30th Year

Pursuit of Excellence

JOTI JOURNAL

(BI-MONTHLY)

FEBRUARY 2024

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

JOTI JOURNAL
FEBRUARY 2024

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CIVIL PROCEDURE CODE, 1908

सिविल प्रक्रिया संहिता, 1908

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Order 7 Rule 11 (d) – Subsequent event – Held, if due to subsequent event, the original proceedings become infructuous, such event should be taken into consideration by the court – Suit was dismissed for want of jurisdiction.

आदेश 7 नियम 11 (घ) – पश्चात्वर्ती घटना – अभिनिर्धारित, यदि पश्चात्वर्ती घटना के कारण मूल कार्यवाही निरर्थक हो जाती है तो न्यायालय को ऐसी घटना को विचार में लेना चाहिए – वाद को क्षेत्राधिकार न होने से निरस्त किया गया।

7 (ii) **12**

Order 9 Rule 13 and Order 17 Rule 2 – Application to set aside *ex parte* decree – Maintainbility.

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Order 11 Rule 1 – Interrogatories – But questions in the nature of cross-examination must not be allowed.

आदेश 11 नियम 1 – परिप्रश्न – परंतु ऐसे प्रश्न जो कि प्रतिपरीक्षण की प्रकृति के हैं, की अनुमति नहीं देनी चाहिए। ***9** **15**

Order 16 Rule 1 and Order 41 Rule 23-A – Power of remand – Cannot be exercised to allow a party to fill up the lacuna of the case.

आदेश 16 नियम 1 एवं आदेश 41 नियम 23–क – रिमांड की शक्ति–किसी पक्ष द्वारा प्रकरण की कमी को पूरा करने के लिए प्रयोग नहीं किया जा सकता।

10 **16**

Order 21 Rule 29 and Order 41 Rule 5 – Execution proceeding – Stay of.

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Order 22 Rule 4 – Decree in favour of or against a dead person – Party to a suit expired before final arguments were heard – Legal Representatives were not brought on record – Decree passed in such matter would be a nullity.

आदेश 22 नियम 4 – मृत व्यक्ति के पक्ष में अथवा उसके विरूद्ध आज्ञप्ति – वाद का पक्षकार अंतिम तर्क सुने जाने के पूर्व मृत हो जाता है – उसके विधिक प्रतिनिधि अभिलेख पर नहीं लाये गए – ऐसे मामलों में पारित आज्ञप्ति अकृत होगी। ***12 19**

Order 23 Rule 2 and Order 43 Rule 1-A – Application to recall compromise decree – Maintainability.

आदेश 23 नियम 2 एवं आदेश 43 नियम 1–क – समझौता डिक्री के प्रत्याह्वान हेतु आवेदन – पोषणीयता। **13 19**

Order 26 Rule 9 – Appointment of Commissioner – Plaintiff filed a suit for declaration of easementary rights – Defendant in counter-claim raised an issue of encroachment by plaintiff upon disputed land – Plaintiff before adducing any evidence in support of his case filed an application under Order 26 Rule 9 of the Code for issuance of commission on the issue of encroachment – Such application would amount to collection of evidence.

आदेश 26 नियम 9 – आयुक्त की नियुक्ति – वादी ने सुखाधिकार की घोषणा हेतु वाद प्रस्तुत किया – प्रतिवादी ने प्रतिदावा में वादी द्वारा विवादित भूमि पर अतिक्रमण का प्रश्न उठाया – वादी ने अपने प्रकरण के समर्थन में साक्ष्य प्रस्तुत करने के पूर्व संहिता के आदेश 26 नियम 9 के अंतर्गत अतिक्रमण के बिन्दु पर कमीशन जारी करनें हेतु आवेदन प्रस्तुत किया – ऐसा आवेदन साक्ष्य संकलन के सदृश होगा। **14 21**

Order 26 Rule 9 – (i) Appointment of Commissioner – Scope.

(ii) Commission for demarcation – Scope – Demarcation already done by the revenue officers and plaintiff filed it in support – There is no need for fresh demarcation by appointing commission.

आदेश 26 नियम 9 – (i) आयुक्त की नियुक्ति–विस्तार।

(ii) सीमाकंन हेतु कमीशन – विस्तार – राजस्व अधिकारियों द्वारा संपत्ति का सीमांकन पूर्व में किया गया जिसे वादी ने अपने समर्थन में प्रस्तुत किया – नए सीमांकन की कोई आवश्यकता नहीं। **15 22**

CRIMINAL PRACTICE:

आपराधिक विचारण:

(i) Mentioning caste of accused in title of judgment – Impermissible.

(ii) Rehabilitation of victim – Whenever a child is subjected to sexual assault, the State Legal Services Authorities should ensure that the child is provided with a facility of counselling by a trained child counsellor or child Psychologist.

(iii) Sentencing – The mitigating circumstances which weigh in favour of the accused must be balanced with the impact of the offence on the victim, her family and society in general.

(i) निर्णय के शीर्षक में अभियुक्त की जाति का उल्लेख करना – अस्वीकार्य।

(ii) पीड़ित का पुनर्वास – जब भी कोई बालक लैंगिक हमले का शिकार होता है, तो राज्य विधिक सेवा प्राधिकरणों को यह सुनिश्चित करना चाहिए कि बालक को एक प्रशिक्षित बाल परामर्श दाता या बाल मनोवैज्ञानिक द्वारा परामर्श की सुविधा प्राप्त हो

(iii) दण्डादेश – दण्डादेश कम करने वाली परिस्थितियाँ जो अभियुक्त के पक्ष में हैं, उन्हें पीड़ित, उसके परिवार और सामान्यतः समाज पर अपराध के प्रभाव के साथ संतुलित किया जाना चाहिए। **16** **23**

CRIMINAL PROCEDURE CODE, 1973

दण्ड प्रक्रिया संहिता, 1973

Sections 53-A and 164-A – Failure to conduct DNA – Drawing adverse inference in the light of section 114(g) of the Act r/w/s 53-A of the Code, not proper.

धाराएं 53–क एवं 164–क – डीएनए परीक्षण कराने में विफलता – अधिनियम की धारा 53–क सहपठित धारा 114 (छ) के प्रकाश में विपरीत निष्कर्ष निकालना उचित नहीं। **34 (ii)** **60**

Section 154 – Delay in lodging FIR – Effect of –The Court must look for the possible motive and the explanation for the delay as well as consider its effect on the trustworthiness of the prosecution witnesses.

धारा 154 – प्रथम सूचना रिपोर्ट लेख कराने में विलंब – प्रभाव – न्यायालय को संभावित उद्देश्य और विलंब के स्पष्टीकरण की खोज करनी चाहिए और अभियोजन साक्षीगण की विश्वसनीयता पर, इसका क्या प्रभाव पड़ा पर विचार करना चाहिए।

17 (i) **26**

Act/ Topic	Note No.	Page No.
Sections 197 and 239 – See section 19 of the Prevention of Corruption Act, 1988 **धाराएं 197 एवं 239 –** देखें भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 19 ।	**18**	**28**
Sections 216, 374 and 386 – Appeal against conviction – Absence of Advocate at the time of hearing – Without hearing accused or his advocate, appeal cannot be decided – In absence of advocate, court should have appointed a lawyer to espouse his cause. Alteration or addition of charge by appellate court – Permissibility. **धाराएं 216, 374 एवं 386** – दोषसिद्धि के विरूद्ध अपील–सुनवाई के समय अधिवक्ता की अनुपस्थिति – अभियुक्त या उसके अधिवक्ता को सुने बिना अपील में निर्णय नहीं किया जा सकता है, यदि अधिवक्ता अनुपस्थित था, तो न्यायालय को उसका पक्ष समर्थन करने के लिए एक अन्य अधिवक्ता को नियुक्त करना चाहिए। अपीलीय न्यायालय द्वारा आरोप में परिवर्तन या परिवर्धन – अनुज्ञेयता।	**19 (i) & (ii)**	**29**
Section 222 (2) – See sections 308 and 338 of the Indian Penal Code, 1860 **धारा 222 (2) –** देखें भारतीय दण्ड संहिता, 1860 की धाराएं 308 एवं 228।	**33**	**58**
Section 313 – See sections 120 – B and 411 of the Indian Penal Code, 1860 and sections 3 and 114(a) of the Evidence Act, 1872. **धारा 313 –** देखें भारतीय दण्ड संहिता, 1860 की धाराएं 120 – बी एवं 41 और साक्ष्य अधिनियम, 1872 की धाराएं 3 एवं 114(क)।	**30**	**49**
Sections 227 and 465 – See sections 13 and 19 of the Prevention of Corruption Act. **धाराएं 227 एवं 465 –** देखें भ्रष्टाचार निवारण अधिनियम, 1988 की धाराएं 13 एवं 19।	**20**	**33**
Section 313 – Expert witness – Authenticity of such report has to be proved through evidence – Relevant question needs to be framed u/s 313 of the Code as well. **धारा 313 –** विशेषज्ञ साक्षी – ऐसी रिपोर्ट की विश्वसनीयता साक्ष्य के द्वारा ही प्रमाणित की जा सकती है – संहिता की धारा 313 के अंतर्गत सुसंगत प्रश्न निर्मित करने की भी आवश्यकता है।	**36**	**64**

Section 319 – (i) Power to summon any person as accused – Stage – Whether the trial court can pass such order in the judgment? Held, No.

(ii) Grounds to invoke section 319 of the Code – Trial court passed the order without considering the grounds constituting the offence on the basis that his role was suspicious – Such vague finding is not sufficient to implead any person as accused.

धारा 319 – (i) किसी व्यक्ति को अभियुक्त के रूप में समन करने की शक्ति – प्रक्रम – क्या विचारण न्यायालय निर्णय में ऐसा आदेश पारित कर सकती है? अवधारित, नहीं।

(ii) धारा 319 का अवलंब लेने के आधार – विचारण न्यायालय ने अपराध गठित करने वाले कारकों पर विचार किये बिना आदेश इस आधार पर पारित किया कि उसकी भूमिका संदिग्ध थी – ऐसा अस्पष्ट निष्कर्ष किसी व्यक्ति को अभियुक्त के रूप में आलिप्त करने हेतु पर्याप्त नहीं। **21** **34**

Section 319 – Summoning of additional accused – Opportunity of hearing.

धारा 319 – अतिरिक्त अभियुक्त को समन किया जाना – सुनवाई का अवसर। **22** **36**

Section 451/ 457 – See section 47(1) of the Excise Act, 1915 and section 39 of the Wild Life (Protection) Act, 1972.

धारा 451/457 – देखें आबकारी अधिनियम, 1915 (म.प्र.) की धारा 47 (1) एवं वन्य प्राणी (संरक्षण) अधिनियम, 1972 की धारा 39। **23** **37**

CRIMINAL TRIAL:
आपराधिक विचारण:

– Burden of proving a fact which was especially within the knowledge of accused – Has to be discharged by the accused – But to invoke section 106 of the Evidence Act, the prosecution has to establish the foundational fact.

– उस तथ्य को साबित करने का भार जो विशेषतः अभियुक्त के ज्ञान में था – अभियुक्त को ही निर्वहनित करना होगा – परंतु साक्ष्य अधिनियम की धारा 106 का अवलंब लेने के लिये अभियोजन को बुनियादी तथ्यों को स्थापित करना होगा ।

27(ii) **43**

– Sentence – Leniency – Only because an accused remained on bail for a long time cannot be a ground by itself to show leniency – Factors for deciding question of showing leniency depends upon the facts and circumstances of the case and conduct of the accused cumulatively.

सजा – उदारता – केवल अभियुक्त का लंबे समय तक प्रतिभूति पर रहना मात्र स्वमेव उदारता दर्शित करने के लिये आधार नहीं हो सकता – उदारता दर्शित करने के लिये आवश्यक कारक प्रकरण के तथ्यों एवं परिस्थितियों तथा अभियुक्त के आचरण पर समेकित रूप से निर्भर करते हैं । **24** **39**

EVIDENCE ACT, 1872

साक्ष्य अधिनियम, 1872

Sections 3, 45 and 118 – Acquittal of co-accused – Effect.

धाराएं 3, 45 एवं 118 – सह–अभियुक्त की दोषमुक्ति – प्रभाव।

35 (ii) **62**

Sections 3 and 114 (a) – Offence of dishonestly receiving stolen property – Disclosure statements made by co-accused solely does not suffice to draw a presumption u/s 114 (a) of Evidence Act.

धाराएं 3 एवं 114 (क) – चुराई हुई सम्पत्ति बेईमानी पूर्वक प्राप्त करने का अपराध – अभियुक्त एवं अन्य सह–अभियुक्तों के प्रकटन कथन मात्र साक्ष्य अधिनियम की धारा 114 (क) के अन्तर्गत उपधारणा आकर्षित करने के लिये पर्याप्त नहीं है।

30 (i) **49**

Sections 8, 32, 54 and 56 – Judicial notice in criminal cases – When permissible?

धाराएं 8, 32, 54 एवं 56 – दाण्डिक मामलों में न्यायिक अवेक्षा – कब अनुमत?

32 (ii) **55**

Section 9 – Principle of parity – The Court cannot make a distinction between two accused, this will amount to discrimination.

धारा 9 – समानता का सिद्धांत – न्यायालय दो अभियुक्तों के मध्य अंतर नहीं कर सकता, यह पक्षपाती होगा। **31(ii)** **51**

Section 11 – Plea of *alibi* – Standard of "strict scrutiny" is required when such plea is taken – When prosecution relied on eye witness then something more than ocular statement ought to have been present to prove the *alibi*.

Criminal history of deceased – Simply because the deceased has a chequered past which constituted several run-ins with the law, cannot be a factor to give benefit thereof to accused.

धारा 11 – अन्यत्र उपस्थिति का अभिवाक् – जब ऐसा अभिवाक् लिया जाता है तो ''सख्त जांच'' के मानक की आवश्यकता होती है – जब अभियोजन पक्ष चक्षुदर्शी साक्षी

पर विश्वास करता है तो अन्यत्र उपस्थिति का अभिवाक् साबित करने के लिए मौखिक कथन से कुछ अधिक उपलब्ध होना चाहिए था।

मृतक की आपराधिक पृष्ठभूमि – केवल इसलिए कि मृतक का विधि के साथ संघर्षरत उतार – चढ़ाव युक्त अतीत है, अभियुक्त को लाभ देने का कारक नहीं हो सकता।

17 (ii) & (iii) 26

Section 27 – (i) Memorandum and recovery – Short span of time between statement, recovery and arrest – Whether such situation casts any doubt on the prosecution case? Held, No.

(ii) Custody – Connotation of – It has a wider meaning for the purpose of section 27 of the Act.

धारा 27 – (i) ज्ञापन और बरामदगी – कथन, बरामदगी और गिरफ्तारी के मध्य कम समयांतराल – क्या ऐसी स्थिति अभियोजन मामले पर कोई संदेह उत्पन्न करती है ? अभिनिर्धारित, नहीं।

(ii) अभिरक्षा – आशय – इसका व्यापक अर्थ है। **25 40**

Section 32 (1) – (i) Dying declaration – Tutored and doubtful – Before convicting the accused on the basis of sole dying declaration, court must come to the conclusion that it is trustworthy, reliable and one which inspires confidence.

(ii) Dying declaration against several accused – Interpretation of.

धारा 32 (1) – (i) मृत्युकालीन कथन – सिखाया हुआ और संदिग्ध – एकमात्र मृत्युकालीन कथन के आधार पर अभियुक्त को दोषी ठहराने से पहले, न्यायालय को इस निष्कर्ष पर पहुंचना चाहिए कि यह भरोसेमंद, विश्वसनीय और विश्वास प्रेरित करता है।

(ii) अनेक अभियुक्त के विरूद्ध मृत्युकालीन कथन – निर्वचन। **26 41**

Section 106 – Circumstantial evidence – Burden of proof – The law does not enjoin a duty on the prosecution to lead such evidence which is almost impossible or extremely difficult to be led.

Circumstantial evidence – Additional link.

धारा 106 – परिस्थितिजन्य साक्ष्य – सबूत का भार – पूर्ण एकांतता में कारित अपराध – विधि अभियोजन पक्ष से ऐसे साक्ष्य को प्रस्तुत करने की अपेक्षा नहीं करती है जिसे प्रस्तुत कर पाना असंभव हो या अत्यन्त कठिन हो ।

परिस्थितिजन्य साक्ष्य – अतिरिक्त कड़ी। **27 (i) & (iii) 43**

Section 114 (g) – Appreciation of evidence – Merely because minor was allegedly raped, accused cannot be mechanically held guilty.

धारा 114 (छ) – साक्ष्य का मूल्यांकन – अवयस्क से बलात्कार होने के कारण अभियुक्त को मशीनी तौर पर दोष सिद्ध नहीं किया जा सकता। **34 (i) 60**

Section 118 – (i) Child witness – Duty of the Trial Court before recording evidence of child.

(ii) Testimony of child witness – Court must make careful scrutiny of evidence of child witness to rule out the possibility of being tutored.

धारा 118 – (i) बाल साक्षी – बालक की साक्ष्य का अभिलेखन करने के पूर्व न्यायिक अधिकारीका यह कर्तव्य है ।

(ii) बालसाक्षी की परिसाक्ष्य – न्यायालय को बालसाक्षी के सिखाये जाने की संभावना को दूर करने के लिए उसकी साक्ष्य का सावधानी पूर्वक परीक्षण करना चाहिए।

28 46

EXCISE ACT, 1915 (M.P.)

आबकारी अधिनियम, 1915 (म.प्र.)

Section 47 (1) – Interim custody of vehicle – Magistrate may proceed with the trial but regarding confiscation, order of Executive Magistrate will be final.

धारा 47 (1) – वाहन की अंतरिम अभिरक्षा – मजिस्ट्रेट विचारण जारी रख सकता है किंतु राजसात करने के संबंध में कार्यपालक मजिस्ट्रेट का आदेश अंतिम होगा।

23 (i) 37

GUARDIANS AND WARDS ACT, 1890

संरक्षकता एवं प्रतिपाल्य अधिनियम, 1890

Section 12 – See sections 21 and 31 of the Protection of Women from Domestic Violence Act, 2005

धारा 12 – देखें घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 की धाराएं 21 एवं 31 **44 78**

HINDU SUCCESSION ACT, 1956

हिन्दू उत्तराधिकार अधिनियम, 1956

Section 6 and proviso to section 6 (1) – (i) Coparcenary property – If the ancestral property is in the hands of a sole surviving coparcener, then the said property turns into separate property.

(ii) Right of female child – Such testamentary disposition of property which had taken place before 20th day of December, 2004 is saved by proviso to section 6 (1).

धारा 6 एवं धारा 6 (1) का परन्तुक – (i) सहदायिक संपत्ति – यदि पैतृक संपत्ति एकमात्र जीवित सहदायिक के हाथों में है तो वह संपत्ति पृथक संपत्ति में परिवर्तित हो जाती है ।

(ii) पुत्री का अधिकार – ऐसा वसीयती व्ययन जो कि दिनांक 20 दिसम्बर 2004 के पूर्व हुआ हो वह धारा 6 (1) के परन्तुक से व्यावृत्त होगा। **29** **47**

INDIAN PENAL CODE, 1860

भारतीय दण्ड संहिता, 1860

Sections 34, 148, 149, 201 and 302 – Conversion of charge from section 149 to Section 34 – If the common object does not necessarily involve a common intention, the substitution of section 34 for section 149 might result in prejudice to the accused and therefore, ought not be permitted.

धाराएं 34, 148, 149, 201 एवं 302 – धारा 149 से धारा 34 में आरोप का परिवर्तन – यदि सामान्य उद्देश्य में आवश्यक रूप से एक सामान्य आशय सम्मिलित नहीं है, तब धारा 149 के स्थान पर धारा 34 के प्रति स्थापन का परिणाम अभियुक्त के प्रति पूर्वाग्रह हो सकता है अतः इसकी अनुमति नहीं दी जानी चाहिए। **19 (iii)** **29**

Sections 120-B and 411 – Criminal conspiracy – Requirement of agreement between two or more persons.

धाराएं 120–बी एवं 411 – आपराधिक षडयंत्र – दो और अधिक व्यक्तियों के मध्य करार की आवश्यकता। **30** **49**

Sections 148, 149, 302 and 307 – See section 154 of the Criminal Procedure Code, 1973 and section 11 of the Evidence Act, 1872.

धाराएं 148, 149, 302 एवं 307 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 154 और साक्ष्य अधिनियम, 1872 की धारा 11 । **17** **26**

Sections 149 and 395 – Unlawful assembly – No identification parade was held – Appellant was part of a big mob and witness were not acquainted with him earlier – Evidence found to be unreliable – Conviction set aside.

धाराएं 149 एवं 395 – विधि विरूद्ध जमाव – कोई शिनाख्ती परेड नहीं हुई थी – अपीलार्थी एक बड़ी भीड़ का सदस्य था एवं साक्षी उसे पूर्व से नहीं जानती थी – साक्ष्य को विश्वसनीय नहीं माना गया – दोषसिद्धि को अपास्त किया गया।

31 (i) **51**

Act/ Topic	Note No.	Page No.
Section 302 – Murder – Proof of.		
धारा 302 – हत्या – प्रमाण।	**32 (i)**	**55**
Section 304–B – See section 32(1) of the Evidence Act, 1872.		
धारा 304–ख – देखें साक्ष्य अधिनियम, 1872 की धारा 32 (1)।	**26**	**41**
Sections 308 and 338 – Alteration of conviction from section 308 to one u/s 338 of IPC in absence of charge u/s 338 of IPC – Whether permissible? Held, Yes.		
धाराएं 308 एवं 338 – धारा 338 भा.दं.सं. के अधीन आरोप के अभाव में धारा 308 के अंतर्गत दोषसिद्धि का धारा 338 भा.दं.सं. में परिवर्तन – क्या अनुज्ञात है? अभिनिर्धारित, हॉ।	**33**	**58**
Sections 342, 376 (1) and 376 (2) – See section 114 (g) of the Evidence Act, 1872 and sections 3 (a) and 4 of the Protection of Children from Sexual Offences Act, 2012.		
धाराएं 342, 376 (1) एवं 376 (2) – देखें साक्ष्य अधिनियम, 1872 की धारा 114 (छ) और लैंगिक अपराधों से बालकों का संरक्षण अधिनिमय, 2012 की धाराएं 3(क) एवं 4।	**34**	**60**
Sections 342 and 376 (2) (g) – Gang rape – Proof.		
धाराएं 342 एवं 376 (2) (छ) – सामूहिक बलात्संग – प्रमाण।	**35 (i)**	**62**
Section 376 – Rape – Appreciation of evidence.		
धारा 376 – बलात्संग – साक्ष्य का मूल्यांकन।	**37**	**68**
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007		
किशोर न्याय (बालकों की देख रेख और संरक्षण) नियम, 2007		
Rule 12 – Determination of age – Documents – Rule 12 reveals that while conducting enquiry regarding age, Court should consider the documents as mentioned in Rule 12 (1) (i) to (iii) – However, it is upon the Court to whether or not to rely upon such documents without any further enquiry.		
नियम 12 – आयु का निर्धारण – दस्तावेज – नियम 12 से स्पष्ट है कि न्यायालय आयु के संबंध में जांच करते समय नियम 12 (1) (i) से (iii) में उल्लेखित दस्तावेजों पर विचार करेगा – किंतु यह न्यायालय पर निर्भर करेगा कि वह इन दस्तावेजों पर बिना अग्रिम जाँच के विश्वास करे या न करें।	**38**	**69**

LIMITATION ACT, 1963

परिसीमा अधिनियम, 1963

Section 5 – Condonation of delay – While appreciating reason for condonation of delay, Court should distinguish between an "explanation" and an "excuse".

धारा 5 – विलंब क्षमा – विलंब को क्षमा करने के कारण पर विचार करते समय, न्यायालय को ''स्पष्टीकरण'' और ''बहाने'' के बीच अंतर करना चाहिए। **39** **70**

MOTOR VEHICLES ACT, 1988

मोटरयान अधिनियम, 1988

Section 10 – (i) Driving licence – If a person is licensed to drive a particular category of vehicle but there is lack of endorsement to drive a commercial vehicle, will not exonerate the insurance company.

(ii) Offending vehicle – Motor cycle – Driver was having a licence to drive a Light Motor Vehicle (Non-transport) and Heavy Motor Vehicle – He was not licensed to drive a two wheeler which is a vehicle of separate category – Tribunal righty orderd for pay and recover.

धारा 10 – (i) चालन अनुज्ञप्ति – यदि किसी व्यक्ति के पास किसी विशिष्ट श्रेणी के वाहन को चलाने की अनुज्ञप्ति है किंतु व्यावसायिक वाहन चालन के संबंध में पृष्ठांकन नहीं है तब बीमा कंपनी को विमुक्त नही ंकिया जा सकता।

(ii) दुर्घटनाकारी वाहन – मोटरसाइकिल – चालक के पास हल्के मोटर यान या (गैर–परिवहन) और भारी मोटर यान चलाने की अनुज्ञप्ति थी – उसके पास दो पहिया वाहन चलाने की अनुज्ञप्ति नहीं थी जो कि एक अलग श्रेणी का वाहन है – अधिकरण द्वारा पारित भुगतान करे और वसूलें का आदेश उचित। **40** **72**

Sections 166 and 173 – Compensation – Reduction of.

धाराएं 166 एवं 173 – प्रतिकर – कटौती। **41** **73**

Sections 166 and 173 – (i) Motor accident claim – Plea of false implication of vehicle – Burden of proof is on the insurance company.

(ii) Valid and effective driving license – Mere absence of endorsement in the driving license is not sufficient to exonerate the insurance company.

धाराएं 166 एवं 173 – (i) मोटर दुर्घटना दावा – वाहन असत्य रूप से आलिप्त किये जाने का अभिवाक् – सबूत का भार बीमा कंपनी पर।

(ii) वैध और प्रभावी वाहन चालन अनुज्ञप्ति – केवल वाहन चालन अनुज्ञप्ति में पृष्ठांकन का अभाव बीमा कंपनी को विमुक्त करने के लिए पर्याप्त नहीं है।

42 75

NEGOTIABLE INSTRUMENTS ACT, 1881

परक्राम्य लिखत अधिनियम, 1881

Sections 141 (1) and 141 (2) – (i) Offence of dishonor of cheque by company/ partnership firm – Conditions required.

(ii) Criminal liability – Attracted only against those, who at the time of commission of offence, were in-charge and responsible for conduct of business – If the Director wants the process to be quashed, he must make out a case that trial against him would be an abuse of process of Court.

धाराएं 141(1) एवं 141 (2) – (i) कंपनी/साझेदारी फर्म द्वारा चेक के अनादरण का अपराध – आवश्यक शर्त।

(ii) आपराधिक दायित्व – केवल उन व्यक्तियों के विरूद्ध आकर्षित होता है, जो अपराध कारित करते समय व्यवसाय के संचालन के लिए प्रभारी और जिम्मेदार थे।

43 76

PRACTICE AND PROCEDURE:

प्रथा एवं प्रक्रिया:

– If a counsel withdraws his *vakalatnama*, then in the normal course the Trial Court should issue a notice to the concerned party to engage another counsel – Such party should not be proceeded *ex-parte*.

यदि अधिवक्ता ने अपना वकालतनामा वापस ले लिया है तब सामान्य अनुक्रम में विचारण न्यायालय को संबंधित पक्षकार को अन्य अधिवक्ता नियुक्त करने के लिये सूचनापत्र जारी करना चाहिए – ऐसे पक्षकार के विरूद्ध एकपक्षीय कार्यवाही नहीं की जानी चाहिए। **8 (ii) 13**

PREVENTION OF CORRUPTION ACT, 1988

भ्रष्टाचार निवारण अधिनियम, 1988

Sections 13 and 19 – Application for discharge of accused on the ground of invalidity of sanction – Maintanability.

धाराएं 13 एवं 19 – अभियुक्त के उन्मोचन हेतु आवेदन – मंजूरी की अवैधता का आधार पर पोषणीयता। **20** **33**

Section 19 – (i) Sanction for prosecution – Applicability.

(ii) Discharge – Accused was charged with offences both under Prevention of Corruption Act and Indian Penal Code – He was discharged from offence u/s 19 of the Act – This alone cannot be a ground for not prosecuting accused for offences under IPC.

धारा 19 – (i) अभियोजन के लिये मंजूरी – प्रयोज्यता।

(ii) उन्मोचन – अभियुक्त भ्रष्टाचार निवारण अधिनियम एवं भारतीय दण्ड संहिता दोनों के अंतर्गत अपराधों में आरोपित किया गया था – उसे अधिनियम की धारा 19 के अंतर्गत मंजूरी के अभाव में भ्रष्टाचार निवारण अधिनियम के अंतर्गत अपराध से उन्मोचित किया गया, अभियुक्त को भारतीय दण्ड संहिता के अंतर्गत अपराधों में अभियोजित न करने का केवल यही आधार नहीं हो सकता। **18** **28**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

लैंगिक अपराधों से बालकों का संरक्षण अधिनिमय, 2012

Sections 3, 4, 5 and 6 – See section 313 of the Criminal Procedure Code, 1973

धाराएं 3, 4, 5 एवं 6 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 313

36 **64**

Sections 3 (a) and 4 – See sections 342, 376 (1) and 376 (2) of the Indian Penal Code, 1860, section 114 (g) of the Evidence Act, 1872 and sections 53-A and 164-A of the Criminal Procedure Code, 1973

धाराएं 3 (क) एवं 4 – देखें भारतीय दण्ड संहिता, 1860 की धाराएं 342, 376(1) एवं 376 (2), साक्ष्य अधिनियम, 1872 की धारा 114 (छ) और दण्ड प्रक्रिया संहिता, 1973 की धाराएं 53–क एवं 164–क **34** **60**

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005

Sections 21 and 31 – Temporary custody – Only a woman subjected to domestic violence or a person applying on her behalf can claim temporary custody under the Act.

धाराएं 21 एवं 31 – अस्थाई अभिरक्षा – सिर्फ वही महिला जिसके साथ घरेलू हिंसा हुई है अथवा उस की तरफ से जो व्यक्ति आवेदन दे रहा है वही अधिनियम के अंतर्गत अस्थाई अभिरक्षा मांग सकता है। **44** **78**

REGISTRATION ACT, 1908

रजिस्ट्रीकरण अधिनियम, 1908

Section 17 (1) (e) – Registration – Family settlement through *"Panch Faisla"* – Whether registration of such document is required? Held, No.

धारा 17 (1) (ङ) – पंजीयन –''पंच फैसला'' के माध्यम से पारिवारिक व्यवस्था – क्या ऐसे दस्तावेज का पंजीकरण आवश्यक है? अभिनिर्धारित, नहीं। **45** **79**

Sections 17 (1-A) and 49 – Unregistered agreement to sale – Admissibility.

धाराएं 17 (1–क) एवं 49 – विक्रय के लिए अपंजीकृत करार – ग्राह्यता। **46** **80**

Section 17 (2) – Unregistered document – Admissibility.

धारा 17 (2) – अपंजीकृत दस्तावेज – ग्राह्यता। **47** **81**

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISTION, REHABILITATION AND RESETTLEMENT ACT, 2013

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Section 63 – Jurisdiction of civil court – After passing of final award, suit cannot proceed further as u/s 63 of the Act civil court has no jurisdiction to record any finding on the validity of the acquisition proceedings.

धारा 63 – सिविल न्यायालय का क्षेत्राधिकार – अंतिम पंचाट पारित होने के उपरांत वाद आगे नहीं चल सकता क्योंकि अधिनियम की धारा 63 के अनुसार व्यवहार न्यायालय के पास ऐसा कोई क्षेत्राधिकार नहीं है जिससे कि वह अधिग्रहण की कार्यवाही की वैधता के संबंध में कोई निष्कर्ष दे सके। **7 (i)** **12**

SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORECEMENT OF SECURITY INTEREST ACT, 2002

वित्तीय अस्तियों का प्रतिभूतिकरण एवं पुनर्गठन और प्रतिभूति हित प्रवर्तन अधिनियम, 2002

Sections 13 and 14 – (i) Application for possession of secured asset – Competent authority – CJM is competent to decide such application and such order is not hit by any illegality or incompetency.

(ii) Notice to borrower – Whether it is required to issue notice to the borrower or third person before deciding application u/s 14 of the SARFESI Act? Held, No – Opportunity of hearing is not required to be extended to the borrower or any third party.

