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SUBJECT – INDEX

(ii) एकपक्षीय कार्यवाही – जहां प्रतिवादी द्वारा प्रस्तुत लिखित कथन अभिलेख पर हो, वहां उसे अपने पक्ष समर्थन में साक्ष्य प्रस्तुत करने का अधिकार होता है। **157** **375**

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धाराएं 107 एवं 306 – आत्महत्या का दुष्प्रेरण – उकसावा सन्निकट, जानबूझकर और इतनी तीव्रता का होना चाहिए कि मृतक के पास जीवन समाप्त करने के अतिरिक्त कोई विकल्प शेष न रहे। **172** **412**

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(ii) अप्राकृतिक यौन संबंध – उपहति के संबंध में चिकित्सा साक्ष्य के अभाव में कोई अपराध नहीं बनता है।

(iii) प्रथम सूचना रिपोर्ट, जब विलंब से दायर की गई – विलंब हमेषा परिवाद को खारिज करने का सारवान आधार नहीं होता, किन्तु यह न्यायालय का कर्तव्य है कि वह आरोपों, साक्ष्य से ज्ञात उसकी प्रकृति का अवलोकन करे, जिससे निर्दोष प्रभावित व्यथित न हो।

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धाराएं 415 एवं 420 – छल का अपराध – मात्र भुगतान करने का वचन पूर्ण न करना बेईमानी को इंगित नहीं करता है, जब तक कि संव्यवहार के प्रारंभ में प्रवंचना विद्यमान न हो। **179** **429**

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EDITORIAL

Esteemed Readers,

It is a great honour and privilege to pen my first editorial for the JOTI Journal. As Director, I regard this opportunity not only as a responsibility but also as a moment of deep personal significance. The Journal, being the voice of our Academy, carries with it the weight of knowledge-sharing, reflection and the aspiration to inspire the judicial fraternity towards higher standards of service. I take this onerous duty with humbleness and that I will be able to discharge it properly.

I began my tenure in the Academy with the organization of a State Level Consultation on the theme *"Shaurya - Safeguarding the Girl Child"* by the Juvenile Justice Committee in collaboration with the Madhya Pradesh State Judicial Academy, State Legal Services Authority and UNICEF Madhya Pradesh on 30th & 31st August, 2025 in the Academy. This Consultation brought together judicial officers, Secretaries of District Legal Services Authorities and subject experts to deliberate on issues of child rights, safety and empowerment. This Consultation witnessed lot of stakeholders come together and brainstormed over their collective roles in providing a safer space for girls in particular. "*Shaurya*" also gave a gentle reminder to all of us that in order to establish a strong nation it is important that the girl child be given the requisite support. And for this support, each of us have to be conscious that we offer a space to every girl to dream and pursue those dreams without any societal hurdles.

The Academy had the proud privilege of celebrating the 79th Independence Day with solemn dignity. Hon'ble the Chief Justice of Madhya Pradesh, Shri Sanjeev Sachdeva, graciously hoisted the National Flag on this occasion. Independence, while historically marking the attainment of political freedom, continues to remind us of the enduring struggle for justice, equality and fraternity. True freedom lies not only in self-governance but also in ensuring that every citizen can live with dignity, security and equal opportunity. The judiciary, as the guardian of the Constitution, stands at the heart of this responsibility. By upholding the rule of law and protecting fundamental rights, the courts give meaning to the promises of independence and ensure that liberty is never compromised.

Another significant highlight was the organization of the West Zone Regional Conference of the National Judicial Academy, hosted in Madhya Pradesh after almost a decade on 2nd & 3rd August, 2025 held at the Brilliant Convention Centre, Indore. The Conference was inaugurated by Hon'ble Shri Justice Jitendra Kumar Maheshwari, Judge, Supreme Court of India in the gracious presence of Hon'ble Shri Justice Satish Sharma, Judge, Supreme Court of India, Hon'ble Chief Justice Shri Sanjeev Sachdeva, High Court of Madhya Pradesh and

other companion Judges. The subject of this Conference was "*Court Dockets: Explosion and Exclusion*" and witnessed some deep insights into the issue from leading resource persons who had travelled from across the country. The deliberations during the Conference underscored the importance of use of technology and delved into the issue of Artificial Intelligence on Judiciary. Photographs from the event are being included in this issue.

As part of our academic initiatives, a Symposium on Forest & Wild Life Laws was organized on 4th & 5th July, 2025. This time, the symposium was conducted in a new way as Academy had invited officers from Forest and Prosecution Departments as well, to participate and share their insights. This offered a chance for healthy interactions and understanding the problem areas from their perspectives. Furthermore, a Conference for Chief Judicial Magistrates was organized on 19th & 20th July, 2025. In addition, a Refresher Course for District Judges who have completed five years of service was held between 18th and 23rd August, 2025. The course provided a valuable opportunity for judicial officers to revisit legal developments, share experiences and strengthen their capacity to meet emerging challenges in justice delivery.

Likewise, two Regional Workshops for Advocates on cluster of district basis were organized on 4th & 5th July, 2025 and on 22nd & 23rd August, 2025, respectively *via* online mode, with sessions designed to foster professional growth, enhance advocacy skills and promote a culture of continuous learning within the Bar. Apart that, under the directions of e-Committee of the Supreme Court, the Academy also conducted four ECT programmes for the Administrative Staff and Court Managers of District Courts, High Court Digitization Officials, Technical Staff of High Court and Advocate Clerks, respectively on 26th July, 2025 and 30th August, 2025.

In our "Our Legends" series, we pay tribute to the indelible legacy of Justice Vivian Bose. He was a jurist of unparalleled intellectual brilliance and fearless integrity, yet it was his profound humanity that defined him. Justice Bose's life is a timeless lesson that professional excellence and a rich, passionate personal life are not mutually exclusive. He serves as an enduring inspiration, reminding us that the law, at its best, is a human-centric endeavour.

As I conclude, I extend my warmest greetings to all our esteemed readers. The *JOTI Journal* is not merely a bi-monthly magazine; it is a reflection of our shared journey. The Academy remains steadfast in its mission to be a crucible of learning, innovation and constitutional service. I look forward for the continued support of all our readers in the direction of pursuit for excellence.

Umesh Pandav
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Hon'ble Shri Justice Sanjeev Sachdeva, Chief Justice, High Court of Madhya Pradesh hoisting the National Flag on the Independence Day at the Academy

Glimpses from the Regional Conference organized by the National Judicial Academy, Bhopal in collaboration with High Court of Madhya Pradesh and Madhya Pradesh State Judicial Academy on 2nd & 3rd August, 2025 at Indore

ONGOING TECHNICAL SESSIONS

Hon'ble resource persons addressing in the Conference

Esteemed gathering at a glance

"Shaurya" – State Consultation for Safeguarding the Girl Child: Towards a Safer and Enabling Environment for her (30th & 31st August, 2025)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Workshop on - Key issues relating to Forest & Wild Life Laws (4th & 5th July, 2025)

Group –I

Group –II

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Conference for Chief Judicial Magistrates
(19.07.2025 & 20.072025)

Refresher Course for the District Judges
(on completion of five years of service) (Group-II)
(18.08.2025 to 23.08.2025)

APPOINTMENT OF JUDGES/ADDITIONAL JUDGES IN THE HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Pushpendra Yadav, Hon'ble Shri Justice Anand Singh Bahrawat, Hon'ble Shri Justice Ajay Kumar Nirankari, Hon'ble Shri Justice Jai Kumar Pillai, Hon'ble Shri Justice Himanshu Joshi, Hon'ble Shri Justice Ramkumar Choubey and Hon'ble Shri Justice Rajesh Kumar Gupta were administered oath of office as Judges of the High Court of Madhya Pradesh whereas Hon'ble Shri Justice Alok Awasthi, Hon'ble Shri Justice Ratnesh Chandra Singh Bisen, Hon'ble Shri Justice Bhagwati Prasad Sharma were administered oath of office as Additional Judge of the High Court of Madhya Pradesh on 30th July, 2025 and Hon'ble Shri Justice Pradeep Mittal was administered oath of office as Additional Judge of the High Court of Madhya Pradesh on 11th August, 2025 by Hon'ble the Chief Justice Shri Sanjeev Sachdeva in a Swearing-in-Ceremony held in the Conference Hall of South Block of High Court of Madhya Pradesh at Jabalpur.

