ajmer, AIR 1956 SC 404*** which refers to section 106 of the Evidence Act. That particular paragraph of that judgment is again reproduced :

"This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that pre-eminently or exceptionally within his knowledge."

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75. I.P.C., SECTIONS 99, 104, 105 AND 425 : PRIVATE DEFENCE :-
2001 (1) JLJ 72
RAVINDRA PRASAD VERMA Vs. STATE OF M.P.

The right available under Section 104 is restricted by not only Section 99 but further restricted by Section 105. In case of mischief it continues till mischief is committed.

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76. I.P.C., SECTIONS 148, 149 AND 326/34 : APPLICABILITY OF :-
2001 (1) VIDHI BHASVAR 37
DHARMA SINGH Vs. STATE

Presence of two accused ruled out by injured eye-witnesses. Number of remaining accused reduced to four only. No offence under Section 148 is made out. Accused person convicted with the aid of this provision not found present even formation of unlawful assembly demolished. Such accused can be punished.

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77. I.P.C., SECTION 97 :-
2001 (1) MPWN S.N. 34
GUDDU ALIAS RAKESH Vs. STATE OF M.P.

Cattle allowed to stray into field of accused. Altercation and beating given in field of the accused. Criminal tresspass or mischief committed. Accused gets the benefit of right of private defence of property.

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78. I.P.C., SECTIONS 304-1 R/W/S 34, 149, 97 AND 99 : RIGHT OF PRIVATE DEFENCE EXPLAINED :-
2001 (1) M.P.H.T. 189
GOVIND SINGH Vs. STATE OF M.P.

Right of private defence of person and property under Section 97 of the Code-Is subject to restrictions under Section 99 of the Code-Sections 34 and 149 of the Code do not apply where this right is available to accused-Where individual act could not be attributed to any particular individual person exceeding right of private defence, other persons could not be punished with the aid of Section 34 or 149 of the Code-Prosecution evidence showing that a fatal blow of knife by accused/appellant-1 caused death of deceased-Corroborated by medical evidence-Held, other appellants could not be held liable for commission of offence under Section 304-I/34- Only appellant No. 1 convicted under Section 304-I. AIR 1968 SC 702 and AIR 1971 SC 1834 relied on.

From the prosecution evidence (Exh. P-1 FIR) itself, it is clear that it was accused Govind Singh who gave fatal blow by knife which resulted in the death of deceased. Exh. P-7 medical report goes to show that it was this injury which resulted into the death of deceased. On the basis of material on record, if the prosecution case in accepted as it is, it would be appellant No. 1 Govind Singh who is responsible for causing death of the deceased. So far as other accused are concerned, they can not be held liable for commission of offence under Section 304 Part I. Section 97 of the Indian Penal Code envisages right of private defence of body and of property subject to the restrictions enunciated in Section 99 of the IPC. From the evidence on record, it can not be inferred that the said appellants exceeded the right of private defence as the injuries caused by them to the complainant party are not of grievous nature. Hon'ble Supreme Court in the case reported in AIR 1968 SC 702 has held that since the right of private defence of person and property was available to the accused, question of applicability of Section 149 or Section 34 does not arise. It was further held that where individual act could not be attributed to any particular individual who had exceeded the right of private defence, the other person would not be liable to be punished with the aid of Section 149 or Section 34, IPC.

WORDS AND PHRASES : MEANING OF THE WORD "SETTLED POSSESSION" :-

The words "Settled possession" means clear and effective possession of a person and even if he is a trespasser, he is entitled to defend his property and such a right is available even against the true owner. **AIR 1968 SC 702 and 2001 (1) MPHT 45 = 2000 (1) JLJ 336** relied on.

79. I.P.C., SECTIONS 354, 306 AND 107 : 'MOTIVE' AND 'ABETMENT' : DISTINCTION BETWEEN :-
2001 (1) M.P.H.T. 142
ANJANI KUMAR Vs. STATE OF M.P.

Appellants/accused convicted and sentenced for offence under Sections 354 and 306, IPC. Hence, this criminal appeal-It is alleged that appellants/accused misbehaved with deceased and tried to remove her Sari. She committed suicide by hanging herself due to humiliation. Cause for suicide was alleged the act of accused persons of trying to outrage her modesty. Accused abjured guilt. Held, It is established that accused tried to

outrage modesty of deceased. They committed offence which falls under Section 354, IPC-Severity and degree of the act of accused is not established to make out a case under Section 306, IPC-There is difference between motive and abetment. Conviction under Section 306, IPC set aside but under Section 354, IPC upheld. Appeal partly allowed. AIR 1989 SC 1661 and 1996 Cr.L.J. (1) 894 followed. 1993 MPLJ 729 and 1994 JLJ 758 relied on.

Offence under Section 354, IPC is clearly made out. Deceased committed suicide immediately after the incident in the same evening and the accused are not entitled for any leniency in the matter of sentence on the ground that they were young at the relevant time. They ought to know in their formative years the consequence of their act. The young age does not give the licence to misbehave with a woman or entitles to be dealt with leniency.

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80. I.P.C., SECTIONS 471, 420 AND 198 :-
(2001) 1 SCC 719
TULSIBHAI JIVABHAI Vs. STATE OF GUJARAT

Appellant using a duplicate certificate of marks-sheet with changes as true certificate, knowing it to be false in material particular and thereby getting admission to polytechnic course. It was held that conviction is justified.

PENOLOGY : SENTENCE : PROPORTION OF :-

Looking to the nature of the offence and the fact that the appellant's past and present records have been good and the fact that he has already lost his career and is now married, his sentence reduced to that already undergone.