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(ii) ऋणी को नोटिस – क्या सरफेसी अधिनियम की धारा 14 के अंतर्गत प्रस्तुत आवेदन निराकृत करने के पूर्व ऋणी या तृतीय व्यक्ति को नोटिस जारी करना आवश्यक है? अभिनिर्धारित, नहीं – सुनवाई का ऐसा कोई अवसर ऋणी या किसी तृतीय पक्ष को देने की आवश्यकता नहीं है। **48 83**

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Act/ Topic	Note No.	Page No.
TRANSFER OF PROPERTY ACT, 1882		
सम्पत्ति अंतरण अधिनियम, 1882		
Sections 54 and Proviso to 58 (c) – Sale or mortgage by conditional sale – Determination.		
धाराएं 54 एव 58 (ग) का परन्तुक – विक्रय अथवा सशर्त विक्रय द्वारा बंधक – अभिनिर्धारण।	**50**	**87**

PART-III
(CIRCULARS/NOTIFICATIONS)

1.	Notification dated 23.02.2024 regarding date of enforcement of the Bharatiya Nagarik Suraksha Sanhita, 2023 Bharatiya Sakshya Adhiniyam,2023 and Bharatiya Nyaya Sanhita, 2023	**1**

EDITORIAL

Esteemed readers,

I take immense pride in presenting this edition of the JOTI JOURNAL which has entered its glorious 30th year of publication. This JOURNAL running since 1995, is a repository of knowledge and wisdom and boasts of a splendid collection of case laws, articles, legal problems, guidelines, relevant Acts and amendments. JOTI JOURNAL is indeed an invaluable asset of the Madhya Pradesh State Judicial Academy.

This year had a wonderful start as the Madhya Pradesh Nyayadheesh Sangh organized the X Biennial Madhya Pradesh State Judicial Officers' Conference on 13th & 14th January, 2024 at Ravindra Bhawan, Bhopal. This Conference gave an opportunity to listen to eminent Judges of the Supreme Court such as Hon'ble Shri Justice Sanjeev Khanna, Hon'ble Shri Justice Anniruddha Bose, Hon'ble Shri Justice Abhay S. Oka, Hon'ble Shri Justice Vikram Nath and Hon'ble Shri Justice J. K. Maheshwari as well as our Chief Justice Hon'ble Shri Justice Ravi Malimath and noted speakers on divergent topics affecting our day-to-day court functioning. It is also a matter of delight that our Hon'ble Chief Justice interacted a great deal with the members of the district judiciary. It is very rare that we get to witness an event of this grandeur and also to interact with Hon'ble Chief Justice which boosted the morale of the Judicial Officers of Madhya Pradesh.

On the momentous occasion of India's 75th Republic Day, the Hon'ble Chief Justice unfurled the National Flag at the Academy on 26th January, 2024. Readers can take a glimpse of this event from the photograph section of this edition. It is noteworthy that the Hon'ble Chief Justice in his Republic Day address has announced the launch of 'Vision 2047' with the aim that by 2047, no case remains pending for beyond a year from its institution at Madhya Pradesh. Let us put in our best efforts in materializing this ambitious goal. The Civil Judges, Junior Division of Batch of 2022 concluded its Final Phase training on 30.01.2024. It was a heart warming and proud moment for the Academy and personally for me too to see the Judicial Officers ready to render their services for the cause of justice. The institutional phase is the longest training course and to witness the transition in their personalities as Judicial Officers over a period of one year has been a gratifying experience.

The Refresher Course for the Civil Judges completing 5 years in the service was conducted from 05.02.2024 to 10.02.2024. This Refresher Course conducted at an interval of 5 years of completion of service, offers a good chance to the in-service Judges to revisit the core law areas, raise their legal issues and update their knowledge. The Academy is also working towards enriching the technological knowledge of the advocates and the ministerial staff by organizing ECT programmes. So far, two programmes have been conducted in the series in the year.

I would like to implore our readers to please give a read to 'OUR LEGENDS' of this edition that being, Hon'ble Shri Justice A.P. SEN. His Lordship is well known for rendering a verdict safeguarding the personal liberty of the citizens during the emergency. His view in the landmark case of ***Shivkant Shukla v. ADM, Jabalpur, 1975 MPLJ 66*** is a revered stand even today. I hope our readers will draw inspiration from His Lordship's journey.

It is important to make mention of the new Criminal Laws: Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023 for which the date of enforcement has been notified as 1st July, 2024. In order to better equip our Judicial Officers to deal with this transformation, the Academy is preparing a research pool of trainers who will travel to the districts and conduct training sessions on the new criminal laws. The training shall focus on highlighting the changes introduced in the new laws and pondering upon the way forward. Apart this, headnotes from the leading cases decided by the Hon'ble Supreme Court and High Court have been included, as always.

I would like to conclude by quoting ***Judge's Prayer*** from the *Nyaya diary* conceptualized by our former Chief Justice Shri Shivdayal Srivastava (reference may be made to the article "OUR LEGENDS" from December, 2023 edition of this Journal):

> *Supreme Lord of all truth, knowledge, and judgment, without whom nothing is true, or wise or just!*
>
> *Look down with mercy upon Thy servants whom Thou sufferest to sit in earthly seats of justment to administer Thy justice to Thy people! Enlighten their ignorance and inspire them with Thy judgments!*
>
> *Grant me grace, truly and in partially to administer Thy justice and to maintain Thy truth to the glory of Thy Name! And of Thy infinite mercy so direct and dispose my heart that I may this day fulfil all my duty in Thy fear and fall into no error of judgment!*
>
> *Give me grace to hear patiently, to consider diligently, to understand rightly, and to decide justly!*
>
> *Grant me due sense of humility, that I may not be misled by my wilfulness, vanity or egotism.*

This poem moved me for it captivates the emotions of a Judge so beautifully. May we all succeed in this onerous duty bestowed upon us.

Best wishes

Krishnamurty Mishra
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Hon'ble Chief Justice Shri Ravi Malimath unfurling the National Flag on 26.01.2024

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh interacting with the Civil Judges, Junior Division, Batch of 2022 on Republic Day, 2024

Hon'ble Shri Justice Sujoy Paul, Chairman, Governing Council, MPSJA delivering a session on "Judiciary and media : Balancing the scale of ethics" to the participants of Institutional Advance Training Course for District Judges (Entry Level) (20.02.2024)

FINAL PHASE INSTITUTIONAL INDUCTION COURSE FOR THE NEWLY APPOINTED CIVIL JUDGES, JUNIOR DIVISION OF 2022 BATCH (16.01.2024 to 30.01.2024)

Group – I

Group – II

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Key issues relating to Forest & Wild Life Laws
(02.02.2024 & 03.02.2024)

Refresher Course for Civil Judges (on completion of 5 years of service) (Group - I)
(05.02.2024 to 10.02.2024)

PART – I

MESSAGE DELIVERED ON THE 75TH REPUBLIC DAY BY HON'BLE SHRI JUSTICE RAVI MALIMATH, CHIEF JUSTICE, HIGH COURT OF MADHYA PRADESH

My esteemed Sister & Brother Judges,

Shri Prashant Singh, Advocate General, State of Madhya Pradesh,

Shri Pushpendra Yadav, Deputy Solicitor General, Union of India,

Shri Prem Singh Bhadouria, Chairman, State Bar Council of Madhya Pradesh,

Shri Sanjay Verma, President, High Court Bar Association, Jabalpur,

Shri Praveen Dubey, Secretary, High Court Advocates' Bar Association, Jabalpur,

Smt. Shobha Menon, Senior Advocate & President, Senior Advocates' Council, Jabalpur,

Shri Alok Awasthi, Principal District & Sessions Judge, Jabalpur and the other Judicial Officers at Jabalpur,

Shri R.C.S. Bisen, Member Secretary and other officers of the M.P. State Legal Services Authority,

Shri Krishnamurty Mishra, Director and other officers of the M.P. State Judicial Academy,

The Registrar General and other Officers of the Registry,

All the young Judicial Officers who are undergoing training in the M.P. State Judicial Academy,

Office bearers of the Bar Council,

Senior Advocates and other members of the Bar,

The staff and employees of the High Court of Madhya Pradesh. I notice that many of them have come with their children, a warm welcome to everyone.

Ladies and Gentlemen,

I wish you all a very happy 75th Republic Day.

The Republic Day is an occasion to celebrate. It is a day to reflect. It is a day to assess our contribution to the institution and to the Nation. A lot has happened over the course of the year in Madhya Pradesh. It is my belief that the judiciary is accountable. Society needs to be cognizant of what we have achieved and what we are in the process of achieving. It is our duty to inform the citizens about our successes as well as our failures. Whosoever wishes to learn about the contributions of the judiciary must be apprised of the same. With this in mind, in the year 2023, I presented an overview of the undertakings by the Madhya Pradesh judiciary for the year 2022. I will now present a briefing on a few of our many undertakings for the year 2023, for the positive development of the justice delivery system of Madhya Pradesh. I will also touch upon what we have in store for the future.

I would like to commence with our non-judicial, noble initiative, *Boond*. Over a period of 4 months, from 1st September, 2023 to 31st December, 2023, an aggregate sum of Rs.5,90,000/- was collected from the Chief Justice and Judges of the High Court of Madhya Pradesh. This amount was used to procure and distribute food, clothing, mattresses, medicines and many items amongst the poor and vulnerable members of society across Madhya Pradesh. Blankets and clothes that protect against the harsh winters have been the special focus this season. What we receive is incomparable to the amount that we are giving, but it does make a difference to someone's lives and it is a start. Hearty congratulations to each judge of the Madhya Pradesh High Court who has contributed to this noble cause.

With respect to appointments and filling up of vacancies in the district judiciary, two advocates were appointed as District Judges (Entry Level). One judicial officer amongst the Civil Judges, Senior Division on successfully passing the limited competitive exam, was appointed as a District Judge (Entry Level).

137 Civil Judges, Junior Division were appointed and administered oath followed by the appointment of six more Civil Judges, Junior Division.

174 Civil Judges, Junior Division were promoted as Civil Judges, Senior Division. 80 Civil Judges, Senior Division have been promoted as District Judges. Therefore, in all, 254 judicial officers were promoted.

On successful completion of the probation period, 403 Civil Judges, Junior Division were confirmed. Three District Judges (Entry Level) were granted Selection Grade Scale. 202 judicial officers of the Madhya Pradesh Judicial Service cadre were screened on completion of the qualifying service of 10 years or on attaining the age of 50 years, whichever was less.

1,178 representations seeking up-gradation of ACRs for the years 2016 to 2020 were considered and effected, when required.

The recruitment process for 21 posts of M.P. Higher Judicial Service District Judge (Entry Level) Direct Recruitment from the Bar is ongoing. The recruitment for 199 posts of Civil Judge, Junior Division (Entry Level) Exam, 2022 is ongoing.

156 Advocates of the District Courts and 6 Advocates of the High Court have been appointed as Commissioner of Oaths.

With respect to the staff and employees, 41 applications for compassionate appointment were approved and appointment orders were issued. 303 Class III employees and 110 Class IV employees have been promoted. The selection process for the appointment of 915 persons in Class III cadre and 456 persons in Class IV (Contingency Fund Employees) is under progress. Regular appointments were made to two posts of Personal Assistants, two posts of Stenographers, three posts of Horticulturists and six of Junior Judicial Translators. 25 employees belonging to Class IV cadre were promoted to the higher posts.

The departmental promotions after the amendment of the Madhya Pradesh Services (Recruitment, General Conditions of Services, Conduct, Classification, Control and Appeal) Rules, 2017 were effected for selecting 4 posts of Senior

Judicial Assistants. 898 candidates were selected for Class-III posts of Stenographer Grade-2, Stenographer Grade-3 and such other posts.

The recruitment process for 40 posts of Junior Judicial Assistant and 23 posts of Data Processing Assistant in the High Court is underway. Recruitment process for 5 posts of Technical Assistant (Computers) is also under progress.

Physical infrastructure was strengthened over the course of 2023. The foundation stone for the new annexe building of the High Court of Madhya Pradesh, Jabalpur was laid by the Hon'ble President of India on 27th September, 2023. Construction work has since commenced from 1st January, 2024.

New court buildings, consisting of an aggregate of 39 courtrooms were inaugurated at Vidisha, Ganjbasoda, Maheshwar and Sonkatch. A 10 courtroom building at the District Court Mandla, a 4 courtroom building at the District Court, Morena were also inaugurated. Child friendly court buildings at Tonkkhurd, Khategaon, Sohagpur, Beohari and Jaisinghnagar were inaugurated. These projects were not only completed within the allocated budget, but there were also a savings of Rs.29.40 Crores. This reflects the economical approach taken by the High Court.

E-Seva Kendras were inaugurated at Dheemarkheda, Barhi, District Court Katni, District Court Mandsaur and District Court Dhar. Mediation Centres were inaugurated at Mahidpur, Mehgaon, Harsood, Tonkkhurd, Deori, Rehli, Budhar, Ichhawar, Budhni, Hathod, Sonkachchha, Deosar, Birsinghpur-Pali, Rajendragram, Beohari and Sailana. As with the courtroom projects, the buildings were also constructed in an economical and sturdy manner resulting in a total savings of Rs.131.92 Lakhs.

Certain buildings are in the final stages of completion, including a new court building at Indore with 169 courtrooms, a new court building at Rewa with 42 courtrooms and a new court building at Gwalior with 83 courtrooms.

The proposal for construction of a new building for the Madhya Pradesh State Judicial Academy, amounting to Rs.498.41 Crores has been sent to the State Government and is awaiting approval. The proposal for construction of the High Court annexe building at Indore, consisting of 31 court halls and amenities with an

estimated cost of Rs.287.52 Crores has also been sent to the State Government and is awaiting approval. The proposal for construction of the High Court annexe building at Gwalior consisting of 31 court halls and amenities with an estimate of Rs.397 Crores has been forwarded to the State Government for approval as well.

There are various other ongoing projects for the district courts that are nearly complete, aggregating to 190 courtrooms across Madhya Pradesh.

A new Court Complex at Gwalior housing 83 courtrooms and a new Court Complex at Agar with 10 courtrooms are both at the finishing stages.

A new Court Complex at Rewa consisting of 40 courtrooms, a new Court Complex at Sabalgarh with 10 courtrooms, a new Court Complex at Karera comprising of 5 courtrooms, a three-storeycourt building at Alirajpur and a Child Friendly Court at Sitamau are 96-99% complete.

A new Court Complex at Damoh with 13 courtrooms, a new Court Complex at Neemuch with 20 courtrooms, a new Family Court Building at Burhanpur, 3 additional courtrooms at Raisen, Child Friendly Courts at Mauganj, Garoth, Burhanpur are also very close to completion.

Technology has been substantially enhanced during 2023. 1,502 LAN points have been installed at various District Courts to improve IT connectivity. 1,100 access points across 47 Districts Courts were also installed. 3,408 cases were heard through video conferencing at the High Court. 1,25,771 cases were heard by video conferencing at the District Courts.

The Integrated Video Surveillance System (IVSS) was inaugurated on 21st December, 2023. This is currently being implemented at the District Court, Jabalpur and at the Tehsil Courts at Patan and Sihora. The Courtroom Live Audio-Visual Streaming System, namely CLASS and the OTT Platform were also inaugurated on 21st December, 2023. It is operational at one District Court at Jabalpur and one Tehsil courtroom each at Patan and Sihora. 572 face recognition systems have been installed and commissioned at the High Court and at the Trial Courts.

Digitization of approximately 4,63,289 files containing 1,50,03,312 pages have been completed over the last year at the High Court. At the District Judiciary, digitization of approximately 3,50,282 files consisting of 2,78,78,506 pages have been completed during the last year. 5,717 cases were filed at the High Court of Madhya Pradesh through e-filing.

Prominence was given to the ILR, resulting in a substantial increase in the number of annual subscribers. The 5 years' Digest for the period 2016-2020 was released in November 2023, i.e. almost 2 years in advance. The 2 years' Digest of the ILR for the year 2021-2022 was also expedited and released in December 2023. A Yearly Digest of the ILR was introduced and such digest for the year 2023 was released on January 2024. Hereinafter, the Yearly Digest of the ILR will be made available within the Republic Day of every year.

Various programmes were undertaken by the Madhya Pradesh State Judicial Academy. A three-day orientation programme was introduced for newly appointed Civil and District Judges. Capacity building programmes for advocates, seminars on sensitive topics, training programmes for advocates and other such sessions for various judicial and non-judicial professionals were conducted at the Judicial Academy. A two-day State Consultation on issues of child protection titled "Vimarsh" was organized by the Juvenile Justice Committee at the Judicial Academy. An action plan for the years 2023 to 2027 for protection of children in the State of Madhya Pradesh has been developed and is being implemented.

Various initiatives were also undertaken by the State Legal Services Authority. Almost 3.5 Lakhs saplings were planted by 15th August, 2023. Special health camps, community mediation training programmes, mediation awareness initiatives and various other programmes were conducted by the Legal Services Authority. Vocational training programmes, blood donation drives, under-trial review committees, special campaigns and such other initiatives were also organized during the year.

Significant progress was shown even in the four National Lok Adalats held in 2023. 5,33,305 cases were disposed off involving a payment of approximately Rs.548 Crores. 2,94,270 cases were disposed off under the Samadhan Aapke Dwar

Scheme at Gwalior and Jabalpur. 9,341 cases were successfully settled through mediation. 48 Chief Legal Aid Defense Counsels, 91 Deputy Chief Legal Aid Defense Counsels and 135 Assistant Legal Aid Defense Counsels were engaged for 50 districts.

With this, we come to the cardinal objective of the judiciary i.e. rendering justice through the judicious hearing and disposing off cases, within a reasonable period of time. Pendencies have always been a challenge. Rather than contemplating, we at Madhya Pradesh decided to walk the talk.

The '25 Debt Scheme' was floated for this very purpose. In October, 2021, the '25 Debt Scheme' was introduced to tackle the pendencies. The battle against pendencies commenced. The scheme achieved wonderful results. Between 18th October, 2021 and 31st December, 2023, eight phases were completed. The disposal rate ranged between 42% and a staggering 87%. The first phase between 18th October, 2021 and 31st December, 2021 yielded a 69% disposal rate. For the second phase, it was 42%. For the third phase, it was 66%. The fourth, fifth and sixth phases resulted in 87%, 77% and 57% disposals respectively. For the seventh phase, it was 64% and for the eighth phase, it was 81%. On an average, we were able to achieve 67% disposal of the oldest cases in the district judiciary.

This is an outstanding performance by the district judiciary. I congratulate each one of my judicial officers for putting in extra efforts for this purpose. I feel proud of the judicial officers for recording such a high percentage of disposals touching 87% for the fourth phase. This only shows the capacity of the judges to deliver. They have proven their commitment to the cause of the litigants and that of justice.

It is indeed notable that 56 judicial officers have disposed off all 25 cases continuously in all the eight quarters. 291 judicial officers have disposed off 90 to 99% of the oldest cases. 279 judicial officers have disposed off 80 to 89% of the oldest cases. 240 officers have disposed off 70 to 79% of the oldest cases, 190 officers have disposed off 60 to 69% of the oldest cases, 141 officers have disposed off 50 to 59% of the oldest cases and 240 officers have disposed off cases below 50%.

One case from 1962, one case from 1964, two cases from 1966, one case from 1969, three cases from 1976, four cases from 1977, five cases from 1978 and so on were disposed off. 17 cases which were pending for more than 45 years, 25 cases which were pending for 41 to 45 years, 36 cases which were pending for 36 to 40 years, 76 cases which were 31 to 35 years old, 182 cases which were 26 to 30 years old, 1035 cases which were 21 to 25 years old and many other old cases were disposed off. With each resolved case, the weight of the backlog has lightened.

The year 2023 has been historic. For not just one, but two reasons. I am very glad to announce that in the year 2023, 1,39,857 cases were disposed off at the High Court, which is the highest ever disposal in the history of Madhya Pradesh. The second highest disposal was of the year 2014 and the third highest disposal was of the year 2022.

The second reason for our celebration is that 2,06,813 cases which were more than 5 years old were disposed off in the year 2023, which is the highest ever disposal of cases over 5 years old in the District Courts in the history of Madhya Pradesh. Until then, 2022 had recorded the highest ever disposal of 5 years old cases in the history of Madhya Pradesh. Now, we have beaten our own record by making 2023 the first.

The years 2023 and 2022 will go down in history. We have achieved, but we need to achieve more. That brings us to a crucial announcement that I would like to make.

In the year 2047, India will be completing 100 years of independence. Certainly a year of great celebrations. But what will the judiciary celebrate in particular? Insofar as the judiciary is concerned, we need to celebrate a reduced pendency of cases in the courts. Justice delayed is justice denied and hence, a reduction in the pendency needs to be undertaken to provide effective justice to the people of this country. Pendencies need to be tackled seriously and effectively. We need to be able to tell the country that we have also contributed to the growth of the nation. We need to make our own contribution when we celebrate India's 100th year of independence. We need to show something to the country that entitles us to celebrate.

On this front, I am happy to launch 'Vision-2047' on the solemn occasion of the 75th Republic Day. The vision is that in the year 2047, the pendency of any case in the State of Madhya Pradesh will not be beyond one year from the institution of such a case. We hope to achieve this by the year 2047 in the 100th year of independence. This will be our contribution to the country.

A continued and proper implementation of the '25 Debt Scheme' would help us reach this goal organically. However, in order to leave no stone unturned, a Committee will be constituted consisting of Judges of the High Court, Advocates of the High Court and the trial Courts, academicians and other stakeholders who will all work together to achieve the goal of 2047. I have already prepared a blueprint for the same. The members of the meeting have also been finalized and will be announced shortly and the first meeting of the 'Vision-2047' committee will be held imminently.

In October, 2021, we declared a battle on pendencies by launching the '25 Debt Scheme'. We have achieved a great deal of success. Today by launching 'Vision -2047', we declare a war on pendencies. A war that we will win. In 2047, the '25 Debt Scheme' should die a natural death. We would have conquered the pendencies by reducing it to less than one year. In 2047, Madhya Pradesh will not be in debt any more. Madhya Pradesh will contribute to a strong judiciary and a stronger country.

Through the various initiatives undertaken, including the '25 Debt', we have achieved unprecedented goals in 2022 and 2023 and have strived for the litigants. Through 'Boond', we have made a modest attempt to give back to society. Through 'Vision 2047', let us give all that we have for the Nation.

Thank you very much!

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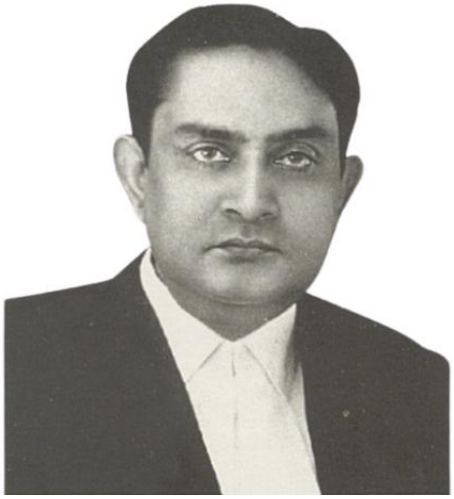
OUR LEGENDS
JUSTICE ANANDA PRAKASH SEN
7th CHIEF JUSTICE OF HIGH COURT OF MADHYA PRADESH



OUR LEGENDS series enter the second year of its publication. The first publication of this year starts with a legend who is known to be a forerunner in protecting the right to life and freedom of speech and expression of the citizens of this country – Hon'ble Shri Justice Anand Prakash Sen.

Justice A.P. Sen was born in Burma on 28th September, 1923. His Lordship hailed from an illustrious family of Judges. Both his father and uncle were Judges of the High Court of Madhya Pradesh. His Lordship's father Hon'ble Shri Justice Jnanranjan Sen was a revered personality. It is noteworthy that His Lordship's brother Hon'ble Shri Justice V.K. Sen was also an eminent lawyer who went on to becoming a Judge of the Nagpur High Court.

Justice A.P. Sen was a meritorious student. After receiving early education in Nagpur, he graduated in B.Sc. from Science College and Law College, Nagpur and started practice in the district court, Nagpur in the year 1945. He had a unique opportunity of studying law under the guidance of his eminent father and uncle as well as from Justice Hidayatullah as teacher in Law. His Lordship's promising career path was identifiable even before he took serious steps in his legal journey. Hon'ble Chief Justice Shri Vivian Bose while unveiling the portrait of His Lordship's late father in 1950 said:

> "It is good also to realize that the elder Sen left behind him a son who shows much promise and who, we hope, in course of time, will carry on the traditions of the family."

After the implementation of the States Reorganisation Act, 1956, His Lordship shifted to Jabalpur where very soon he acquired a name for himself as a lawyer. He played a significant role in the organization of the Bar at Jabalpur and was Secretary of the Bar in 1952-53. He was appointed as the second Advocate General of Madhya Pradesh in June, 1966. On 7th November, 1967, he was elevated as Judge of the High Court of Madhya Pradesh.

One of His Lordship's most celebrated judgment is ***Shivkant Shukla v. ADM, Jabalpur, 1975 MPLJ 66.*** It was during this time that His Lordship writing for the Bench, overruled the preliminary objection of the Government that a writ petition for enforcement of fundamental rights guaranteed under Article 21 of the Constitution, did not lie after the proclamation of emergency was issued. This judgment went on to be challenged in the Supreme Court and is famously known as ***"Habeas Corpus case''***. Owing to this stand on liberty, His Lordship was transferred to the Rajasthan High Court during the period of Emergency.

Post emergency, despite insistence from the Rajasthan government and the members of Rajasthan Bar, His Lordship was transferred to the High Court of Madhya Pradesh as Chief Justice and took oath of office on 28th February, 1978.

At the welcome address, on His Lordship's appointment as Chief Justice, Justice G.P. Singh said:

> "My Lord, we have assembled here to welcome you home after a separation of about 20 months. Your Lordship's transfer during the Emergency without your consent, presumably for your Lordship's decision in the well-known case of ***ShivKant Shukla v. A.D.M., Jabalpur,*** was resented here by all right thinking persons. The vigorous dissent by Khanna J. in the Supreme Court, the decisions of other High Courts and numerous extra-judicial writings have amply justified the view taken by Your Lordship. The ruling of the Supreme Court in ***Justice Sheth's case*** now firmly establishes that judges of High Courts cannot be transferred from one High Court to another without their consent except in public interest and certainly not for giving a decision adverse to the Government. All this and Your Lordship's return to this Court as Chief Justice have fully vindicated you."

It would not be out of place to mention here that the view taken by His Lordship which was approved by Justice Khanna in his dissenting judgment which was found to be correct by the Hon'ble Supreme Court in the famous case ***Justice K.S. Puttaswamy (Retd.) & anr. v. Union of India & ors, 2019 (1) SCC 1.*** His Lordship in his reply to the felicitations, considered it a great honour that he was called to head this institution of which his father and uncle were illustrious members. His Lordship said :

> "I have a feeling of indifference of same diffidence when I recall the stature of men like Sir Gilbert Stone, Sir Fredrick Grille, Shri Vivian Bose, Shri Hidayatullah and Shri Dixit, to name a few, whom I have witnessed heading this institution with great distinction and ability. They have left a lasting impression on this court, in the making of which their contribution has been very considerable."

His Lordship expressed that he will spare no efforts in an attempt to try and achieve the best result to the best of his ability. He also solicited the cooperation of the members of the Bench and the Bar. It is noteworthy that His Lordship could only work for approximately, 5 months as Chief Justice before he was elevated to the Supreme Court in July, 1978. In this brief tenure, His Lordship emphasized on keeping the fair name of the court unsullied and to maintain highest traditions of the court. Disposal of old pending cases was His Lordship's priority. His Lordship decided more than 100 old income tax references and about 700 old criminal references pending for almost a decade. Such was the respect carried for His Lordship that the fellow Judges also worked throughout the summer vacation for deciding the old matters and yielded fabulous disposal results.

In his ovation ceremony held on 14th July, 1978, a great delight was expressed by the members of the Bar. His Lordship in his ovation address maintained that he was fortunate to be born in an environment of not merely pursuit of law, so indispensable for a lawyer but of high traditions and that unwritten code of fairness and courtesy without which the profession would lose much of its value. He expressed his deepest gratitude to Hon'ble Shri Justice Jnanranjan Sen, his uncle Shri Vivel Ranjan, Justice Vivian Bose, Justice M. Hidayatullah and Shri Manmath

Nath Bhaduri, the doyen of Chattisgarh Bar. He said his life was largely influenced by these people and His Lordship in his ovation address said:

> "During the 11 years that I have sat on the Bench, barring the 20 months of the period of Emergency, I have never spared myself in the discharge of my responsible duties. I have worked strenuously in the firm belief that without great labour, success cannot be attained and that it would have been impossible otherwise to do justice in dealing with those important and abstruse questions which have come before me for adjudication in the course of my career as a Judge. But notwithstanding diligent study of the science of law for more than a third of a century, I have now a more profound and abiding sense of ignorance that oppresses me in the beginning of my career. My ambition has been to attain the ideal of judicial administration, to hear patiently, to consider diligently, to understand rightly and to decide justly. It is for others to judge what measure of success I have achieved, notwithstanding inevitable errors of judgment."

He was elevated as a Judge of the Supreme Court of India on 17th July, 1978, where he remained a staunch supporter of personal liberty and freedom of speech. He passed several landmark judgments on various points of law. He was a great advocate of freedom of the Press. He was of the view that the expression, "freedom of press" means freedom from any interference from the authorities, which could have the effect of interference with the content of the right. His stance on freedom of speech can further be gathered from the renowned judgment delivered in ***Express Newspaper Private Limited v. Union of India, AIR 1986 SC 872***, wherein he shared the view of the Court while deciding the challenge to the imposition of import duty and levy of auxiliary duty on newsprints as under:

> "I would only like to stress that the freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that problems of the Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation."

After serving for 10 years as Judge of the Hon'ble Supreme Court, His Lordship demitted the office on 20th September, 1988. He has great respect for the doctrine of Separation of Power as envisaged in our Constitution. In the case of ***State of Kerala v. A. Lakshmikutty, AIR 1987 SC 331***, while delivering the judgement on quashing the Cabinet decision and issuing a writ in the nature of mandamus by the High Court of Kerala directing the State Government to fill up five vacancies in the posts of District Judges meant for direct recruitment from the Bar as provided under Article 233 (1) of the Constitution of India, Justice Sen held:

> "Even though this is so, the respective powers of the three wings of the State are well defined with the object that each wing must function within the field earmarked for it. The object of such demarcation is to exclude the possibility of encroachment on the field earmarked for one wing by the other or others. As long as each wing of the State functions within the field carved out and shows due deference for the other two branches, there would arise no difficulty in the working of the Constitution. But the trouble arises when one wing of the State tries to encroach on the field reserved for the other. It is in the above context that special responsibility devolves upon the Judges to avoid an over-activist approach and to ensure that they do not trespass within the spheres earmarked for the other two branches of the State."

Justice A.P. Sen was a veracious reader and his interest spread over a vast array of subjects including English and Bengali literature. His favorite authors were PG Woodehouse, Jerome K. Jerome and Sir Arthor Cannon Doyle. He was particularly fond of Bengali literature and presided over a symposium on the cause of declining interest in Bengali literature and the ways to reverse this trend.

He was also artistic by nature and had a large collection of old melodies. He was also fond of western classical music and would often immerse himself in the work of Beethoven, Mozart, Bach, Tchaikovsky and Johann Strauss. Apart this, he had interest in cricket and rarely missed watching an International cricket match in which India was playing.

True to his nature of adhering simplicity, discouraging showmanship and maintaining devotion to work, Justice A.P. Sen was also the first Supreme Court

Judge to have declined a farewell function. His Lordship demitted the office in the year 1988. Post his retirement, he did not linger in Delhi pursuing fresh assignments but promptly returned to his home in Nagpur to lead a quite life. He barely attended any public functions as well. He was a bachelor and loved his pets. His Lordship passed away on 26th January, 2003 at the age of 80. He was survived by two sisters and two brothers, one being Justice C.P. Sen who demitted office as a Judge of High Court of Madhya Pradesh in 1989.

At the full court reference held at the Hon'ble Supreme Court on 28th March, 2003 on His Lordship's sad demise an interesting anecdote was shared. It was generally believed that he was very tough in admission of Special Leave Petitions. It is said that in one of the Bar parties which he attended as acting Chief Justice of Rajasthan High Court, a lawyer in a lighter vein told him, "Sir, your list has been wrongly printed and the Registry must be told to be careful in future." While Justice Sen was struggling to understand as to what was wrong with the list, the lawyer submitted that at the top of your list matters have been listed "for Admission", whereas it should have been listed "for dismissal". He joined the members of the Bar in the joke by laughing heartily. It was to his credit that he always kept the ambience in the court congenial and light and shared jokes with the members of the Bar.

There are several stalwarts from the legal field but His Lordship stands out for his exemplary vision which was far ahead of his times. His Lordship gave importance to real hard work rather than slogans, speeches and showmanship. Such was this *'legend of ours'* that his extraordinary talent, fearless temperament, forcefulness of character and amicable disposition, made him a beacon of light to the entire judiciary and which continues to shine even today through his pathbreaking verdicts.