Hon'ble Shri Justice Pushpendra Yadav was born on 27th February, 1977. His Lordship belongs to the renowned Devda family of Village Shivpur, District Narmadapuram. His Grandfather Late Shri Radhelal Devda, was a well-known freedom fighter of Narmadapuram District. His father, Late Shri J.P. Yadav, was a distinguished lawyer practicing at Bhopal and was widely regarded as a master of Co-operative Law.

After completion of degrees of B.Sc. from M.V.M. College, Bhopal, which is affiliated with Barkatullah University, in the year 1997 and LL.B. from State Law College, Bhopal, in the year 2000, His Lordship was enrolled as an Advocate with the Bar Council of Madhya Pradesh on 29.07.2000 and later on joined the Chamber of renowned Senior Advocate Shri Sanjay K. Agrawal.

His Lordship practiced about 25 years in the High Court of Madhya Pradesh at Jabalpur, in various fields. His Lordship is also known for his keen interest in sports and is a good cricketer, enjoys playing badminton and also a passionate golfer. Prior to elevation, His Lordship was Deputy Solicitor General of India from June 2022.

Hon'ble Shri Justice Anand Singh Bahrawat was born on 26th July, 1978. His Lordship's father Shri Uday Singh Bahrawat also served in the District Judiciary and retired as Principal District Judge in the year 2013 and at present his two brothers; Shri Harsh Singh Bahrawat and Shri Prasanna Singh Bahrawat are also presently serving in the District Judiciary as Registrar (Admn.), High Court of Madhya Pradesh and District & Additional Sessions Judge, Dewas, respectively.

After obtaining degrees of B.Com. from Jain College, Vidisha and LL.B. from Career College, Bhopal, His Lordship was enrolled as an Advocate on 04.11.2001 on the rolls of the State Bar Council of Madhya Pradesh.

His Lordship was Panel Lawyer for the Union Bank of India, Bank of Maharashtra, Rajmata Vijayaraje Scindia Agriculture University, Agriculture College, Gwalior, Rajmata Vijayaraje Scindia Indore and Ujjain Agriculture University, Agriculture College, Development Authority, Ujain.

Hon'ble Shri Justice Ajay Kumar Nirankari was Born on 5th October, 1975. After obtaining the degrees of B.Sc. (Biology) from P.G.V. College, Gwalior and LL.B. from M.L.B. College, Gwalior, His Lordship enrolled as an Advocate on 7th August, 2002 on the rolls of the State Bar Council of Madhya Pradesh as a first generation lawyer in his family and started practice with Senior Advocate Shri Shyam Bihari Mishra.

His Lordship went on to build a distinguished legal career for more than two decades, appearing primarily before the High Court of Madhya Pradesh at Gwalior, as well as before various Courts.His Lordship held key positions of Deputy Government Advocate from July, 2017 to January, 2019 and also the office of Government Advocate since January, 2021. His Lordship has to his credit a number of reported decisions. His Lordship has appeared as *Amicus Curiae* in matters of Public Interest and legal significance, as ap- pointed by the Hon'ble High Court.

Hon'ble Shri Justice Jai Kumar Pillai was born on 4th August, 1971 in Kerala in a middle class family in a village Bhagwati Paddi. After completing Graduation from G.S. College of Commerce & Economics, Jabalpur in the year 1992 and LL.B from N.E.S Law College, Jabalpur in the year 1996, His Lordship joined S.S.I (I) Ltd, a non-banking institution as Legal Advisor from 1997 to 2002 and due to winding up of the company, he resigned from the services and having a law background and being much familiar with company matters, financial, labour and miscellaneous disputes, got enrolled as an Advocate on the rolls of State Bar Council of Madhya Pradesh in March, 2003. His Lordship joined the esteemed office of Hon'ble Shri Justice Satish Chandra Sharma in March 2003 and under his able guidance, practiced in various fields. His Lordship also represented Cantornment Board Jabalpur, M.P. State Cooperative Oil Seeds Growers Federation Limited.

After the elevation of his senior Hon'ble Shri Justice Satish Chandra Sharma on 18th January 2008, His Lordship practiced independently from January 2008 till elevation before various Courts.

His Lordship was also appointed as Government Advocate to represent the High Court on behalf of State of Madhya Pradesh from 2019 to 2020 and also represented many esteemed Private Universities.

Hon'ble Shri Justice Himanshu Joshi was born on 4th April, 1979. After obtaining degrees, of B.A. LL.B in the year 2003 and LL.M. in the year 2005, His Lordship enrolled as an Advocate in the year 2003 to practice in all Courts of India by Bar Council of India. His Lordship joined Chambers of Late Shri K.B. Joshi, Advocate (Grandfather) in the year 1998 and practised under the guidance of Late Shri B.K. Joshi, Advocate (Paternal Uncle) at Madhya Pradesh High Court Judicature at Indore. His Lordship has also served as Guest Lecturer, Shri K.P. Govt. Law College Dewas.

In between the years 2019 till elevation, His Lordship worked as Deputy Solicitor General of India (DSGI) posted at Madhya Pradesh High Court Judicature at

Indore. His Lordship represented prestigious agencies (Department of Enforcement, Central Bureau of Investigation, Department of Revenue Intelligence etc) and various departments (Income Tax Department, Ministry of Home Affairs etc.) of Central Government before the Hon'ble High Court of Madhya Pradesh.

His Lordship has vast experience of 21 years of Advocacy and practiced in Constitutional, Civil, Criminal and Taxation Law before Hon'ble Apex Court, various High Courts, Arbitral Tribunals, Family Courts, Consumer Courts and Trial Courts. His Lordship appeared and argued in more than 5,000 cases and have more than 90 reported Judgments and doing *Pro-Bono* work for the unprivileged section of the society.

Hon'ble Shri Justice Ramkumar Choubey was born on 1st July, 1966 at Deori, a Tehsil of District Sagar (M.P.). After obtaining the degrees of B.Sc. and LL.B. (First Division) from Dr. Hari Singh Gour University, Sagar, Master of Arts in Philosophy (First class first in merit), Post Graduate Diploma in Yoga Science, joined Madhya Pradesh Judicial Services as Civil Judge Class II on 7th April, 1994 at Damoh and promoted to Higher Judicial Services as Additional District Judge (through limited competitive examination) in June, 2007. His Lordship was granted Selection Grade Scale with effect from 7th August, 2012 and Super Time Scale with effect from 13th June, 2018.