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81. INDIAN SUCCESSION ACT, SECTION 372 : PROCEEDINGS UNDER ARE SUMMARY ONE AND SUBJECT TO DECISION BY CIVIL COURT :-
2001 (1) M.P.L.J. 46
RAMESHCHAND Vs. SMT. SHAKUNTALA DEVI

The proceeding under section 372 of the Indian Succession Act, 1925, is only a summary proceeding and any decision therein in regard to the entitlement to the property left by the deceased dying intestate and the grant of the certificate to a particular person or applicant is always subject to the decision of a Civil Court of competent jurisdiction in a regular suit.

On the facts found by the trial court, it was apparent that the claimant was entitled to the grant of the succession certificate as prayed for. When all the basic necessary facts enabling the trial Court to come to a definite conclusion in regard to the entitlement to have the succession certificate as prayed for, had been found and established, there could be no impediment in the grant of the succession certificate. The view to the contrary taken by the Court below was not supportable in law. The finding in that regard reversed.

Even in a case where there are more than one applicants for the succession certificate, only one certificate should be granted as the grant of two or more succession certificates is not contemplated. However, while granting the certificate, it ought to be ensured that the interest of all the applicant which is found to have been established is protected.

NOTE :- Please refer to ***AIR 1966 All 107 Ganga Devi Vs. Munia and Musamma Jagatram Vs. Gayatri Devi, AIR 1936 Patna 430.***

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82. INTEREST ON AMOUNT WITHHELD WITHOUT JUSTIFICATION AND CONSTITUTION OF INDIA, ART. 226 :-
2001 (1) M.P.L.J. 117
J.D. SURYAVANSHI Vs. STATE OF M.P.

Dues payable to Additional Government Pleader paid during the course of Writ Petition. The question raised was liability to pay interest amount due between the period June 1986 to December 1991. Such amount was paid during the pendency of the Writ Petition filed claiming payment. There was no explanation from the Government for the inordinate delay. The state is bound to indemnify the person for withholding the amount. Non-payment of interest over the amount found due and actually paid later on will be wholly unjust and unfair. The State Government was directed to pay interest at the rate of 12% per annum.

NOTE :- Please refer to 2000 (2) ***Vidhi Bhasvar 99, Hope Textiles Vs. Union of India*** also reported in 'JOTI JOURNAL' 2001 February issue at page 37, Tit Bit No. 4.

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83. JOINT FAMILY AND PROPERTY OF JOINT FAMILY :-
2001 (1) M.P.L.J. 505
RAJESHWARI RAJENDRA KUMAR JAIN Vs. BALCHAND BHAIYALAL JAIN

Merely because a family is joint, every property purchased or held by its members is not a property of Joint Family.

It is settled principle that there is no presumption that joint family possesses joint property. Merely because a family is joint, every property purchased or held by its members is not a property of joint family. The burden of proving it to be so is on the party asserting it.

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84. JURISPRUDENCE :- BINDING NATURE OF THE ORDER, BINDING EFFECT PRECEDENT :-
2001 (1) VIDHI BHASVAR 11
DULARI Vs. COLLECTOR, RAIPUR

The order of the trial court set aside and the case was remanded. The question was neither decided finally nor addressed with reference to legal position. The order does not remain binding.

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85. JURISDPRUDENCE :- POWERS OF THE APEX COURT :- BINDING EFFECT :-
2001 R.N. 26 (HC)
HARISH KUMAR SHIVHARE Vs. STATE OF M.P.

Judgments of the Supreme Court are fountains of knowledge. Some drink, some take a sip while some just gargle with it and forget.

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86. JURISPRUDENCE
WORDS AND PHRASES : STARE DECISIS : EXPLAINED :-
2001 (1) M.P.H.T. 402 (SC) (CB)
STATE OF MAHARASHTRA Vs. MILIND

The rule of 'Stare decisis' is not flexible so as to preclude a departure therefrom in any case but its application depends on facts and circumstances of each case. It is good to proceed from precedent to precedent but it is earlier the better to give quietus to the incorrect one by annulling it to avoid repetition or perpetuation of injustice, hardship and anything ex facie illegal more particularly when a precedent runs counter to the provisions of the Constitution.

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87. JUVENILE JUSTICE ACT, SECTION 18 : JUVENILE DELINQUENT ; JURISDICTION TO GRANT BAIL :-
2001 (1) M.P.L.J. 172
RAHUL RAJENDRA MISHRA Vs. STATE OF M.P.

Juvenile delinquent may appear primafacie guilty but for grant of bail he is favourably considered under S. 18 on account of his age.

The consideration for grant of bail to a juvenile delinquent are entitely different. Firstly, the prosecution, opposing the bail to the applicant, must establish or there must be some material on record for believing that in case, the juvenile delinquent is released on bail, he is likely to come into association with a known criminal. Secondly, juvenile delinquent is likely to be exposed to moral danger and thirdly, his release would defeat the ends of justice. Here, the words "ends of justice" should be confined to those facts which show that the grant of bail itself is likely to result in injustice. The juvenile delinquent may appear to be guilty prima facie but he is especially protected by the Juvenile Justice Act and is favourably considered for grant of bail under section 18 of the Act for the reason of his age. The words "notwithstanding anything contained in the Code of Criminal Procedure, 1973" only indicate that considerations which are germane for granting or refusing bail to persons who are not juvenile delinquents shall not come into play for granting or refusing bail to them. Directed that the applicant be released on bail.

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88. JUDICIAL ACTIVISM - LIMITS OF JUDICIAL DYNAMISM
(2001) 1 SCC 715
HINDUSTAN ANTIBIOTICS LTD. Vs. PARENTAL DRUGS (INDIA) PVT. LTD.