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आयु निर्धारण – शाला अभिलेख में की गई प्रविष्टि की सुसंगतता

–संस्थानिक आलेख

संदर्भ

आयु निर्धारण के संबंध में विस्तृत आलेख अक्टूबर 2004, फरवरी 2006, अक्टूबर 2007 और फरवरी 2022 के अंक में प्रकाशित किये गये हैं, लेकिन ***पी. युवप्रकाश विरूद्ध राज्य द्वारा इंस्पेक्टर ऑफ पुलिस, 2023 एससीसी ऑनलाईन एससी 846*** में प्रतिपादित विधिक सिद्धांत के उपरांत शाला–अभिलेख में की गई प्रविष्टि एवं स्थानांतरण प्रमाण–पत्र में अंकित की गई जन्मतिथि की आयु निर्धारण के संबंध में सुसंगतता पर विचार किए जाने के उद्देश्य से संस्थानिक आलेख प्रकाशित किया जा रहा है।

प्रस्तावना

संविधान का अनुच्छेद 15 (खण्ड 3) अन्य बातों के साथ राज्य को बालकों के लिए विशेष उपबंध करने के लिए सशक्त करता है लैंगिक हमला, लैंगिक उत्पीड़न और अश्लील साहित्य के अपराधों से बालकों का संरक्षण करने और ऐसे अपराधों का विचारण करने के लिए विशेष न्यायालयों की स्थापना तथा उनसे संबंधित या आनुषंगिक विषयों के लिए उपबंध करने के लिए लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 पारित किया गया, जो दिनांक 14 नवम्बर, 2012 से प्रवृत्त हुआ है।

बालक की आयु से आशय

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 (तत्पश्चात् ''अधिनियम'' के रूप में उल्लेखित किया जावेगा) की धारा 2 (घ) के अनुसार बालक से ऐसा कोई व्यक्ति अभिप्रेत है जिसकी आयु 18 वर्ष से कम है। इस प्रकार अधिनियम के तहत अपराध का विचारण करने में आयु महत्वपूर्ण अवधारणीय प्रश्न है कि बालक की आयु 18 वर्ष से कम हो। उच्चतम न्यायालय ने न्यायदृष्टांत ***मे. ईरा द्वारा डॉ. मंजूला विरूद्ध राज्य, 2018 (2) क्राईम्स 99 सुप्रीम कोर्ट*** में ये मार्गदर्शित किया है कि आयु से आशय जैविक आयु है न कि मानसिक आयु।

आयु निर्धारण के मानक

अधिनियम में आयु निर्धारण की प्रक्रिया के संबंध में कोई उपबंध नहीं किया गया है लेकिन उच्चतम न्यायालय ने ***जर्नेल सिंह विरूद्ध हरियाणा राज्य, (2013) 7 एससीसी 263*** में मार्गदर्शित किया है कि अन्य प्रावधान के अभाव में पीड़िता की आयु का निर्धारण उसी प्रकार से किया जा सकता है जैसे विधि विरूद्ध किशोर का किया जाता है। 15 जनवरी 2016 से किशोर न्याय (बालकों की देखरेख एवं सरंक्षण) अधिनियम, 2015 प्रवृत्त है। अतः यदि घटना 15 जनवरी 2016 के पश्चात् की है तब 2015 का अधिनियम एवं यदि घटना 15 जनवरी 2016 से पूर्व की है तब किशोर न्याय (बालकों की देखरेख एवं सरंक्षण) अधिनियम, 2000 के उपबंध आकृष्ट होंगे।

आयु निर्धारण के लिए निश्चित फार्मूला नहीं बनाया जा सकता है वह प्रत्येक मामले में प्रस्तुत किये गये साक्ष्य के विश्लेषण पर आधारित होती है। आयु निर्धारण के लिए मौखिक साक्ष्य

विरले ही उपलब्ध होते हैं। आयु निर्धारण दस्तावेजी साक्ष्य और उनकी प्रमाणिकता पर निर्भर करता है। उच्चतम न्यायालय ने ***प्रताप सिंह विरूद्ध झारखण्ड राज्य, (2005) 3 एससीसी 551*** में ये अभिनिर्धारित किया है कि आयु निर्धारण के लिए अपराध कारित किये जाने की तिथि सुसंगत है।

सुसंगत उपबंधों की तुलनात्मक स्थिति

किशोर न्याय (बालकों की देखरेख एवं सरंक्षण) अधिनियम, 2000 के नियम 12 के अनुसार	किशोर न्याय (बालकों की देखरेख एवं सरंक्षण) अधिनियम, 2015 धारा 94 आयु के अनुसार
1. मैट्रिक परीक्षा या उसके समकक्ष परीक्षा का प्रमाण–पत्र यदि उपलब्ध हो और उसके अनुपस्थिति में	(i) विद्यालय से प्राप्त जन्म तारीख प्रमाण–पत्र या संबंधित परीक्षा बोर्ड से मैट्रिकुलेशन या समतुल्य प्रमाण–पत्र, यदि उपलब्ध हो; और उसके अभाव में,
2. प्रथम बार के स्कूल जो कि प्ले स्कूल न हो का जन्मतिथि संबंधी प्रमाण–पत्र, उसकी अनुपस्थिति में	(ii) निगम या नगर पालिका प्राधिकारी या पंचायत द्वारा दिया गया जन्म प्रमाण–पत्र;
3. जन्म प्रमाण–पत्र जो निगम या नगर पालिका प्राधिकारी या पंचायत द्वारा गया गया हो।	(iii) उपरोक्त (i) और (ii) के अभाव में, आयु का अवधारण समिति या बोर्ड के आदेश पर की गई अस्थि जांच या कोई अन्य नवीनतम चिकित्सीय आयु अवधारण जांच के आधार पर किया जाएगा।
4. और उक्त तीनों साक्ष्य के न होने पर एक सम्यक रूप से गठित मेडिकल बोर्ड की राय।	

वर्ष 2000 एवं 2015 के अधिनियम की तुलनात्मक स्थिति से ये दर्शित होता है कि आयु निर्धारण के संदर्भ में मैट्रिक परीक्षा या समकक्ष परीक्षा, निगम या नगर पालिका प्राधिकारी या पंचायत द्वारा दिया गया प्रमाण–पत्र समान रूप से प्रवृत्त है लेकिन जहां 2000 के अधिनियम में प्रथम बार के स्कूल जो प्ले स्कूल न हो को उल्लेखित किया गया था वहीं 2015 के अधिनियम में विद्यालय से प्राप्त जन्मतिथि प्रमाण–पत्र को उपबंधित किया गया है। ये उल्लेखनीय है कि 2015 के अधिनियम की धारा 94 में विद्यालय से प्राप्त जन्म तारीख प्रमाण–पत्र ''अथवा'' संबंधित परीक्षा बोर्ड से मैट्रीकुलेशन या समतुल्य प्रमाण–पत्र को समकक्ष रखा गया है। इसी प्रकार वर्ष 2000 के अधिनियम में दस्तावेजी साक्ष्य न होने पर सम्यक् रूप से गठित मेडीकल बोर्ड की राय अपेक्षित की गई थी जबकि 2015 के अधिनियम में अन्य दस्तावेजों के अभाव में समिति या बोर्ड के आदेश पर की गई अस्थि जांच या कोई अन्य नवीनतम चिकित्सकीय आयु अवधारण परीक्षण के आधार पर किया जाना उल्लेखित है।

बालक की आयु निर्धारण के संबंध में मध्यप्रदेश किशोर न्याय (बालकों की देखरेख और संरक्षण) नियम, 2022 के नियम 35 के अनुसार आयु का निर्धारण किया जायेगा। नियम 65

उपनियम 4 के अनुसार यदि न्यायालय को आयु के आधार पर किसी दस्तावेज की प्रमाणिकता के संबंध में कोई संदेह है तो वह ऐसे दस्तावेज को जारी करने वाले प्राधिकारी को दस्तावेज के मूल अभिलेखों के साथ उपस्थित होने के लिए नोटिस देगा और स्वयं यह संतुष्टि करेगा कि ऐसा दस्तावेज प्रमाणित है साथ ही दस्तावेज के संबंध में प्रतिपरीक्षण करने और साक्ष्य प्रस्तुत करने की अनुज्ञा भी दे सकता है। इस आधार पर दस्तावेज की विश्वसनीयता का निर्धारण लिखित रूप से विनिर्दिष्ट कारणों के साथ किया जायेगा।

दस्तावेजों की प्राथमिकता के क्रम के संबंध में उच्चतम न्यायालय ने ***शाह नवाज विरूद्ध उत्तर प्रदेश राज्य, एआईआर 2011 एससी 3107*** में मार्गदर्शित किया है कि प्रथम दस्तावेज के अभाव में या अनुपस्थिति में द्वितीय दस्तावेज विचारणीय होंगे क्योंकि अधिनियम में ''अथवा'' शब्द का प्रयोग नहीं किया गया है।

स्थानांतरण प्रमाण–पत्र एवं शाला जन्मतिथि पंजी में उल्लेखित आयु की सुसंगतता

न्यायदृष्टांत ***शाह नवाज विरूद्ध स्टेट ऑफ यू.पी. (2011) 13 एससीसी 751*** में शाला स्थानांतरण प्रमाण–पत्र को आयु निर्धारण हेतु विधिक साक्ष्य माना गया है, जबकि शाला पंजी में उल्लेखित की गई जन्मतिथि को शाला के प्राचार्य द्वारा प्रमाणित किया गया हो। न्यायदृष्टांत ***अश्वनी कुमार सक्सेना विरूद्ध स्टेट ऑफ एम.पी. (2012) 9 एससीसी 750*** में भी शाला प्रवेश–पंजी को आयु निर्धारण के लिए सुसंगत माना गया। ***अबुझर हुसैन विरूद्ध स्टेट ऑफ वेस्ट बंगाल, (2012) 10 एससीसी 489*** में ये मार्गदर्शित किया गया कि शाला स्थानांतरण प्रमाण–पत्र या अन्य दस्तावेजों के संबंध में उनकी स्वीकारोक्ति या निरस्ती को लेकर कोई निश्चित नियम नहीं बनाया जा सकता। ***जर्नेल सिंह*** (पूर्वोक्त) के अनुसार जहां प्रथम बार के स्कूल में जन्मतिथि की प्रविष्टि उपबंध हो वह निश्चयात्मक और अंतिम होती है तथा अन्य किसी विषय–वस्तु पर विश्वास नहीं किया जा सकता।

इस प्रकार आयु निर्धारण के संबंध में उच्चतम न्यायालय के विभिन्न न्यायदृष्टातों मे स्थानांतरण प्रमाण–पत्र तथा शाला प्रवेश–पंजी में की गई प्रविष्टि को आयु निर्धारण हेतु अपेक्षित आवश्यकताओं की पूर्ति होने पर सुसंगत माना गया, लेकिन उच्चतम न्यायालय द्वारा हाल ही में पारित निर्णय ***पी. युवप्रकाश*** (पूर्वोक्त) में स्थानांतरण प्रमाण–पत्र एवं शाला अभिलेख में की गई प्रविष्टि के अंशों को किशोर न्याय (बालकों की देखरेख एवं सरंक्षण) अधिनियम, 2015 की धारा 94 (2)(i) एवं धारा 94 (2)(ii) की अपेक्षाओं के अनुरूप न मानते हुए आयु निर्धारण हेतु सुसंगत न होना अभिनिर्धारित किया गया है।

मध्यप्रदेश उच्च न्यायालय, जबलपुर की खण्डपीठ ने ***रामस्वरूप विरूद्ध स्टेट ऑफ मध्यप्रदेश, 2023 एससीसी ऑनलाईन एमपी 2232*** में पूर्व में प्रतिपादित मार्गदर्शी सिद्धांतो पर विचार–विश्लेषण करते हुये अभिव्यक्त किया है कि ***पी. युवप्रकाश*** (पूर्वोक्त) के मामले में शाह नवाज, अश्वनी सक्सेना, रामसुरेश सिंह एवं अबुझर हुसैन (पूर्वोक्त) में प्रतिपादित विधिक प्रतिपादनाओं का उल्लेख ही नहीं किया गया, तब ऐसी स्थिति में न्यायदृष्टांत ***जबलपुर बस ऑपरेटर एसोसिएशन एवं अन्य विरूद्ध स्टेट ऑफ एमपी एवं अन्य, 2003 (1) एमपीएचटी 226*** (पूर्ण पीठ) में प्रतिपादित सिद्धांत अनुकरणीय है जिसके अनुसार यदि उच्चतम न्यायालय की

समान संख्या वाली पीठों में मतभेद हो, ऐसी स्थिति में पूर्व पीठ द्वारा प्रतिपादित विधिक सिद्धांत बाध्यकारी होते हैं जब तक कि पश्चातवर्ती पीठ ने उसे स्पष्ट न कर दिया हो और ऐसी स्थिति में पश्चातवर्ती निर्णय बाध्यकारी प्रभाव रखता है एवं वृहद पीठ का निर्णय लघु पीठों पर बाध्यकारी होता है।

रामस्वरूप (पूर्वोक्त) की खण्डपीठ ने निर्धारित सिद्धातों का विश्लेषण करते हुये यह मत प्रतिपादित किया कि जबकि युव प्रकाश वाले मामले में पूर्ववर्ती पीठों द्वारा प्रतिपादित विधि का उल्लेख एवं विश्लेषण नहीं किया गया है, ऐसी स्थिति में यह नहीं माना जा सकता कि शाला अभिलेख में की गई प्रविष्टि आयु निर्धारण के लिए स्वीकार नहीं की जा सकती।

धारा 35 साक्ष्य अधिनियम की सुसंगतता

उच्चतम न्यायालय की संवैधनिक पीठ ने ***बृजमोहन सिंह विरूद्ध प्रिय बृत नारेन सिन्हा एवं अन्य, एआईआर 1965 एससी 282*** में ये मार्गदर्शित किया है कि लोक सेवक द्वारा अपने पदीय कर्तव्यों के अनुक्रम में स्वयं प्रविष्टि की गई हो जो सुसंगत विवाद्यक के संबंध में हो तब उसके सही होने की उच्च संभावना होती है। संवैधानिक पीठ ने इस तर्क को अस्वीकार कर दिया कि जहां लोक सेवक अशिक्षित हो और ऐसी प्रविष्टि करने में असमर्थ हो तब वह किसी अन्य व्यक्ति से ऐसी प्रविष्टि करा सकता है एवं यह स्पष्ट किया है कि यदि चौकीदार द्वारा स्वयं प्रविष्टि की गई होती तब वह धारा 35 साक्ष्य अधिनियम के अन्तर्गत ग्राहय हो सकती थी।

उच्चतम न्यायालय ने ***बिरदमलसिंघवी विरूद्ध आनंद पुरोहित, 1988 सप्ली. एससीसी 604*** में मार्गदर्शित किया कि शाला–पंजी या स्कूल रजिस्टर में की गई प्रविष्टि लोक दस्तावेज नहीं है अतः उसे विधि के अनुसार प्रमाणित किया जाना आवश्यक है। ***ऋषी पाल सिंह सोलंकी विरूद्ध स्टेट ऑफ उत्तर प्रदेश एवं अन्य, (2022) 8 एससीसी 602*** के मामले में उच्चतम न्यायालय ने अभिनिर्धारित किया कि जहां आयु निर्धारण स्कूल अभिलेखों के आधार पर किया जाता है वहां पर धारा 35 भारतीय साक्ष्य अधिनियम की आवश्यकताओं की पूर्ति होना आवश्यक है।

इस प्रकार भारतीय साक्ष्य अधिनियम, 1872 की धारा 35 के अंतर्गत कोई दस्तावेज सुसंगत होता है यदि वह तीन शर्तों को पूर्ण करता हो–

1– जन्मतिथि से संबंधित प्रविष्टि पंजी में लोक कर्तव्य के निर्वहन में की गई हो

2– ऐसी प्रविष्टि सुसंगत तथ्य दर्शित करती हो

3– ऐसी प्रविष्टि लोक सेवक द्वारा अपनी शासकीय कर्तव्यों के निर्वहन में की गई हो।

जाँच का स्वरूप एवं प्रमाण का स्तर

उच्चतम न्यायालय ने ***रजिन्दर चन्द्र विरूद्ध स्टेट ऑफ छत्तीसगढ़, (2002) 2 एससीसी 287*** में किशोर की आयु निर्धारण के संबंध में ये मार्गदर्शित किया है कि आयु निर्धारण में प्रमाण का स्तर संदेह से परे साबित किया जाना अपेक्षित नहीं है बल्कि अधिसंभाव्यता के आधार पर प्रमाण अपेक्षित है लेकिन जहां पर शाला के अभिलेख संदेहास्पद दर्शित होते है वहां पर न्यायालय विस्तृत जॉच करने के लिए स्वंतत्र है।

जहां तक किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2012 में अभियोक्त्री की आयु का निर्धारण किया जाना है तो धारा 34 उपनियम 2 के अनुसार विशेष न्यायालय द्वारा ऐसे व्यक्ति के आयु के बारे में स्वयं का समाधान करने के लिए साक्ष्य ले सकता है। आयु निर्धारण एक महत्वपूर्ण तथ्य है और अभियोक्त्री की आयु क्या है यह प्रमाणित करने का भार अभियोजन पर है इस तथ्य को युक्तियुक्त संदेह से परे प्रमाणित करना आवश्यक है। युक्तियुक्त संदेह का तात्पर्य प्रत्येक संदेहास्पद स्थिति से नहीं होता बल्कि एक साधारण प्रज्ञावान व्यक्ति जिस संदेह को उचित माने यह देखा जाना आवश्यक है।

रामस्वरूप (पूर्वोक्त) के मामले में जहां बालक की आयु निर्धारण का प्रश्न अर्न्तवलित था ये मार्गदर्शित किया है कि जहां पर अभियोजन किशोर न्याय अधिनियम की आवश्यकताओं के अनुरूप प्रवेश–पंजी अथवा अन्य दस्तावेज प्रस्तुत कर जन्मतिथि को प्रमाणित करता है तब ऐसी स्थिति में न्यायालय के लिए आवश्यक नहीं है कि वह इन दस्तावेजों की विस्तृत एवं गहन जांच करे क्योंकि धारा 94 के अनुसार विधायिका का आशय उपबंधित किए गए दस्तावेजों के आधार पर आयु निर्धारण करने का है और यदि ऐसी स्थिति में सुसंगत दस्तावेज प्रस्तुत किए जाते हैं तो यह बाध्यकारी नहीं है कि ऐसे दस्तावेजों में की गई प्रविष्टि अथवा घोषणा के संदर्भ में स्रोत का पश्चात्वर्ती मूल्यांकन किया जाए।

रामस्वरूप (पूर्वोक्त) में यह मार्गदर्शित किया कि 2007 के नियम आयु निर्धारण के लिए प्रकिया निर्धारित करते है तब ऐसी स्थिति में माता–पिता के कथनों को आयु निर्धारण के लिए आधार नहीं बनाया जा सकता। दसूरे शब्दों में मौखिक कथनों में अंतर होने पर दस्तावेजी साक्ष्यों अर्थात् शाला–पंजी और जन्मतिथि–पंजी को अविश्वसनीय नहीं माना जा सकता।

उच्चतम न्यायालय ने ***लोकनाथ पाण्डेय विरूद्ध स्टेट ऑफ उत्तर प्रदेश एवं अन्य, एआईआर 2017 एससी 3866*** में अभिनिर्धारित किया है कि जहां पर भिन्न–भिन्न कक्षाओं में भिन्न जन्मतिथियां अभिलिखित की गई हों वहां पर सर्वप्रथम की गई प्रविष्टि सामान्यतः मान्य की जानी चाहिए।

मध्यप्रदेश उच्च न्यायालय द्वारा ***फारिद खान विरूद्ध राज्य, आपराधिक अपील क्रमांक 8359/2023 निर्णय दिनांक 23.01.2024*** में रामस्वरूप (पूर्वोक्त) के मामले पर विश्वास करते हुये शाला अभिलेख एवं प्रवेश पंजी को आयु निर्धारण के संबंध में सुसंगत दस्तावेज माना है।

मध्यप्रदेश जन्मतिथि (शाला पंजी की प्रविष्टि) नियम, 1973 की सुसंगतता

मध्यप्रदेश जन्मतिथि (शाला पंजी की प्रविष्टि) नियम, 1973 में स्कूल रजिस्टर में जन्मतिथि प्रविष्ट किये जाने की प्रकिया उपबंधित की गई है। नियमों के अनुसार अभिभावकों के लिये घोषणा–पत्र प्रस्तुत करना आवश्यक होता है उसके अभाव में शाला–पंजी में अभिलिखित की गई जन्मतिथि विश्वसनीय नहीं होती है।

रामस्वरूप (पूर्वोक्त) में ये मार्गदर्शित किया गया है कि 1973 के नियम प्रकियात्मक स्वरूप के हैं आम आदमी और ग्रामीण के संदर्भ में ऐसा नहीं माना जा सकता कि जब वह अपने बच्चों के शाला में प्रवेश के लिये जाता है तो ऐसे नियमों को जानता हो। यह सही है कि यदि

नियमों के अनुसार अभिभावकों से घोषणा प्राप्त की जाती है तब शाला–पंजी में की गई प्रविष्टि को अधिक बल मिल सकता है लेकिन इस तथ्य से सहमत नहीं हुआ जा सकता है कि यदि 1973 के नियमों के अनुसार ''घोषणा–पत्र'' तैयार नहीं किया गया है तब वह प्रवेश–पंजी में अभिलिखित प्रविष्टि को अविश्वसनीय बना देता है। यदि जन्मतिथि प्रमाण–पत्र/प्रवेश के संबंध में भारतीय साक्ष्य अधिनियम की धारा 35 की अपेक्षाओं को पूरा किया गया है तब 1973 के नियमों का अनुपालन न किया जाना ऐसी प्रविष्टि को दुर्बल नहीं करता है। न तो 1973 के नियम और न ही विहित प्रारूप यह अपेक्षा करते हैं कि जन्मतिथि के संदर्भ में की गई घोषणा के समर्थन में दस्तावेजी साक्ष्य प्रस्तुत किए जायें। अतः यदि ऐसी विहित की गई घोषणा के अभाव में भी अभिभावकों के निर्देश पर प्रवेश–पंजी अथवा जन्मतिथि–पंजी में प्रविष्टि की जाती है और उसे न्यायालय के समक्ष प्रस्तुत कर धारा 35 साक्ष्य अधिनियम की आवश्यकताओं को पूर्ण किया जाता है तो वह सुसंगत है।

उपसंहार

- बालक से ऐसा कोई व्यक्ति अभिप्रेत है जिसकी आयु घटना दिनांक को 18 वर्ष से कम हो। आयु से आशय जैविक आयु है न कि मानसिक आयु।
- बालक की आयु निर्धारण हेतु किशोर न्याय (बालकों का देखरेख एवं संरक्षण) अधिनियम, 2000 एवं किशोर न्याय (बालकों का देखरेख एवं संरक्षण) अधिनियम, 2015 सुसंगत है।
- आयु निर्धारण के लिए अपराध किए जाने की तिथि सुसंगत है। जहां घटना 15 जनवरी 2016 के पश्चात् की है तब 2015 का अधिनियम एवं यदि घटना 15 जनवरी 2016 से पूर्व की है तब किशोर न्याय (बालकों की देखरेख एवं सरंक्षण) अधिनियम, 2000 के अधिनियम के उपबंध लागू होंगे।
- यदि लोक सेवक द्वारा पदीय कर्तव्यों के निर्वहन में सुसुंगत तथ्यों के संबंध में जन्मतिथि से संबंधी प्रविष्टि शाला पंजी में की गई है और वह धारा 35 साक्ष्य अधिनियम की अपेक्षाओं को पूर्ण करती है तब शाला अभिलेख में की गई प्रविष्टि अथवा स्थानांतरण प्रमाण–पत्र में अंकित की गई जन्मतिथि आयु निर्धारण की लिए सुसंगत है।
- अभियोक्त्री की आयु निर्धारण करते समय यदि शाला पंजी में की गई प्रविष्टियॉ विश्वास योग्य पाई जाती है तो केवल मौखिक साक्ष्य के आधार पर शाला पंजी से की गई समस्त प्रविष्टियों पर अविश्वास नही किया जाना चाहिए।
- **पी. युवप्रकाश** (पूर्वोक्त) में शाला अभिलेख में की गई प्रविष्टि एवं स्थानांतरण प्रमाण पत्र में अंकित की गई जन्मतिथि को आयु निर्धारण के सुसंगत नहीं माना गया है लेकिन इस मामले में पूर्व में प्रतिपादित विधिक सिद्धांतों का न तो उल्लेख किया गया है और न ही विश्लेषण किया गया है। अतः ऐसी स्थिति में ये नहीं माना जा सकता कि शाला अभिलेख में की गई प्रविष्टि एवं स्थानांतरण प्रमाण–पत्र में अंकित की गई जन्मतिथि आयु निर्धारण की लिए सुसंगत नहीं है।

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विधिक समस्यायें एव समाधान

(इस स्तम्भ के अन्तर्गत मध्यप्रदेश के अधीनस्थ न्यायालयों के न्यायाधीशों द्वारा अकादमी के संज्ञान में लाई गई विधिक समस्याओं का उपयुक्त हल प्रस्तुत करने का प्रयास किया जाता है। इस स्तम्भ के लिये न्यायाधीशगण अपनी विधिक समस्याएं अकादमी को भेज सकते हैं। चयनित समस्याओं के समाधान आगामी अंको में प्रकाशित किये जाएंगे।)

प्रश्नः अपर्याप्त रूप से स्टाम्पित दस्तावेज में लिखे गये आर्बिट्रेशन संबंधी उपबंध की वर्तमान वैधानिक स्थिति क्या है?

उत्तरः उक्त प्रश्न का उत्तर जोति जर्नल के माह अप्रैल – 2023 के अंक में विधिक समस्यायें एवं समाधान स्तम्भ के अंतर्गत पृष्ठ क्रमांक 105 पर प्रकाशित किया गया था जो माननीय सर्वोच्च न्यायालय की पांच सदस्यीय खंडपीठ द्वारा ***N. N. Global Mercantile Private Limited v. Indo Unique Flame Limited, (2023) 7 SCC 1*** के मामले में 3:2 के बहुमत से दिये गये अभिमत पर आधारित था । उक्त पीठ ने यह अभिनिर्धारित किया था कि आर्बिट्रेशन क्लॉज को सम्मिलित करते हुये निष्पादित किया गया करार/दस्तावेज जिसका स्टाम्प अधिनियम के आधीन स्टाम्पित होना अपेक्षित था तब ऐसे दस्तावेज का अस्टाम्पित होना दस्तावेज में उपबंधित आर्बिट्रेशन क्लॉज को भी अप्रभावी बना देगा ।

परंतु इसके पश्चात् माननीय सर्वोच्च न्यायालय की सात सदस्यीय खण्डपीठ ने इस बिंदु को स्वप्रेरणा से ***In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 2023 SCC Online SC 1666*** में उक्त संबंध में पुनः विचार में लिया और यह अभिमत दिया कि अपर्याप्त रूप से स्टाम्पित दस्तावेज में लिखा गया आर्बिट्रेशन एग्रीमेंट मात्र इस आधार पर अप्रभावी नहीं होगा और न्यायालय ऐसे दस्तावेज के आधार पर धारा–8 और धारा–11, माध्यस्थम और सुलह अधिनियम, 1996 के अधीन कार्य करने के लिये सक्षम है और ऐसे दस्तावेज में स्टाम्प की कमी संबंधी आपत्तियों पर विचार करने की अधिकारिता आर्बिट्रेशन ट्रिब्यूनल को है ।

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PART – II

1. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 10 and 35 Order of fixation of standard rent – Execution of – Such order passed by Rent Controlling Authority is not executable – It is only for fixation of standard rent and if the landlord wants to recover the arrears then he has to file a suit for recovery of arrears of rent so fixed by Rent Controlling Authority.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धाराएं 10 एवं 35

मानक भाड़े के निर्धारण का आदेश – निष्पादन – भाड़ा नियंत्रक प्राधिकारी द्वारा पारित ऐसा आदेश निष्पादन योग्य नहीं – यह केवल मानक भाड़े का निर्धारण करता है और यदि भू–स्वामी बकाया वसूल करना चाहता है तो उसे भाड़ा नियंत्रक प्राधिकारी द्वारा नियत किये गये ऐसे किराये की वसूली के लिये वाद प्रस्तुत करना होगा।

Vipin Kumar Mehta v. Rajkumar Jain

Order dated 26.04.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 4844 of 2021, reported in 2023 (4) MPLJ 355

Relevant extracts from the order:

The Coordinate Bench of this Court in the case of ***Triveni Bai (Smt.) v. Smt. Vimla Devi, 2011 (1) MPLJ 620*** has held that the order passed under Section 10 of M.P. Accommodation Control Act is not executable and if the landlord wants to recover the arrears, then he has to file a civil suit. Paragraph Nos. 6 and 7 of the said order reads as under:

> "6. The Court in the case of ***State of Madhya Pradesh v. Mulamchand, 1973 MPLJ 832*** has held in paragraph 26:-
>
> > "26. The above discussion leads to the following conclusions:-
> >
> > (1) The bar of *res judicata* operates also as between two stages in the same litigation.
> >
> > (2) A decision in a writ proceeding operates as *res judicata* in a subsequent suit based on the same cause of action between the same parties.

(3) The principle of *res judicata* is based on the need of giving finality to a judicial decision. Once a *res judicata*, it shall not adjudged again. The underlying principle is that the parties should not be vexed twice over.

(4) Even where section 11, Civil Procedure Code, does not apply, the principle of *res judicata* may apply for the purpose of achieving finality in litigation.

(5) A question of law is as much in issue as a question of fact. The expression "matter in issue" is not confined to issues of fact; it includes issues of law as well.

(6) But, for the purposes of the rule of *res judicata*, the issue of law must be an abstract question of law, it must be one relating to its applicability or non-applicability to the facts and circumstances of the particular case.

(7) Even an erroneous decision on an issue of law operates as *res judicata*. Exceptions to this rule are (i) whereby a subsequent legislation, the law, as applied in the earlier decision, is altered. However, a different interpretation of the law as given in a subsequent binding precedent is not the same thing as altering the law. (ii) Where the question of law is one purely relating to the jurisdiction of the Court. (iii) Where the decision of the Court sanctions something which is illegal. 'Illegality' in this context refers to an act prohibited by law.

(8) As between a decision which operates as *res judicata* and another which is binding precedent, though not *res judicata*, the former prevails.

(9) A decision of the Supreme Court is binding on all Courts by virtue of Article 141 of the Constitution, but it is not the same thing as to say that a decision of the Supreme Court alters the law. Article 141 does not confer on the Supreme Court any legislative function. The Supreme Court declares the law; it does not alter the existing law, or make a new law."

Since it was already held in Civil Revision No.465/2001 that the only remedy available to the landlord for recovery of the rent fixed by the Rent Controlling Authority was to file a civil suit for arrears of rent on the basis of rent fixed by the Rent Controlling Authority, it is not now open for the respondents to execute the order of fixation of rent. Such a recourse would be barred by the principle of *res judicata*, in view of ***Mulamchand's*** decision (supra) of this Court.

Even on merit, this Court is of the opinion that Section 35 of the M.P Accommodation Control Act, 1961 does not empower civil Court to execute the order of Rent Controlling Authority, fixing thereby standard rent. Section 35 of the Act may be reproduced below for convenience:-

> "*35. Rent Controlling Authority to exercise powers of Civil Court for execution of other order*:- Save as otherwise provided in section 34, an order made by the Rent Controlling Authority or an order passed in appeal under this Chapter or in a revision under Chapter III-A shall be executable by the Rent Controlling Authority as a decree of a Civil Court and for this purpose, the Rent Controlling Authority shall have all the powers of a Civil Court."

Perusal of the aforesaid goes to show that an order made by the Rent Controlling Authority or an order passed in appeal under Chapter V or in a revision under Chapter III-A shall be executed by the Rent Controlling Authority as a decree of a Civil Court. The respondents have put the order dated 26.08.1989 passed by the Rent Controlling Authority in exercise of powers under section 10 (4) of the said Act into execution. Section 10 of the Act empowers the Rent Controlling Authority to fix standard rent in respect of any accommodation. Sub-section (4) of it, empowers him to fix such rent, as would be reasonable, having regard to the situation, locality and condition of the accommodation and the amenities provided therein. It merely empowers him to make fixation of rent and not to command the tenant to make payment at such rate of rent, which is fixed by him. This apart, it may be seen that the Rent Controlling Authority, vide his order dated 26.08.1989 fixed the rent at the rate of ₹ 75/- p.m. per room and ₹ 50/- p.m. in respect of the *varanda*. He further held that the rent would be payable with effect from 16.08.1984. There was no order to the revisionist to make the payment to respondents at the rate on which the rent was fixed by the Rent Controlling Authority. The said order did not contain any command to the revisionist to make the payment to the present respondents. Executability of an order is adjudged from the language of the order itself. Order of the Rent Controlling Authority dated 26.08.1989 was merely about fixation of rent and was not executable, in view of the language employed in it."