As Judge of District Judiciary, His Lordship worked in different capacities and held the post of Special Judge designate for CBÍ, Bhopal in the year 2008 and VYAPAM scam cases investigated by STF and CBI at Bhopal from March, 2014 to March, 2017. His Lordship also served as Faculty in the Madhya Pradesh State Judicial Academy, Jabalpur for about five years i.e. from April, 2009 to March, 2014 and Director, Madhya Pradesh State Judicial Academy between June, 2022 to October, 2023. During this period, His Lordship conceptualized First Seed Programme for the newly inducted Advocates in Madhya Pradesh, prepared the training module and initiated judicial education through virtual mode. The illustrious tenure was further marked by conduction of several pathbreaking programmes including training of foreign delegate and includes authoring the academically acclaimed book on "*Symbols of National Honour: A Legal Introduction"*

His Lordship also held the prominent posts like Secretary, Govt. of Madhya Pradesh, Department of Law & Legislative Affairs, Registrar Judicial (J-1), Supreme Court of India from October 2017 to October 2018, Registrar General, High Court of Madhya Pradesh from June 2022 to October 2023. Prior to elevation, His Lordship was Principal District & Sessions Judge, Narmadapuram from 20th November, 2023.

Hon'ble Shri Justice Rajesh Kumar Gupta was born on 15th August, 1965. His Lordship obtained degrees of B.Sc. from Mahamana Malviya Degree College, Khekda and LL.B from M.M.H. College, Ghaziabad (U.P.). His Lordship throughout his education stood first in the class and was awarded National Scholarship for six years by the Government of Uttar Pradesh. His Lordship joined Madhya Pradesh Judicial Services as a Civil Judge Grade-II on 1st January, 1996. His Lordship was promoted to Higher Judicial Services as Additional District

Judge on 16th June, 2008 (through limited competitive examination). His Lordship was granted Selection Grade Scale with effect from 16th June, 2013 and Super Time Scale with effect from 19th June, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places at Morena, Narmadapuram, Budhni (Sehore), Indore, Khandwa, Ujjain, Barwah (Mandleshwar), Dewas, Rajgarh, Jhabua. His Lordship also served as Additional Secretary, Government of M.P., Law & Legislative Affairs Department, Bhopal, Officer-on-Special Duty, High Court of Madhya Pradesh and District Judge (Inspection), High Court of Madhya Pradesh, Zone Jabalpur and Principal Judge, Family Court Waidhan (Singrauli). His Lordship also served as Principal District & Sessions Judge Ratlam and Seoni. Prior to elevation, His Lordship was Principal District & Sessions Judge, Ujjain from 11th October, 2024.

Hon'ble Shri Justice Alok Awasthi was born on 15th June, 1964. After obtaining the degrees of B.A., LL.B, His Lordship joined Madhya Pradesh Judicial Services as a Civil Judge Grade-II on 11th July, 1994. His Lordship was promoted to Higher Judicial Services as Additional District Judge on 16th June, 2008 (through limited competitive examination). His Lordship was granted Selection Grade Scale with effect from 30th June, 2013 and Super Time Scale with effect from 19th June, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places at Rewa, Jabalpur, Shujalpur (Shajapur), Chhindwara, Khachraud (Ujjain), Sidhi, Raisen and Bhopal. His Lordship also served as Deputy Welfare Commissioner, Bhopal Gas Victims, Bhopal and President, District Consumer Forum No.1, Bhopal. His Lordship also served as Principal District & Sessions Judge Narmadapuram. Prior to elevation, His Lordship was Principal District & Sessions Judge, Jabalpur from 17th April, 2023.

Hon'ble Shri Justice Ratnesh Chandra Singh Bisen was born on 1st July, 1966 in Ballia District Uttar Pradesh. After obtaining degrees of M.A. and LL.B from Harishchandra Law College, His Lordship joined the Madhya Pradesh Judicial Services as a Civil Judge Grade-II on 24th May, 1994 at Satna. His Lordship was promoted to Higher Judicial Services as Additional District Judge on 16th June, 2008 (through limited competitive examination). His Lordship was granted Selection Grade Scale with effect from 30th June, 2013 and Super Time Scale with effect from 19th June, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places at Satna, Sihora (Jabalpur), Rewa, Seoni, Jabalpur, Gadarwara (Narsinghpur), Rewa, Biaora (Rajgarh), Itarsi (Narmadapuram) and Chhatarpur. His Lordship also served as Law Officer, Economic Offences Investigation Bureau, Bhopal, Principal Judge, Family Court, Additional Secretary & Secretary, Government of M.P., Law & Legislaltive Affairs Department, Bhopal and Member Secretary, M.P. State Legal Services Authority, Jabalpur. His Lordship also served as District & Sessions Judge (as the designation then was) and Principal District & Sessions Judge Anuppur and Rajgarh,

respectively. Prior to elevation, His Lordship was Principal District & Sessions Judge, Satna from 21st November, 2024.

Hon'ble Shri Justice Bhagwati Prasad Sharma was born on 4th October, 1968 at Ambah, District Morena. After obtaining degrees of B.A. and LL.B. from M.L.B. College, Gwalior in the year 1992, joined the Madhya Pradesh Judicial Services as Civil Judge Class-II on 24th May, 1994 at Morena. His Lordship was promoted to Higher Judicial Services as Additional District Judge on 16th June, 2008 (through limited competitive examination). His Lordship was granted Selection Grade Scale with effect from 24th July, 2013 and Super Time Scale with effect from 19th June, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places at Morena, Dabra (Gwalior), Gwalior, Sagar, Jabalpur and Ujjain. His Lordship also served as Secretary, Inquiry Commission of the Sardar Sarovar Project, Indore, Registrar (District Establishment), High Court of Madhya Pradesh, Jabalpur, District Judge (Inspection), High Court of Madhya Pradesh, Zone Gwalior. His Lordship also served as District & Sessions Judge (as the designation then was) and Principal District & Sessions Judge Chhindwara and Indore, respectively. Prior to elevation, His Lordship was Principal District Judge (Inspection), High Court of Madhya Pradesh, Zone Gwalior from 21st November, 2024.

Hon'ble Shri Justice Pradeep Mittal was born on 23rd July, 1967 at Shivpuri. After obtaining degrees of B.Sc. and LL.B. from Jiwaji University, Gwalior in the years 1986 and 1989, started practicing in civil and criminal laws at District Court Shivpuri from 1989 to 1994. Thereafter, joined the Madhya Pradesh Judicial Services as Civil Judge Class-II on 24th May, 1999 at Shivpuri. His Lordship was promoted to Higher Judicial Services as Additional District Judge on 16th June, 2008 (through limited competitive examination). His Lordship was granted Selection Grade Scale with effect from 24th July, 2013 and Super Time Scale with effect from 19th June, 2018.

His Lordship, as Judge of District Judiciary, worked in different capacities at various places at Shivpuri, Indore, Dabra (Gwalior), Ambah (Morena), Khandwa, Sehore, Chhindwara, Amarwara (Chhindwara), Dr, Ambedkar Nagar (Indore), Anuppur and Guna. His Lordship also served as Deputy Welfare Commissioner, Bhopal Gas Victims, Bhopal, District Judge (Inspection), High Court of Madhya Pradesh, Zone Gwalior. His Lordship also served as District & Sessions Judge (as the designation then was) Sheopur. Prior to elevation, His Lordship was Member Secretary, M.P. Legal Services Authority, Jabalpur from 21st November, 2024.

We on behalf of JOTI Journal wish Their Lordships a very happy and successful tenure.

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HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL & HON'BLE SHRI JUSTICE PREM NARAYAN SINGH DEMIT OFFICE

Hon'ble Shri Justice Dinesh Kumar Paliwal and Hon'ble Shri Justice Prem Narayan Singh demitted office on Their Lordship's attaining superannuation.

Hon'ble Shri Justice Dinesh Kumar Paliwal was born on 10th August, 1963. His Lordship joined Judicial Services on 31st May, 1990 and was appointed as Civil Judge, Class-I on 23rd May, 1996. His Lordship was promoted as officiating District Judge in Higher Judicial Services on 10th October, 2003. His Lordship was granted Selection Grade Scale with effect from 1st March, 2011 and Super Time Scale with effect from 1st January, 2018.