Courts on discovery of any irregularity in course of any proceedings, can order **inquiry not prosecution.**

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89. LIMITATION ACT : GENERALLY : COMPUTATION OF LIMITATION PERIOD (S. 12 OF LIMITATION ACT :
2) GENERAL CLAUSES ACT, 1897, SECTION 9 : WORDS "FROM" AND "TO" MEANING EXPLAINED :-
3) WORDS AND PHARSES : "FROM" AND "TO" MEANING :-
(2000) 8 SCC 649
TARUN PRASAD CHATTERJEE Vs. DINANATH SHARMA

Computation of limitation period under Section 81(1) of the Representation of the People Act, application of General Clauses Act. (S.9) Section 81(1) of the Representation of People Act does not express any contrary intention. Therefore, the first day is to be excluded.

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90. LIMITATION ACT, SECTION 5 AND (2) C.P.C., O. 9 R. 13 :- THE ADVOCATE PLEADED NO INSTRUCTIONS : CASE PROCEEDED EX PARTE :-
2001 (1) VIDHI BHASVAR 21
SANJAY KUMAR Vs. KU. SEVIKA

Application for setting aside ex-parte award was filed with an application under Section 5 of the Limitation Act on the ground that the delay was due to knowledge of exparte award. This delay not rightly explained. The application was not accepted by the High Court. ***Milkiath Singh Vs. Joginder Singh, AIR 1998 SC 258*** distinguished.

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91. LAND REVENUE CODE, 1959 (M.P.), : SECTIONS 146 AND 147 :-
2001 REVENUE NIRNAYA 6 (HC)
CHANDRA SHEKHAR Vs. STATE OF M.P.

Amount due under works contract. Government need not seek adjudication by Tribunal. It can recover such amount as determined by final authority as arrears of land revenue.

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92. LAND REVENUE AND TENANCY ACT, 1950, (MB) : SECTIONS 45, 46 50 AND 52
2001 R.N. 1 (SC)
KASTURCHAND Vs. HARBILASH

Entries made in the annual village papers. Such entries were not changed/corrected according to the provisions of Section 50. Entries shall be presumed to be correct as per the provisions of Section 52.

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93. LAND ACQUISITION ACT, SECTION 18 : REFERENCE BY LAND OWNERS TO THE CIVIL COURT : DECIDING THE MATTER - NATURE OF :-
2001 (1) MPWN S.N. 48
UNION OF INDIA Vs. MOHAR SINGH

There was a reference by the land owners to civil court against the award of Land Acquisition Officer. Examining merits of rival contentions would only prolong agony of petty land-holders without resulting in any gain to union offers. It was held that let by gones be by gones. This is not to shy away from taking adjudication to logical end but to terminate litigation to mutual advantage. The amount of Rs. 45,000/- per hectre was raised to Rs. 58,000/-.

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94. LIMITATION ACT, SECTION 14 : SCOPE OF : CIVIL SUIT VIS-A-VIS : CIVIL PROCEEDINGS :-
2001 (1) M.P.L.J. 331
M.P. STATE CO-OPERATIVE MARKETING FEDERATION LTD., BHOPAL Vs. UNION OF INDIA :-

Benefit of Section 14 Limitation Act is equally extended to the proceedings prosecuted by the plaintiff if he Bonafide pursued his remedy for vindication of civil rights, such proceedings shall be covered by words 'civil proceeding' attracting applicability of section 14 of the Limitation act.

It was held that even though the proceedings before the Dy. Registrar, Co-operative Societies were not technically a civil suit, but that by itself would not preclude the appellant from claiming benefit under section 14 of the Limitation Act, in view of the fact that the said proceedings were in the nature of civil proceedings instituted by the claimant/appellant for vindicating his civil rights. Accordingly, the claimant/appellant was entitled to exclude the period spent in the litigation before the Dy. Registrar, Co-operative societies. Appeal allowed. The Claims Tribunal directed to hear the matter and decide it on merits, in accordance with law. **AIR 1965 SC 1818, AIR 1985 SC 39 and AIR 1993 HP 23** referred.

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95. LEGAL MAXIMS" 'FALSUS IN UNO, FALSUS IN OMNIBUS' : APPRECIATION OF EVIDENCE : PRINCIPLE OF :-
2001 (1) M.P.H.T. 341
SHRIRAM Vs. STATE OF M.P.

There is no any such rule that, if evidence of a witness is not believed with regard to some accused, his evidence with regard to other accused should also be rejected. Even contradictions and omissions occurred in the evidence of truthful witness due to weak memory and power of observation.

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96. MOTOR VEHICLES ACT, SECTION 171 : NEGLIGENCE OF CLAIMANT IN PROSECUTING CLAIM : DENIAL OF INTEREST JUSTIFIED :-
2001(1) M.P.L.J. 493
SUBHADRADEVI Vs. MUKHTIARSINGH

Where claimant himself was negligent in prosecution of case and responsible for long delay-Discretion relating to payment of interest by Tribunal could be exercised against claimant.

The awarding of interest as envisaged under the provisions contained in section 171 of the Motor Vehicles Act depends not on compassionate grounds. The provision for interest being paid on the amount determined as just compensation for the period between the making of the claim and the date of the payment of the compensation in fact has a dual purpose. Firstly, it is aimed to compensate the claimant for the delayed payment of the just compensation to which he is found entitled to by the Motor Accidents Claims Tribunal. The other purpose is to coerce the person or persons who have to pay the compensation so that they may not delay the payment. In a case where he claimant himself was negligent in not taking interest in the prosecution of the case and responsible for a long delay in leading the evidence in support of his case, the discretion with which the Tribunal stands vested in the matter relating to the payment of interest could be exercised against the claimants. In such a situation, neither the Insurer-company nor the owner or any person vicariously liable could be saddled with the liability to pay interest for the negligence of the claimants.