Accordingly, this Court is of the considered opinion that the Court below erred in law by not staying the further proceedings in the execution proceedings.

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2. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 12 (1), 13 (1) and 13 (2)

Dispute regarding rate of rent – Fixation of provisional rent – Whenever application u/s 13 (2) of the Act is filed by any of the parties, the Court is bound to fix reasonable provisional rent – It cannot refer the matter to the Rent Controlling Authority for fixation of provisional or standard rent – Unless the Court decides reasonable provisional rent, operation of Section 13 (1) of the Act gets arrested.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धाराएं 12 (1), 13 (1) एवं 13 (2) भाड़े की दर के संबंध में विवाद – अंतरिम भाड़े का निर्धारण – जब भी अधिनियम की धारा 13 (2) के अंतर्गत किसी भी पक्ष द्वारा आवेदन किया जाता है, तब न्यायालय उचित अंतरिम भाड़ा निर्धारित करने हेतु बाध्य है – न्यायालय अनंतिम अथवा मानक भाड़े के निर्धारण हेतु प्रकरण को भाड़ा नियंत्रक प्राधिकारी को नहीं भेज सकता – जब तक न्यायालय उचित अंतरिम भाड़ा तय नहीं करता, अधिनियम की 13 (1) का क्रियान्वयन बाधित हो जाता है।

Sunil Kumar Soni v. Nirmal Kumar Jain

Order dated 25.07.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 3880 of 2023, reported in ILR 2023 MP 2221

Relevant extracts from the order:

From reading of the Sections 10 and 13 (2) of the M.P. Accommodation Control Act, 1961, it is clear that whenever an application under Section 13(2) of the Act is filed by any of the parties to the suit raising dispute of monthly rate of rent, the Court is bound to fix the reasonable provisional rent for due compliance of Section 13(1) of the Act. As has been held in the case of ***Jamnalal and ors. v. Radheshyam, (2000) 4 SCC 380***, unless the Court decides the reasonable provisional rent, operation of Section 13(1) of the Act gets arrested.

Further from perusal of Section 10 of the Act, it is clear that the RCA gets jurisdiction to decide the standard rent only upon filing of application either by the landlord or by tenant and in the present case neither the plaintiff/landlord nor the defendant/tenant has prayed for fixation of standard rent, therefore, in such

circumstances there is no question of deciding/fixing standard rent, as has been directed by learned trial Court.

Impugned order shows that learned Court below has not decided the dispute although covered by Section 13(2) of the Act and has not fixed the reasonable provisional rent and beyond its jurisdiction referred the matter to the RCA for fixation of standard rent, therefore, by setting aside the impugned order matter is remanded back to learned trial Court for deciding the defendant's application under Section 13(1) & (2) of the Act afresh in accordance with the law without being influenced by the impugned order or by the order passed by this Court today.

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3. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34 and 37

(i) Jurisdiction – Scope of – Appellate jurisdiction of the Court u/s 37 is akin to the jurisdiction u/s 34 of the Act as the Appellate Court is restricted and is subject to the same grounds as that of the challenge u/s 34 of the Act – However, scope of jurisdiction u/s 34 and 37 of the Act are not akin to normal appellate jurisdiction.

(ii) Arbitral award – Power of – Courts ought not to interfere with the arbitral award in a casual and cavalier manner and the findings of the tribunal cannot be reversed on the ground of possibility of an alternative view.

माध्यस्थम् और सुलह अधिनियम, 1996 - धाराएं 34 एवं 37

(i) क्षेत्राधिकार – विस्तार – धारा 37 के अंतर्गत न्यायालय का अपीलीय क्षेत्राधिकार अधिनियम की धारा 34 के समान सीमित है एवं यह अधिनियम की धारा 34 के तहत चुनौती के समान आधारों के अधीन है – तथापि अधिनियम की धाराएं 34 और 37 के अंतर्गत, क्षेत्राधिकार सामान्य अपीलीय क्षेत्राधिकार के सदृश नहीं है।

(ii) माध्यस्थम् पंचाट – शक्ति – न्यायालयों को माध्यस्थम पंचाट में लापरवाही पूर्वक हस्तक्षेप नहीं करना चाहिए और अधिकरण के निष्कर्ष को वैकल्पिक दृष्टिकोण की उपलब्धता के आधार पर उलटना नहीं चाहिए।

Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking

Judgment dated 17.08.2023 passed by the Supreme Court in Civil Appeal No. 2903 of 2023, reported in (2023) 9 SCC 85 (3 Judge Bench)

Relevant extracts from the judgment:

> At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in ***MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163***, is akin to the jurisdiction of the court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.

Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction [***UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116***]. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal [***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India, (2019) 15 SCC 131*** and ***Parsa Kente Collieries Ltd. v. Rajasthan Rajya Viyut Utpadan Nigam Ltd., (2019) 7 SCC 236***]. In ***Dyna Technologies Private Limited v. Crompton Greaves Limited, (2019) 20 SCC 1***, this Court held:

> "There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award.
>
> Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.
>
> Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of

> contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

In the present case, the Arbitral Tribunal interpreted the contractual clauses and rejected the Respondent's claims pertaining to Disputes I, III and IV. The findings were affirmed (***Chenab Bridge Project Undertaking v. Konkan Railway Corpn. Ltd., 2019 SCC OnLine Bom 13296***) by the Single Judge of the High Court in a challenge under Section 34 of the Act, who concluded that the interpretation of the Arbitral Tribunal was clearly a possible view, that was reasonable and fair-minded in approach.

The Single Judge of the High Court affirmed the findings of the Arbitral Tribunal. The reason for upholding the decision of the Tribunal is not that the Single Judge exercising jurisdiction under Section 34 of the Act is in complete agreement with the interpretation of the contractual clauses by the Arbitral Tribunal. The Learned Judge exercising jurisdiction under Section 34 of the Act kept in mind the scope of challenge to an Arbitral Award as elucidated by a number of decisions of this Court. Section 34 jurisdiction will not be exercised merely because an alternative view on facts and interpretation of contract exists.

In the present case, we have examined the appreciation of evidence by the Arbitral Tribunal as well as the Single Judge of the High Court. We are convinced that their appreciation of the facts and interpretation of the contract is reasonable, and comprises a possible view. Keeping in mind the mandate of Section 5 of the Act 1996, we note the observation of this Court in ***Vidya Drolia and ors. v. Durga Trading Corporation, (2021) 2 SCC 1***:

> "Arbitration is a private dispute resolution mechanism whereby two or more parties agree to resolve their current or future disputes by an Arbitral Tribunal, as an alternative to adjudication by the courts or a public forum established by law. Parties by mutual agreement forgo their right in law to have their disputes adjudicated in the courts/public forum. Arbitration agreement gives contractual authority to the Arbitral Tribunal to adjudicate the disputes and bind the parties."

Having considered the matter in detail, we are of the opinion that the Division Bench of the High Court committed an error in setting aside the concurrent findings of the Arbitral Tribunal and the Single Judge of the High Court. The Award of the Arbitral Tribunal and the decision of the Single Judge of the High Court

under Section 34 of the Act cannot be termed as perverse or patently illegal as concluded by the Division Bench of the High Court. The decision of the Arbitral Tribunal is a plausible view, and the Single Judge refrained from interfering with it under Section 34 of the Act. We are of the opinion that the Division Bench should not have interfered with these orders.

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4. CIVIL PROCEDURE CODE, 1908 – Sections 11 and 100

(i) Appeal – Maintainability – Only against specific findings – Appeal not maintainable when the decree is not against the appellant.

(ii) *Res judicata* – Adverse finding – If the finding recorded against the party cannot be challenged by him then it cannot be said that such finding has been finally decided against him – Therefore, would not operate as *res judicata*.

सिविल प्रक्रिया संहिता, 1908 – धाराएं 11 एवं 100

(i) अपील – पोषणीयता – केवल विनिर्दिष्ट निष्कर्षों के विरूद्ध – अपीलार्थी के विरूद्ध डिक्री न होने से अपील पोषणीय नहीं।

(ii) *पूर्व न्याय* – प्रतिकूल निष्कर्ष – यदि अभिलिखित निष्कर्ष को पक्षकार चुनौती नहीं दे सकता तब ऐसे निष्कर्ष को उसके विरूद्ध अंतिम रूप से निराकृत होना नहीं कहा जा सकता – इसलिये *पूर्व न्याय* की तरह लागू नही होगा।

Ramesh and ors. v. Sajjan Bai through LRs. Sagarmal and ors.

Order dated 24.04.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 2692 of 2022, reported in 2023 (4) MPLJ 351

Relevant extract from the order:

In ***Banarsi and ors. v. Ram Phal, (2003) 9 SCC 606, Ali Ahmad v. Amarnath, AIR 1951 P&H 444, The Commissioner for the Port of Calcutta v. Bhairadinram Durga Prosad, AIR 1961 Calcutta 39 (FB), Jugal Kishore Singh and ors. v. Sheonandan, AIR 1973 Patna 22, Corporation of Madras v. P.R. Ramachandran and ors., AIR 1977 Madras 25, Midnapur Zamindari Company Limited v. Naresh Narayan Roy, AIR 1922 Privy Council 241, State of M.P. and ors. v. Gajrajsingh, 1971 MPLJ, 837 (DB), Tarasingh v. Smt. Shakuntla, AIR 1974 Rajasthan 21*** and ***Bhima Jally and ors. v. Nata Jally and ors., AIR 1977 Orissa 59***, it has been emphatically held that a defendant succeeding on one point has no chance to appeal against adverse findings recorded against him

on another points. Those adverse findings on other points hence do not operate as *res judicata* against him in a subsequent suit.

The relevant part of Section 11 of the CPC for the purpose of the present case is as under:

> "11…… No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

The primary requirement of applicability of *res judicata* is that the issue raised must have been heard and finally decided by the Court in the former suit. Finally decided would mean that the issue or finding which is against a party is challenged by him before the higher Court and the challenge is decided against him. Since in case of dismissal of a suit of plaintiff on one point, the issue or finding recorded against the defendant cannot be challenged by him by preferring an appeal, it cannot be said that such issue and finding has been finally decided against him as for there to be final adjudication on the same, the defendant ought to have a right to challenge them before the higher Court. Since he has no such right and cannot challenge them, they cannot be held to be operative as *res judicata* against him.

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5. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17 and Order 7 Rule 11 Application for amendment in the plaint *vis-a-vis* for rejection of plaint – Provisions of amendment are not restricted or controlled by the provisions of Order 7 Rule 11 – Application under Order 6 Rule 17 ought to be decided prior to the application under Order 7 Rule 11 – Reasons explained.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17 एवं आदेश 7 नियम 11 वाद को नामंजूर करने संबंधी आवेदन के संदर्भ में वाद में संशोधन करने संबंधी आवेदन – संशोधन के प्रावधान आदेश 7 नियम 11 के प्रावधानों द्वारा प्रतिबंधित या नियंत्रित नहीं हैं – आदेश 6 नियम 17 के अंतर्गत प्रस्तुत आवेदन का निराकरण आदेश 7 नियम 11 के तहत प्रस्तुत आवेदन के पूर्व किया जाना चाहिए – कारण स्पष्ट किए गये।

Suchitra Dubey (Smt.) v. Sattar & ors.

Order dated 30.06.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 383 of 2022, reported in ILR 2023 MP 2100

Relevant extracts from the order:

The provisions of Order 6 Rule 17 of the CPC are not restricted or controlled by provisions of Order 7 Rule 11 of the CPC. Where an application under Order 6 Rule 17 is filed and is pending then the same ought to be decided first prior to decision on the application under Order 7 Rule 11. The same would be more so when the application under Order 6 Rule 17 is filed pursuant to filing of an application under Order 7 Rule 11 and intends to remedy the defects as pointed out in the said application. Such consideration of an application under Order 6 Rule 17 would be in the interest of justice. If there is some objection as regards maintainability of the claim and that objection is sought to be remedied by plaintiff by appropriately amending the plaint, then such amendment application needs to be considered first.

As per Order 7 Rule 13 of the CPC where a plaint is rejected under Order 7 Rule 11 then plaintiff is not precluded from presenting a fresh plaint in respect of the same cause of action. Thus, if the application under Order 7 Rule 11 of the CPC is decided first and the plaint is rejected it would still be permissible for plaintiff to file a fresh plaint and including therein the proposed amendment in the pleadings. That would not serve any purpose but would only be a prolongation of the proceedings and shall result in unnecessary expenditure and delay for both the parties. It would be proper to permit amendment of the plaint so as to remove the defect therein.

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6. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11 and Order 21 Rule 97 Execution of decree – Third party claiming himself to be in possession of disputed property – Suit for protection of possession by the same third party – Not maintainable – Plaintiff was aware of decree and execution proceedings – Plaintiff had opportunity of raising objection in execution proceedings under Order 21 Rule 97 – Suit rightly rejected under Order 7 Rule 11.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11 एवं आदेश 21 नियम 97 आज्ञप्ति का निष्पादन – तृतीय पक्ष द्वारा विवादित संपत्ति पर स्वयं के आधिपत्य का दावा – उसी तृतीय पक्ष द्वारा आधिपत्य के संरक्षण हेतु वाद – ऐसा वाद प्रचलन योग्य नहीं – वादी को आज्ञप्ति और निष्पादन कार्यवाही के विषय में जानकारी थी – वादी को निष्पादन कार्यवाही में आदेश 21 नियम 97 के अंतर्गत आपत्ति उठाने का अवसर था – आदेश 7 नियम 11 के अंतर्गत वाद उचित नामंजूर किया गया।

Dinesh Saxena & ors. v. Smt. Reena Devi & ors.

Order dated 08.08.2023 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Civil Revision No. 177 of 2021, reported in ILR 2023 MP 2106

Relevant extracts from the order:

The Apex Court in the case of ***Anwarbi v. Pramod D.A. Joshi and ors., (2000) 10 SCC 405*** has held that where obstruction to execution of decree is being caused, it is for the decree holder to take appropriate steps under Order 21 Rule 97 of CPC for removal of obstruction and to have the rights of the parties including the obstructionist ajudicated under Order 21 Rule 101 of CPC. In the case of ***N.S.S. Narayana Sarma and ors. v. Goldstone Exports (P) Limited and ors., (2002) 1 SCC 662***, the Apex Court held that executing court has jurisdiction to decide all questions raised by such complainant, including questions regarding right, title or interest in the property, notwithstanding provisions of any other law to the contrary. The aim of enacting Rule 101 is to remove technical objections to applications filed by aggrieved party, whether he is the decree holder or any other person in possession. In the case of ***Har Vilas v. Mahendra Nath and ors., (2011) 15 SCC 377***, the Apex Court has held that third party claiming to be in possession of property forming subject matter of decree in his own right can resist delivery of possession even by filing an objection under Order 21 Rule 97 of CPC in executing Court itself. The objection shall have to be determined by executing court itself. In the case of ***Shreenath and anr. v. Rajesh and ors., (1998) 4 SCC 543***, the Apex Court held that under Order 21 Rule 35(1) of CPC, the executing court delivers actual physical possession of the disputed property to the decree holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. Under Rule 36, the decree holder gets the symbolic possession. Order 21 Rule 97 of CPC conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". This

may be either by the person bound by the decree, claiming title through the judgment-debtor or claiming independent right of his own including a tenant not party to the suit or even a stranger.

In view of the aforesaid provisions and the law settled by the Apex Court, the present civil suit is found to be barred by law because the respondents/plaintiffs being a third party claiming to be in possession of property forming subject matter of decree in his own right can resist delivery of possession by filing an objection under Order 21 Rule 97 of CPC in executing Court itself. The objection shall have to be determined by executing court itself.

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7. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11 (d)
RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISTION, REHABILITATION AND RESETTLEMENT ACT, 2013 – Section 63

(i) Jurisdiction of civil court – Acquisition proceeding initiated and award was passed during the pendency of suit – Plaintiff has not challenged the award before appropriate forum – After passing of final award, suit cannot proceed further as u/s 63 of the Act, civil court has no jurisdiction to record any finding on the validity of the acquisition proceedings – In such case, power under Order 7 Rule 11 (d) ought to have been exercised.

(ii) Subsequent events – Held, if due to subsequent events the original proceedings become infructuous then such events should be taken into consideration by the court – Suit was dismissed for want of jurisdiction.

व्यवहार प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11 (घ)

भूमि अधिग्रहण, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर एवं पारदर्शिता का अधिकार अधिनियम, 2013 – धारा 63

(i) सिविल न्यायालय का क्षेत्राधिकार – वाद लंबन के दौरान अधिग्रहण कार्यवाही आरम्भ हुई एवं पंचाट पारित हुआ – वादी ने सक्षम अधिकरण के समक्ष पंचाट को चुनौती नहीं दी – अंतिम पंचाट पारित होने के उपरांत वाद आगे नहीं चल सकता क्योंकि अधिनियम की धारा 63 के अनुसार सिविल न्यायालय के पास ऐसा कोई क्षेत्राधिकार नहीं है जिससे कि वह अधिग्रहण की कार्यवाही की वैधता के संबंध में कोई निष्कर्ष दे सके – ऐसे मामले में आदेश 7 नियम 11 (घ) की शक्ति का प्रयोग किया जाना चाहिए।

(ii) पश्चात्वर्ती घटना – अभिनिर्धारित, यदि पश्चात्वर्ती घटना के कारण मूल कार्यवाही निरर्थक हो जाती है तो न्यायालय को ऐसी घटना को विचार में लेना चाहिए – वाद को क्षेत्राधिकार न होने से निरस्त किया गया।

Dilip Buildcom Ltd. v. Ghanshyam Das Dwivedi

Order dated 26.06.2023 passed by the High Court of Madhya Pradesh in Civil Revision No. 852 of 2019, reported in ILR 2023 MP 1872

Relevant extracts from the order:

In view of the law laid down by the Supreme Court in ***Shipping Corporation of India Ltd. v. Machado Brothers and ors., (2004) 11 SCC 168*** and ***J.M. Biswas v. N.K. Bhattacharjee and ors., (2002) 4 SCC 68,*** it is clear that if due to subsequent events original proceedings have become infructuous, then such events can be and should be taken into consideration by Courts even under section 151 CPC.

As such taking into consideration the ratio of the aforesaid decisions and in view of Section 63 of the LARR Act, 2013, the present is a fit case where the powers under Order 7 Rule 11(d) of the CPC can be exercised. Section 63 of the LARR Act, 2013 is quoted as under:

> "***63. Jurisdiction of civil courts barred –*** No civil court (other than High Court under Article 226 or Article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter."

Resultantly, in the light of final acquisition award dated 12/12/2017, the instant suit cannot proceed further and is hereby rejected as the Civil Court has no jurisdiction to record any finding on the validity or otherwise of the acquisition process of the suit property undertaken and completed by the statutory authorities.

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8. CIVIL PROCEDURE CODE, 1908 – Order 9 Rule 13 and Order 17 Rule 2 PRACTICE AND PROCEDURE:

(i) Application to set aside *ex parte* decree – Maintainability – Trial court allowed the application – High Court reversed the order holding the application under Order 9 Rule 13 to be not maintainable by applying explanation to Order 17 Rule 2 – Suit was at the stage of plaintiff's evidence and defendants counsel had not

even cross-examined the plaintiff's witnesses – The explanation to Order 17 Rule 2 could not have been invoked – Order of Trial Court restored.

(ii) If a counsel withdraws his vakalatnama, then in the normal course the Trial Court should issue a notice to the concerned party to engage another counsel – Such party should not be proceeded *ex parte*.

सिविल प्रक्रिया संहिता, 1908 – आदेश 9 नियम 13 एवं आदेश 17 नियम 2 प्रथा एवं प्रक्रिया:

(i) एक पक्षीय आज्ञप्ति को अपास्त करने हेतु आवेदन – पोषणीयता – विचारण न्यायालय ने आवेदन स्वीकार किया – उच्च न्यायालय ने आदेश 17 नियम 2 के स्पष्टीकरण को प्रयोज्य करते हुए आदेश 9 नियम 13 के अंतर्गत आवेदन पोषणीय ना होना अभिनिर्धारित कर आदेश को उलट दिया – वाद वादीगण की साक्ष्य के स्तर पर था और यहां तक कि प्रतिवादीगण के अधिवक्ता ने वादीगण के साक्षियों का प्रतिपरीक्षण भी नहीं किया था – आदेश 17 नियम 2 का स्पष्टीकरण का अवलंब नहीं लिया जा सकता – विचारण न्यायालय का आदेश प्रत्यावर्तित किया गया।

(ii) यदि अधिवक्ता ने अपना वकालतनामा वापस ले लिया है तब सामान्य अनुक्रम में विचारण न्यायालय को संबंधित पक्षकार को अन्य अधिवक्ता नियुक्त करने के लिये सूचना पत्र जारी करना चाहिए – ऐसे पक्षकार के विरूद्ध एकपक्षीय कार्यवाही नहीं की जानी चाहिए।

Y.P. Lele v. Maharashtra State Electricity Distribution Company Ltd. and ors.

Judgment dated 16.08.2023 passed by the Supreme Court in Civil Appeal No. 5155 of 2023, reported in AIR 2023 SC 3832

Relevant extracts from the judgment:

Now coming to the explanation, what is stated therein is that where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court would be at liberty to proceed with the case as if such party were present. Two phrases are important in the explanation "any party" and "such party". "Any party" refers to the party which has led evidence or substantial evidence and "such party" refers to that very party which has led evidence or substantial evidence. What is discernible is that under Order XVII Rule 2, the Court

would proceed to pass orders with respect to any of the parties being absent or both the parties being absent. Whereas the explanation is confined to record the presence of that party and that party alone, which has led evidence or substantial evidence and has thereafter failed to appear. In the present case, admittedly the suit was at the stage of plaintiff's evidence as is apparent from the order dated 04.12.2004. The evidence of the defendants had not even started and the defendants' counsel had not even cross-examined the plaintiff's evidence.

The explanation in the present case could have been invoked only if the plaintiff, after adducing his evidence or substantial evidence, failed to appear, the Court could have recorded his presence while disposing of the suit. But once the defendant had not led any evidence at all, the explanation could not be invoked as against the defendant/appellant. The High Court committed an error in applying the explanation to Order XVII Rule 2 CPC and based upon it holding that an application under Order IX Rule 13 CPC would not be maintainable as the presence of the defendant would be deemed to be recorded at the time of disposal of the suit.

As a matter of fact, once the counsel had withdrawn his Vakalatnama, in normal course, the Trial Court ought to have issued notice to the defendants to engage another counsel, which it did not do and proceeded ex parte. The Trial Court committed an error in doing so. Further, the Trial Court, in its wisdom and discretion having allowed the application under Order IX Rule 13 CPC, the High Court ought to have refrained itself from interfering with an order which advanced the cause of justice by affording opportunities to both the parties so that the suit could be decided on merits.

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***9. CIVIL PROCEDURE CODE, 1908 – Order 11 Rule 1**

Interrogatories – Purpose is to facilitate proof of case by obtaining admission – It also saves time and cost which may otherwise be incurred by adducing evidence to prove facts which could have been admitted – But questions in the nature of cross-examination must not be allowed.

सिविल प्रक्रिया संहिता, 1908 – आदेश 11 नियम 1

परिप्रश्न – उद्देश्य, अभिस्वीकृति के माध्यम से प्रकरण का प्रमाणन सुगम बनाना है – यह ऐसे तथ्यों पर साक्ष्य प्रस्तुत करने में समय एवं व्यय की बचत करता है जो कि अन्यथा स्वीकार्य हो सकते थे – परंतु ऐसे प्रश्न जो कि प्रतिपरीक्षण की प्रकृति के हैं, की अनुमति नहीं देनी चाहिए।

Shobarani (Smt.) v. Smt. Malti Bai

Order dated 22.06.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 3505 of 2018, reported in ILR 2023 MP 1809

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10. CIVIL PROCEDURE CODE, 1908 – Order 16 Rule 1 and Order 41 Rule 23-A

Power of remand – Cannot be exercised to allow a party to fill up the lacuna of the case – Application to call record from *Panchayat* was rejected by the trial court and the same attained finality – Suit being time barred, was rejected by the trial court – Application to call record was allowed by the appellate court and the matter was remanded to be decided afresh – Such order of remand by appellate court is erroneous and unjustified as the appellate court did not decide the issue of limitation.

सिविल प्रक्रिया संहिता, 1908 – आदेश 16 नियम 1 एवं आदेश 41 नियम 23–क

रिमांड की शक्ति – किसी पक्ष द्वारा प्रकरण की कमी को पूरा करने के लिए प्रयोग नहीं किया जा सकता – पंचायत से रिकॉर्ड बुलाने हेतु प्रस्तुत आवेदन को विचारण न्यायालय ने निरस्त कर दिया एवं वह अंतिम हो गया था – वाद समयावधि बाधित होने के कारण विचारण न्यायालय द्वारा निरस्त किया गया – अपील न्यायालय ने रिकॉर्ड बुलाने के आवेदन को स्वीकार कर वाद को नए सिरे से निर्णित करने के लिए रिमांड किया – अपील न्यायालय द्वारा रिमांड का ऐसा आदेश गलत और अन्यायपूर्ण है क्योंकि अपील न्यायालय ने परिसीमा के संबंध में निष्कर्ष नहीं दिया था।

Kamla Bai (Smt.) & ors. v. Babulal & ors.

Order dated 05.07.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 1434 of 2006, reported in 2023 ILR 2023 MP 2056

Relevant extracts from the order:

I find that the order of remand passed by the appellate court is erroneous and not justified. The order of remand cannot be passed to fill up the lacuna. The plaintiff has filed a suit for declaration of title and permanent injunction but he has failed to adduce any evidence to prove his title. The documents exhibited from Annx.P/1 to P/18 do not indicate any title of his ancestors. The plaintiff's

application under Order 16 Rule 1 CPC was dismissed. Against the said order, the review was also dismissed, which was not challenged and the same attained finality. From going through the application under Order 16 Rule 1 CPC, this Court does not find any averment that what type of record of title of plaintiff's ancestors are available with the Panchayat. The documents only indicate that application was filed before Panchayat for permission to construct the house which is not in dispute. The dispute is in relation to adjacent land for which no document was exhibited. The Apex Court in the case of ***Shivkumar and ors. v. Sharanabasappa and ors., AIR 2020 SC 3102*** in para No.25.4 has held as under :-

> "25.4. A conjoint reading of Rules 23, 23A and 24 of Order XLI brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an Appellate Court is to follow the mandate of Rule 24 of Order XLI CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the Appellate Court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the Trial Court may not be considered proper in a given case because the First Appellate Court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.
>
> The decision cited by the learned Counsel for the appellants in the case of ***Mohan Kumar v. State of Madhya Pradesh and ors., (2017) 4 SCC 92*** is an apt illustration as to when the Appellate Court ought to exercise the power of remand. In the said case, the appellant and his mother had filed the civil suit against the Government and local body seeking declaration of title, perpetual injunction and for recovery of possession in respect of the land in question. The Trial

Court partly decreed the suit while holding that the plaintiffs were the owners of the land in dispute on which trespass was committed by the respondents and they were entitled to get the encroachment removed; and it was also held that the Government should acquire the land and pay the market value of the land to the appellant. Such part of the decree of the Trial Court was not challenged by the defendants but as against the part of the decision of the Trial Court which resulted in rejection of the claim of the appellant for allotment of an alternative land, the appellant preferred an appeal before the High Court. The High Court not only dismissed the appeal so filed by the appellant but proceeded to dismiss the entire suit with the finding that the plaintiff-appellant had failed to prove his ownership over the suit land inasmuch as he did not examine the vendor of his sale deed. In the given circumstances, this Court observed 8 that when the High Court held that the appellant was not able to prove his title to the suit land due to non- examination of his vendor, the proper course for the High Court was to remand the case to the Trial Court by affording an opportunity to the appellant to prove his title by adducing proper evidence in addition to what had already been adduced. Obviously, this Court found that for the conclusion reached by the High Court, a case for re-trial was made out particularly when the Trial Court had otherwise held that the appellant was owner of the land in dispute and was entitled to get the encroachment removed as also to get the market value of the land. Such cases where re- trial is considered necessary because of any particular reason and more particularly for the reason that adequate opportunity of leading sufficient evidence to a party is requisite, stand at entirely different footings than the cases where evidence has already been adduced and decision is to be rendered on appreciation of evidence. It also remains trite that an order of remand is not to be passed merely for the purpose of allowing a party to fill-up the lacuna in its case".

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***11. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 29 and Order 41 Rule 5**

Execution proceeding – Stay of – The executing Court cannot stay execution of decree on the ground that second appeal is pending – Only Appellate Court can stay the execution of decree after admitting the second appeal for hearing on substantial questions of law – Power to stay execution of decree cannot be usurped by the Executing Court under Order 21 Rule 29 of the Code.

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***12. CIVIL PROCEDURE CODE, 1908 – Order 22 Rule 4**

Decree in favour of or against a dead person – Party to a suit expired before final arguments were heard – Legal representatives were not brought on record – Decree passed in such matter would be a nullity.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 4

मृत व्यक्ति के पक्ष में अथवा उसके विरूद्ध आज्ञप्ति – वाद का पक्षकार अंतिम तर्क सुने जाने के पूर्व मृत हो जाता है – उसके विधिक प्रतिनिधि अभिलेख पर नहीं लाये गए – ऐसे मामलों में पारित आज्ञप्ति अकृतता होगी।

Raniya Bai v. Tekmani Rathore and ors.

Judgment dated 17.04.2023 passed by the High Court of Madhya Pradesh in Second Appeal No. 1171 of 2014, reported in 2023 (4) MPLJ 371

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13. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 2 and Order 43 Rule 1-A

Application to recall compromise decree – Maintainability – Person aggrieved by the compromise decree has a right to file an application for recalling before the court which granted the decree or can file an appeal in terms of Order 43 Rule 1-A – Both the remedies are available. ***(Banwari Lal v. Chando Devi, (1993) 1 SCC 581*** **followed*)***

सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 2 एवं आदेश 43 नियम 1–क समझौता आज्ञप्ति के प्रत्याह्वान हेतु आवेदन – पोषणीयता – समझौता डिक्री से पीड़ित व्यक्ति को उस न्यायालय के समक्ष जिसने आज्ञप्ति पारित की है, को आवेदन प्रस्तुत कर प्रत्याह्वान कराने का अधिकार है या वह आदेश 43 नियम 1–क के अंतर्गत अपील भी कर सकता है – दोनों उपाय उपलब्ध हैं। (*बनवारी लाल बनाम चंदो देवी, (1993) 1 एस.सी.सी. 581* अनुसरित)

Vipan Aggarwal and anr. v. Raman Gandotra and ors.

Order dated 29.04.2022 passed by the Supreme Court in Civil Appeal No. 3492 of 2022, reported in (2023) 10 SCC 529

Relevant extracts from the order:

This Court in a judgment reported in ***Banwari Lal v. Chando Devi, (1993) 1 SCC 581*** held the question as to whether an aggrieved person against the compromise decree has a right to file an application before the Court which granted the decree or an appeal in terms of Order 43 Rule 1A of the Code of Civil Procedure, 1908 (for short, 'the CPC'). It was held as under:-

> "When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, "the Court shall decide the question", the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more 2 comprehensive, the explanation to the proviso says that an agreement or compromise "which is void or voidable under the Indian Contract Act..." shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained the petition of compromise has to examine whether the compromise was void or voidable under the Indian Contract Act. Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the Code."

The appellants had thus the right to avail either the remedy of appeal in terms of Order 43 Rule 1A or by way of an application before the court granting decree. Therefore, the application filed by the appellants before the Court which granted the decree cannot be said to be without jurisdiction.

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14. CIVIL PROCEDURE CODE, 1908 – Order 26 Rule 9

Appointment of Commissioner – Plaintiff filed a suit for declaration of easementary rights – Defendant in counter-claim raised an issue of encroachment by plaintiff upon disputed land – It was also denied that there were windows, doors and ventilation at the northern side of the plaintiff's house – Plaintiff before adducing any evidence in support of his case filed an application under Order 26 Rule 9 of the Code for issuance of commission on the issue of encroachment – Such application would amount to collection of evidence – Plaintiff was required to first prove by way of evidence that there existed any doors, windows or ventilation on his property – Trial Court rightly rejected the application.