As Judge of District Judiciary, His Lordship was posted at various places. His Lordship also worked as Officer-on-Special Duty (Vigilance), Jabalpur and Indore, President, District Consumer Forum, Jabalpur and District Judge (Inspection), Indore. Before elevation as Judge of the High Court of Madhya Pradesh, His Lordship was posted as Principal District & Sessions Judge, Indore.

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

Hon'ble Shri Justice Prem Narayan Singh was born on 14th August, 1963 at Ghazipur (U.P.) in a family of Lawyers. After obtaining degrees of B.A., M.A. and LL.B. from Allahabad University, His Lordship joined the Madhya Pradesh Judicial Service as Civil Judge Class II on 16th July, 1990 at District Chhatarpur. His Lordship was promoted to Higher Judicial Services as officiating District Judge w.e.f. 18th June, 2007. His Lordship was granted Selection Grade Scale w.e.f. 18th June, 2012 and Super Time Scale w.e.f. 1st April, 2018.

As Judge of District Judiciary, His Lordship worked in different capacities at various places. His Lordship held the posts of Deputy Welfare Commissioner, Bhopal Gas Victims, Registrar (Vigilance) and Principal Registrar (Vigilance) at High Court of Madhya Pradesh, Jabalpur. His Lordship also served as Principal Judge, Family Court at Rewa and District & Sessions Judge (the then designation), Panna. His Lordship was Principal District & Sessions Judge, Gwalior from 12th July, 2021 prior elevation.

His Lordship was elevated as Judge of the High Court of Madhya Pradesh on 1st May, 2023. During His Lordship's tenure in the High Court of Madhya Pradesh, rendered invaluable services as Judge and Member of various Administrative Committees of the High Court.

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

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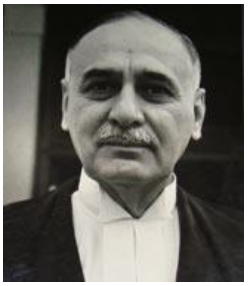
PART – I

OUR LEGENDS

JUSTICE VIVIAN BOSE
THE REMARKABLE JUDGE



The Indian Judiciary has had many remarkable judges but Justice Vivian Bose holds a special place. He was not just a brilliant legal mind; he was a man who believed that law should serve people, not intimidate them. His judgments, his life and even his hobbies show us that he was a human being first and a judge later – a rare balance that makes his story worth telling.

EARLY LIFE AND EDUCATION

Justice Bose was born on 9th June, 1891 at Ahmedabad. His grandfather, Sir Bipin Krishna Bose, had moved to Nagpur in 1874 and soon became a central figure in law and politics. He was the first Indian appointed to a judicial post in the Central Provinces, later knighted, and eventually became a member of the Viceroy's Executive Council. His son, Lalit Mohun Bose**,** was an Executive Engineer in government service and married an English woman. From this blend of traditions, Vivian Bose inherited both Indian rootedness and a cosmopolitan outlook.

Educated at Dulwich College and Pembroke College, Cambridge, he was called to the Bar at Middle Temple in 1913. Returning to India the same year, he commenced practice at the Nagpur Judicial Commissioner's Court, where his talent soon became apparent. Justice Hidayatullah later recalled that young advocates were advised to "*watch Bose argue a hard case*," likening his method to that of a physician at the bedside of a patient, careful, calm and precise.

PROFESSIONAL RISE AND PUBLIC LIFE

Bose's success as an advocate was immediate. He was appointed as Government Advocate (equivalent to today's Advocate General) and later became Chief Justice of Nagpur High Court. In 1951, he was elevated to the Supreme Court of India where he served until 1956.

At the farewell ceremony on His Lordship's elevation to the Supreme Court of India, Justice Vivian Bose reflecting upon his journey said:

> "My home is here and my friends. I am not a Hindu but my ancestors were and I have inherited a Hindu's deep attachment and love for his ancestral home. I do not know why your President said

that I will be in India for atleast 5 years. India is my country and Nagpur is my home, and if I have my wish I will one day die here and have my body become part of the soil I have lived and where my grandfather lived, where all the richness of my life has been acquired.

And everyone has always been so uniformly kind to me here. They haven't always liked me. They haven't always approved of the things I have done. As your President hinted, I haven't been what you might call popular for I have never striven to do the popular thing, but what I conceived to be right thing. A man in my position who strives after mere popularity would not be fit to occupy it. But in spite of that I have been made to feel that I have been liked-which is a very different thing.

Everyone has always been uniformly kind and understanding and appreciative. It would have been so easy to say that I was an outsider, a stranger, that I did not belong. But never once have I been made to feel that. You have always taken me in as one of yourselves and made me feel I was one of you. No wonder I hate to go.

I want now to touch on certain other matters and first, the relations between the Bench and Bar. As your President indicated, the two are essential counterparts in the administration of justice. You just can't get proper justice unless both work in harmony and close cooperation and unless both sides understand the difficulties and make allowances for the weaknesses of the other. I have been on both sides of the barrier. I know from the Bar how irritating and annoying a Judge can be. I have been just as mad at Judges as many of you from time to time have been mad with me. But from the Bench I also know how exceedingly annoying counsel can sometimes be. I know it is human for each sometimes to lose their temper. But might I plead with you on both sides to remember that we are all, as your President said, members of one great family and however much we may get angry with each other on occasion, let us keep our differences in the family and stand by each other in spite of that so that the great task to which we are both committed and which has been entrusted to our care can be done and done well, done to the best of our joint abilities."

When India's Supreme Court was established in 1950, Justice Bose became one of its early judges. It was a challenging time, the Constitution was new and the courts had to give life to its words. Justice Bose took this responsibility seriously.

One of his most famous observations was:

> "*The Constitution exists for the common man for the butcher, the baker and the candlemaker."*

This was typical of him. Instead of speaking only in abstract legal terms, he drew examples from everyday life farmers, workers, villagers, to remind everyone that justice must be rooted in the realities of ordinary people.

JUDICIAL PHILOSOPHY

Justice Bose's contribution to Indian Constitutional Law was profound, marked by a rare blend of rigorous reasoning and humanitarian vision. In ***State of West Bengal v. Anwar Ali Sarkar, (1952)1 SCC 1*** he laid down that any action which is not "just, fair, and reasonable" would be in violation of Article 14–a formulation that was decades ahead of its time and later found full expression in ***Maneka Gandhi v. Union of India,* (1978) *1 SCC 248***. His understanding of liberty and equality was equally striking. In ***State of Madras v. V.G. Row (1952) 1 SCC 410***, he likened liberty to a "delicate plant" requiring constant protection, underscoring the importance of safeguarding individual freedoms against arbitrary State action. His approach to criminal law also carried a deep humanistic core, as he consistently emphasized that justice demanded consideration of circumstances and mental states, while warning courts against blind reliance on coerced confessions. For him, justice was not about retribution but about reform. Such clarity of vision was matched by his eloquence; it is said that Chief Justice Patanjali Sastri often entrusted Bose with drafting opinions whenever elegant expression was required. Together, these qualities made Justice Bose one of the most influential and humane judges in the formative years of India's Constitutional Jurisprudence.

JUDICIAL TEMPERAMENT

Justice Bose's character was defined by humility and originality. He often drove himself to court, waited in queues for postage stamps and refused to misuse official staff for personal errands. He hated VIP treatment and often travelled incognito. He was also a lover of magic, books and conversation. Despite his fame, he remained approachable and kind, encouraging young lawyers to see law as a mission, not just a career.