PRECEDENT :-

It is the ratio decidendi which has to be ascertained - What is binding is ratio and the principles laid down.

What constitutes the binding precedent is the ratio decidendi which has to be ascertained on an analysis of the material facts of the case i.e. generally those facts which are found expressly or impliedly to be material on which the decision is based. It is, therefore, obvious that a decision is binding not because of its conclusions but in regard to its ratio and the principles laid down therein.

97. MOTOR VEHICLES ACT, 1988, SECTIONS 163-A, 165, 140 AND SECOND SCHEDULE OF M.V. ACT : JURISDICTION OF THE CLAIMS TRIBUNAL :-
(2001) 2 SCC 9
KAUSHNUMA BEGUM Vs. NEW INDIA ASSURANCE CO. LTD.

It is not restricted to decide claims arising out of the negligent use of motor vehicles. Therefore, the rule of strict liability enunciated in ***Reylands Vs. Fletcher*** can be followed till a new and better principle is evolved or a different situation is created by legislation. "No fault liability" under section 140 of the Act is distinguishable from the strict liability rule.

Following are the brief facts of the case :

The accident which gave rise to the claim occured at about 7.00 p.m. on 20-3-1986. The vehicle involved in the accident was a jeep. It capsized while it was in motion. The cause of the capsize was attributed to bursting of the front tyre of the jeep. In the process of capsizing the vehicle hit against one Haji Mohammad Hanif who was walking on the road at that ill-fated moment and consequently that pedestrian was crushed and subsequently succumbed to the injuries sustained in that accident.

The Tribunal dismissed the claim for compensation. However, the Tribunal directed the insurance Company to pay Rs. 50,000 to the claimants by way of no fault liability envisaged in section 140 of the Motor Vehicles Act, 1988 (for short "the MV Act) (corresponding to Section 92-A of the Motor Vehicles Act, 1939-the old MV Act).

Aggrieved by the said rejection of the claim the appellants moved the High Court of Allahabad in appeal, as per the provisions of the MV Act. On 28-4-1999, a Division Bench of the High Court dismissed the appeal for which a very short order has been passed. It reads thus :

"Heard learned cousel for the appellant. Finding has been recorded that the tempo overturned and there were no negligence or rashness of the driver. Hence Rs. 50,000 has been awarded as compensation which is the minimum amount. There is no error in the order.

We have to proceed on two premises based on the findings of the Tribunal. The first is that there was no negligence or rashness on the part of the driver of the jeep. Second is that the deceased was knocked down by the jeep when its front tyre burst and consequently the vehicle became disbalanced and turned turtle. Should there necessarily be negligence of the person who drove the vehicle if a claim for compensation (due to the accident involving that vehicle) is to be sustained ?

Section 165 (1) of the MV Act confers power on the State Government to constitute one or more Motor Accidents Claims Tribunals by notification in the Official Gazette for such area as may be specified in the notification. Section 165 of the said Act contains a prohibition that no civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunals.

Paragraphs 11 to 25 are reproduced :-

11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.

12. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use, should not the owner be made liable for damages to the person who suffered on account of such accident ? This question depends upon how far the rule in ***Rylands v. Fletcher(1861-73) All ER. Rep.*** can apply in motor accident cases. The said rule is summarised by Blackburn, J., thus:

> "[T] he true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

13. The House of Lords considered it and upheld the ratio with the following dictum:

> "We think that the true rule of law is that the person who, for his own purposes, brings on his land, and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, he is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default, or, perhaps, that the escape was the consequence of vis major, or the act of God; but, as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

14. The above rule eventually gained approval in a large number of decisions rendered by courts in England and abroad, Winfield on Tort has brought out even a chapter on the "Rule in ***Rylands v. Fletcher***". At p. 543 of the 15th Edn. of the celebrated work the learned author has pointed out that

> "over the years ***Rylands v. Fletcher*** has been applied to a remarkable variety of things: fire, gas, explosions, electricity, oil, noxious fumes, colliery spoil, rusty wire from a decayed fence, vibrations, poisonous vegetation".

He has elaborated seven defences recognised in common law against action brought on the strength of the rule in ***Rylands v. Fletcher.*** They are:

(1) Consent of the plaintiff i.e. volenti non fit injuria.

(2) Common benefit i.e. where the source of the danger is maintained for the common benefit of the plaintiff and the defendant, the defendant is not liable for its escape.

(3) Act of stranger i.e. if the escape was caused by the unforeseeable act of a stranger, the rule does not apply.

(4) Exercise of statutory authority i.e. the rule will stand excluded either when the act was done under a statutory duty or when a statute provides otherwise.

(5) Act of God or vis major i.e. circumstances which no human foresight can provide against and of which human prudence is not bound to recognise the possibility.

(6) Default of the plaintiff i.e. if the damage is caused solely by the act or default of the plaintiff himself, the rule will not apply.

(7) Remoteness of consequences i.e. the rule cannot be applied ad infinitum, because even according to the formulation of the rule made by Blackburn, J., the defendant is answerable only for all the damage "which is the natural consequence of its escape".

15. The Rule in ***Rylands v. Fletcher*** has been referred to by this Court in a number of decisions. While dealing with the liability of industries engaged in hazardous or dangerous activities P.N. Bhagwati, C.J., speaking for the Constitution Bench in ***M.C. Mehta v. Union of India (1987) 1 SCC 395*** expressed the view that there is no necessity to bank on the rule in ***Rylands v. Fletcher.*** What the learned Judge observed is this: (SCC p. 420, para 31)

> "We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order."