सिविल प्रक्रिया संहिता, 1908 – आदेश 26 नियम 9

आयुक्त की नियुक्ति – वादी ने सुखाधिकार की घोषणा हेतु वाद प्रस्तुत किया – प्रतिवादी ने प्रतिदावा में वादी द्वारा विवादित भूमि पर अतिक्रमण का प्रश्न उठाया – वादी के घर के उत्तर दिशा में खिड़कियां, दरवाजे एवं रौशनदान होने से भी इंकार किया गया – वादी ने अपने प्रकरण के समर्थन में साक्ष्य प्रस्तुत करने के पूर्व संहिता के आदेश 26 नियम 9 के अंतर्गत अतिक्रमण के बिन्दु पर कमीशन जारी करने हेतु आवेदन प्रस्तुत किया – ऐसा आवेदन साक्ष्य संकलन के सदृश होगा – वादी को सर्वप्रथम साक्ष्य के माध्यम से यह प्रमाणित करना होगा कि उसकी संपत्ति पर दरवाजा, खिड़की अथवा रौशनदान स्थित था – विचारण न्यायालय ने उचित ही आवेदन निरस्त किया।

Deepak Goyal v. Nagar Nigam Gwalior

Order dated 09.08.2023 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 5999 of 2022, reported in AIR 2023 MP 145

Relevant extracts from the order:

This Court is in full agreement with the findings given by the Coordinate Bench of this Court in the matter of ***Anurag Jaiswal v. Collector*, (2019) 2 MPLJ 637** which is based upon a judgment of Division Bench of this Court in the matter of ***Durga Prasad v. P. Faujdar, 1975 MPLJ 801 (AIR 1975 MP 196),*** wherein it was opined that in case where there is a dispute as to encroachment, the fact whether there is such an encroachment or not cannot be determined in absence of an agreed map except by appointment of the commissioner under Order 26 Rule 9 CPC, but in the present matter the fact situation is bit different. The entire case of the

petitioner is not based upon the fact that the respondents have encroached upon the piece of land in dispute rather it is the suit for declaration of the easementary rights. The question of encroachment has been raised for the first time by the respondents in their counterclaim that the plaintiff/petitioner had encroached upon the piece of land which was not in the map appended by the respondents along with their counter-claim.

From bare perusal of the application filed under Order 26 Rule 9 CPC by the petitioner/plainfiff, it would be evident that the said application was moved to ascertain the fact whether on spot the windows, doors and the ventilation, on the property possessed by the petitioner/plaintiff, exists or not. According to this Court such type of an application would amount to collecting of an evidence as the very suit filed by the petitioner/plaintiff was with regard to declaration of his easementary rights and for that the plaintiff/petitioner was required to first prove by way of evidence that there existed any doors, windows or ventilation on the northern side of his property and only, thereafter, if some dispute still persists and the Trial Court needed elucidation then the commission could have been issued, but not at this stage. Thus, according to this Court the judgment cited by the learned Counsel for the petitioner in the matter of ***Anurag Jaiswal v. Collector*** (supra) has no applicability in the present matter.

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15. CIVIL PROCEDURE CODE, 1908 – Order 26 Rule 9

(i) Appointment of Commissioner – Scope – Power conferred under Order 26 Rule 9 can be exercised at any stage but for limited purpose only – Where there is a dispute of encroachment or demarcation of land between the parties, the court should direct investigation by appointing commission.

(ii) Commission for demarcation – Scope – Demarcation already done by the revenue officers and plaintiff filed it in support – In case defendant disputes it, burden of proof would be on the plaintiff to prove the demarcation by adducing cogent evidence – There is no need for fresh demarcation by appointing commission. [*Haryana WAQF Board v. Shanti Swaroop, (2008) 8 SCC 671* and *Durga Prasad v. Praveen Faujdar, (1975) MPLJ 810* relied upon.]

सिविल प्रक्रिया संहिता, 1908 – आदेश 26 नियम 9

(i) आयुक्त की नियुक्ति – विस्तार – आदेश 26 नियम 9 के तहत प्रदत्त शक्तियों का प्रयोग किसी भी प्रक्रम पर किया जा सकता है परन्तु सीमित उद्देश्य के लिये – जहॉ पक्षकारों के मध्य अतिक्रमण अथवा भूमि के सीमांकन का विवाद हो वहॉ न्यायालय को कमीशन नियुक्त कर अन्वेषण हेतु निर्देशित करना चाहिए।

(ii) सीमाकंन हेतु कमीशन – विस्तार – राजस्व अधिकारियों द्वारा संपत्ति का सीमांकन पूर्व में किया गया जिसे वादी ने अपने समर्थन में प्रस्तुत किया – यदि प्रतिवादी द्वारा उसे विवादित किया जाता है तो ठोस साक्ष्य प्रस्तुत कर सीमाकंन को साबित करने का भार वादी पर होगा – नए सीमांकन की कोई आवश्यकता नहीं। [*हरियाणा वक्फ बोर्ड विरूद्ध शांति स्वरूप, (2008) 8 एससीसी 671* एवं *दुर्गा प्रसाद विरूद्ध प्रवीण फौजदार, (1975) एमपीएलजे 810* पर विश्वास किया गया।]

Shivnarayan v. Shyamlal & ors.

Order dated 14.03.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 5362 of 2022, reported in ILR 2023 MP 2031

Relevant extracts from the order:

In the present case, the demarcation has already been done by the revenue authorities and the petitioner/plaintiff has filed its report. If the respondents/ defendants are disputing the said, then the burden is on the petitioner/plaintiff to prove that demarcation by adducing evidence. Once the demarcation has already been done by the revenue authority, there would be no need for fresh demarcation by appointing a Commissioner, which would be done by the same authority. As discussed above, as per the scope of Order 26 Rule 9 of CPC if any elucidation or clarification will be required in future at any stage of the suit then the trial Court shall be competent to pass the order at the appropriate stage.

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16. CRIMINAL PRACTICE:

(i) Mentioning caste of accused in title of judgment – Impermissible – An accused has no caste or religion when the court deals with his case – Practice of mentioning caste strongly deprecated – Trial courts are advised to not mention the caste of the accused in title of the judgment.

(ii) Rehabilitation of victim – Whenever a child is subjected to sexual assault, the State Legal Services Authorities should ensure that the child is provided with a facility of counselling by a trained child counsellor or child Psychologist – It will help the child victim to come out of the trauma – State should ensure that the child continues with the education.

(iii) Sentencing – Relevant factors like accused is not a habitual offender, young age and period of custody can be considered – The mitigating circumstances which weigh in favour of the accused must be balanced with the impact of the offence on the victim, her family and society in general – Punishment must commensurate with the gravity of the offence.

आपराधिक विचारणः

(i) निर्णय के शीर्षक में अभियुक्त की जाति का उल्लेख करना – अस्वीकार्य – जब न्यायालय प्रकरण का निराकरण करती है तब अभियुक्त का कोई जाति या धर्म नहीं होता है – जाति का उल्लेख करने की प्रथा को कठोरतापूर्वक हतोत्साहित किया गया – विचारण न्यायालय को सलाह दी जाती है कि वे निर्णय के शीर्षक में अभियुक्त की जाति का उल्लेख न करें।

(ii) पीड़ित का पुनर्वास – जब भी कोई बालक लैंगिक हमले का शिकार होता है, तो राज्य विधिक सेवा प्राधिकरण को यह सुनिश्चित करना चाहिए कि बालक को एक प्रशिक्षित बाल परामर्शदाता या बाल मनोवैज्ञानिक द्वारा परामर्श की सुविधा प्राप्त हो – इससे पीड़ित बालक को आघात से बाहर निकलने में मदद मिलेगी – राज्य को यह सुनिश्चित करना चाहिए कि बालक की शिक्षा जारी रहे।

(iii) दण्डादेश – प्रासंगिक कारक जैसे कि अभियुक्त आदतन अपराधी नहीं है, कम उम्र और निरोध की अवधि पर विचार किया जा सकता है – दण्डादेश कम करने वाली परिस्थितियाँ जो अभियुक्त के पक्ष में हैं, उन्हें पीड़ित, उसके परिवार और सामान्यतः समाज पर अपराध के प्रभाव के साथ संतुलित किया जाना चाहिए – दण्डादेश अपराध की गंभीरता के अनुरूप होना चाहिए।

State of Rajasthan v. G

Judgment dated 11.10.2023 passed by the Supreme Court in Criminal Appeal No. 3168 of 2023, reported in (2023) 10 SCC 516

Relevant extracts from the judgment:

While dealing with the issue of sentence, in such a case, the mitigating circumstances which weigh in favour of the accused must be balanced with the impact of the offence on the victim, her family and society in general. The rights of the accused must be balanced with the effect of the crime on the victim and her family. This is a case which impacts the society. If undue leniency is shown to the respondent in the facts of the case, it will undermine the common man's confidence in the justice delivery system. The punishment must be commensurate with the gravity of the offence. When it comes to sentencing, the Court is not only concerned with the accused but the crime as well.

Only two factors prevent us from restoring the life sentence. First is the young age of the accused. His age was 22 years, as noted by the High Court. The second is that he has undergone the sentence imposed by the High Court. Therefore, we are of the view that in this case, the sentence of rigorous imprisonment of fourteen years will be appropriate.

Before we part with the judgment, we find from the cause title of the judgments of the Trial Court and the High Court that the respondent's caste has been mentioned. The same defect has been carried forward in the Special Leave Petition as the description of the respondent-accused must have been copied from the cause title of the judgments of the Courts. An accused has no caste or religion when the Court deals with his case. We fail to understand why the caste of the accused has been mentioned in the cause title of the judgments of the High Court and the Trial Court. The caste or religion of a litigant should never be mentioned in the cause title of the judgment. We have already observed in our order dated 14th March 2023 that such practice should never be followed. The cause title in this judgment has been amended accordingly. Formal amendment be carried out after pronouncement of this judgment.

We have a suggestion to make before we part with judgment. Whenever a child is subjected to sexual assault, the State or the Legal Services Authorities should ensure that the child is provided with a facility of counselling by a trained child counsellor or child psychologist. It will help the victim children to come out of the trauma, which will enable them to lead a better life in future. The State needs to ensure that the children who are the victims of the offence continue with their education. The social environment around the victim child may not always be conducive to the victim's rehabilitation. Only the monetary compensation is not enough.

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17. CRIMINAL PROCEDURE CODE, 1973 – Section 154
EVIDENCE ACT, 1872 – Section 11
INDIAN PENAL CODE, 1860 – Sections 148, 149, 302 and 307

(i) Delay in lodging FIR – Effect of – Such circumstance gives rise to suspicion on the case – The Court must look for the possible motive and the explanation for the delay as well as consider its effect on the trustworthiness of the prosecution witnesses – No time duration, in the abstract could be fixed as a "reasonable time" to give information to the Police – Such question should be determined as per facts and circumstances of each case.

(ii) Plea of *alibi* – Standard of "strict scrutiny" is required when such plea is taken – When prosecution relied on eye witness then something more than ocular statement ought to have been present to prove the *alibi*.

(iii) Criminal history of deceased – Simply because the deceased has a chequered past which constituted several run-ins with the law, cannot be a factor to give benefit thereof to accused.

दण्ड प्रक्रिया संहिता, 1973 – धारा 154
साक्ष्य अधिनियम, 1872 – धारा 11
भारतीय दण्ड संहिता, 1860 – धाराएं 148, 149, 302 एवं 307

(i) प्रथम सूचना रिपोर्ट लेख कराने में विलंब – प्रभाव – ऐसी परिस्थिति से प्रकरण पर संदेह उत्पन्न होता है – न्यायालय को संभावित उद्देश्य और विलंब के स्पष्टीकरण की खोज करनी चाहिए और अभियोजन साक्षीगण की विश्वसनीयता पर, इसका क्या प्रभाव पड़ा पर विचार करना चाहिए – सारवान रूप में किसी भी समयावधि में पुलिस को सूचना देने के लिये ''उचित समय'' के रूप में निर्धारित नहीं किया जा सकता, ऐसे प्रश्न का निर्धारण प्रत्येक प्रकरण के तथ्यों और परिस्थितियों के अनुसार किया जाना चाहिए।

(ii) अन्यत्र उपस्थिति का अभिवाक् – जब ऐसा अभिवाक् लिया जाता है तो ''सख्त जांच'' के मानक की आवश्यकता होती है – जब अभियोजन पक्ष चक्षुदर्शी साक्षी पर विश्वास करता है तो अन्यत्र उपस्थिति का अभिवाक् साबित करने के लिए मौखिक कथन से कुछ अधिक उपलब्ध होना चाहिए था।

(iii) मृतक की आपराधिक पृष्ठभूमि – केवल इसलिए कि मृतक का विधि के साथ संघर्षरत उतार – चढ़ाव युक्त अतीत है, अभियुक्त को लाभ देने का कारक नहीं हो सकता।

Kamal Prasad and ors. v. State of Madhya Pradesh (now State of Chhattisgarh)

Judgment dated 10.10.2023 passed by the Supreme Court in Criminal Appeal No. 1578 of 2012, reported in (2023) 10 SCC 172

Relevant extracts from the judgment:

This Court in ***Apren Joseph v. State of Kerala, (1973) 3 SCC 114***, has observed that "Undue unreasonable delay in lodging the FIR", "inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version." The Bench of three learned Judges further observed that no time duration, in the abstract could be fixed as the "reasonable time" to give information to the police and therefore, the same is a question to be determined as per facts and circumstances of each case.

In respect of the first contention put forth by the appellant convicts it is seen from the record that the FIR was registered about two hours after the incident having taken place on 17.04.1988 at about 08.00 a.m. The document itself records the time of incident as being 8.15 a.m. and the time of report as being 11.00 a.m. The testimony of PW-3 at whose instance the FIR was recorded, shows that out of fear and having sustained numerous injuries, he ran from the place of occurrence and hid in the house of Baisakhu Kewat and only emerged there from two hours later. In such a situation, delay in filing of the FIR cannot be said to be fatal to the case of the prosecution more so in view of the injuries sustained by him; the place of occurrence being a remote village area and that the version of events was dictated to the police by this witness only upon their reaching his place of shelter. To us it does not appear to be a case of prior consultation; discussion; deliberation or improvements.

We find that for the plea of alibi to be established, something other than a mere ocular statement ought to have been present. After all, the prosecution has relied on the statement of eyewitnesses to establish its case against the convict-appellants leading to the unrefuted conclusion that convict-appellants were present on the spot of the crime and had indeed caused injuries unto the deceased as also PW-3 with *Lathis and Tabbal* on various and vital parts of their bodies.

It may be true that the deceased Chetram was a history-sheeter and had scores of criminal cases pending against him or cases in which he was involved.

However, such fact is unsubstantiated on record for no detail whatsoever stands provided in respect of such cases involving the deceased. Be that as it may, simply because the deceased had a chequered past which constituted several run-ins with the law, Courts cannot give benefit thereof, particularly when such claims are bald assertions, to those accused of committing such a person's murder. And in any event, such a plea is merely presumptuous.

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18. CRIMINAL PROCEDURE CODE, 1973 – Sections 197 and 239
PREVENTION OF CORRUPTION ACT, 1988 – Section 19

(i) Sanction for prosecution – Applicability – Accused was serving as Astt. General Manager in a nationalised Bank – Although he was a public servant but he was not holding a post where he could not be removed from service except by or with the sanction of the Government – As such, provisions of Section 197 are not attracted – Accused cannot claim protection of the said provision.

(ii) Discharge – Accused was charged with offences both under Prevention of Corruption Act and Indian Penal Code – He was discharged from offence u/s 19 of the Act – This alone cannot be a ground for not prosecuting accused for offences under IPC.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 197 एवं 239
भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 19

(i) अभियोजन के लिये मंजूरी – प्रयोज्यता – अभियुक्त राष्ट्रीयकृत बैंक में असिस्टेंट जनरल मैनेजर के रूप में कार्य कर रहा था – यद्यपि वह लोक सेवक था परन्तु ऐसा पद धारित नहीं करता था जहां उसे शासन द्वारा या उसकी अनुमति के बिना सेवा से पृथक न किया जा सकता हो – अतः धारा 197 के उपबंध आकर्षित नहीं होते – अभियुक्त कथित उपबंध के संरक्षण का दावा नहीं कर सकता।

(ii) उन्मोचन – अभियुक्त भ्रष्टाचार निवारण अधिनियम एवं भारतीय दण्ड संहिता दोनों के अंतर्गत अपराधों में आरोपित किया गया था – उसे अधिनियम की धारा 19 के अंतर्गत मंजूरी के अभाव में भ्रष्टाचार निवारण अधिनियम के अंतर्गत अपराध से उन्मोचित किया गया, अभियुक्त को भारतीय दण्ड संहिता के अंतर्गत अपराधों में अभियोजित न करने का केवल यही आधार नहीं हो सकता।

A. Sreenivasa Reddy v. Rakesh Sharma and anr.

Judgment dated 08.08.2023 passed by the Supreme Court in Criminal Appeal No. 2339 of 2023, reported in AIR 2023 SC 3811

Relevant extracts from the judgment:

The appellant was serving as an Assistant General Manager, State Bank of India, Overseas Bank at Hyderabad. State Bank of India is a nationalised bank. Although a person working in a nationalised bank is a public servant, yet the provisions of Section 197 CrPC would not be attracted at all as Section 197 is attracted only in cases where the public servant is such who is not removable from his service save by or with the sanction of the Government. It is not disputed that the appellant is not holding a post where he could not be removed from service except by or with the sanction of the Government. In this view of the matter, even if it is alleged that the appellant herein is a public servant, still the provisions of Section 197CrPC are not attracted at all.

Thus, although in the present case, the appellant has been discharged from the offences punishable under the PC Act, 1988 yet for IPC offences, he can be proceeded further in accordance with law.

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19. CRIMINAL PROCEDURE CODE, 1973 – Sections 216, 374 and 386
INDIAN PENAL CODE, 1860 – Sections 34, 148, 149, 201 and 302

(i) Appeal against conviction – Absence of Advocate at the time of hearing – Without hearing accused or his advocate, appeal cannot be decided – If the advocate was absent, court should have appointed a lawyer to espouse his cause.

(ii) Alteration or addition of charge by Appellate Court – Permissibility – When prejudice is likely to be caused to the accused Appellate Court can exercise the power to alter or add charge after putting the accused to the notice of the charge.

(iii) Conversion of charge from Section 149 to Section 34 – If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and therefore, ought not be permitted – If it does involve a common intention then such substitution must be held to be a formal matter, therefore, whether such recourse can be taken or not, depends on the facts of each case.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 216, 374 एवं 386
भारतीय दण्ड संहिता, 1860 – धाराएं 34, 148, 149, 201 एवं 302

(i) दोषसिद्धि के विरूद्ध अपील – सुनवाई के समय अधिवक्ता की अनुपस्थिति – अभियुक्त या उसके अधिवक्ता को सुने बिना अपील में निर्णय नहीं किया

जा सकता है, यदि अधिवक्ता अनुपस्थित था, तो न्यायालय को उसका पक्ष समर्थन करने के लिए एक अन्य अधिवक्ता को नियुक्त करना चाहिए।

(ii) अपीलीय न्यायालय द्वारा आरोप में परिवर्तन या परिवर्धन – अनुज्ञेयता – जब अभियुक्त को पूर्वाग्रह होने की संभावना हो – अपील न्यायालय अभियुक्त को सूचना देने के बाद आरोप में परिवर्तन या परिवर्धन करने की शक्ति का प्रयोग कर सकता है।

(iii) धारा 149 से धारा 34 में आरोप का परिवर्तन – यदि सामान्य उद्देश्य में आवश्यक रूप से एक सामान्य आशय सम्मिलित नहीं है, तब धारा 149 के स्थान पर धारा 34 के प्रतिस्थापन का परिणाम अभियुक्त के प्रति पूर्वाग्रह हो सकता है अतः इसकी अनुमति नहीं दी जानी चाहिए – अगर इसमें सामान्य आशय सम्मिलित है तो इस तरह के प्रतिस्थापन को एक औपचारिक मामला माना जाना चाहिए, अतः ऐसा अवलंब लिया जा सकता है या नहीं, यह प्रत्येक मामले के तथ्यों पर निर्भर करता है।

Chandra Pratap Singh v. State of Madhya Pradesh

Judgment dated 09.10.2023 passed by the Supreme Court in Criminal Appeal No. 1209 of 2011, reported in (2023) 10 SCC 181

Relevant extracts from the judgment:

The first issue is whether any prejudice was caused to the appellant, as his appeal was heard in the absence of his advocate. The cause-title of the judgment clearly mentions that the advocate representing the appellant was absent. The order sheet of the appeal preferred by the appellant and two others (Annexure P-3) records that on 26-10-2004, when the appeal preferred by the appellant and two others was called out, the appellant's advocate was present. The appeal was heard on 23-11-2004. The order sheet of that date records that the advocate for the appellant was absent. It also notes that the arguments were heard, and judgment was reserved. The impugned judgment [Budhal Raja v. State of M.P., Criminal Appeal No. 992 of 1992, order dated 1-12-2004 (MP)] does not refer to any submission canvassed on behalf of the appellant. The High Court has, thus, committed illegality by deciding the appeal against the conviction preferred by the appellant without hearing the appellant or his advocate. After finding that the advocate appointed by the appellant was absent, the High Court ought to have appointed a lawyer to espouse his cause.

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In view of the wide powers conferred by Section 386 of Cr.PC, even an Appellate Court can exercise the power under Section 216 of altering or adding the charge. However, if the Appellate Court intends to do so, elementary principles of natural justice require the Appellate Court to put the accused to the notice of the charge proposed to be altered or added when prejudice is likely to be caused to the accused by alteration or addition of charges. Unless the accused was put to notice that the Appellate Court intends to alter or add a charge in a particular manner, his advocate cannot effectively argue the case. Only if the accused is put to notice by the Appellate Court that the charge is intended to be altered in a particular manner, his advocate can effectively argue that even the altered charge was also not proved. For example, in the present case, it was necessary for the Appellate Court to put the appellant to notice that it intended to convict him with the aid of Section 34 of IPC, for which a charge was not framed. We may add here that the Court can give the notice of the proposed alteration or addition of the charge even by orally informing the accused or his advocate when the appeal is being heard. In a given case, the Court can grant a short time to the advocates for both sides to prepare themselves for addressing the Court on the altered or added charge.

In the facts of the case, the appellant's advocate was absent on the date of the hearing. Therefore, there was no occasion for the High Court to put the advocate for the appellant to the notice that the charge under Section 302 read with Sections 148 and/or 149 of IPC was proposed to be altered to a charge under Section 302 read with Section 34 of IPC. Therefore, grave prejudice has been caused to the appellant by altering the charge without giving any notice to the appellant or his advocate about the charge. The reason is that there was no opportunity available to the accused to argue that there was no evidence on record to prove the existence of common intention, which is the necessary ingredient of Section 34 of IPC. There is one more crucial aspect of the case. A perusal of the impugned judgment shows that the High Court has extensively

referred to the evidence of PW-1 Nand Kishore and PW-2 Manua. However, the entire judgment does not mention that the Court was altering the charge for the reasons recorded. No finding is recorded in terms of sub-section (4) of Section 216 of Cr.PC that the proposed alteration of the charge will not prejudice the accused in his defence.

In the case of ***Chittarmal v. State of Rajasthan, (2003) 2 SCC 266*** this Court dealt with the conversion of charge from Section 302 read with Section 149 of IPC, to Section 302 read with Section 34 of IPC. Paragraph 14 of the said decision reads thus:

> "14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all. (See ***Barendra Kumar Ghosh v. King Emperor, AIR 1925 PC 1, Mannam Venkatadari v. State of A.P., 1971 SCC (Cri) 479, Nethala Pothuraju v. State of A.P.,*** **1992 SCC (Cri) 20** and ***Ram Tahal v. State of U.P., (1972) 1 SCC 136)"***

We have carefully perused the evidence of PW-1 and PW-2. There is no evidence of the presence of common intention. Only the act of stopping the

deceased Uma Prasad will not, by itself, bring the case within the purview of Section 34 of IPC. There is no overt act attributed to the appellant by any prosecution witness in the assault on deceased Uma Prasad. It is difficult to infer a prior meeting of minds in this case. There is no material to prove the existence of common intention which is the necessary ingredient of Section 34 of IPC. In this case, there is no overlap between a common object and a common intention. Therefore, the conviction of the appellant under Section 302, read with Section 34 will have to be set aside.

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20. CRIMINAL PROCEDURE CODE, 1973 – Sections 227 and 465
PREVENTION OF CORRUPTION ACT, 1988 – Sections 13 and 19
Application for discharge of accused – Maintainability – On the ground of invalidity of sanction – Multiple applications for discharge were filed and trial proceeded – 17 prosecution witnesses were also examined – After reaching such stage the trial could not be stayed in view of Section 19 (3) of the Act especially when respondent himself has not stated that any failure of justice has occurred – Interlocutory application seeking discharge filed in the midst of trial would not be maintainable – The only option available to the respondent/accused in that situation is to raise the issue at the stage of final arguments.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 227 एवं 465
भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 13 एवं 19
अभियुक्त के उन्मोचन हेतु आवेदन – पोषणीयता – मंजूरी की अवैधता का आधार – उन्मोचन हेतु अनेक आवेदन निराकृत एवं विचारण अग्रसरित – 17 अभियोजन साक्षी भी परीक्षित – इस स्तर पर पहुँचने के उपरांत विचारण अधिनियम की धारा 19 (3) के आलोक में स्थगित नहीं किया जा सकता, विशेषतः जबकि प्रत्यर्थी ने स्वयं कथन किया कि किसी तरह की न्याय की हानि नहीं हुई – विचारण के मध्यवर्ती स्तर पर पुनः उन्मोचन के अनुतोष का अंतवर्ती आवेदन पोषणीय नहीं – अभियुक्त के लिये ऐसी परिस्थिति में केवल यह विकल्प है कि वह अंतिम तर्क के स्तर पर इस बिन्दु को उठाये।

State of Karnataka Lokayukta Police v. S. Subbegowda
Judgment dated 03.08.2023 passed by the Supreme Court in Criminal Appeal No. 1598 of 2023, reported in AIR 2023 SC 3770

Relevant extracts from the judgment:

In the instant case, the Special Judge proceeded with the trial, on the second application for discharge filed by the respondent having not been pressed for by him. The Special Judge, while dismissing the third application filed by the respondent seeking discharge after examination of 17 witnesses by the prosecution, specifically held that the sanction accorded by the government which was a superior authority to the Karnataka Water Supply Board, of which the respondent was an employee, was proper and valid. Such findings recorded by the Special Judge could not have been and should not have been reversed or altered by the High Court in the petition filed by the respondent challenging the said order of the Special Judge, in view of the specific bar contained in sub-section (3) of Section 19, and that too without recording any opinion as to how a failure of justice had in fact been occasioned to the respondent-accused as contemplated in the said sub-section (3). As a matter of fact, neither the respondent had pleaded nor the High Court opined whether any failure of justice had occasioned to the respondent, on account of error if any, occurred in granting the sanction by the authority.

As a matter of fact, such an interlocutory application seeking discharge in the midst of trial would also not be maintainable. Once the cognizance was taken by the Special Judge and the charge was framed against the accused, the trial could neither have been stayed nor scuttled in the midst of it in view of Section 19(3) of the said Act. In the instant case, though the issue of validity of sanction was raised at the earlier point of time, the same was not pressed for. The only stage open to the respondent-accused in that situation was to raise the said issue at the final arguments in the trial in accordance with law.

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21. CRIMINAL PROCEDURE CODE, 1973 – Section 319

(i) Power to summon any person as accused – Stage – Whether the trial court can pass such order in the judgment? Held, No – Trial court has to pass such order before pronouncement of judgment – In case, a person is joined as an accused at belated stage, then a separate trial should be initiated. [*Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289* relied upon.]

(ii) Grounds to invoke section 319 of the Code – Trial court passed the order without considering the grounds constituting the offence on

the basis that his role was suspicious – Such vague finding is not sufficient to implead any person as accused.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

(i) किसी व्यक्ति को अभियुक्त के रूप में समन करने की शक्ति – प्रक्रम – क्या विचारण न्यायालय निर्णय में ऐसा आदेश पारित कर सकती है? अवधारित, नहीं – विचारण न्यायालय को निर्णय घोषित करने के पूर्व ऐसा आदेश पारित करना चाहिए – यदि किसी व्यक्ति को विचारण के आगामी प्रक्रम पर अभियुक्त के तौर पर जोड़ा जाता है तो उसका विचारण पृथक से आरम्भ किया जा सकता है। *(सुखपाल सिंह खैरा विरूद्ध पंजाब राज्य, (2023) 1 एस.सी.सी. 289* पर विश्वास किया गया।*)*

(ii) धारा 319 का अवलंब लेने के आधार – विचारण न्यायालय ने अपराध गठित करने वाले कारकों पर विचार किये बिना आदेश इस आधार पर पारित किया कि उसकी भूमिका संदिग्ध थी – ऐसा अस्पष्ट निष्कर्ष किसी व्यक्ति को अभियुक्त के रूप में आलिप्त करने हेतु पर्याप्त नहीं।

Lalit Agrawal v. State of M.P.

Order dated 28.06.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 2034 of 2023, reported in ILR 2023 MP 2114

Relevant extracts from the order:

The question is whether the learned trial Court has applied the aforesaid law in passing the impugned order under Section 319 of Cr.P.C. In this case, two of the accused have been acquitted and remaining three have been convicted. As such, this is a case of joint result; i.e. acquittal and conviction, both. Hence, in my considered opinion, the learned trial Court should pass the order under Section 319 of Cr.P.C. before passing the order of acquittal of Aneesh and Abdul Saleem. Since, the learned trial court has passed the impugned order under Section 319 of Cr.P.C. against the petitioner after acquitting the accused persons rather than preceding their acquittal, the order passed by the learned trial Court cannot be said to be in accordance with the settled law laid down by Hon'ble Apex Court in the case of ***Sukhpal Singh Khaira v. State of Punjab, (2023)1 SCC289***. Therefore, on the basis of this sole reason, this order of learned trial Court is not sustainable in the eyes of law.

In the case at hand, the learned trial Court, without assigning sufficient ground for substratum of constituting the said offence, has wrongly observed that the role of the petitioner is suspicious. Virtually, such type of vague and obscure

finding is not sufficient to implead any person as an accused and to direct him for facing a separate trial.

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22. CRIMINAL PROCEDURE CODE, 1973 – Section 319

Summoning of additional accused – Opportunity of hearing – In such proceedings, right of hearing would accrue only to a person who has already been discharged in the very same proceeding prior to the commencement of the trial – When a person who is not discharged but is to be summoned as per Section 319 of the Code on the basis of satisfaction derived by the court on the evidence available on record, no inquiry or hearing is contemplated.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

अतिरिक्त अभियुक्त को समन किया जाना – सुनवाई का अवसर – ऐसी कार्यवाहियों में सुने जाने का अधिकार उस व्यक्ति के लिए उत्पन्न होगा जो कि उसी प्रक्रिया में विचारण प्रारंभ होने के पूर्व ही उन्मोचित किया जा चुका हो – जब एक व्यक्ति जो कि उन्मोचित न किया गया हो परन्तु अभिलेख पर उपलब्ध साक्ष्य के आधार पर न्यायालय द्वारा संतुष्ट होने पर उसे संहिता की धारा 319 के तहत समन किया गया हो तब कोई जॉच अथवा सुनवाई अपेक्षित नहीं है।

Yashodhan Singh and ors. v. State of Uttar Pradesh and anr.

Judgment dated 18.07.2023 passed by the Supreme Court in Criminal Appeal No. 2186 of 2023, reported in AIR 2023 SC 3878

Relevant extracts from the judgment:

From the observations of the Constitution Bench of this Court in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86,*** it is noted that an inquiry is contemplated as against a person who has been discharged prior to the commencement of the trial in terms of Section 227, CrPC as extracted above but on an inquiry, if it appears that there is evidence against such a discharged person, then power under Section 319, CrPC can be exercised against such a discharged person. This clearly would mean that when a person who is not discharged but is to be summoned as per Section 319, CrPC on the basis of satisfaction derived by the court on the evidence on record, no inquiry or hearing is contemplated. This would clearly indicate that principle of natural justice and an opportunity of hearing a person summoned under 319, CrPC are not at all contemplated. Such a right of inquiry would accrue only to a person who is already discharged in the very same

proceeding prior to the commencement of the trial. This is different from holding that a person who has been summoned as per Section 319, CrPC has a right of being heard in accordance with the principles of natural justice before being added as an accused to be tried along with other accused.

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23. CRIMINAL PROCEDURE CODE, 1973 – Section 451/ 457
EXCISE ACT, 1915 (M.P.) – Section 47 (1)
WILD LIFE (PROTECTION) ACT, 1972 – Section 39

(i) Interim custody of vehicle – Jurisdiction – Magistrate is precluded from releasing the seized vehicle on *supurdnama* if intimation is sent by the Executive Magistrate u/s 47-A regarding initiation of confiscation proceedings – Until such proceedings are pending, the Judicial Magistrate cannot exercise the jurisdiction to release the vehicle – Magistrate may proceed with the trial but regarding confiscation, order of Executive Magistrate will be final.