His love for magic once found its way into court. One anecdote that captures his charm is from a criminal appeal. A fellow judge kept asking how money could be planted on an accused. Bose, who loved magic tricks, quietly slipped a ten-rupee note into the judge's pocket during the hearing. When the judge finally checked his

pocket, everyone burst out laughing. It was Bose's way of saying: sometimes, the unbelievable can still be true.

PERSONAL LIFE

In 1930, he married Irene Mott, daughter of Nobel Peace laureate John R. Mott. Irene dedicated herself to rural development in India, establishing schools, health initiatives and ration shops that saved lives during the Bengal famine. In villages around Nagpur, she came to be known as "Bose Bai." She was an author herself and has famously penned, *the Monkey Tree* and *Totaram*.

OTHER PURSUITS

Justice Vivian Bose maintained diverse interests ranging from photography and wireless experiments to motoring and magic. His broad intellectual pursuits gave him a depth of perspective that was rare among judges of his era. Among his many passions, Scouting held a special place. Justice Bose's life was not limited to law. He loved scouting, helped to start the Bharat Scouts in 1913 and later became Chief Commissioner of Scouts in India. His commitment to Indianising the Scout movement reflected his belief in unity amidst diversity. In a letter written on behalf of Scouts at a camp in Mandla in 1924, he expressed his conviction that "goodwill and brotherhood" were essential to solving India's challenges – words that mirror his later judicial emphasis on fairness and human dignity.

He also had a passion for driving, often taking long road trips across India and abroad. His Mercedes station wagon would be packed with supplies bread, gas cylinders, even a sandbox for his pet Siamese cat, Marco.

He also undertook adventurous motoring expeditions, including a 1933 journey from Nagpur to London with his wife Irene and infant son.

LATER LIFE AND RECOGNITION

After retiring from the Supreme Court in 1956, Bose continued to serve the nation by heading commissions of inquiry, most notably the Mundhra Scandal Inquiry, which led to a political confrontation with Prime Minister Nehru. His impartiality and integrity remained unquestioned. Interestingly, his judicial career was complemented by a vibrant public life. Notably, he was the first Principal of Nagpur Law College (1925) and participated in legal education. For his contributions, he was awarded the Padma Bhushan in 1961.

He remained deeply connected to Nagpur, often stating:

> *"India is my country and Nagpur is my home. If I have a wish, it is to die here and let my body become part of the soil."*

CONCLUSION

Justice Vivian Bose passed away in 1983 at the age of 92. He spent his last days with his daughter Leila Powar in Bangalore. Justice Vivian Bose was more than a jurist; he was a polymath whose diverse life experiences spanning law, scouting, motoring and public service, shaped a judicial philosophy grounded in fairness, compassion and independence. His judgments anticipated constitutional developments by decades and his insistence on liberty and dignity remains a guiding force.

At the Full Court reference organized at the Supreme Court in memory of Vivian Bose the then, Chief Justice Y. V. Chandrachud said the young Bar will profit if it cultivates a *Vivian touch*.

Justice Hidayatullah, a person who observed him the closest remarked, Vivian's friendship is a treasure. A man of few words but intense feelings. You sense him around you even when he is silent. I have sat with him for hours, both of us reading but it is enough to know that he is there.

For legal scholars, his life illustrates that judicial temperament is not shaped solely within the courtroom but is enriched by engagement with the larger world. Justice Bose's legacy reminds us that law, when guided by humanity, becomes a living instrument of justice.

Such experiences reflected his courage, curiosity and detachment from convention traits that shaped his independence on the Bench.

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> Law is a matter of the heart, as well as the head. You have to have compassion; it is one of the greatest qualities. Lord Denning and Justice Krishna Iyer have both said that compassion is extraordinarily important in the law. Amongst Lawyers and particularly amongst Judges. One must be able to assess whether a person has something genuine to say in a case.
>
> – Fali Sam Nariman

भूमि–अर्जन, पुनर्वास और पुनर्व्यवस्थापन प्राधिकरण द्वारा प्रतिकर की रकम का अवधारण

डॉ. धर्मेन्द्र टाडा
संकाय सदस्य (वरिष्ठ)
म.प्र. राज्य न्यायिक अकादमी, जबलपुर

भूमि मनुष्य के अस्तित्व के लिये एक महत्वपूर्ण संसाधन है। माननीय उच्चतम न्यायालय के न्यायमूर्ति बी.आर. गवई एवं न्यायमूर्ति व्ही.के. विश्वानाथन की पीठ ने यह अभिनिर्धारित किया कि संविधान (44वां संशोधन) अधिनियम, 1978 के अंतर्गत संपत्ति का अधिकार मौलिक अधिकार नहीं रहा, किन्तु यह कल्याणकारी राज्य में मानव अधिकार और संविधान के अनुच्छेद 300–क के अंतर्गत संवैधानिक अधिकार बना हुआ है। **(बर्नार्ड फ्रांसिस जोसेप वाज व अन्य विरूद्ध कर्नाटक गवर्मेंट व अन्य, 2025 एससीसी ऑनलाईन एस.सी. 20)**

भूमि से व्यक्ति की आजीविका, आवास, सभ्यता, संस्कृति के आवश्यक आधारभूत अधिकार संलग्न होते हैं, किन्तु व्यक्तिगत हित की तुलना में लोक प्रयोजन को महत्व देने के सिद्धांत के अंतर्गत भूमि अधिग्रहण की अवधारणा का विकास हुआ। उसी प्रक्रिया में वर्ष 1894 में भूमि अधिग्रहण कानून पारित किया गया। कल्याणकारी राज्य की अवधारणा के अंतर्गत संपत्ति के अधिकार को अधिमान्यता देते हुये न्यायोचित एवं ऋजु प्रतिकर देने और प्रभावित व्यक्तियों के पुनर्वासन और पुनर्व्यवस्थापन के उद्देश्य से भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार अधिनियम, 2013 (जिसे आगे अधिनियम, 2013 से उल्लेखित किया जा रहा है।) पारित किया गया।

संपत्ति का अधिकार बनाम भूमि अधिग्रहण

भारतीय संविधान में सम्पत्ति के अधिकार को अनुच्छेद 300–क के अंतर्गत 'संवैधानिक अधिकार' के रूप में समाविष्ट किया गया है जो यह उपबंधित करता है कि ***"किसी व्यक्ति को उसकी सम्पत्ति से विधि के प्राधिकार से ही वंचित किया जायेगा अन्यथा नहीं।"*** सम्पत्ति के अधिकार को संवैधानिक और मानव अधिकार दोनों के रूप में वर्णित किया गया है **(लक्षमन दास विरूद्ध जगत राम, (2007) 10 एससीसी 448; विद्या देवी विरूद्ध हिमाचल प्रदेश राज्य, (2020) 2 एससीसी 569)** माननीय उच्चतम न्यायालय की 9 न्यायमूर्तिगण की संवैधानिक पीठ द्वारा न्यायदृष्टांत **प्रापर्टी ऑनर्स एसोशियेशन विरूद्ध महाराष्ट्र राज्य, 2024 एससीसी ऑनलाईन 3122** के मामले में संपत्ति के अधिकार को मान्यता देते हुये यह अभिनिर्धारित किया गया है कि सार्वजनिक कल्याण और निजी संपत्ति के अधिकार के बीच एक संतुलन होना चाहिए।