16. It is pertinent to point out that the Constitution Bench did not disapprove the rule. On the contrary, learned Judges further said that "we are certainly prepared to receive light from whatever source it comes". It means that the constitution Bench did not foreclose the application of the rule as a legal proposition.

17. In ***Charan Lal Sahu v. Union of India (1990) 1 SCC 613*** another Constitution Bench of this Court while dealing with Bhopal gas leak disaster cases, made a reference to the earlier decisions in **M.C. Mehta** but did not take the same view. The rule of strict liability was found favour with. Yet another Constitution Bench in ***Union Carbide Corpn. v. Union of India (1991) 4 SCC. 584*** referred to **M.C. Mehta** decision but did not detract from the rule in ***Rylands v. Fletcher.***

18. In ***Gujarat SRTC v. Ramanbhai Prabhatbhai 1987 SCC. (Cri.) 482*** the question considered was regarding the application of the rule in cases arising out of motor accidents. The observation made by E.S. Venkataramiah, J. (as he then was) can profitably be extracted here: **(SCC pp. 244-45, para 10)**

"Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing

volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in ***Rylands v. Fletcher.*** From the point of view of the pedestrian the roads of this country have been rendered by the use of the motor vehicles highly dangerous. 'Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault."

19. Like any other common law principle, which is acceptable to our jurisprudence, the rule in ***Rylands v. Fletcher*** can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, we are disposed to adopt the rule in claims for compensation made in respect of motor accidents.

20. "No fault liability" envisaged in Section 140 of the MV Act is distinguishable from the rule of strict liability. In the former, the compensation amount is fixed and is payable even if any one of the exceptions to the rule can be applied. It is a statutory liability created without which the claimant should not get any amount under that count. Compensation on account of accident arising from the use of motor vehicles can be claimed under the common law even without the aid of a statute. The provisions of the MV Act permit that compensation paid under "no fault liability" can be deducted from the final amount awarded by the Tribunal. Therefore, these two are resting on two different premises. We are, therefore, of the opinion that even apart from Section 140 of the MV Act, a victim in an accident which occurred while using a motor vehicle, is entitled to get compensation from a Tribunal unless any one of the accidents exceptions would apply. The Tribunal and the High Court have, therefore, gone into error in divesting the claimants of the compensation payable to them.

21. Now, we have to decide as to the quantum of compensation payable to the appellants. We first thought that the matter can be remitted to the Tribunal for fixation of the quantum of compensation but we are mindful of the fact that this is a case in which the accident happened more than 13 years ago. Hence we are inclined to fix the quantum of compensation here itself.

22. The appellants claimed a sum of Rs. 2,36,000. But PW 1 widow of the deceased said that her husband's income was Rs. 1500 per month. PW 4 brother of the deceased also supported the same version. No contra-evidence has been adduced in regard to that aspect. It is, therefore, reasonable to believe that the monthly income of the deceased was Rs. 1500. In calculating the amount of compensation in this case we lean ourselves to adopt the structured formula provided in the Second Schedule to the MV Act. Though it was formulated for the purpose of Section 163-A of the MV Act, we find it a safer guidance for arriving at the amount of compensation than any other method so far as the present case is concerned.

23. The age of the deceased at the time of accident was said to be 35 years plus. But when that is taken along with the annual income of Rs. 18,000 figure indicated in the structured formula is Rs. 2,70,000. When 1/3rd therefore is deducted the balance would be Rs. 1,80,000. We, therefore, deem it just and proper to fix the said amount as total compensation payable to the appellants as on the date of their claim.

24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf". Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants. The amount of Rs. 50,000 paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date.

25. We direct the first respondent Insurance Company to pay the above amount to the claimants by depositing it in the Tribunal. Once such deposit is made, the same shall be disbursed to the claimants in accordance with the principles laid down by this Court in ***G.M., Kerala SRTC v. Susamma Thomas (1944) 2 SCC 176 : 1994 SCC (Cri) 335.*** The appeal is disposed of accordingly.

Courtesy : SCC Publishers E.B.C., Lucknow.

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98. MOTOR VEHICLES ACT : GENERALLY : APPRECIATION OF EVIDENCE
2001 (1) VIDHI BHASVAR 1
VIRENDRA KUMAR Vs. SMT. DASODA DEVI

Statement recorded in criminal case may not be used for appreciating the proceedings in the Motor Accident Claims.

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99. MOTOR VEHICLES ACT, SECTIONS 149 AND 173 : ABSENCE OF DRIVING LICENCE EFFECT OF :-
2001 (1) M.P.H.T. 221 (DB)
ORIENTAL INSURANCE CO. LTD. Vs. SMT. HIRA TRIPATHI

Deceased along with his son was going on Luna moped. A Truck dashed the Luna. The deceased was died in the accident. He was in employment of Bhilai Steel Plant. Tribunal awarded a sum of Rs. 7,58,640 as compensation and interest at the rate of 12% from the date of application till payment. The insurer contended that the driving licence of driver had expired on 24-5-1998. While, accident took place on 12-11-1998. Thus, on 12-11-1998 he was not authorised to drive the said truck. Hence, the insurer cannot be held liable. It was held that the certificate issued by R.T.O. shows that the date of issue of driving licence is 30-3-1989 and date of its expiry is 19-11-2001. It was renewed. Hence, the insurer cannot escape the liability particularly when driver has not been disqualified as licence has been renewed. Further it was held that once the licence is renewed, it cannot be said that the vehicle was driven by any incompetent person. Hence, the insurer

was held liable and dismissed the appeal. ***Sohan Lal Bassi Vs. P. Sesh Reddy and other, AIR 1996 SC 2627, Kashiram Yadav Vs. Oriental Fire and General Insurance Co. AIR 1989 SC 2002, Suresh Mohan Chopra Vs. Lakhi Prabhu Dayal and Others, AIR 1990 SC 1979*** followed. ***Mrs. Elizabeth Leema Vs. T. Narayan Rao and others, ILR 1976 Karnataka 1013 and United India Insurance Co. Vs. Sherali, 1999 (1) MPWN 90*** relied on.