(ii) Confiscation proceedings – Difference in the provisions of various Special Acts – The provisions of Section 39 of the Wild Life (Protection) Act and 47 (1) of the Excise Act are enforceable in different domains – Provision relating to opportunity of hearing creates the main difference – Law explained.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 451/457
आबकारी अधिनियम, 1915 (म.प्र.) – धारा 47 (1)
वन्य प्राणी (संरक्षण) अधिनियम, 1972 – धारा 39

(i) वाहन की अंतरिम अभिरक्षा – क्षेत्राधिकार – मजिस्ट्रेट जब्तशुदा वाहन को सुपुर्दनामा पर मुक्त नहीं कर सकता, यदि धारा 47–क के तहत कार्यपालक मजिस्ट्रेट द्वारा राजसात की कार्यवाही आरम्भ करने की सूचना प्रेषित कर दी गई है – जब तक ऐसी कार्यवाही लंबित है, मजिस्ट्रेट वाहन को मुक्त करने की क्षेत्राधिकारिता का उपयोग नहीं कर सकता – मजिस्ट्रेट विचारण जारी रख सकता है किंतु राजसात करने के संबंध में कार्यपालक मजिस्ट्रेट का आदेश अंतिम होगा।

(ii) राजसात कार्यवाही – विभिन्न विशेष अधिनियमों के प्रावधानों में अंतर – धारा 39 वन्य प्राणी (संरक्षण) अधिनियम और आबकारी अधिनियम के 47 (1) के प्रावधान विभिन्न क्षेत्रों में प्रभावी होते हैं – सुनवाई के अवसर का प्रावधान मुख्य अंतर उत्पन्न करता है – विधि समझाई गई।

Vijay v. State of M.P. & ors.

Order dated 02.08.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 2141 of 2023, reported in ILR 2023 MP 2047

Relevant extracts from the order:

As per section 47 (1) of M.P. Excise Act, there is a bar on power of Magistrate to exercise its jurisdiction to release the vehicle on supurdnama if intimation has been sent to him under section 47-A of M.P. Excise Act by Executive Magistrate and he is barred from exercising the power until proceedings under section 47-A of the Act which is pending before District Magistrate/Collector have been disposed of. Section 47-A lays down for confiscation of intoxicants, articles, implements, utensils, materials and conveyance if same is used for commission of offence under section 34(1)(a) and (b) of M.P. Excise Act and quantity of liquor is found to be more than 50 bulk litres and if Collector/District Magistrate has passed an order of confiscation under section 47-A of the Act, then Magistrate shall not pass any order in this regard. Section 47-A of the Act, only states that use of vehicle in commission of offence. Bar has been created only in respect of passing an order of confiscation of vehicle and Magistrate shall not proceed to pass orders on confiscation of vehicle but Magistrate is free to proceed with trial of the case for commission of offence which means that Judicial Magistrate can proceed with trial of a case under Excise Act but will not pass on order of confiscation in regard to vehicle if intimation of same has been given to him and District Magistrate/Collector is proceeding in the case for confiscation of vehicle. If order of confiscation has been passed by Executive Magistrate then same will be final and Judicial Magistrate will not pass any order regarding confiscation.

Section 39(1)(d) of Wild Life (Protection) Act provides that if vehicle is used for commission of offence and seized then same will become property of State Government. No hearing, trial, etc. is provided, therefore, Supreme Court held that confiscation will take place once trial is concluded. However, under section 47(1) of M.P. Excise Act, procedure for confiscation with opportunity of hearing is provided and further aggrieved person has remedy of appeal and revision, therefore, scheme of two sections i.e. under Wild Life (Protection) Act, 1972 and M.P. Excise Act, 1915 is entirely different.

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24. CRIMINAL TRIAL:

Sentence – Leniency – Only because an accused remained on bail for a long time cannot be a ground by itself to show leniency – Factors for deciding question of showing leniency depends upon the facts and circumstances of the case and conduct of the accused cumulatively.

आपराधिक विचारण:

सजा – उदारता – केवल अभियुक्त का लंबे समय तक प्रतिभूति पर रहना मात्र स्वमेव उदारता दर्षित करने के लिये आधार नहीं हो सकता – उदारता दर्शित करने के लिये आवश्यक कारक प्रकरण के तथ्यों एवं परिस्थितियों तथा अभियुक्त के आचरण पर समेकित रूप से निर्भर करते हैं ।

Razia Khan v. State of Madhya Pradesh

Judgment dated 03.08.2023 passed by the Supreme Court in Criminal Appeal No. 2259 of 2023, reported in (2023) 8 SCC 592

Relevant extracts from the judgment:

As noted in our order dated 09.05.2023, no case was made out to interfere with the order of conviction and the notice was confined to sentence. Therefore, the question is about the quantum of sentence. Looking at the findings recorded by the Sessions Court and the High Court, the following are the relevant factors for deciding the question of showing leniency to the appellant:

a. For espousing the cause of the labourers, the appellant visited the office of the Directorate;

b. Evidence of PW1 and PW2 Hemraj (a peon working in the Office of the Commissioner) indicated that the appellant had sent a slip of her name to PW6 which was kept on the table of PW6 as she wanted to meet him. After waiting for a considerable time, as she was not allowed to meet PW6, she forced her entry to his cabin and complained that she was made to wait;

c. PW1 admitted that the appellant was not annoyed with her. She stated that the appellant did not indulge in any scuffle with her. When she tried to stop the appellant, she was pushed by the appellant and that is how she received injury to her little right finger;

d. The incident is more than thirty years old;

e. During the last thirty and a half years, when the trial and appeal were pending, the appellant was all throughout on bail. Even in this appeal, an exemption has been granted to her from the requirement of surrendering;

f. During this long period of more than 30 long years, there was no allegation of any objectionable activity by her; and

g. The appellant is a female whose present age is 62 years.

Considering the seriousness of the offence punishable under Section 333 of the IPC and since the punishment prescribed is both of imprisonment of either description and a fine, obviously, the appellant cannot be let off only on a fine. However, considering the circumstances set out in paragraph 5 above, we are of the view that the appellant deserves to be shown leniency when it comes to the substantive sentence. The distinct factors set out in paragraph no.5, taken individually, do not constitute a ground by itself to show leniency. For example, only because an accused is on bail for a long time, it is no ground by itself to show leniency. It is only one of the several factors to be considered. But we have considered these factors cumulatively. Hence, we propose to bring down the sentence of the appellant for the offence punishable under Section 333 to simple imprisonment for one month. We propose to impose a fine of Rs.30,000/- for the said offence.

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25. EVIDENCE ACT, 1872 – Section 27

(i) Memorandum and recovery – Short span of time between statement, recovery and arrest – Whether such situation casts any doubt on the prosecution case? Held, No – Statement, recovery or arrest are not dependent upon a particular chronological order – Such memo and recovery would not automatically be treated a nullity because of jumbled chronology, if have a legal sanctity.

(ii) Custody – Connotation of – It has a wider meaning for the purpose of section 27 – Custody not only means formal custody but also includes when the accused is under surveillance or within range of police officers so that they have effective control or tab over him.

साक्ष्य अधिनियम, 1872 – धारा 27

(i) ज्ञापन और बरामदगी – कथन, बरामदगी और गिरफ्तारी के मध्य कम समयांतराल – क्या ऐसी स्थिति अभियोजन मामले पर कोई संदेह उत्पन्न करती है? अभिनिर्धारित, नहीं – कथन, बरामदगी या गिरफ्तारी किसी विशेष कालानुक्रम पर निर्भर नहीं है – यदि ज्ञापन एवं बरामदगी विधिपूर्ण है तो केवल अव्यवस्थित कालानुक्रम के आधार पर स्वयमेव अमान्य नहीं किया जा सकता।

(ii) अभिरक्षा – आशय – इसका व्यापक अर्थ है – साक्ष्य अधिनियम की धारा 27 के संदर्भ में, अभिरक्षा का अर्थ न केवल औपचारिक अभिरक्षा है बल्कि इसमें जब अभियुक्त निगरानी में हो या पुलिस अधिकारियों की पहुँच के भीतर हो, जिससे उनका उस पर प्रभावी नियंत्रण हो, सम्मिलित हैं।

Nadeem Khan v. State of M.P.

Order dated 15.06.2023 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Criminal Case No. 10886 of 2023, reported in ILR 2023 MP 2140

Relevant extracts from the order:

This is a case where name of applicant figures in FIR and statements of witnesses. So far as argument advanced in respect of custody is concerned, it appears from the charge-sheet that applicant was arrested on 26.02.2022 at 08:45 pm, arrest memo indicates such date and time. It is also true that prior to his formal arrest, as per arrest memo, weapon used in commission of offence was seized at 08:15 pm which is prior in time. It is also true that his memo under Section 27 of the Evidence Act has been taken at 07:10 pm. Meaning thereby, his memo was taken first and then weapon was seized, then he was arrested. There appears nothing wrong apparently in the case because custody as contemplated under Section 27 of the Evidence Act does not mean formal custody only but includes such state of affair/activities whereby accused can be under the surveillance of police officers or within the range of police officers so that they can keep an effective tab or control over him.

It is not necessary that chronology of statement of Section 27 of the Evidence Act, recovery in pursuance thereof and arrest of accused may come in same fashion. Chronology may change also without disturbing the effect and potency of the seizure and recovery because if an accused tries to escape from the scene of crime and throws weapon of offence midway which is recovered by the police while chasing him and thereafter he is arrested and memo is prepared then said memo and recovery would not automatically be treated a nullity because of jumbled chronology. Said memo has legal sanctity

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26. EVIDENCE ACT, 1872 – Section 32 (1)
INDIAN PENAL CODE, 1860 – Section 304-B

(i) Dying declaration – Tutored and doubtful – Before convicting the accused on the basis of sole dying declaration, court must come to the conclusion that it is trustworthy, reliable and one which inspires

confidence – Probability of tutoring and doubt regarding mental fitness of deceased creates a serious doubt on the veracity of dying declaration – Such dying declaration cannot be the sole basis for conviction.

(ii) Dying declaration against several accused – Interpretation of – Dying declaration if disbelieved for one accused, cannot be made basis for conviction of other accused.

साक्ष्य अधिनियम, 1872 – धारा 32 (1)
भारतीय दण्ड संहिता, 1860 – धारा 304–ख

(i) मृत्युकालीन कथन – सिखाया हुआ और संदिग्ध – एकमात्र मृत्युकालीन कथन के आधार पर अभियुक्त को दोषी ठहराने से पहले, न्यायालय को इस निष्कर्ष पर पहुंचना चाहिए कि यह भरोसेमंद, विश्वसनीय और विश्वास प्रेरित करता है – मृत व्यक्ति के मानसिक स्वास्थ्य के बारे में संदेहास्पद परिस्थिति और सिखाये गये मृत्युकालीन कथन की सत्यता पर गंभीर संदेह पैदा होता है – इस तरह का मृत्युकालीन कथन दोषसिद्धि का आधार नहीं हो सकता है।

(ii) अनेक अभियुक्त के विरूद्ध मृत्युकालीन कथन – निर्वचन – एक अभियुक्त के लिए अविश्वासपूर्ण मृत्युकालीन कथन को दूसरे अभियुक्त की दोषसिद्धि का आधार नहीं बनाया जा सकता है।

Phulel Singh v. State of Haryana

Judgment dated 27.09.2023 passed by the Supreme Court in Criminal Appeal No. 396 of 2010, reported in (2023) 10 SCC 268 (3 Judge Bench)

Relevant extracts from the judgment:

The present case mainly rests on the dying declaration of the deceased. No doubt, that a conviction can be solely recorded on the basis of dying declaration. However, for doing so, the court must come to a conclusion that the dying declaration is trustworthy, reliable and one which inspires confidence. In the present case, the dying declaration is recorded by Shri Sadhu Singh (PW-5), Executive Magistrate. He stated that he obtained the certificate from the doctor regarding the fitness of the deceased to make the statement. He further stated that he recorded the statement of the deceased and thereafter it was read over and explained to her. He further states that she had thumb marked the same after admitting its contents to be correct.

It could thus be seen that there is a grave doubt as to whether the dying declaration recorded by Shri Sadhu Singh (PW-5), Executive Magistrate was a

voluntary one or tutored at the instance of respondent No.5. It is further relevant to note that Dr. Jatinder Pal Singh (PW-8), in his deposition itself, states that Shri Sadhu Singh (PW-5), Executive Magistrate had recorded the dying declaration of the deceased on 8th November 1991 at 4.40 p.m. whereas the opinion with regard to her fitness was given by him at 6.00 p.m. on 8th November 1991. He has further admitted that he had not mentioned in the bed-head ticket that he had attested the statement of the deceased at 04.40 p.m. on 8th November 1991. It is thus doubtful as to whether Dr. Jatinder Pal Singh (PW-8) had really examined the deceased with regard to her fitness prior to her statement being recorded by Shri Sadhu Singh (PW-5), Executive Magistrate.

It is further relevant to note that Dr. Jasmeet Singh Dhir (PW-7) has stated that the history recorded by him while admitting the deceased, was narrated by the deceased herself. He has further stated that the deceased had also narrated that her husband had extinguished fire by pouring water on her.

In the totality of the circumstances, it cannot be said that the dying declaration (Ex. P.L.) is free from doubt.

The most glaring aspect that is required to be considered is that the High Court itself has disbelieved the dying declaration insofar as Jora Singh, father-in-law of the deceased is concerned. We fail to understand as to how the same dying declaration could have been made basis for conviction of the appellant when the same was disbelieved insofar as another accused is concerned.

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27. EVIDENCE ACT, 1872 – Section 106

CRIMINAL TRIAL:

(i) Circumstantial evidence – Burden of proof – Crime committed in complete secrecy – It will be extremely difficult for the prosecution to lead evidence to establish the guilt – The duty of prosecution is to lead such evidence capable of leading having regard to the facts and circumstances of the case – The law does not enjoin a duty on the prosecution to lead such evidence which is almost impossible or extremely difficult to be led.

(ii) Burden of proving a fact which was especially within the knowledge of accused – Has to be discharged by the accused – But to invoke section 106 of the Evidence Act, the prosecution has to establish the foundational fact.

(iii) Circumstantial evidence – Additional link – Offence committed inside the four walls of a house – If incriminating circumstance is put to accused and the accused either offers no explanation or offers explanation which is not found to be true, the same becomes additional link in the chain to make it complete.

साक्ष्य अधिनियम, 1872 – धारा 106
आपराधिक विचारणः

(i) परिस्थितिजन्य साक्ष्य – सबूत का भार – पूर्ण एकांतता में कारित अपराध – अभियोजन हेतु अपराध साबित करने के लिये सबूत प्रस्तुत करना अत्यंत दुष्कर होगा – अभियोजन का यह दायित्व है कि वह प्रकरण की परिस्थितियों और तथ्यों में ऐसी साक्ष्य प्रस्तुत करे जिसे वह प्रस्तुत करने में सक्षम है – विधि अभियोजन पक्ष से ऐसे साक्ष्य को प्रस्तुत करने की अपेक्षा नहीं करती है जिसे प्रस्तुत कर पाना असंभव हो या अत्यन्त कठिन हो ।

(ii) उस तथ्य को साबित करने का भार जो विशेषतः अभियुक्त के ज्ञान में था – अभियुक्त को ही निर्वहनित करना होगा – परंतु साक्ष्य अधिनियम की धारा 106 का अवलंब लेने के लिये अभियोजन को बुनियादी तथ्यों को स्थापित करना होगा ।

(iii) परिस्थितिजन्य साक्ष्य – अतिरिक्त कड़ी – घर की चारदीवारी के भीतर कारित अपराध – यदि अभियुक्त के समक्ष दोषी ठहराये जाने वाली परिस्थितियां प्रस्तुत की जाती हैं और अभियुक्त उनके संबंध में कोई स्पष्टीकरण नहीं देता है या उसके द्वारा दिया गया स्पष्टीकरण सत्य नहीं पाया जाता है तो यह श्रृंखला को पूर्ण करने के लिये अतिरिक्त कड़ी बन जाती है।

Wazir Khan v. State of Uttarakhand

Judgment dated 02.08.2023 passed by the Supreme Court in Criminal Appeal No. 1922 of 2017, reported in (2023) 8 SCC 597

Relevant extract from the judgment:

We take into consideration the following circumstances emerging from the record of the case:-

1. The deceased was the wife of the appellant–Wazir Khan. It appears that the marital relations of the appellant–Wazir Khan with the deceased were strained.

2. The appellant–Wazir Khan has not disputed his presence in the house at the time of the incident. However, he has put forward a defence that robbers got into his house and killed his wife. He has also gone to the extent of saying that while his wife was being attacked by the robbers, he too suffered injuries.

3. In the aforesaid context, we may only say that there is nothing on record to indicate that the appellant Wazir Khan had suffered any injuries. The entire defence put forward by the appellant–Wazir Khan, could be termed as false defence.

4. There were as many as 17 incised wounds on the body of the deceased. On the next day, when the police brought the appellant–Wazir Khan at the scene of the occurrence, he pointed out the place where the knife was left behind. The weapon of offence was recovered from the place of incident itself.

Here is a case, wherein the prosecution could be said to have laid the legal foundation for the purpose of invoking Section 106 of the Act, 1872. Undoubtedly, the burden is on the prosecution to prove the guilt of the appellant–Wazir Khan beyond reasonable doubt. If the prosecution fails to discharge its initial burden beyond reasonable doubt, the appellant–Wazir Khan has to be acquitted. It is settled law that the prosecution cannot take recourse of Section 106 of the Act, 1872 without laying any foundational facts. However, in the case on hand, we are convinced that the foundational facts laid by the prosecution are sufficient to invoke Section 106 of the 1872 Act.

Cases are frequently coming before the Courts where the husbands, due to strained marital relations and doubt as regards the character, have gone to the extent of killing the wife. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. Like the present case, no member of the family, even if he is a witness of the crime, would come forward to depose against another family member. If an offence takes place inside the four walls of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in the circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused, if the strict principle of circumstantial evidence, is insisted upon by the Courts. Reference could be made to a decision of this Court in the case of ***Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681***, in which this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. This Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case.

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28. EVIDENCE ACT, 1872 – Section 118

(i) Child witness – Recording of evidence – Duty of Trial court – Before recording evidence of child, it is the duty the of the Judicial Officer to ask preliminary questions to him with a view to ascertain whether he can understand questions put to him and is in a position to give rational answers and understands the importance of speaking the truth.

(ii) Testimony of child witness – Evidentiary value and appreciation – Child witness is easily susceptible to tutoring but that by itself is no ground to reject its evidence – Corroboration of his testimony is not a rule but a measure of caution and prudence – Court must make careful scrutiny of evidence of child witness to rule out the possibility of being tutored.

साक्ष्य अधिनियम, 1872 – धारा 118

(i) बाल साक्षी – साक्ष्य का अभिलिखित करना – विचारण न्यायालय का कर्तव्य – बालक की साक्ष्य का अभिलेखन करने के पूर्व न्यायिक अधिकारी का यह कर्तव्य है कि वह यह सुनिश्चित करने के लिए बालक से प्रारंभिक प्रश्न पूछे कि क्या वह पूछे गये प्रश्नों को समझ रहा है और उनका तर्कसंगत उत्तर देने की स्थिति में है एवं सत्य बोलने के महत्व को समझता है।

(ii) बाल साक्षी की परिसाक्ष्य – साक्ष्यिक मूल्य एवं विवेचन – बाल साक्षी को आसानी से सिखाया–पढ़ाया जा सकता है किन्तु मात्र इस आधार पर उसकी साक्ष्य को अस्वीकार नहीं किया जा सकता – उसकी परिसाक्ष्य की सम्पुष्टि नियम नहीं है अपितु सावधानी एवं समझदारी का तरीका है – न्यायालय को बाल साक्षी के सिखाये जाने की संभावना को दूर करने के लिए उसकी साक्ष्य का सावधानीपूर्वक परीक्षण करना चाहिए।

Pradeep v. The State of Haryana

Judgment dated 05.07.2023 passed by the Supreme Court in Criminal Appeal No. 553 of 2012, reported in 2023 (3) Crimes 25 (SC)

Relevant extracts from the judgment:

It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the

evidence of a child witness is required to be made by the Court with care and caution.

Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.

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29. HINDU SUCCESSION ACT, 1956 – Section 6 and proviso to Section 6 (1)

(i) Coparcenary property – If the ancestral property is in the hands of a sole surviving coparcener, then the said property turns into separate property – Such a person shall be entitled to bequeath the said property by executing Will – But after amendment in section 6, if such sole surviving coparcener is having a female child then he cannot bequeath his property treating himself to be sole owner as his daughter would also be a coparcener.

(ii) Right of female child – Prior to amendment in section 6, sole surviving coparcener who was having female child bequeathed his property by executing a will on 27.06.1976 – Testator died in the year 1980 and upon his death the beneficiary acquired title by virtue of testamentary succession – Such testamentary disposition of property which had taken place before 20th day of December, 2004 is saved by proviso to section 6 (1) – Hence, amended section 6 would not apply in this matter. [*Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1* relied upon]

हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 6 एवं धारा 6 (1) का परन्तुक

(i) सहदायिक संपत्ति – यदि पैतृक संपत्ति एकमात्र जीवित सहदायिक के हाथों में है तो वह संपत्ति पृथक संपत्ति में परिवर्तित हो जाती है – ऐसा व्यक्ति उक्त संपत्ति को वसीयत कर सकता है – परन्तु धारा 6 के संशोधन के

उपरांत यदि एकमात्र जीवित सहदायिक की पुत्री है तो वह ऐसी संपत्ति को स्वयं को एकमात्र स्वत्वाधिकारी मानकर वसीयत नहीं कर सकता क्योंकि उसकी बेटी भी सहदायिक होगी।

(ii) पुत्री का अधिकार – धारा 6 में संशोधन के पूर्व एकमात्र जीवित सहदयिक जिसकी पुत्री भी थी ने दिनांक 27.06.1976 को अपनी संपत्ति को वसीयत कर दिया – वसीयतकर्ता की सन् 1980 में मृत्यु हो गई और उसकी मृत्यु के उपरांत वसीयती उत्तराधिकार के आधार पर हितधारक को संपत्ति में स्वत्व प्राप्त हुआ – ऐसा वसीयती व्ययन जो कि दिनांक 20 दिसम्बर 2004 के पूर्व हुआ हो वह धारा 6 (1) के परन्तुक से व्यावृत्त होगा – अभिनिर्धारित, संशोधित धारा 6 इस प्रकरण में लागू नहीं होगी। (*विनीता शर्मा विरूद्ध राकेश शर्मा (2020) 9 एस.सी.सी. 1 पर* विश्वास किया गया)

Kamlabai (Smt.) and ors. v. Narmada Prasad and ors.

Judgment dated 18.04.2023 passed by the High Court of Madhya Pradesh in Second Appeal No. 734 of 1994, reported in ILR 2023 MP 1815

Relevant extracts from the judgment:

The Supreme Court in the case of ***Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1*** has held as under:

Resultantly, we answer the reference as under:

The provisions contained in substituted Section 6 of the Hundu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

The rights can be claimed by the daughter born earlier with effect from 09.09.2005 with savings as provided in Section 6(1) as to disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December. 2004.

Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 09.09.2005.

The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect,

Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected *(sic* effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

In the present case, the Civil Suit as well as the Regular Civil Appeal were already decided much prior to the amendment in Section 6 of Hindu Succession Act, therefore, the amendment in Section 6 of Hindu Succession shall not apply, in the light of proviso to Section 6(1) of Hindu Succession Act.

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30. INDIAN PENAL CODE, 1860 – Sections 120–B and 411
EVIDENCE ACT, 1872 – Sections 3 and 114 (a)
CRIMINAL PROCEDURE CODE, 1973 – Section 313

(i) Offence of dishonestly receiving stolen property – Proof – Even if it is assumed that the items sold to accused were stolen articles, it would not be sufficient to attract Section 411 IPC – It is necessary to be proved that continued retention of such articles was with a dishonest intent and knowledge or belief that the items were stolen – No evidence except disclosure statement of co-accused was adduced by the prosecution to prove this fact – Accused was never given an opportunity to explain the disclosure statement of co-accused – Disclosure statements made by co-accused solely does not suffice to draw a presumption u/s 114 (a) of the Evidence Act – Such presumption must not be drawn in isolation without corroboration of other cogent evidence.

(ii) Criminal conspiracy – Requirement of agreement between two or more persons – One person alone can never be held guilty of criminal conspiracy because one cannot conspire with oneself – There is no

evidence to even remotely suggest that there existed any agreement between accused and the co-accused – Conviction of accused set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 120–बी एवं 411
साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 114(क)
दण्ड प्रक्रिया संहिता, 1973 – धारा 313

(i) चुराई हुई सम्पत्ति बेईमानीपूर्वक प्राप्त करने का अपराध – प्रमाण – यदि यह मान भी लिया जाए कि अभियुक्त को विक्रय की गई वस्तुएं चोरी की सम्पत्ति थी तब भी यह भारतीय दण्ड संहिता की धारा 411 को आकर्षित करने के लिए पर्याप्त नहीं होगा – यह भी प्रमाणित करना आवश्यक है कि ऐसी सामग्रियों को बेईमानीपूर्ण आशय और ज्ञान या इस विश्वास के साथ कि वे चोरी की हैं, रखा गया – अभियोजन द्वारा ऐसे तथ्य को प्रमाणित करने के लिए सह अभियुक्त के प्रकटन कथन के अतिरिक्त कोई साक्ष्य प्रस्तुत नहीं की गई – अभियुक्त को सहअभियुक्त के प्रकटन कथन के स्पष्टीकरण का कोई अवसर नहीं दिया गया – अभियुक्त एवं अन्य सह–अभियुक्तों के प्रकटन कथन मात्र साक्ष्य अधिनियम की धारा 114 (क) के अन्तर्गत उपधारणा आकर्षित करने के लिये पर्याप्त नहीं है – ऐसी उपधारणा अन्य विश्वसनीय साक्ष्य से संपुष्टि के बिना एकाकी रूप से आकर्षित नहीं की जा सकती।

(ii) आपराधिक षडयंत्र – दो और अधिक व्यक्तियों के मध्य करार की आवश्यकता – अकेले एक व्यक्ति को कभी भी आपराधिक षडयंत्र के तहत दोषसिद्धि नहीं किया जा सकता क्योंकि एक व्यक्ति स्वयं के साथ षडयंत्र नहीं कर सकता – ऐसा कोई साक्ष्य नहीं है जो दूर तक भी यह इंगित करता हो कि अभियुक्त और सह–अभियुक्त के मध्य कोई करार अस्तित्व में था – अभियुक्त की दोषसिद्धि अपास्त की गई।

Manoj Kumar Soni v. State of Madhya Pradesh

Judgment dated 11.08.2023 passed by the Supreme Court in Criminal Appeal No. 1030 of 2023, reported in AIR 2023 SC 3857

Relevant extracts from the judgment:

A presumption of fact under Section 114(a), Evidence Act must be drawn considering other evidence on record and without corroboration from other cogent evidence, it must not be drawn in isolation. The present case serves as a perfect example of why such a presumption should have been avoided by the Trial Court. Manoj's conviction, solely relying on the disclosure statements made by himself and the other co-accused, does not suffice to warrant a presumption under Section 411, IPC. It would not be unreasonable to presume that a goldsmith, who

has to deal in ornaments and jewelleries on a day-to-day basis, would obviously be in possession of a significant quantity of ornaments at his shop. Given the circumstances, such a presumption drawn under Section 114(a) stands vitiated.

At this juncture, even if we assume the veracity of the claim that the items sold to Manoj were indeed stolen articles, it would not be sufficient to attract Section 411, IPC; what was further necessary to be proved is continued retention of such articles with a dishonest intent and knowledge or belief that the items were stolen. No evidence worthy of consideration was adduced by the prosecution to prove that Manoj had retained the articles either with dishonest intent and with knowledge or belief of the same being stolen property.

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31. INDIAN PENAL CODE, 1860 – Sections 149 and 395
EVIDENCE ACT, 1872 – Section 9

(i) Unlawful assembly – Mob was involved in committing several offences – In all, 13 persons were prosecuted but several of them were acquitted – Trial court convicted the appellant and his appeal was also dismissed – Sole witness testified against appellant and identified him as a person who snatched her chain – Witness identified the appellant for the first time in the court after two years of the incident – No identification parade was held – Appellant was part of a big mob and witnesses were not acquainted with him earlier – Evidence found to be unreliable – Conviction set aside.

(ii) Principle of parity – Criminal Court should decide similar cases alike – Where evidence is same against two accused, court cannot convict one and acquit another – Court cannot make a distinction between the two accused, this will amount to discrimination.

भारतीय दण्ड संहिता, 1860 – धाराएं 149 एवं 395
साक्ष्य अधिनियम, 1872 – धारा 9

(i) विधि विरूद्ध जमाव – भीड़ अनाधिक अपराध घटित करने में सम्मिलित थी – कुल 13 व्यक्ति अभियोजित किये गये परन्तु बहुत व्यक्ति दोषमुक्त हो गये – विचारण न्यायालय ने अपीलार्थी को दोषसिद्ध किया था एवं उसकी अपील भी निरस्त हो गई थी – एकमात्र साक्षी ने अपीलार्थी के विरूद्ध साक्ष्य दी थी एवं उसे उसकी चेन खींचने वाले व्यक्ति के रूप में पहचाना था – साक्षी ने अभियुक्त को न्यायालय में घटना के दो वर्ष बाद पहचाना था – कोई शिनाख्ती परेड नहीं हुई थी – अपीलार्थी एक बड़ी भीड़ का सदस्य

था एवं साक्षी उसे पूर्व से नहीं जानती थी – साक्ष्य को विश्वसनीय नहीं माना गया – दोषसिद्धी को अपास्त किया गया।

(ii) समानता का सिद्धांत – दाण्डिक न्यायालय को एक जैसे प्रकरण एक समान निराकृत करने चाहिए – जहाँ दो अभियुक्त के विरूद्ध समान साक्ष्य है वहाँ न्यायालय एक को दोषसिद्ध एवं दूसरे को दोषमुक्त नहीं कर सकता – न्यायालय दो अभियुक्त के मध्य अंतर नहीं कर सकता, यह पक्षपाती होगा।

Javed Shaukat Ali Qureshi v. State of Gujarat

Judgment dated 13.09.2023 passed by the Supreme Court in Criminal Appeal No. 1012 of 2022, reported in AIR 2023 SC 4444

Relevant extracts from the judgment:

In a given case, the conviction can be based on the testimony of only one eyewitness. The law has been laid down on this behalf by a Bench of three Hon'ble Judges of this Court in the case of ***Vadivelu Thevar & Anr. v. State of Madras, AIR 1957 SC 614***. In paragraphs 10, 11 and 12 of the said decision, this Court held thus:

> "10. .. ..
>
> On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions may be safely stated as firmly established:
>
> (1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.
>
> (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.
>
> (3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.
>
> 11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should

insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence - 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

Considering the nature of the testimony of PW2, it cannot be said that the evidence of PW2 is wholly reliable. The identification of the appellant for the first time in the Court after a lapse of about two years becomes doubtful for more than one reason. Firstly, the appellant was not known to PW2. Secondly, the appellant was part of a large aggressive mob of 50 to 100 people which surrounded the auto-rickshaw. Thirdly, there was no identification parade held. Fourthly, there was no

time available to PW2 to note the distinctive features of the appellant. Hence, it is very unsafe to record a conclusion based only on the testimony of the solitary witness that the guilt of the appellant was proved beyond a reasonable doubt. Even if we categorise the evidence of PW2 as "neither wholly reliable nor wholly unreliable," the appellant cannot be convicted only based on the sole testimony of PW2 unless there is a corroboration to the version of PW2 either by direct or circumstantial evidence. Such corroboration is completely absent in this case. Therefore, the conviction of the appellant cannot be sustained.

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

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32. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Sections 8, 32, 54 and 56

(i) Murder – Proof of – *Fard Bayan* of victim was later converted into FIR – Investigation was heavily affected by the accused who was an MP of the ruling party – Investigating agency and prosecution made deliberate errors – Prosecution and trial court did not exhibit FIR and statement of deceased – Eye-witness was under continuous threat and fear – No serious discrepancy apparent in her testimony – *Bayan tahriri* of injured was treated as dying declaration u/s 32 of the Act – Evidence available on record found sufficient to connect the accused with the offence – Accused convicted.