माननीय उच्चतम न्यायालय द्वारा **कोलकाता म्युनिसिपल कॉपरेशन विरूद्ध बिमल कुमार शाह, (2024) 10 एससीसी 533** के मामले में भारतीय संविधान के अनुच्छेद 300–क अंतर्गत 'सम्पत्ति के अधिकार' के सात निम्न उप–अधिकारों पर प्रकाश डालते हुये इस बात पर बल दिया गया कि ये उप–अधिकार अनुच्छेद 300–क के अंतर्गत संपत्ति के अधिकार की वास्तविक सामग्री को चिन्हित करते हैं। इनका अनुपालन न करना भूमि के अधिकार का उल्लंघन होगा। अनिवार्य अधिग्रहण तब भी असंवैधानिक होगा यदि किसी व्यक्ति को संपत्ति के अधिकार से वंचित करने से पहले उचित प्रक्रिया स्थापित नहीं की जाती है या उसका पालन नहीं किया जाता है–

1– **नोटिस का अधिकार (*the right to notice*) :** राज्य का कर्तव्य है कि वह व्यक्ति को सूचित करे कि वह उसकी संपत्ति अर्जित करने का आशय रखता है। *(अधिनियम, 2013 की धारा 11 एवं राष्ट्रीय राजमार्ग अधिनियम, 1956 की धारा 3–ए)*

2– **सुनवाई का अधिकार (*the right to be heard*)** : अधिग्रहण पर आपत्तियों को सुनना राज्य का कर्तव्य है। *(अधिनियम, 2013 की धारा 15 एवं राष्ट्रीय राजमार्ग अधिनियम, 1956 की धारा 3–सी)*

3– **तर्कसंगत निर्णय का अधिकार (*Right to a reasoned decision*) :** अधिग्रहण के अपने निर्णय के बारे में व्यक्ति को सूचित करना राज्य का कर्तव्य है। *(अधिनियम, 2013 की धारा 19 एवं राष्ट्रीय राजमार्ग अधिनियम, 1956 की धारा 3–डी)*

4– **केवल लोक प्रयोजन के लिए अधिग्रहण करने का कर्तव्य (*The Duty to acquire only for public purpose*)** : यह प्रदर्शित करना राज्य का कर्तव्य है कि अधिग्रहण लोक प्रयोजन के लिए है। *(अधिनियम, 2013 की धाराएं 2(1), 11(1), 15(1)(बी) और 19(1) एवं राष्ट्रीय राजमार्ग अधिनियम, 1956 की धारा 3–ए(1))*

5– **पुनर्स्थापन या उचित प्रतिकर का अधिकार (*The Right of restitution or fair compensation*)** : पुनर्स्थापन और पुनर्वास करना एवं उचित प्रतिकर संदाय करना राज्य का कर्तव्य है। *(अधिनियम, 2013 की धारा 23 एवं राष्ट्रीय राजमार्ग अधिनियम, 1956 की धाराएं 3–जी और 3–एच)*

6– **कुशल और शीघ्र प्रक्रिया का अधिकार (*The Right to an efficient and expeditious process*)** : अधिग्रहण की प्रक्रिया को कुशलतापूर्वक और निर्धारित समयसीमा के भीतर संचालित करना राज्य का कर्तव्य है। *(अधिनियम, 2013 की धाराएं 4(2), 7(4), 7(5), 11(5), 14, 15(1), 16(1), 19(2), 25, 38(1), 60(4), 64 और 80 तथा राष्ट्रीय राजमार्ग अधिनियम, 1956 की धाराएं 3–सी(1), 3–डी(3) और 3–ई(1))*

7– **निष्कर्ष का अधिकार (*The Right of conclusion*) :** निहितार्थ की ओर ले जाने वाली कार्यवाही का अंतिम निष्कर्ष अनिवार्य है। *(अधिनियम, 2013 की धारा 37 एवं 38 एवं राष्ट्रीय राजमार्ग अधिनियम, 1956 की धाराएं 3–डी और 3–ई)*

उपरोक्त सात उप–अधिकार अनुच्छेद 300–क के अनुरूप विधि के आधारभूत तत्व हैं, और इनमें से एक या कुछ का अभाव विधि को चुनौती देने के लिए अतिसंवेदनशील बना देगा। माननीय उच्चतम न्यायालय द्वारा **के.टी. प्लांटेशन (पी) लिमिटेड विरूद्ध कर्नाटक राज्य, (2011) 9 एससीसी 1**, के मामले में अभिनिर्धारित किया गया है कि अनुच्छेद 300–क के अंतर्गत परिकल्पित विधि, *'विधि के शासन'* के व्यापक सिद्धांतों के अनुरूप और न्यायसंगत, निष्पक्ष और युक्तियुक्त होना चाहिए। इन प्रक्रियागत उप–अधिकारों को अनिवार्य भूमि अधिग्रहण से संबंधित विधियों में समकालिक रूप से सम्मिलित किया गया है और निजी संपत्ति के अनिवार्य अधिग्रहण के लिए प्रशासनिक कार्यवाही की समीक्षा करते समय हमारे संवैधानिक न्यायालयों द्वारा भी इन्हें मान्यता प्रदान की गई है, जो यह दर्शित करते है कि कैसे सात उप–अधिकार भूमि अधिग्रहण से संबंधित संघ और राज्य के विधानों के अभिन्न अंग बन गए हैं। (**पूर्वोक्त न्यायदृष्टांत कोलकाता म्युनिसिपल कॉपरेशन**)

राष्ट्रीय राजमार्ग अधिनियम के अंतर्गत भू–अर्जन पर अधिनियम, 2013 का लागू होना

राष्ट्रीय राजमार्ग अधिनियम, 1956 की धारा 3–ए के अंतर्गत 'लोक प्रयोजन' के लिये किसी राष्ट्रीय राजमार्ग या उसके किसी भाग के निर्माण, अनुरक्षण, प्रबंध या कार्यान्वयन के लिये भूमि की आवश्यकता होने पर, ऐसी भूमि अर्जित करने के आशय की घोषणा केन्द्र सरकार कर सकती है एवं जब कोई भूमि अधिग्रहीत की जाती है तो प्रतिकर संदाय रकम का अवधारण धारा 3–जी के अंतर्गत सक्षम प्राधिकारी द्वारा किया जायेगा। धारा 3–जी की उपधारा (5) यह उपबंधित करती है कि सक्षम प्राधिकारी द्वारा अवधारित रकम किसी पक्षकार को स्वीकार्य नहीं है तो उक्त रकम किसी पक्षकार के आवेदन पर केन्द्रीय सरकार द्वारा नियुक्त मध्यस्थ द्वारा अवधारित की जाएगी।

सड़क परिवहन और राजमार्ग मंत्रालय, भारत सरकार की अधिसूचना दिनांक 03.01.2022 के संदर्भ में **मध्यप्रदेश शासन राजस्व विभाग के आदेश क्रमांक एफ 16–44/2021/सात–2 भोपाल दिनांक 28.11.2022** द्वारा मध्यप्रदेश के समस्त कलेक्टरों को राष्ट्रीय राजमार्ग अधिनियम, 1956 की धारा 3–जी की उपधारा (5) के अंतर्गत मध्यस्थ (आर्बिट्रेटर) संबंधी अधिकार प्रदत्त किये गये हैं।