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100. M.P. LAND REVENUE CODE, SECTION 164 : REPROSPECTIVE OPERATION :-
2001 R.N. 16 (HC)
DHANNA Vs. NANUDI

Bhumiswami dying in 1960. Succession would be governed under Section 164. Date of Lis or order is of no consequence.

SECTION 170-B : Right of claimant has to be considered in its proper perspective and in accordance with law.

Person in possession not furnishing information under Section 170-B(1). Consequence of sub section (2) of Section 170-B would not follow. Claimant would not be entitled to have the possession. Person in possession still has right to explain his possession.

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101. M.P. ACCOMMODATION CONTROL ACT, SECTIONS 2(b), 12(1)(a) AND 12(1)(e) MORTGAGE AS OWNER :-
2001 (1) MPWN S.N. 41
RAVINDRA KUMAR SHIVHARE Vs. SMT. DHANNO BAI

Mortgagee in possession is landlord can sue for recovery of rent and possession for his bona fide need.

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102. M.P. ACCOMMODATION CONTROL ACT, SECTION 3(2) : EXEMPTION UNDER SECTION
2001 (1) M.P.L.J. 119
A.M. QURESHI Vs. M/S. SHAKTI PICTURES CIRCUIT LTD., AMRAWATI

Exemption under section 3(2) by notification dated 13-5-1964 published on 22-5-1964 exempting property owned by Dudhadhari Shri Vaishnava Trust Fund applied to the accommodation and is not affected by a contract between lessee and a sub-lessee. If the accommodation is exempted, then it does not matter, whether the suit is filed by a paramount landlord or the lessee against the sub-lessee, and the Act would not come into operation. ***Betibai and others Vs. Nathooram and others, AIR 1999 SC 1767*** referred.

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103. M.P. LAND REVENUE CODE : SECTION 248 : PROCEEDINGS UNDER THE SECTION BEFORE TAHSILDAR FOR AUKAF LAND :-
2001 (1) M.P.L.J. 170
BANSHI Vs. STATE OF M.P.

Proceedings before Tahsildar under section 248 of the M.P. Land Revenue Code against a person claiming right of sub-tenancy from time of his father over suit land. Land in dispute was of Aukaf department and was given to a temple for its upkeep and no right of tenancy accrued therein. Proceedings before the Tahsildar for ejectment not illegal. No

right accrued by possessing disputed land for more than sixty years. ***Panchamsingh Vs. Kishandas Guru Ramdas and others, 1971 MPLJ 745 = AIR 1972 MP 14 relied on*** and ***Gajendra Singh s/o Ramsingh Vs. Mansingh and others, 2000 (2) MPLJ 316, Kanchania Vs. Shivram and others, 1992 R.N. 194*** referred to.

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104. M.P. PUBLIC TRUSTS ACT, SECTIONS 25, 26 AND 27 :-
2001 (1) M.P.L.J. 189
GHANSHYAM Vs. YASHWANT

An order passed with respect of removal of the trustee who was appointed is within the purview of section 27 (2) of the M.P. Public Trusts Act 1951. Proceedings under Order 9 Rule 13, Civil Procedure Code are maintainable. Section 30 of the M.P. Public Trusts Act 1951 has made applicable, the provision of Civil Procedure Code to the extent not inconsistent with the provision of the Act. There is no inconsistency with the provisions of the Act with respect to provision of Order 9 Rule 13 Civil Procedure Code.

Under Section 27 of the M.P. Public Trusts Act the Court has to conduct an enquiry into the case as it deems fit and pass such orders thereon as it may consider appropriate, and the Court is empowered to pass the orders as mentioned in sub-section (2) of section 27, for removing any trustee or appointing a new trustee etc. Trustee concerned is necessary party - Non-joinder of such trustee as a party will warrant dismissal of application.

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105. M.P.L.R.C., SECTION 57 :-
2) C.P.C., SECTION 100 :-
2001 (1) M.P.L.J. 459
NAGAR PALIKA NIGAM, GWALIOR Vs. KAILASH NARAIN SHRIVASTAVA

No specific plea raised regarding jurisdiction on the basis of provisions envisaged under section 57 of M.P. Land Revenue Code. Point of jurisdiction not contested before both the Courts below. It is not permissible to raise such a point of law first time in the second appeal.

Plaintiffs claiming ownership of the disputed land on the ground of thirty years adverse possession-Neither pleading of adverse possession set up in plaint nor evidence on that point led-No pleading regarding source of title-Appellate Court committed error in holding the title of the plaintiffs to the disputed land on the ground of thirty years adverse possession.

Appellate Court committed error in holding title of the plaintiffs to the disputed land on the ground of thirty years of adverse possession, while no plea of adverse possession was set up in the pleadings contained in the plaint. There was no pleading regarding source of title to the father of the plaintiffs. The Appellate Court was not justified in carving out absolutely a new case for the plaintiffs which was even contrary to the pleadings on record. For setting up a plea of adverse possession, claim of animus on the part of the person claiming adverse possession is necessary. Appellate Court erred in law in holding plaintiffs' title to the disputed land on the strength of adverse possession when no such plea has been raised nor the evidence has been led on this point.