(ii) Judicial notice in criminal cases – When permissible? Ordinarily not taken in criminal matters – Judgment passed in the habeas corpus petition was connected with the present matter – Eye-witness was aged mother of the deceased – Ten days prior to her Examination-in-Chief, she was abducted by the accused – Owing to this, habeas corpus petition was filed before the High Court – Adverse observations and findings were made against the accused – Judicial notice was taken of these observations made in the judgment rendered in this petition.

भारतीय दण्ड संहिता, 1860 – धाराएं 149 एवं 302
साक्ष्य अधिनियम, 1872 – धाराएं 8, 32, 54 एवं 56

(i) हत्या – प्रमाण – पीड़ित के फर्द बयान को बाद में प्रथम सूचना रिपोर्ट में परिवर्तित किया गया – अभियुक्त जो कि सत्ताधारी दल का सांसद था ने अन्वेषण को गंभीर रूप से प्रभावित किया – अन्वेषण अभिकरण एवं अभियोजन ने जानबूझ कर गलतियाँ की – अभियोजन एवं विचारण न्यायालय ने प्रथम सूचना रिपोर्ट एवं मृतक के बयान को प्रदर्श नहीं किया – चक्षुदर्शी साक्षी लगातार ही धमकी एवं भय में थी – उसकी अभिसाक्ष्य में कोई भी विसंगति नहीं थी – पीड़ित के बयान तहरीरी को अधिनियम की धारा 32 के अंतर्गत मृत्युकालिक कथन माना गया – अभिलेख पर उपलब्ध साक्ष्य को अभियुक्त से संबद्ध करने हेतु पर्याप्त पाया गया – अभियुक्त दोषसिद्ध।

(ii) दाण्डिक मामलों में न्यायिक अवेक्षा – कब अनुमत? सामान्यतः दाण्डिक मामलों में नहीं ली जाती है – मृतक की बूढ़ी माँ चक्षुदर्शी साक्षी थी – मुख्य परीक्षण से दस दिन पहले अभियुक्त ने माँ का अपहरण कर लिया था – जिसके कारण उच्च न्यायालय में बंदी प्रत्यक्षीकरण याचिका दायर की गई थी – अभियुक्त के विरूद्ध प्रतिकूल टिप्पणियाँ करते हुए विपरित निष्कर्ष दिये गये – याचिका में पारित किये गये निर्णय में की गई टिप्पणियों पर न्यायिक अवेक्षण लिया गया।

Harendra Rai v. State of Bihar and ors.

Judgment dated 18.08.2023 passed by the Supreme Court in Criminal Appeal No. 1726 of 2015, reported in AIR 2023 SC 4331 (3 Judge Bench)

Relevant extracts from the judgment:

The marking of a piece of evidence as 'exhibit' at the stage of evidence in a Trial proceeding is only for the purpose of identification of evidence adduced in the trial and for the convenience of the Court and other stakeholders in order to get a clear picture of what is being produced as evidence in a Trial proceeding.

As we are dealing with this case as an "exceptionally painful episode of our Criminal Justice System", we have already taken judicial notice of the judgement passed by the High Court in the Habeas Corpus petition for drawing an adverse inference against the subsequent conduct of the accused of the trial in question, it's Public Prosecutor, Police Administration and the Presiding Officer of the Trial Court as provided under Section 8 of the Evidence Act.

In the present case, considering the failure of State machinery and failure of the Trial Court to ensure a fair trial from the perspective of the victim side, the aspect of non-marking of the FIR and Bayan Tahriri as an exhibit, non- production of the formal witnesses, i.e., the Constable Clerk and Investigating Officer to prove the lodging of FIR/Bayan Tahriri and the flimsy rejection of application filed by Kishori Rai seeking his examination as a witness along with the examination of Nagendra Singh and Sanjeev Kumar Singh (who had signed said written statement/Bayan Tahriri as attesting persons) as witnesses in the Trial proceeding do not vitiate the genuineness of the FIR and Bayan Tahriri, and we refuse to give any discount to the accused persons for non-exhibition thereof.

The judicial notice of any fact is generally not taken in criminal matters, but the present matter stands on an altogether different footing in view of what has been noted hereinbefore. It falls in the category of rarest of rare cases and hence, it requires a different approach. This Court, in its considered opinion, finds that the judgement in the Habeas Corpus Petition was passed on the basis of notes of the Inspecting Judge of the High Court, the report of Additional Director General of Police, statement of CW-1 Smt. Lalmuni Devi recorded in Court before the Magistrate under the directions of High Court, her affidavit filed before the High Court, her statement/disclosure in Bhojpuri before one of Judges hearing the Habeas Corpus petition and several other authoritative materials after giving the opportunity of hearing to the parties, including the accused of the crime in question. In the said judgement, certain inferences, observations and findings arrived at by the Division Bench have a crucial impact on the merit of the present case, as it gives a complete picture as to how the prosecution version in the present case was being demolished brick by brick by using political authority and muscle power with the aid of not only the police administration but also with the aid of Public Prosecutor and unfortunately, the Presiding Officer of the Trial Court also conducted himself in a manner unbecoming of a Judicial Officer, despite directions and continuous vigil by the High Court.

The judgement dated 13.03.2007, which is a public document, is well discussed and is based upon authoritative materials and was passed in consonance with the doctrine of audi alteram partem. Moreover, it has a torch bearer effect over the facts of the case. Thus, it qualifies the requirement of law for the purpose of taking judicial notice thereof, and this Court takes judicial notice of the inferences, observations and findings arrived at by the Division Bench and the directions issued in its judgement dated 13.03.2007 to the extent of the subsequent conduct of the accused, deplorable functioning of the Public Prosecutor, Police Administration

and the Presiding Officer of the Trial Court to extend undesirable favour to the accused.

Another Latin Maxim, which means that a judicial decision must be accepted as correct, may be usefully extracted here, "***res judicata pro veritate accipitur***".

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33. INDIAN PENAL CODE, 1860 – Sections 308 and 338
CRIMINAL PROCEDURE CODE, 1973 – Section 222 (2)
Alteration of conviction from section 308 to one u/s 338 of IPC in absence of charge u/s 338 of IPC – Whether permissible? Held, Yes – In absence of intention and knowledge, as contemplated by section 299 of IPC, the offence of attempt to commit culpable homicide not amounting to murder u/s 308, not made out – Applying principle incorporated in sub-section (2) of section 222 of the Code, the Court can convict in minor offence if no prejudice is caused to accused – Law explained.

दण्ड प्रक्रिया संहिता, 1872 – धारा 222 (2)
भारतीय दण्ड सहिंता, 1860 – धाराएं 308 एवं 338
धारा 338 भा.दं.सं. के अधीन आरोप के अभाव में धारा 308 के अंतर्गत दोषसिद्धि का धारा 338 भा.दं.सं. में परिवर्तन – क्या अनुज्ञात है? अभिनिर्धारित, हॉ – धारा 299 भा.दं.सं. में अपेक्षित आशय एवं ज्ञान के अभाव में धारा 308 के अंतर्गत हत्या की कोटी में न आने वाले आपराधिक मानव वध कारित करने के प्रयत्न का अपराध गठित नहीं होता – संहिता की धारा 222 की उपधारा (2) में वर्णित सिद्धांत लागू करते हुए न्यायालय लघुतर अपराध में दोषसिद्ध कर सकता है, यदि कोई पूर्वाग्रह ना हो – विधि समझाई गई।

Abdul Ansar v. State of Kerala

Judgment dated 05.07.2023 passed by the Supreme Court in Criminal Appeal No. 1751 of 2023, reported in (2023) 8 SCC 175

Relevant extracts from the judgment:

It is not the prosecution's case that the appellant had any intention to cause the death of PW 1 or intention to cause such bodily injury to her as is likely to cause her death. The question is whether the appellant had knowledge that he, by virtue of the act of ringing the bell, was likely to cause death. It is not possible to say that the appellant while ringing the bell, had knowledge that his act is likely to cause the death of PW 1. The bus was overcrowded. The cleaner was standing near the

footboard. Therefore, in the absence of intention and knowledge as contemplated by Section 299 IPC, the offence of attempt to commit culpable homicide not amounting to murder was not made out. This is not a case where if the appellant's act would have resulted into the death of PW 1, he would be guilty of culpable homicide, not amounting to murder.

By applying principles incorporated in sub-section (2) of Section 222 of the Code of Criminal Procedure, 1973, the Court can consider whether the appellant has committed any other offence which is a minor offence in comparison to the offence for which he is tried.

At that relevant time, the bus was overcrowded. There were a number of passengers waiting at the bus-stop. Therefore, it was the duty of the appellant as a conductor to take care of the passengers. Hence, before he rang the bell and gave a signal to the driver to start the bus, he ought to have verified whether all passengers had safely boarded the bus. He could have ascertained this from Accused 3—cleaner who was standing near the door of the bus. However, he did not take that precaution and care which he was under an obligation to take. Therefore, the appellant acted rashly and negligently as he did not perform his duty of being careful. The appellant knew that at the relevant bus-stop, alarge number of students were waiting to take the bus to reach their school and therefore, the appellant ought to have verified whether all the passengers had properly boarded the bus before giving the signal to the driver. However, he did not verify whether the passengers had properly boarded the bus. Therefore, he is guilty of negligence as he failed to perform his duty. In fact, this was an act of recklessness on his part. The fact is that due to the negligence on the part of the appellant, human life was endangered. Grievous hurt was caused.

In the circumstances, we are of the view that the appellant is guilty of ^ the commission of an offence punishable under Section 338 IPC. There will not be any prejudice caused to him as the appellant had sufficient notice of allegations of negligence against him during the trial. Hence, omission to frame charge under Section 338 IPC will not be fatal.

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34. INDIAN PENAL CODE, 1860 – Sections 342, 376(1) and 376(2)
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 3 (a) and 4
EVIDENCE ACT, 1872 – Section 114 (g)
CRIMINAL PROCEDURE CODE, 1973 – Sections 53-A and 164-A

(i) Appreciation of evidence – Prosecutrix aged 13-14 years – Alleged rape was committed on her by the accused by forcibly throwing her on rough surface of 'kotha'– No external and internal signs of injury found on her body – Clothes recovered from victim did not have any sign of semen – Testimony of prosecutrix not supported by medical evidence – Place of incident was a busy crowded area at the time of incident, which was 11 a.m. – Any untoward incident would have attracted the notice of the crowd – Incriminating material was not confronted to accused with necessary clarity – Material discrepancy as to the date and time when samples were collected for FSL examination – Previous animosity was also established – Merely because minor was allegedly raped, accused cannot be mechanically held guilty – Conviction was held not proper.

(ii) Failure to conduct DNA – Sections 53-A and 164-A of the CrPC makes it obligatory upon the prosecution to conduct DNA examination – Non-conduction shall not vitiate the case of prosecution – Drawing adverse inference in the light of section 114 (g) of the Act r/w/s 53-A of CrPC, not proper.

भारतीय दण्ड संहिता, 1860 – धाराएं 342, 376(1) एवं 376(2)
लैंगिक अपराधों से बालकों का संरक्षण अधिनिमय, 2012 – धाराएं 3 (क) एवं 4
साक्ष्य अधिनिमय, 1872 – धारा 114 (छ)
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 53–क एवं 164–क

(i) साक्ष्य का मूल्यांकन – अभियुक्त ने 13–14 वर्षीय अभियोक्त्री को जोर से 'कोठे' की कठोर सतह पर गिरा कर आक्षेपित रूप से उसके साथ बलात्संग किया – उसके शरीर पर बाहरी एवं अंदरूनी कोई चोटे नहीं पाई गई – अभियोक्त्री से प्राप्त किये गये कपड़ों पर भी सीमन के कोई निशान नहीं मिले – अभियोक्त्री के साक्ष्य का समर्थन चिकित्सीय साक्ष्य से नहीं – घटनास्थल भीड़–भाड़ वाला स्थान होकर घटना का समय जो कि सुबह 11:00 बजे का था – कोई भी असामान्य घटना भीड़ का ध्यान आकृष्ट करती

– अभियुक्त के विरूद्ध प्रकट हुई साक्ष्य से उसका सामना उचित स्पष्टता से नहीं कराया गया – एफएसएल परीक्षण हेतु एकत्रित नमूने की तिथि एवं समय में भी गंभीर विरोधाभास था – पूर्व रंजिश भी प्रमाणित – अवयस्क से बलात्कार होने के कारण अभियुक्त को मशीनी तौर पर दोषसिद्ध नहीं किया जा सकता – अभिनिर्धारित, दोषसिद्धि उचित नहीं।

(ii) डीएनए परीक्षण कराने में विफलता – संहिता की धाराएं 53–क एवं 164–क अभियोजन पर यह भार डालती है कि वह आवश्यक रूप से डीएनए परीक्षण कराएं – डीएनए परीक्षण करने में विफलता सम्पूर्ण अभियोजन को दूषित नहीं करती – अधिनियम की धारा 53–क सहपठित धारा 114 (छ) के प्रकाश में विपरीत निष्कर्ष निकालना उचित नहीं।

Dinesh Yadav v. State of M.P. and anr.

Judgment dated 12.04.2023 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 728 of 2019, reported in ILR 2023 MP 1841 (DB)

Relevant extracts from the judgment:

A cumulative reading of statement of father (PW-8), victim (PW-3) and mother (PW-4) leaves no room for any doubt that floor of 'Kotha' was made of 'Muram' and stones. All the above witnesses candidly admitted that if somebody is thrown on such floor, he will undoubtedly receive injuries. No injury marks were found on the person of the victim.

We are not oblivious of legal position that ocular evidence alone can be reason to record conviction. However, as noticed above, the said evidence must be of unimpeachable quality or in other words of a 'sterling quality'. If there exists a serious contradiction between medical evidence and oral evidence and medical evidence makes oral testimony as improbable, ocular evidence can very well be disbelieved.

The Apex Court in ***Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala and ors., 2021 SCC OnLine SC 493*** held as under:

> "Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved."

To summarize, we are inclined to hold that considering the geographical location of 'Kotha', the availability of people all around at 11:00 AM and absence of injury marks on the body of victim makes the case of prosecution highly doubtful and it is totally unsafe to give stamp of approval to the conviction in absence of any corroboration in the facts and circumstances of the present case. In other words, the statement of prosecutrix alone does not make the case of prosecution as a foolproof case. We are unable to countenance the judgment of conviction based on the statements of victim (PW-3), mother (PW-4) and father (PW-8) Sections 53-A and 164-A of Cr.P.C. make it obligatory for the prosecution to undertake the exercise of DNA examination. However, we are unable to hold that if the DNA test was not conducted, as a rule of thumb the prosecution story stands vitiated. It depends on the facts and circumstances of each case. In the case of ***Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 341***, no such principle of law was laid down that non-conduction of DNA examination will vitiate the case of prosecution in all circumstances. For the same reason, we are unable to hold that combined reading of Section 114 (g) of Evidence Act and Section 53(A) Cr.P.C. should lead us to draw adverse inference against the prosecution.

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35. INDIAN PENAL CODE, 1860 – Sections 342 and 376 (2) (g)
EVIDENCE ACT, 1872 – Sections 3, 45 and 118

(i) Gang rape – Proof – Prosecutrix was allegedly taken to a room of under-construction Haveli belonging to co-accused where labour was working throughout the day – She was allegedly raped for two days in the room and adjoining filed – She never raised alarm – No external or internal injury found on her body – Prosecutirix stated that she neither drank water nor ate anything for three days – Upon medical examination doctor has found her well nourished – FIR was lodged after one day – For want of scientific evidence, stains of semen allegedly found on clothes of prosecutrix could not be linked with the accused – Taking into consideration the above facts including the fact that there was prior enmity between the parties, co-accused acquitted – Evidence not found reliable against the co-accused.

(ii) Acquittal of co-accused – Effect – Acquittal of co-accused on the same set of evidence broke the chain of events and falsified the story projected by the prosecutrix – Conviction of accused set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 342 एवं 376 (2) (छ)
साक्ष्य अधिनियम, 1872 – धाराएं 3, 45 एवं 118

(i) सामूहिक बलात्संग – प्रमाण – अभियोक्त्री को कथित रूप से सह–अभियुक्त की निर्माणाधीन हवेली के कमरे में ले जाया गया था जहाँ मजदूर दिनभर काम कर रहे थे – उस पर कथित रूप से दो दिनों तक लगातार कमरे और लगे हुये खेत पर बलात्संग किया गया – उसने कभी शोर नहीं किया – उसके शरीर पर अंदरूनी या बाहरी चोट नहीं पाई गई – अभियोक्त्री के अनुसार तीन दिनों तक उसने कुछ नहीं खाया और न ही पानी पिया – चिकित्सीय परीक्षण में उसे अच्छी तरह से पोषित होना पाया गया – प्र.सू. रि. एक दिन बाद दर्ज की गई – अभियोक्त्री के वस्त्रों पर कथित रूप से पाये गये सीमन के धब्बे वैज्ञानिक साक्ष्य के अभाव में अभियुक्त को आलिप्त नहीं कर सके – उपरोक्त तथ्यों के साथ इस तथ्य को विचार में लेते हुये कि पक्षकारों के मध्य पूर्व वैमनस्यता थी, सह–अभियुक्त को दोषमुक्त किया गया – अभिलेख पर उपलब्ध साक्ष्य अभियुक्त के विरूद्ध विश्वसनीय नहीं पाई गई।

(ii) सह–अभियुक्त की दोषमुक्ति – प्रभाव – समान साक्ष्य के आधार पर सह–अभियुक्त की दोषमुक्ति घटनाओं की श्रृंखला को तोड़ देती है और अभियोक्त्री द्वारा प्रस्तुत की गई कहानी को मिथ्या साबित करती है – अभियुक्त की दोषसिद्धि अपास्त की गई।

Avtar Singh and anr. v. State of Punjab

Judgment dated 02.08.2023 passed by the Supreme Court in Criminal Appeal No. 1050 of 2013, reported in AIR 2023 SC 3718

Relevant extracts from the judgment:

This story of the prosecution is belied by the fact, as has come on record through the evidence led by the prosecution, that the haveli of Gian Singh was under construction where regular activity was going on. Labour was working there throughout the day. Coupled with the fact that it was the case of the prosecutrix herself that the accused party belonged to the opposite group in the village. The trial court did not find any case made out against Gian Singh in whose haveli, the prosecutrix had allegedly stayed for two days, out of which on one day, she was allegedly raped by Gian Singh, owner of the haveli. The acquittal of Gian Singh has broken the chain of events and falsified the story projected by the prosecutrix.

Now coming to the evidence lead against the appellants. It is the case of the prosecution itself that the room in which the prosecutrix was allegedly detained and raped for two days by three persons is located in an under-construction haveli of

Gian Singh where labour was working throughout the day. Despite this fact, the prosecutrix did not raise any alarm. The stand of the prosecutrix in her statement was that she neither drank water, nor had she eaten anything for three days. She remained in the illegal custody of the accused and was raped repeatedly for three days, against her wishes. When considered in the light of her medical examination, the said statement is falsified as the doctor noted that she was well-built and well-nourished.

Further, on going through the evidence led by the prosecution, the findings returned by the trial court are found to be completely perverse. It is so stated by the prosecutrix in the FIR that about 5 months back, her father had a quarrel with Avtar Singh (also called Tari) and others. To take the revenge, Avtar Singh, Gian Singh and Sohan Lal had committed rape on her. Gian Singh was acquitted by the trial court noticing the stand of the prosecutrix that there was party faction in the village and both the parties belonged to different sections. The same reasoning will apply to the appellants as well for the reason that in the FIR, the stand taken by the prosecutrix is same in respect of all the accused, as far as the allegation of party faction is concerned.

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36. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 3, 4, 5 and 6

CRIMINAL PROCEDURE CODE, 1973 – Section 313

Expert witness – DNA report was exhibited – Expert witness was not called to give evidence – Defense was not given a chance to cross-examine the expert witness – Held, defense has right to cross-examine the expert to ascertain the credibility of such report – Authenticity of such report has to be proved through evidence – Relevant question needs to be framed u/s 313 of the Code as well – Conviction set aside, matter remanded to trial court.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 3, 4, 5 एवं 6

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

विशेषज्ञ साक्षी – डीएनए रिपार्ट प्रदर्शित हुई – विशेषज्ञ साक्षी को साक्ष्य देने हेतु नहीं बुलाया गया – बचाव पक्ष को विशेषज्ञ साक्षी का प्रतिपरीक्षण करने का अवसर नहीं दिया गया – अभिनिर्धारित बचाव पक्ष को यह अधिकार है कि वह विशेषज्ञ का प्रतिपरीक्षण कर रिपोर्ट की विश्वसनीयता को अभिनिश्चित करता –

ऐसी रिपोर्ट की विश्वसनीयता साक्ष्य के द्वारा ही प्रमाणित की जा सकती है – संहिता की धारा 313 के अंतर्गत सुसंगत प्रश्न निर्मित करने की भी आवश्यकता है – दोषसिद्धि अपास्त, प्रकरण विचारण न्यायालय को प्रतिप्रेषित किया गया।

In Reference v. Anokhilal

Order dated 11.09.2023 passed by the High Court of Madhya Pradesh in Criminal Reference (Capital Punishment) No. 6 of 2022, reported in ILR 2023 MP 1891 (DB)

Relevant extracts from the order:

The judgment of the Hon'ble Supreme Court in the case of ***Anokhilal v. State of Madhya Pradesh*** rendered in Criminal Appeal No.62-63 of 2014 dated 18.12.2019 clearly indicates the factum as to whether any of the prosecution witnesses need to be recalled for further cross-examination and whether any expert evidence is required to be led, in response to the FSL and the DNA reports. The case of the accused has been consistent with regard to the DNA report. He has stated that no opportunity was given to him to examine the expert witness, since his evidence was not recorded. One of the key issues of evidence is that of the expert witness. That merely marking of a document is not sufficient. The same has to be proved through the evidence of the witness. It is very unfortunate that in the instant case the same has not been done.

The Hon'ble Supreme Court in the case of ***Ramesh Chandra Agrawal v. Regency Hospital Limited and ors., (2009) 9 SCC 709*** explained the role of expert evidence rendering expert opinion, with reference to para 16, which reads as follows:

> "16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the layperson. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialised and perhaps even esoteric, the central role of an expert cannot be disputed....."

Further, a three-Judge Bench of the Hon'ble Supreme Court in the case of ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey and ors., (2022) 12 SCC***

657 stressed on the importance of expert evidence in the field of medicine. The Court with reference to para 31 held as follows:

> "31.....A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is ccepted, it is not the opinion of the medical officer but of the court."

The Hon'ble Supreme Court in the case of ***Pattu Rajan v. State of T.N. and ors., (2019) 4 SCC 771*** considered the probative value attached to DNA report with reference to para 52, which reads as follows:

> "52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on the facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible....."

Therefore, the credibility of expert evidence in case of a DNA report depends upon the data, material, or the basis on which conclusions were drawn in DNA report.

In a case where the prosecution relies on the expert evidence to prove the charge against an accused, then mere production of a DNA report in the Court may not be sufficient. Therefore, where the prosecution relies upon the DNA report of the expert to bring home the guilt against an accused, then merely by relying upon the DNA report it cannot establish the said medical evidence beyond all reasonable doubt. In such circumstances, it is all the more imperative that not only the report is produced, but the expert witness is also examined before the Court on oath and sufficient opportunity is given to the accused to cross-examine him on the correctness of the report. Reliance is placed on a decision of the Karnataka High Court in the case of ***Parappa and ors. v. Bhimappa and anr., ILR 2008 KAR 1840*** with reference to para 20, wherein, the Court observed as follows:-

> "20. This provision should not be confused with the general law governing the admissibility of an expert's evidence. In a criminal case when the prosecution relies on the expert's evidence to prove the charges against the accused mere production of the said expert's report into Court is not sufficient. It does not become a part of the Court record on mere production. If the prosecution relies on a report of the expert, not only the report is to be produced, the author of the report is also to be examined in the Court on oath and an opportunity should be given to the accused to cross-examine the said expert on the correctness of the report. It is only then the said evidence becomes admissible and not otherwise....."

Thus, we are of the view that the prosecution would have to prove through its witness the truthfulness of the DNA report and other documents which have been marked. If they do not do so the mere marking of the document is no proof of its authenticity. The defence has every right to cross-examine the expert with regard to the DNA report and other documents.

In the instant case, pursuant to the directions issued by the Hon'ble Supreme Court, summons were issued to the expert witness on 11.04.2022. The expert failed to receive the summons and was repeatedly absent. By placing reliance on Section 293 of the CrPC, the Trial Court incorrectly shifted the burden on the defence to show why an expert should be summoned. This, we feel, is rather erroneous. Furthermore, by the order dated 04.07.2022, the summons issued to the expert witness was cancelled.

The Hon'ble Supreme Court in the case of ***Zahira Habibulla H. Sheikh v. State of Gujarat (Best Bakery case (2004) 4 SCC 158*** laid great emphasis on the concept of a fair trial and observed that it does not only mean that the accused should be convicted and punished, but it also entails that a just and fair procedure is followed in the trial. It has also been emphasised that the Courts have an overriding duty to maintain public confidence in the administration of justice so that the majesty of law is maintained. The Hon'ble Supreme Court in para 35 thereof, further held as follows:-

> "35. ..... Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion,

to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves.

Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators."

By cancelling the summons issued to the expert witness, not only has the prosecution not established its case beyond all reasonable doubt but the accused has not had the opportunity to cross-examine the witness. Thus, the cancellation of the summons issued to the witness was wholly uncalled for. Not only has it led to gross miscarriage of justice, but is also in violation of the directions issued by the Hon'ble Supreme Court in the case of ***Anokhilal*** (supra) decided on 18.12.2019. Therefore, we are of the view that this error committed by the Trial Court becomes fatal.

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37. INDIAN PENAL CODE, 1860 – Section 376

Rape – Appreciation of evidence – FIR was lodged after delay of four days without any cogent and plausible explanation – There was inimical relationship between the parties – Statement of prosecutrix not supported by medical evidence – Material infirmities found in the evidence create strong doubt in the prosecution case – Case not proved beyond reasonable doubt – Conviction set aside.

भारतीय दण्ड संहिता, 1860 – धारा 376

बलात्संग – साक्ष्य का मूल्यांकन – प्रथम सूचना रिपोर्ट बिना किसी ठोस और संभावित स्पष्टीकरण के चार दिनों के विलंब से लिखाई गई – पक्षकारों के बीच वैमनस्यता थी – चिकित्सीय साक्ष्य से अभियोजन पक्ष का समर्थन नहीं होता है – अभियोजन साक्षीगणों के कथनों में महत्वपूर्ण विरोधाभास पाये गये – प्रकरण संदेह से परे प्रमाणित नहीं होता है – दोषसिद्धि अपास्त की गई ।

Gabbu v. State of M.P.

Judgment dated 18.07.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 1466 of 1999, reported in ILR 2023 MP 2251

Relevant extracts from the judgment:

The prosecutrix (PW-1) stated that she narrated to brother-in-law (PW-2) that "*Gabbu ne meri izzat loot li*" while her brother-in-law (PW-2) asked the prosecutrix (PW-1) that why is she weeping to which she replied "*Gabbu ne*

mujhe pakad lia", he further stated that, apart from that the prosecutrix has not said anything else. Therefore, it appears that there are material contradictions in the statement of prosecutrix (PW-1) and of her brother-in-law (PW-2). Though, husband of the prosecutrix (PW-3) has supported the statement of prosecutrix (PW-1) that she had stated him about the incident.

As per statement of Dr. Sushma Rathi (PW-8), who examined the prosecutrix (PW-1), on 29-03-1999, it appears that at the time of the examination, no external or internal injury was found on the body of prosecutrix (PW-1). No FSL report was produced in the case, therefore, it is clear that statement of prosecutrix (PW-1) is not supported by medical evidence.

So far as the question of 04 days of delay in lodging the FIR, in this respect, prosecutrix (PW-1) stated that her in-laws returned home on the next day of the incident. While, Inspector Chandrakant Bhamre (PW-5) stated that the prosecutrix (PW-1) lodged FIR on 29.03.1999 and cause of delay was explained by her that her in-laws were not in village and they had returned on 29.03.1999. Thereafter, she came to lodge the report. Therefore, it appears that the prosecutrix (PW-1) has given false explanation to delay in lodging the FIR.

On the basis of aforesaid discussion, it appears that in respect to the incident, there are material contradictions in the statements of prosecutrix (PW1), her brother-in-law (PW-2) and husband (PW-3). Prosecutrix (PW-1), her brother-in-law (PW-2) and husband (PW-3) are related witnesses. No independent witnesses available in the case. Statement of prosecutrix (PW-1) is not supported by medical evidence. No cogent and plausible explanation has been given by the prosecutrix for delay of 04 days in lodging of FIR. She has falsely stated that she reported the matter the next day of the incident itself. It is also evident that there was inimical relationship between the parties. Therefore, statement of prosecutrix (PW-1), her brother-in-law (PW-2) and husband (PW-3) does not appear reliable and trustworthy. The case relied upon by the counsel for the respondent/State [***Ganesan v. State represented by its Inspector of Police, (2020) 10 SCC 573***] is different from the facts and circumstances of this case. Therefore, it is not applicable in this case.

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

Determination of age – Documents – Rule 12 reveals that while conducting enquiry regarding age, Court should consider the documents as mentioned in Rule 12 (1) (i) to (iii) – However, it is upon the Court to whether or not to rely upon such documents without any further enquiry.

किशोर न्याय (बालकों की देख रेख और संरक्षण) नियम, 2007 – नियम 12 आयु का निर्धारण – दस्तावेज – नियम 12 से स्पष्ट है कि न्यायालय आयु के संबंध में जांच करते समय नियम 12(1) (i) से (iii) में उल्लेखित दस्तावेजों पर विचार करेगा – किंतु यह न्यायालय पर निर्भर करेगा कि वह इन दस्तावेजों पर बिना अग्रिम जाँच के विश्वास करे या न करें।

Mohin Mansoori v. State of M.P.

Order dated 30.06.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 4302 of 2022, reported in ILR 2023 MP 2273

Relevant extracts from the order:

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 provides for the procedure to be followed as regards determination of age of a juvenile.

A perusal of the aforesaid rule reveals that while conducting the enquiry the Matriculation or equivalent certificate, if available and in absence whereof, the date of birth certificate from the school first attended is to be firstly considered. In absence thereof the birth certificate given by a Corporation or Municipal Authority or Panchayat has to be considered. In absence of any of the aforesaid the medical opinion has to be sought from a duly constituted Medical Board which will declare the age of a juvenile or child. Thus, the primary document which is to be considered is Matriculation or equivalent certificate or date of birth certificate from the school first attended. The same however cannot be said to mean that whatever date of birth certificate from the school first attended is produced, it has to be relied upon without anything further. A meaningful and purposeful reading of the clause would demonstrate that the birth certificate has to be a genuine one. The rule cannot be stretched to mean that whatever date of birth certificate is produced it has to be given effect to no matter what and that its genuineness or authenticity is beyond the scope of examination in the enquiry. It would be open for the Court to satisfy itself as to whether the date of birth certificate of the juvenile produced is genuine or not and if the same is not found to be so, then it has every power to reject the same and to proceed further as provided in the rule.

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39. LIMITATION ACT, 1963 – Section 5

Condonation of delay – Sufficient cause – Discretionary power available to courts – Exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the

explanation – Length of delay is immaterial – While appreciating reason for condonation of delay, Court should distinguish between an "explanation" and an "excuse" – Lethargic approach of Government departments and public bodies in preferring appeal should be depreciated.

परिसीमा अधिनियम, 1963 – धारा 5

विलंब का क्षमा किया जाना – पर्याप्त कारण – न्यायालयों के लिए उपलब्ध विवेकाधीन शक्ति – विवेकाधिकार का प्रयोग अनिवार्य रूप से दर्शाए गए कारण की पर्याप्तता और स्पष्टीकरण की स्वीकार्यता के परिमाण पर निर्भर होना चाहिए – विलंब की अवधि महत्वहीन है – विलंब को क्षमा करने के कारण पर विचार करते समय, न्यायालय को ''स्पष्टीकरण'' और ''बहाने'' के बीच अंतर करना चाहिए – अपील को प्रस्तुत करने में सरकारी विभागों और सार्वजनिक निकायों के सुस्त दृष्टिकोण को बढावा नहीं दिया जाना चाहिए।

Sheo Raj Singh (Deceased) through LRs. and ors. v. Union of India and anr.

Judgment dated 09.10.2023 passed by the Supreme Court in Civil Appeal No. 5867 of 2015, reported in (2023) 10 SCC 531

Relevant extracts from the judgment:

Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.

Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must

however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

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40. MOTOR VEHICLES ACT, 1988 – Section 10

(i) Driving licence – Category – A person is required to have a particular category of licence to enable him to drive that vehicle – If a person is licensed to drive a particular category of vehicle but there is lack of endorsement to drive a commercial vehicle, will not exonerate the insurance company.