राष्ट्रीय राजमार्ग अधिनियम, 1956 की धारा 3–जी की उपधारा (6) यह उपबंधित करती है कि इस अधिनियम के उपंबंध के अधीन रहते हुये मध्यस्थम् और सुलह अधिनियम, 1996 के उपबंध राष्ट्रीय राजमार्ग अधिनियम के अंतर्गत प्रतिकर निर्धारण हेतु नियुक्त मध्यस्थम् की कार्यवाही को लागू होंगे। मध्यस्थम् द्वारा पारित अवार्ड से असंतुष्ट पक्ष मध्यस्थम् और सुलह अधिनियम, 1996 की धारा 34 के अंतर्गत क्षेत्राधिकारवान् जिला न्यायालय में पंचाट को अपास्त कराने के लिये आवेदन प्रस्तुत कर सकता है। (**नेशनल हाईवे अथोरिटी ऑफ इंडिया विरूद्ध दिनेश सिंह, आर्बिट्रेशन अपील नं. 99/2021 आदेश दिनांक 07.05.2025, माननीय म.प्र. उच्च न्यायालय खण्डपीठ ग्वालियर**)

अधिनियम, 2013 1 जनवरी, 2014 से प्रभावी हुआ और अधिनियम, 2013 की चौथी अनुसूची में विनिर्दिष्ट अधिनियमितियों के अधीन भूमि अर्जन के मामलों को लागू प्रतिकर के

अवधारण, पुनर्वासन और पुनर्व्यवस्थापन से संबंधित अधिनियम के उपबंधों को जारी करने के लिए अधिनियम, 2013 की धारा 105 की उप–धारा (3) अधिसूचना जारी करने का उपबंध करती है और अधिनियम, 2013 की धारा 105 की उप–धारा (3) के अधीन अभिकल्पित अधिसूचना जारी नहीं की गयी थी और भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार (संशोधन) अध्यादेश, 2014 *(जिसे आगे अध्यादेश से संबोधित किया जा रहा है)*। 31 दिसम्बर, 2014 को प्रख्यापित किया गया था, जिसके द्वारा, अन्य बातों के साथ–साथ, अधिनियम, 2013 की चौथी अनुसूची में विनिर्दिष्ट अधिनियमितियों के अधीन भूमि अर्जन के मामलों को लागू प्रतिकर के अवधारण, पुनर्वासन और पुनर्व्यवस्थापन से संबंधित अधिनियम के उपबंधों को विस्तारित करने के लिए अधिनियम, 2013 की धारा 105 का संशोधन किया गया है और (संशोधन) अध्यादेश, 2015 को अधिनियम (संशोधन) अध्यादेश, 2014 के उपबंधों को निरंतरता प्रदान करने के लिए 3 अप्रेल, 2015 को प्रख्यापित किया गया था

भू–अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार (संशोधन) दूसरा अध्यादेश, को (संशोधन) अध्यादेश, 2015 के उपबंधों को निरंतरता प्रदान करने के लिए, 30 मई, 2015 को प्रख्यापित किया गया था; जो 31 अगस्त, 2015 को व्यपगत हुआ तथा केन्द्र सरकार, द्वारा अधिनियम, 2013 की धारा 113 की उप–धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भू–अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता अधिकार (कठिनाइयां को दूर करना) आदेश, 2015 पारित किया जो 1 सितम्बर, 2015 को प्रवृत्त हुआ। जिसके अनुसार अधिनियम, 2013 की चौथी अनुसूची में विनिर्दिष्ट अधिनियमिति के अधीन भूमि अर्जन के सभी मामलों में पहली अनुसूची के अनुसरण में प्रतिकर के अवधारण और दूसरी अनुसूची के अनुसरण में पुनर्वासन और पुनर्व्यवस्थापन तथा तीसरी अनुसूची के अनुसरण में अवसंरचनात्मक प्रसुविधाओं से संबंधित अधिनियम, 2013 के उपबंध लागू होंगे।

भारत सरकार के उपरोक्त अध्यादेश एवं स्पष्टीकरण से यह स्पष्ट है कि अधिनियम, 2013 राष्ट्रीय राजमार्ग अधिनियम, 1956 के अंतर्गत अधिग्रहित की जाने वाली भूमियों के प्रतिकर निर्धारण के संबंध में 01/01/2015 से प्रभावशील हुआ। इस संबंध में भारत सरकार मिनिस्ट्री ऑफ रोड ट्रांसपोर्ट एण्ड हाईवे की गाईडलाईन दिनांक 28/12/2017, 10/05/2018 एवं **यूनियन ऑफ इण्डिया विरूद्ध तरसेम सिंह, (2019) 9 एस0सी0सी0 304** अवलोकनीय है।

प्रतिकर की रकम का अवधारण

ऐतिहासिक पृष्ठभूमि:

भू–अर्जन अधिनियम, 1894 के अंतर्गत भू–अर्जन पर प्रतिकर का निर्धारण निरसित अधिनियम, 1894 की धारा 23 एवं विविध न्यायदृष्टांतों में प्रतिपादित सिद्धांतों के अंतर्गत किया जाता है। माननीय मध्यप्रदेश उच्च न्यायालय द्वारा न्यायदृष्टांत **मजहर हुसैन विरूद्ध मध्यप्रदेश राज्य, 2019 एससीसी ऑनलाईन एमपी 780** में यह व्यक्त किया गया कि उचित

बाजार मूल्य निर्धारित करने के लिए न्यायालय को मामले के विभिन्न तथ्यों तथा परिस्थितियों पर विचार करते हुये विभिन्न तरीकों को अपनाकर अपने विवेक का प्रयोग करना चाहिए।

माननीय उच्चतम न्यायालय द्वारा न्यायदृष्टांत **स्पेशल लेण्ड एक्वीजीशन आफिसर विरूद्ध करिगौड़ा, (2010) 5 एससीसी 708** में अभिनिर्धारित किया गया कि भू–अर्जन अधिनियम, 1894 के अंतर्गत उस पद्धति का वर्णन नहीं हैं जिसे न्यायालयों द्वारा प्रासंगिक समय पर भूमि के उचित बाजार मूल्य का निर्धारण करने में अपनाया जाना चाहिए। न्यायालय विभिन्न विधियों को अपनाकर अपने विवेक का प्रयोग कर रहे हैं, जिनमें अन्य बातों के साथ–साथ निम्नलिखित विधियों को स्वीकृति प्राप्त है –

(क) बिक्री सांख्यिकी पद्धति (Sales statistics method)- इस संबंध में अग्र न्यायदृष्टांत अवलोकनीय है : **फरीदाबाद गैस पावर प्रोजेक्ट, एन.टी.पी.सी. लिमिटेड विरूद्ध ओम प्रकाश, (2009) 4 एससीसी 719, शाजी कुरियाकोस विरूद्ध इंडियन ऑयल कार्पोरेशन लिमिटेड, (2001) 7 एससीसी 650, रविंदर नारायण विरूद्ध भारत संघ, (2003) 4 एससीसी 481।**

(ख) शुद्ध आय की पूंजीकरण पद्धति (Capitalisation of net income method) - इस संबंध में अग्र न्यायदृष्टांत अवलोकनीय है : **यूनियन ऑफ इंडिया विरूद्ध श्रीमती शांति देवी, (1983) 4 एससीसी 542, एक्ज्यूकेटिव डायरेक्टर विरूद्ध शरत चंद्र बिसोई, (2000) 6 एससीसी 326, नेल्सन फर्नांडीस विरूद्ध स्पेशल लेण्ड एक्वीजीशन आफिसर, साउथ गोवा (2007) 9 एससीसी 447।**