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106. MUSLIM LAW : GIFT

2) SUCCESSION ACT, SECTIONS 218, 276 AND 295 :-

(2000) 8 SCC 507

GULAMHUSSAIN Vs. ABDULRASHID

Gift in favour of minor grandson. Mother of the minor cannot be appointed as his guardian to accept gift on his behalf during the lifetime of minor's father under the Muslim Law.

Under Mohammedan law, gift is a donation conferring right of property without exchange. The gift is in the nature of contract where there must be a tender of property, acceptance of the property by the donee and delivery of possession of the property. It is only when these three ingredients are satisfied a gift is completed. The object behind the compliance with the three ingredients is that there may not be any future dispute in respect of the property that is gifted to the donee.

Suit for letter of administration and possession. Maintainability. Plaintiff praying for relief of letter of administration in respect of "estate" of his deceased father.

WORDS AND PHRASES : WORD "ESTATE" EXPLAINED :-

"Estate" includes all the properties of the deceased and hence it cannot be said that the suit was not maintainable because of non-inclusion of some other properties of the deceased.

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107. N.D.P.S. ACT, SECTIONS 42, 43 AND 20(b)(i) :-

2001(1) M.P.L.J. 500

DHARMU Vs. STATE OF M.P.

The A.S.I. on duty in weekly market saw appellant/accused carrying two bags in a "Kavar" and on being informed that the bags contained 'Ganja' served notice on him aprising of his right to be searched by a Magistrate or a Gazetted Officer. The appellant opted to be searched by the A.S.I., an empowered officer to conduct the search of the appellant. There were five kilograms of Ganja in each bag.The search was made in a public place in weekly market.

Held, that Section 42 of the Narcotic Drugs and Psychotropic Substances Act was not attracted as search was not made from any building conveyance or enclosed place. Section 43 applies to the seizure in a "public place". There was proper compliances with sections 50 and 57 of the Act. From the scheme of the Act and the Code of Criminal Procedure it is clearly spelt out that an authorised police officer has the right and duty to conduct investigation in all its stages. The A.S.I. who recovered the Ganja from the possession of the appellant/accused was not the complainant. Under law he was an empowered officer to conduct the search of the accused. The recovery of ten kilograms of Ganja from the possession of appellant was fully established. The recovery and further investigation can be carried on by the same police officer unless he is biased or has any personal interest. The search and seizure are steps in the investigation" and there is no law or jurisprudential principle that after the search and seizure the police officer doing so should withdraw from the case and entrust further investigation to another police officer. There was no prejudice in such a case to the accused and therefore, section 465 of the

Criminal Procedure Code cures it even if it is held that there was any irregularity in such investigation. The conviction of the appellant under section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 was unassailable.

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108. N.D.P.S. ACT, SECTIONS 32-A AND 37 :- SUSPENSION OF SENTENCE :-
2) CR.P.C., SECTIONS 389, 432 & 433 : POWERS OF THE COURT :
3) CRIMINAL TRIAL : MINIMUM SENTENCE TO BE AWARDED :-
(2000) 8 SCC 437
DADU Vs. STATE OF MAHARASHTRA

Convict under N.D.P.S. Act will not be entitled to ask for suspension of sentence as a matter of right just because S. 32-A has been held to be void to the extent it takes away the right of course to suspend the sentence awarded under the Act.

Section 32A is unconstitutional to the extent it takes away the sentence of a person convicted under the Act and thus intermedles with the right of appeal in such a way as to actually take away the power of judicial review, the heart and soul of the constitutional scheme. Taking away of the right of the executive to suspend, remit and commute sentences under the Act, however are valid.

Section 32-A was enacted in discharge of international obligations. Powers to suspend sentence must be exercised within parameters of section 37. Person convicted under the Act is not entitled to seek suspension as a matter of right on the basis of the provisions in Section 32-A depriving courts of the power of suspending sentence has been to be void. Parole means the release of person temporarily for a special purpose before the expiry of sentence on promise of good behaviour and return to jail and has essentially an executive function to be exercised within the prescribed limits.

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109. NEGOTIABLE INSTRUMENTS ACT, SECTION 4 : PROMISSORY NOTE : INGREDIENTS OF :-
2001 (1) M.P.L.J. 86
BHAGATRAM Vs. MOHAN GUPTA

The essential ingredients of promissory note are -

(1) An unconditional undertaking to pay; (2) The sum should be a sum of money and should be certain; (3) The payment should be to the order of a person who is certain; or to the bearer of the instrument; and (4) the maker should sign it.

The document in question read "कुर्जी लिख दई भगतराम गंधी जुझालपुर बारिन ने मोहन जी सुनारीवारिन को हाथ उधार लये रूपया पचास हजार अंकन 50,000/– सिक्का चालू ब्याज पर। रूपये 50 पैसे के हिसाब से देवेंगे। मिसी फसवती 6 संवत 2041 तारीख 14-12-1984."

द. भगतराम गन्धी

50,000/– (पचास हजार रूपये) पाये।

It was held that the said document was an acknowledgment and not a promissory note. Third requirement of promissory note, i.e. the payment should be to the order of a person was missing. As one of the essential conditions was missing the document in

question could not be termed as a promissory note. ***Mannalal Nanhelal Vs. Sitamber nath Ramhirdelal, 1961 MPLJ 169*** relied on.