(ii) Offending vehicle – Motor cycle – Driver was having a licence to drive a Light Motor Vehicle (Non-transport) and Heavy Motor Vehicle – He was not licensed to drive a two wheeler which is a vehicle of separate category – Tribunal righty ordered for pay and recover.

मोटर यान अधिनियम, 1988 – धारा 10

(i) चालक अनुज्ञप्ति – श्रेणी – किसी व्यक्ति द्वारा वाहन संचालित करने में सक्षमता हेतु उसके पास विशिष्ट श्रेणी की अनुज्ञप्ति होना आवश्यक है – यदि किसी व्यक्ति के पास किसी विशिष्ट श्रेणी के वाहन को चलाने की अनुज्ञप्ति है किंतु व्यवसायिक वाहन चालन के संबंध में पृष्ठांकन नहीं है तब बीमा कंपनी को विमुक्त नहीं किया जा सकता।

(ii) दुर्घटनाकारी वाहन – मोटर साइकिल – चालक के पास हल्के मोटर यान या (गैर–परिवहन) और भारी मोटर यान चलाने की अनुज्ञप्ति थी – उसके पास दोपहिया वाहन चलाने की अनुज्ञप्ति नहीं थी जो कि एक अलग श्रेणी का वाहन है – अधिकरण द्वारा पारित भुगतान करे और वसूलें का आदेश उचित।

Sufiyan Ali Qureshi v. Rishabh Shanrm A & ors.

Order dated 18.07.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 1128 of 2023, reported in ILR 2023 MP 2227

Relevant extracts from the order:

The learned council for respondent No. 3 submits that the meaning and import of the notification [Government of India, Ministry of Road Transport and Highways and signed by the Joint Secretary (T) wherein it has been mentioned that there was no need to possess a separate driving license to drive a motorcycle without gear or a motorcycle with gear] is that there will be exemption from the requirement to obtain an endorsement for commercial vehicles to a motorcycle without gear, motorcycle with gear, Light Motor Vehicle (Goods/passenger) E-rickshaw/E-cart. Thus, endorsement is exempted and not possessing license to drive a particular category of vehicle, therefore, there will be violation of provisions contained in Section 10 of the Motor Vehicles Act, 1988 which deals with form and contents of licenses to drive.

After hearing learned counsel for the parties and going through the record, the circular which has been relied on by the appellant is in regard to exemption from endorsement to drive a commercial vehicle and it is not in regard to a particular category of vehicle whereas law laid down by Hon'ble Supreme Court in the case of ***Oriental Insurance Company Ltd. v. Jahrul Nisha, (2008) 3 DMP 352 SC*** is that a person is required to have a particular category of license to make him enable to drive that vehicle. In case, a person is licensed to drive a particular category of vehicle and possesses license to drive that category of vehicle but there is lack of endorsement to drive a commercial vehicle then that endorsement will not exonerate the Insurance Company. That being not the case in the present case, where admittedly driver of the motorcycle was not having a valid license to drive a motorcycle, impugned award cannot be faulted with.

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41. MOTOR VEHICLES ACT, 1988 – Sections 166 and 173

Compensation – Reduction of – Remarriage of widow of deceased during pendency of claim petition – Is not a valid ground for reduction of compensation.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 173

प्रतिकर – कटौती – दावा याचिका लंबित रहने के दौरान मृतक की विधवा का पुनर्विवाह – प्रतिकर में कमी करने हेतु उचित आधार नहीं।

The New India Assurance Co. Ltd. v. Kalabai & ors.

Order dated 01.09.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 1700 of 2021, reported in ILR 2023 MP 2237

Relevant extracts from the order:

After hearing both the parties and perusal of the record, it was found that Kalabai was the wife of the deceased (Suresh) and respondent Geetabai was the mother of the deceased (Suresh). It was also found that Geetabai admitted in the evidence that Kalabai went to her father's house and got remarried.

In ***Renu Rani Shrivastav and ors. v. New India Insurance Company Ltd., 2020 ACJ 307***, the Apex Court held that grant of compensation by the Tribunal in respect of death of a person in an accident will not be affected by the family arrangements of the party in as much as compensation as per law has to be awarded by the Court in favour of claimant.

In ***Iffco Tokio General Insurance Company Ltd. v. Smt. Bhagyashri Ganesh Gaikwad and ors.*** (first appeal No.111/19 decided on 13.03.2023 passed by the Bombay High Court) held in para 10 inspite of issues of remarriage of claimant No. 1 in my view, it appears from record that at the time of death of her husband she was only 19 years old. Thereafter, she filed a claim petition for getting compensation. During the pendency of the claim petition, she got remarried.

One cannot expect that in getting compensation of deceased/husband the widow has to remain widow for life time or during getting compensation. Considering the age of claimant at the time of accident, she was wife of the deceased which is sufficient ground that she is entitled for the compensation. However, after death of her husband, she got remarried cannot be taboo to get compensation. Section 166 of Motor Vehicles Act states about who can file application for compensation.

This section provides that by all or any legal representative of deceased can file application for compensation. Claimant Kalabai was wife of the deceased at the time of accident being legal representative, she filed application of compensation which is legal.

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42. MOTOR VEHICLES ACT, 1988 – Sections 166 and 173

(i) Motor accident claim – Plea of false implication of vehicle – Burden of proof is on the insurance company – FIR was lodged on the same day without delay – Registration number of the vehicle revealed on the immediate next day at the time of preparation of spot map – No evidence by insurance company in support of the pleading even after availing the opportunity to do so – Vehicle cannot be said to be falsely implicated.

(ii) Valid and effective driving license – Driver bearing licence for LMV on the date of incident – Insurance company could not prove that the offending transport vehicle does not come in the category of LMV – Mere absence of endorsement in the driving license is not sufficient to exonerate the insurance company.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 173

(i) मोटर दुर्घटना दावा – वाहन असत्य रूप से आलिप्त किये जाने का अभिवाक् – सबूत का भार बीमा कंपनी पर – बिना विलंब के उसी दिन प्रथम सूचना रिपोर्ट दर्ज की गई – वाहन का रजिस्ट्रेशन नंबर नक्शा मौका तैयार करते समय अगले दिन तुरंत प्रकट किया गया – अवसर प्राप्त करने के बाद भी बीमा कंपनी द्वारा अभिवचन के समर्थन में कोई साक्ष्य प्रस्तुत नहीं – यह नहीं कहा जा सकता कि वाहन को असत्य आधार पर आलिप्त किया गया।

(ii) वैध और प्रभावी वाहन चालन अनुज्ञप्ति – चालक के पास घटना दिनांक को एल. एम. वी. के लिए वाहन चालन अनुज्ञप्ति – बीमा कंपनी यह साबित नहीं कर सकी कि दुर्घटनाकारी वाहन एल. एम. वी. की श्रेणी में नहीं आता – केवल वाहन चालन अनुज्ञप्ति में पृष्ठांकन का अभाव बीमा कंपनी को विमुक्त करने के लिए पर्याप्त नहीं है।

Iffco Tokiyo General Insurance Co. Ltd. v. Ram Singh Keer and ors.

Order dated 13.09.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 1187 of 2011, reported in ILR 2023 MP 2079

Relevant extract from the order:

Firstly I deal with the arguments regarding false implication of the alleged vehicle in the case. It reveals from the certified copy of the FIR (Ex.P-1) that date and time of the incident was 28.09.2009 at 5:45 am and FIR was lodged on the same day at 10:40 am, hence, it is clear that in lodging the FIR, inordinate delay

has not been caused. It also reveals that the FIR (Ex.P-1) was lodged by eye-witness of incident i.e. Laxman Singh Thakur S/o Mannu Singh Thakur who has been examined before the Tribunal as AW-2. AW-2 has supported the pleadings of the petition regarding incident. FIR (Ex.P-1) was lodged against the driver of White colour Pick-Up vehicle. In page-2 of the Postmortem report (Ex.P-2), it is mentioned that death was occurred due to accident from Pick-Up vehicle. Site map was prepared on 30.09.2009 i.e. the second day of incident and in the site map (Ex.P-2) vehicle number was disclosed. Appellant-Insurance Company has not adduced any evidence to prove his pleadings regarding false implications of the alleged vehicle in the case. Hence, the facts regarding false implication of vehicle No. MP-49-0438 are not proved. {Relied on ***Kusumlata and others v. Satbir and ors., (2011) 3 SCC 646*** **and** ***Sunita and ors. v. Rajasthan State Road Transport Corporation*** **and** ***anr., (2020) 13 SCC 486 para Nos.21 & 23 {Civil Appeal No.1665/2019 - SLP (Civil No.33757 of 2018 judgment dated 14.02.2019) }.***

Light motor vehicle is defined in Section 2(21) of the Motor Vehicles Act, 1988, according to which 'light motor vehicles' means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms. The submissions of learned counsel for the appellant regarding driving license is no more relevant in the light of law as laid down by Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. v.. Mukund Devangan, (2017) 14 SCC 663*** and therefore, mere absence of endorsement on the driving license is not a sufficient circumstance to exonerate the insurance company.

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43. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 141 (1) and 141(2)

(i) Offence of dishonor of cheque by company/partnership firm – Conditions required – Complainant should make specific averments to make accused vicariously liable – No legal requirement to show that accused partner was aware of every transaction – Complainant is supposed to have only general knowledge that such person is in-charge of the affairs of the company or firm.

(ii) Criminal liability – Attracted only against those, who at the time of commission of offence, were in-charge and responsible for conduct of business – If the Director wants the process to be quashed then he must make out a case that trial against him would be an abuse of process of Court.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 141(1) एवं 141(2)

(i) कंपनी/ साझेदारी फर्म द्वारा चेक के अनादरण का अपराध – आवश्यक शर्त – अभियुक्त को प्रतिनिधिक रूप से दायित्वधीन बनाने के लिए परिवादी को विनिर्दिष्ट अभिकथन करने चाहिए – ऐसा दर्शित करने की कोई विधिक आवश्यकता नहीं है कि अभियुक्त भागीदार को प्रत्येक संव्यवहार की जानकारी थी – परिवादी का मात्र सामान्य जानकारी होना अपेक्षित है कि ऐसा व्यक्ति कंपनी या फर्म के मामलों का प्रभारी है।

(ii) आपराधिक दायित्व – केवल उन व्यक्तियों के विरूद्ध आकर्षित होता है, जो अपराध कारित करते समय व्यवसाय के संचालन के लिए प्रभारी और जिम्मेदार थे – यदि निदेशक चाहता है कि कार्यवाही को अपास्त कर दिया जाए तब उसे यह स्थापित करना होगा कि उसके विरूद्ध विचारण न्यायालय की प्रक्रिया का दुरुपयोग होगा।

S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan

Judgment dated 16.09.2022 passed by the Supreme Court in Criminal Appeal No. 1586 of 2022, reported in (2023) 10 SCC 685

Relevant extracts from the judgment:

The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company.

Advertence to Section 138 and Section 141, respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court.

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44. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 21 and 31
GUARDIANS AND WARDS ACT, 1890 – Section 12
Temporary custody – Only a woman subjected to domestic violence or a person applying on her behalf can claim temporary custody under the Act – Relief cannot be claimed by the father unlike u/s 12 of the Act of 1890 – Act provides respite to the "aggrieved person" who is a woman – Sections 21 and 31 of the Act, 2005 are not *ultra vires.*

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धाराएं 21 एवं 31 संरक्षकता एवं प्रतिपाल्य अधिनियम, 1890 – धारा 12

अस्थाई अभिरक्षा – सिर्फ वही महिला जिसके साथ घरेलू हिंसा हुई है अथवा उसकी तरफ से जो व्यक्ति आवेदन दे रहा है वही अधिनियम के अंतर्गत अस्थाई अभिरक्षा मांग सकता है – पिता अधिनियम, 1890 की धारा 12 के समान अनुतोष प्रार्थित नहीं कर सकता – अधिनियम ''व्यथित व्यक्ति'' हेतु ही अनुतोष प्रावधानित करता है जो कि महिला है – अधिनियम, 2005 की धाराएं 21 एवं 31 असंवैधानिक नहीं है।

Ashwini Pradhan v. Union of India and anr.

Order dated 08.08.2023 passed by the High Court of Madhya Pradesh in Writ Petition No. 18589 of 2023, reported in ILR 2023 MP 1771 (DB)

Relevant extracts from the order:

Section 12 of the Guardians and Wards Act empowers the Court to make orders for temporary custody and protection of the person or property of the minor. Under the Guardians and Wards Act not only the mother can claim temporary custody of a minor child but the father can also apply for the same. However, under the DV Act only a woman who is subjected to domestic violence or the person making an application on her behalf can apply for the temporary custody of child.

By enacting Section 21 of the DV Act the legislature has taken care of a situation where domestic violence is committed against the woman and where she is in constant fear or apprehension of being separate from her child. In such circumstances, the DV Act provides some respite to such women by giving her right to ask for temporary custody of her child.

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45. REGISTRATION ACT, 1908 – Section 17 (1) (e)

Registration – Family settlement through *"Panch Faisla"* – Whether registration of such document is required? Held, No – Document is only a record of what had already happened in the past, it does not attract Section 17 (1) (e) of Act and the law does not mandate registration.

रजिस्ट्रीकरण अधिनियम, 1908 – धारा 17 (1) (ङ)

पंजीयन –''पंच फैसला'' के माध्यम से पारिवारिक व्यवस्था – क्या ऐसे दस्तावेज का पंजीकरण आवश्यक है ? अभिनिर्धारित, नहीं – दस्तावेज केवल अतीत में जो हुआ था, इसका एक अभिलेख है, यह अधिनियम की धारा 17 (1) (ङ) को आकर्षित नहीं करता है और विधि अनुसार पंजीयन अनिवार्य नहीं है।

Vijendra Singh Yadav v. Lieut. Col. Mahendra Singh Yadav

Judgment dated 19.07.2023 passed by the High Court of Madhya Pradesh in First Appeal No. 918 of 2006, reported in ILR 2023 MP 2061

Relevant extracts from the judgment:

In view of the the facts of this case, contention of the appellant to the effect that panch faisla (Ex.P/9) dated 06.11.1996 merely sets out the arrangement arrived at between the brothers, which is the family arrangement and it was a mere record of the past transaction and therefore by itself it did not create or extinguish any right over immovable property, appears to be correct. Resultantly, since the document is only a record of what had already happened in the past, it did not attract Section 17(1)(e) of the Registration Act and the law did not mandate registration.

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46. REGISTRATION ACT, 1908 – Sections 17 (1-A) and 49

Unregistered agreement to sale – Admissibility – Though agreement to sale affecting any immovable property is compulsorily required to be registered u/s 17(1-A), but proviso to section 49, carves out an exception to the above provision – As per the proviso to section 49, an unregistered document affecting the immovable property and required by the Registration Act to be registered may be received in evidence of a contract in a suit for Specific Relief Act, 1877, or as evidence for any collateral transaction – Held, such kind of unregistered agreement is admissible in evidence in a suit of specific performance of contract.

रजिस्ट्रीकरण अधिनियम, 1908 – धाराएं 17 (1–क) एवं 49

विक्रय के लिए अपंजीकृत करार – ग्राह्यता – यद्यपि किसी भी अचल संपत्ति को प्रभावित करने वाले विक्रय के करार को अनिवार्य रूप से पंजीकृत किया जाना धारा 17(1–क) के अनुसार आवश्यक है, परंतु धारा 49 का परंतुक उपरोक्त प्रावधान का एक अपवाद है – धारा 49 के प्रावधान के अनुसार, अचल संपत्ति को प्रभावित करने वाला और पंजीकरण अधिनियम द्वारा पंजीकृत होने के लिए आवश्यक एक अपंजीकृत दस्तावेज विशिष्ट अनुतोष अधिनियम, 1877 के वाद में अनुबंध के साक्ष्य या किसी सांपार्श्विक संव्यवहार के लिए साक्ष्य के रूप में ग्राह्य किया जा सकता है – अभिनिर्धारित, इस तरह का अपंजीकृत करार संविदा के विनिर्दिष्ट पालन के वाद में साक्ष्य में ग्राह्य है।

R. Hemalatha v. Kashthuri

Judgment dated 10.04.2023 passed by the Supreme Court in Civil Appeal No. 2535 of 2023, reported in (2023) 10 SCC 725

Relevant extracts from the judgment:

It is required to be noted that the proviso to Section 49 came to be inserted vide Act No.21 of 1929 and thereafter, Section 17(1-A) came to be inserted by Act No. 48 of 2001with effect from 24.09.2001 by which the documents containing contracts to transfer for consideration any immovable property for the purpose of Section 53-A of the Transfer of property Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then they shall have no effect for the purposes of said Section 53-A. So, the exception to the proviso to Section 49 is provided under Section 7(1-A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable.

Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1-A) of the Registration Act. It is not the case on behalf of either of the parties that the document/Agreement to Sell in question would fall under the category of document as per Section 17(1-A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered agreement to sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49.

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47. REGISTRATION ACT, 1908 – Section 17 (2)

Unregistered document – Admissibility – Plaintiff tendered "*Abhiswikrati Patra*" in evidence and alleged that it was a Will which was neither required to be stamped nor registered – However, the executor himself had provided in the document that a separate Will was being written – Executor had divided the share in the self-acquired property among his sons and created rights in their favour through this document –

Document required registration as it transferred the property and created rights – Held, document cannot be treated to be a Will and was inadmissible in evidence even for the collateral purposes.

रजिस्ट्रीकरण अधिनियम, 1908 – धारा 17 (2)

अपंजीकृत दस्तावेज – ग्राह्यता – वादी ने ''अभिस्वीकृति पत्र'' प्रस्तुत किया और आक्षेपित किया कि वह वसीयत है जो कि स्टॉपित एवं पंजीकृत होना आवश्यक नहीं थी – यद्यपि, निष्पादनकर्ता ने दस्तावेज में यह स्वयं बताया था कि पृथक से वसीयत लेख की जा रही है – निष्पादनकर्ता ने इस दस्तावेज के माध्यम से अपनी स्व–अर्जित संपत्ति में अपने पुत्रों के मध्य अंश विभाजित कर दिये थे और उनके पक्ष में अधिकार उत्पन्न किये थे – दस्तावेज से सपत्ति हस्तांतरित हुई थी और उसके अधिकार संरक्षित हुए थे जिसके कारण उसे पंजीकरण की आवश्यकता थी – अभिनिर्धारित, दस्तावेज को वसीयत नहीं माना गया एवं साक्ष्य में सांपार्श्विक उद्देश्य से भी ग्राह्य योग्य नहीं है।

Rajesh Kumar Sahu v. Manish Kumar Sahu

Order dated 26.06.2023 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 5485 of 2019, reported in AIR 2023 MP 157

Relevant extracts from the order:

After considering the rival submission made by the learned counsel for the parties and perusal of record, the document which is said to be a Will by the trial court and permitted to be taken on record, though the same was unregistered and not duly signed, I have perused the recital of the document, it is titled as *"Abhiswikrati Patra"* but from the contents of document it reveals that Jhunnalal, the executor, has distributed his self-acquired property among his sons and created right in their favour. As per the document, the executor assigning reason given maximum share to his one of the sons namely, Manish, as such transferred the right and document therefore, required to be registered as creating right in favour of Manish. This document cannot be considered to be a Will for the reason that the executor himself has admitted in the document that he was also writing a Will giving his share in the property to his son Manish and also clarified that other sons would not get any share in the property.

It is clear that a document which is required to be registered under Section 17 of the Act, 1908 but not registered, then the same is not admissible in evidence even for collateral purpose.

The judgment relied upon the by respondents in case of ***Khusiram Awasthy v. State of Madhya Pradesh*, AIR Online 2012 MP 36** laying down that a

document not duly stamped and registered, is not admissible for any purpose including a collateral purpose as provided under Section 49 of the Act, 1908, is fully applicable in the fact situation of the present case.

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48. SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORECEMENT OF SECURITY INTEREST ACT, 2002 – Sections 13 and 14

(i) Application for possession of secured asset – Competent authority – CJM is competent to decide such application and such order is not hit by any illegality or incompetency.

(ii) Notice to borrower – Whether it is required to issue notice to the borrower or third person before deciding application u/s 14 of the SARFESI Act? Held, No – Opportunity of hearing is not required to be extended to the borrower or any third party.

वित्तीय अस्तियों का प्रतिभूतिकरण एवं पुनर्गठन और प्रतिभूति हित प्रवर्तन अधिनियम, 2002 – धाराएं 13 एवं 14

(i) सुरक्षित संपत्ति के आधिपत्य के लिए आवेदन – सक्षम प्राधिकारी –मुख्य न्यायिक मजिस्ट्रेट ऐसे आवेदन पर निर्णय लेने में सक्षम है – सी.जे.एम. द्वारा पारित ऐसा आदेश किसी अवैधता या अक्षमता से ग्रस्त नहीं है।

(ii) ऋणी को नोटिस – क्या सरफेसी अधिनियम की धारा 14 के अंतर्गत प्रस्तुत आवेदन निराकृत करने के पूर्व ऋणी या तृतीय व्यक्ति को नोटिस जारी करना आवश्यक है? अभिनिर्धारित, नहीं – सुनवाई का ऐसा कोई अवसर ऋणी या किसी तृतीय पक्ष को देने की आवश्यकता नहीं है।

Kamal Kishore Gaur v. IDFC First Bank Ltd. & ors.

Order dated 05.07.2023 passed by the High Court of Madhya Pradesh (Indore Bench) in MP No. 3024 of 2023, reported in ILR 2023 MP 2042 (DB)

Relevant extracts from the order:

So far as the answer to the question whether the CJM can exercise powers u/s 14 of the SARFAESI Act is concerned, this question came up for consideration before The Hon'ble Apex Court in the case of ***Authorized Officer Indian Bank v. D. Visalakshi and anr., (2019) 20 SCC 47.*** The Apex Court was tasked to deal with the contrary views being taken from various High Courts in the country. The High Court of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand interpreted the said provision to mean that only the CMM in metropolitan areas and the DM in non-metropolitan areas were competent to deal with the applications u/s

14 of the SARFAESI Act whereas on the other hand High Courts of Kerela, Allahabad, Andhra Pradesh and Karnataka took a contrary view and concluded that the provision does not debar or preclude the CJM to exercise the powers u/s 14 of the Act. The Apex Court in the case of ***Authorized Officer Indian Bank*** (supra) has held thus:

> "Notably, the powers and functions of the CMM and the CJM are equivalent and similar, in relation to matters specified in the Cr.P.C..These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act does not explicitly exclude the CJM from dealing with the request of the secured creditor made there under. The power to be exercised under Section 14 of the 2002 Act by the concerned authority is, by its very nature, non judicial or State's coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226 of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage muchless 4 added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression "CMM", as inclusive of CJM concerning nonmetropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in the Cr.P.C. on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.
>
> Suffice it to observe that keeping in mind the subject and object of the 2002 Act and the legislative intent and purpose underlying Section 14 of the 2002 Act, contextual and purposive construction of the said provision would further the legislative intent. In that, the power conferred on the authorised of icer in Section 14 of the 2002 Act is circumscribed and is only in the nature of exercise of State's coercive power to facilitate taking over possession of the secured assets.
>
> To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks)."

In view of the aforesaid discussion and the various pronouncements of the Apex Court, the answer to first question would be that the CJM, is very much competent to deal with the application u/s 14 of the SARFAESI Act. In other words, the order passed by the CJM, Indore is not hit by any illegality or incompetency. So far as opportunity of hearing to the borrower while deciding the application u/s 14 of the SARFAESI Act is concerned, in the light of the judgment passed in the case of ***Standard Chartered v. Noble Kumar & ors., (2013) 9 SCC 620, Aditya Birla Finance Ltd. v. Shri Carnet Elias Fernandes, AIR 2018 MP 209*** and ***Authorized Officer, Indian Bank v. D. Visalakshi and anr., (2019) 20 SCC 47***, the CMM/DM/CJM is not required to issue notice either to the borrowers or the third party, they are only required to verify from the bank/institution whether notice u/s 13(2) of the SARFAESI Act has been issued/served or not.

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49. SPECIFIC RELIEF ACT, 1963 – Sections 34 and 38

Suit for perpetual injunction – Maintainability – Seeking relief of declaration of title, when necessary? Suit filed for perpetual injunction by plaintiff claiming that the suit property was allotted to his share under family settlement and respondents tried to interfere with his possession – Defendants filed counter-claim and pleaded that they have perfected their title by way of adverse possession – This implies admission as to title of person against whom adverse possession is claimed – If there is no cloud of doubt over title, simple suit for permanent injunction is maintainable.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 34 एवं 38

शाश्वत व्यादेश हेतु वाद – पोषणीयता – स्वत्व की घोषणा की सहायता की आवश्यकता कब होती है? वादी द्वारा शाश्वत व्यादेश के लिए वाद संस्थित किया गया जिसमें दावा किया गया था कि प्रकरण की संपत्ति पारिवारिक समझौते के तहत उसे अपने हिस्से में प्राप्त हुई थी और उत्तरादाताओं ने उसके कब्जे में हस्तक्षेप करने की कोशिश की – प्रतिवादियों ने प्रति दावे मे और अभिवचन किया कि उन्होंने प्रतिकूल आधिपत्य के माध्यम से स्वत्व प्राप्त किया है – इसका तात्पर्य उस व्यक्ति के स्वत्व को स्वीकार करना है जिसके विरूद्ध प्रतिकूल कब्जे का दावा किया जाता है – यदि स्वामित्व पर संदेह का कोई बादल नहीं है, तो प्रकरण केवल स्थायी निषेधाज्ञा की सहायता के लिए प्रस्तुत किया जा सकता है।

K.M. Krishna Reddy v. Vinod Reddy and anr.

Judgment dated 06.10.2023 passed by the Supreme Court in Civil Appeal No. 4471 of 2010, reported in (2023) 10 SCC 248

Relevant extracts from the judgment:

The question is whether it was necessary for the appellant to claim a declaration of title. On this aspect, a decision of this Court in the case of ***Anathula Sudhakar v. P. Buchi Reddy, (2008) 4 SCC 594*** is relevant. Paras 13 and 14 of the said decision read thus:

> "13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.
>
> 13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.
>
> 13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.
>
> 13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.
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> 14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed

by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title."

It is obvious that there was no issue involved about the title of the plaintiff and his father. It is not as if the respondents had set up a title in themselves or were claiming through somebody who was claiming the title. Their plea was of adverse possession against the appellant, which presupposes that the appellant was the owner. When in a suit simpliciter for a perpetual injunction based on title, the defendant pleads perfection of his title by adverse possession against the plaintiff or his predecessor, it cannot be said that there is any dispute about the title of the plaintiff. Hence, the plaintiff need not claim a declaration of title in such a case as the only issues involved in such a suit are whether the plaintiff has proved that he was in possession on the date of the institution of the suit and whether the defendant has proved that he has perfected his title by adverse possession. Therefore, in the case at hand, it was not necessary for the appellant to claim a declaration of ownership. There was no cloud on his title. Therefore, the suit, as originally filed, was maintainable.

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50. TRANSFER OF PROPERTY ACT, 1882 – Sections 54 and 58 (c) Proviso Sale or mortgage by conditional sale – Determination – Two documents, a sale deed and a re-conveyance deed were executed – On a request made by vendor, right to purchase property was given to him within a period of five years on payment of sale consideration – It was agreed that agreement shall cease to have effect immediately after expiry of 5 years – Considering terms of sale deed and re-conveyance deed, transaction could not be held to be of mortgage of property.

सम्पत्ति अंतरण अधिनियम, 1882 – धाराएं 54 एवं 58 (ग) परन्तुक

विक्रय अथवा सशर्त विक्रय द्वारा बंधक – अभिनिर्धारण – दो दस्तावेज, एक विक्रय पत्र और पुनः क्रय करने का दस्तावेज निष्पादित किया गया – विक्रेता द्वारा किये गये निवेदन पर संपत्ति को पुनः क्रय करने का अधिकार पाँच वर्ष के भीतर विक्रय प्रतिफल का भुगतान करने पर उसे दिया गया – इस पर सहमति थी कि पाँच वर्ष समाप्त हो जाने के तत्काल उपरांत अनुबंध का प्रभाव समाप्त हो जायेगा – विक्रय पत्र और पुनः क्रय किये जाने के पत्र की शर्तों को

विचारोपरांत यह अभिनिर्धारित नहीं किया जा सकता कि संव्यवहार संपत्ति के बंधक के लिये था।

Prakash (Dead) by LR. v. G. Aradhya and ors.
Judgment dated 18.08.2023 passed by the Supreme Court in Civil Appeal No. 706 of 2015, reported in AIR 2023 SC 3950

Relevant extracts from the judgment:

A perusal of the contents of the sale deed shows that it is clearly mentioned therein that the same was an absolute sale for a total sale consideration of Rs. 5,000/- (Rupees Five Thousand) required by the vendor to meet domestic expenses and to meet education expenses of his minor son and to discharge some debts. Total sale consideration was Rs. 5,000/- (Rupees Five Thousand). Out of this amount, a sum of Rs. 3,000/- (Rupees Three Thousand) was received earlier and Rs. 2,000/- (Rupees Two Thousand) was to be received in the presence of the Sub-Registrar at the time of the registration of the Sale Deed. Possession of the property was to be delivered on registration of the Sale Deed. The vendee was entitled to get the mutation entered in her name and enjoy the property by paying the taxes, if any. She would become an absolute owner thereof from generation to generation. There were no encumbrances attached to the property.

The agreement of buy back dated 24.12.1973 mentioned, that after registration of the Sale Deed, the vendor had requested the vendee to resell the property within the time given. The vendee granted him five years' time to repurchase the property in case sale consideration of Rs. 5000/- (Rupees Five Thousand) is paid. It was agreed that the agreement shall cease immediately after expiry of 5 years. It further mentions that at the time of repurchase, registration expenses are to be borne by the father of the appellant, who had to get the Sale Deed registered back.

In terms of the Sale Deed and the Reconveyance Deed, reconsidered in the light of the enunciation of law, as referred to above, in our opinion, the same cannot be held to be a transaction of mortgage of property. Sale of property initially, was absolute. By way of execution of Reconveyance Deed, namely, on the same day, the only right given to the appellants was to repurchase the property.

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PART – III

NOTIFICATION DATED 23.02.2024 REGARDING DATE OF ENFORCEMENT OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, BHARATIYA SAKSHYA ADHINIYAM, 2023 AND BHARATIYA NYAYA SANHITA, 2023

S.O. 848(E) – In exercise of the powers conferred by sub-section (3) of section 1 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023), the Central Government hereby appoints the 1st day of July, 2024 as the date on which the provisions of the said Sanhita, except the provisions of the entry relating to section 106 (2) of the Bharatiya Nyaya Sanhita, 2023, in the First Schedule, shall come into force.

का.आ. 848(अ) – केन्द्रीय सरकार, भारतीय नागरिक सुरक्षा संहिता, 2023 (2023 का 46) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 1 जुलाई, 2024 को उस तारीख के रूप में नियत करती है, जिसको उक्त संहिता के उपबंध, पहली अनुसूची में भारतीय न्याय संहिता, 2023 की धारा 106 की उपधारा (2) से सम्बंधित प्रविष्टि के उपबंधों के सिवाय, प्रवृत होंगे।

S.O. 849(E) – In exercise of the powers conferred by sub-section (3) of section 1 of the Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023), the Central Government hereby appoints the 1st day of July, 2024 as the date on which the provisions of the said Adhiniyam, shall come into force.

का.आ. 849(अ) – केन्द्रीय सरकार, भारतीय साक्ष्य अधिनियम, 2023 (2023 का 47) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 1 जुलाई, 2024 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के उपबंध प्रवृत होंगे।

S.O. 850(E) – In exercise of the powers conferred by sub-section (2) of section 1 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023), the Central Government hereby appoints the 1st day of July, 2024 as the date on which the provisions of the said Sanhita, except the provision of sub-section (2) of section 106, shall come into force.

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का.आ. 850(अ) – केन्द्रीय सरकार, भारतीय न्याय संहिता, 2023 (2023 का 45) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 1 जुलाई, 2024 को उस तारीख के रूप में नियत करती है, जिसको उक्त संहिता के उपबंध, धारा 106 की उपधारा (2) के उपबंधों के सिवाय, प्रवृत होंगे।

(फा. सं. 1/3/2023 न्यायिक प्रकोष्ठ–1)
श्री प्रकाश, संयुक्त सचिव

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"There are no great things, only small things with great love. Happy are those."

– **Mother Teresa**

मध्यप्रदेश राज्य न्यायिक अकादमी, जबलपुर (26.01.2024)

जिला एवं सत्र न्यायालय, दतिया (म.प्र.)

मध्यप्रदेश उच्च न्यायालय, जबलपुर

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