NOTE :- Please refer to 1980 JLJ S.N. 21 for knowing the distinction between Bond and Promissory Note which reproduced here for ready reference :-

"Held : An Instrument is bound within the meaning of section 2(5)(b) of the Stamp Act, if the following elements are present :-

(i) There must be an undertaking to pay;

(ii) The sum should be a sum of money but not necessarily certain;

(iii) The payment will be to another person named in the instrument;

(iv) The maker should sign it;

(v) The instrument must be attested by a witness;

(vi) It must not be payable to order or bearer.

A bond has two distinguishing features form a promissory note. Firstly that it must be attested by a witness and secondly, it must not be payable to order or bearer. ***Sant Singh Ladharam Vs. Madandas, 1976 MPLJ 238 (FB)*** relied on".

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दोष निवारण

माह दिसम्बर 2001 के ज्योति में अक्षर संयोजन एवं विन्यास में जो त्रृटियां त्वरित दृष्टिगोचर हो सकी हैं वे इस प्रकार हैं। कृपया संशोधन कर लें।

1. पृष्ठ 401 पर द्वितीय चरण में तृतीय पंक्ति में **कान्हिक्ट** के स्थान पर **'कन्हिक्ट'** शब्द पढ़ा जावे।
2. पृष्ठ 459 पर टिट बिट क्र. 15 में दूसरी पंक्ति में **Pendents** के स्थान पर **Pendente** लिखना।
3. पृष्ठ 461 टिट बिट क्र. 19 में **धारा 183** के स्थान पर **173** लिखना।
4. पृष्ठ 471 पर टिट बिट क्र. 33 के शीर्षक में **Consirasy** के स्थान पर **Conspircy** पढ़ना।
5. पृष्ठ क्र. 477 पर टिट बिट क्र. 47 के शीर्षक में **Join** के स्थान पर **Joint** लिखना।
6. पृष्ठ 477 पर टिट बिट क्र. 49 में शीर्षक में **A** शब्द को मिटाना।
7. पृष्ठ 479 पर टिट बिट क्र. 53 में शीर्षक इस प्रकार पढ़ें–

   N.D.P.S. Act. Section 67-50 R/W/S 25, Evidence Act.
8. पृष्ठ 481 पर प्रथम पंक्ति में **be** के स्थान पर **the** पढ़ें।
9. पृष्ठ 487 टिट बिट क्र. 72 में **2003** के स्थान पर **2008** पढ़ें।

हम आभारी हैं

हम आभारी हैं विभिन्न लेखकों एवं प्रकाशकों के जिनके कारण हम हमारी पत्रिका को सारगर्भित करने का सतत् रूप से यत्न कर रहे हैं। ऐसे ज्ञात–अज्ञात लेखकों व प्रकाशकों के प्रति नये वर्ष सन् 2002 में कृतज्ञता व्यक्त करते हैं एवं आशा करते हैं कि उनका सहयोग, सहकार्य न्यायिक क्षेत्र के लिए पथ प्रदर्शित करता रहेगा। हमारे विशेष आभार इन्हें भी;

(1) सुप्रीम कोर्ट केसेस, इस्टर बुक कंपनी लखनऊ।

(2) आल इंडिया रिपोर्ट्र, नागपुर।

(3) जबलपुर लॉ जर्नल प्रकाशन ग्वालियर (वे म.प्र. एवं छत्तीसगढ़ हेतु प्रकाशित समस्त पत्रिकाएँ निःशुल्क भेज रहे हैं)।

(4) एम.पी.एच.टी., लॉ जर्नल, प्रकाशक, सुविधा लॉ हाउस भोपाल (वे एम.पी.एच.टी. लॉ जर्नल निःशुल्क भेज रहे हैं)।

(5) ए.एन.जे. (म.प्र. एवं सर्वोच्च न्यायालय) अपराध निर्णय जर्नल, प्रकाशन जैन मोहल्ला सांगानेर, जयपुर 303902 (वे उपरोक्त दोनों पत्रिकाएँ निःशुल्क भेज रहे हैं।)

(6) सेंट्रल इंडिया लॉ इंस्टीट्यूट, जबलपुर (इनके यहां से त्रैमासिक पत्रिका निःशुल्क प्राप्त होती है।)

(7) एम.पी.एल.जे. लॉ जर्नल पब्लिकेशन, नागपुर (अनुक्रमांक दो से सात के प्रकाशकों ने कॉपीराईट का अधिकार भी दिया हैं इसलिए विशेष आभार भी।)

(8) इन्स्टीट्यूट ऑफ ज्यूडीशियल ट्रेनिंग एंड रिसर्च गोमती नगर, लखनऊ। (इनके यहां से समय–समय पर विभिन्न प्रकाशन निःशुल्क प्राप्त होते हैं।)

(9) उन लेखकों का जो समय–समय पर लेख भेजते रहे हैं व समस्त पाठकों के जो यथा समय पत्रिका को अधिकाधिक उपयोगी बनाने हेतु सकारात्मक रूप से मार्गदर्शित कर रहे हैं।

(10) उन वक्ताओं का जो संस्था में विभिन्न अवसरों पर प्रशिक्षुगण को मार्गदर्शित करने हेतु पधारते हैं।

(11) विशेष उल्लेख संस्था के संरक्षक, माननीय मुख्य न्यायाधिपति एवं समिति के माननीय अध्यक्ष एवं माननीय सदस्य न्यायाधिपतिगण एवं उच्च न्यायालय के जिनके वरद हस्त के कारण यह संस्था अपने कार्यों का संचालन करती है।

संपादकद्वय

OPINIONS AND VIEWS EXPRESSED IN THE MAGAZINE ARE OF THE WRITERS OF THE ARTICLES AND NOT-BINDING ON THE INSTITUTION AND FOR JUDICIAL PROCEEDINGS.