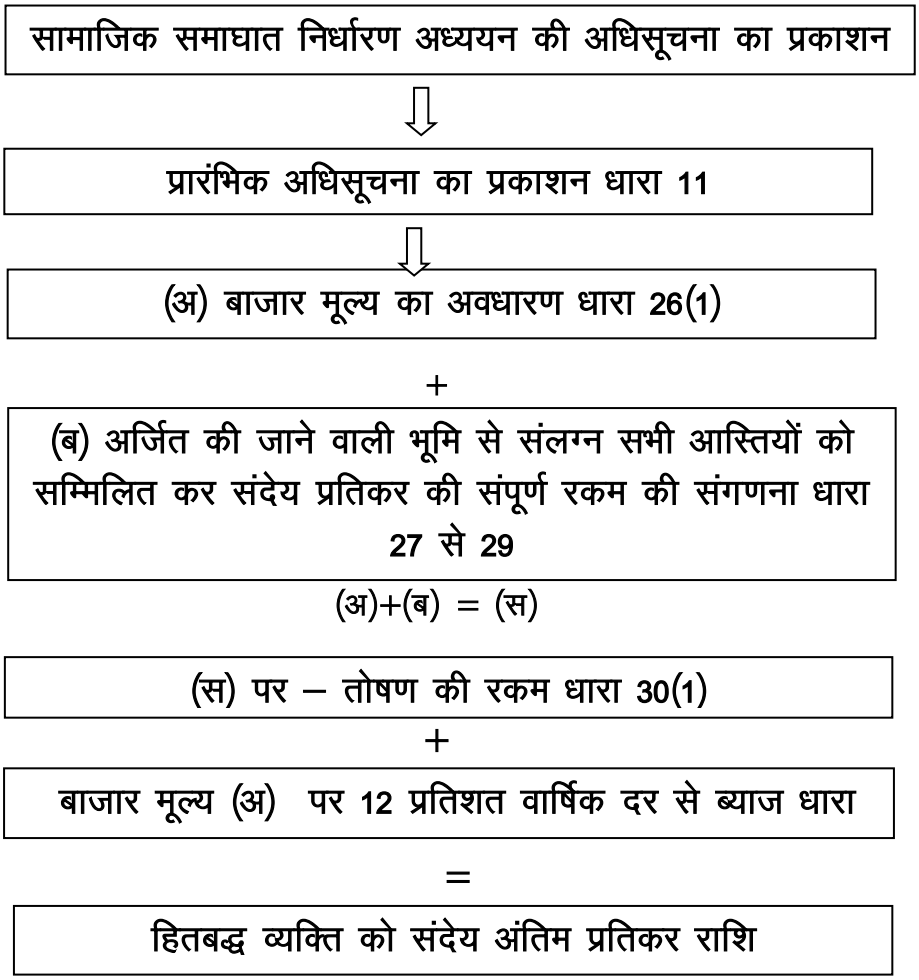
(ग) कृषि उपज आधार पद्धति (Agricultural yield basis method) **-** राजस्व रिकॉर्ड के संदर्भ में और भूमि की क्षमता और प्रकृति को ध्यान में रखते हुए अधिग्रहित भूमि की कृषि उपज – सिंचित, असिंचित और बंजर।

माननीय उच्चतम न्यायालय द्वारा बाजार मूल्य के निर्धारण हेतु **श्रीमती त्रिबेनी देवी एवं अन्य विरूद्ध कलेक्टर, रॉची, (1972) 1 एससीसी 480** के आलोक में *"कटौती का सिद्धांत"* (*The theory of deduction*) लागू किया जाता था जिसे माननीय उच्चतम न्यायालय के न्यायदृष्टांत **जग महेन्दर व अन्य विरूद्ध हरियाणा राज्य व अन्य, (2017) एससीसी ऑनलाईन एससी 2160** एवं **लाल चंद विरूद्ध भारत संघ व अन्य, (2009) 15 एससीसी 769** में भी अनुमोदित किया गया। माननीय उच्चतम न्यायालय द्वारा न्यायदृष्टांत **बिजेन्द्र व अन्य विरूद्ध हरियाणा राज्य व अन्य, (2018) 11 एससीसी 180** में *"बेल्टिंग का सिद्धांत"* *(The theory of belting)* लागू किया गया।

नवीन अधिनियम, 2013 के अंतर्गत प्रतिकर अवधारणः

माननीय उच्चतम न्यायालय द्वारा **आर.बी. डीलर्स (प्रा.) लिमि. विरूद्ध मेट्रो रेल्वे, कोलकाता, (2019) 20 एससीसी 658** के मामले में यह निर्धारित किया कि अधिनियम, 2013 के अंतर्गत प्रतिकर का निर्धारण अधिनियम, 2013 की धारा 26 से धारा 30 के प्रावधानों के अनुसार किया जायेगा तथा अधिनियम, 2013 की धारा 69 यह उपबंधित करती है कि अधिग्रहित की गई भूमि के प्रतिकर के अवधारण में प्राधिकरण इस बात पर विचार करेगा कि कलेक्टर ने अधिनियम, 2013 की धारा 26 से 30 और अध्याय 5 के अधीन उपबंधों के अधीन उपवर्णित मापदण्डों का पालन किया है अथवा नहीं।

भू–अर्जन पर संदेय अंतिम प्रतिकर रकम का अवधारण निम्नलिखित चरणों से गमन करेगा –



जब समुचित सरकार का {धारा 3(ङ)} किसी लोक प्रयोजन {धारा 2(1) में विनिर्दिष्ट कियाकलाप} के लिये भू–अर्जन करने का आशय हो तब वह अधिनियम, 2013 की धारा 4 के अंतर्गत सामाजिक समाघात निर्धारण अध्ययन के आरंभ होने की अधिसूचना जारी करती है यह भू–अर्जन का प्रारम्भिक चरण है तथा धारा 30(3) के अंतर्गत ऐसी अधिसूचना की प्रकाशन की तारीख से अंतिम प्रतिकर राशि के संबंध में निर्णय की तारीख या भूमि का कब्जा लेने की तारीख जो भी पूर्वतर हो कि अवधि के लिये 12 प्रतिशत प्रतिवर्ष की दर से ब्याज का संदाय किया जाता है। धारा 11 के अंतर्गत प्रारम्भिक अधिसूचना के प्रकाशन का परिणाम यह है कि उसमें विनिर्दिष्ट भूमि के संबंध में कोई संव्यवहार नहीं किया जा सकता है एवं उस पर कोई विल्लंगम सृजित नहीं किया जा सकता है।

बाजार मूल्य का अवधारणः

अधिनियम, 2013 की धारा 3(प) के अनुसार **''बाजार मूल्य''** से धारा 26 के अनुसार अवधारित भूमि का मूल्य अभिप्रेत है। धारा 26 (1) के अनुसार बाजार मूल्य का अवधारण के लिये सुसंगत दिनांक धारा 11 के अंतर्गत जारी प्रारम्भिक अधिसूचना के प्रकाशन की दिनांक होगी। माननीय उच्चतम न्यायालय द्वारा न्यायदृष्टांत **सुमित्राबेन सिंगाभाई गामित विरूद्ध गुजरात राज्य व अन्य, 2025 एससीसी ऑनलाईन एससी 832** में यह अभिनिर्धारित किया गया कि धारा 26(1) में विधायिका द्वारा ''shall'' शब्द का उपयोग किया है। अतः बाजार मूल्य के निर्धारण की दिनांक अधिनियम, 2013 के लागू होने की दिनांक 01.01.2014 या भू–अर्जन की दिनांक नहीं हो सकती है एवं बाजार मूल्य का अवधारण धारा 11 के अंतर्गत जारी अधिसूचना की दिनांक से होगा।

बाजार मूल्य के निर्धारण में बाजार मूल्य को प्रभावित करने वाले विभिन्न कारक या सिद्धांतों जैसे कि क्षेत्र में औद्योगिक विकास, बिजली और पानी की आपूर्ति की उपलब्धता, राजमार्गों और विकसित क्षेत्रों तक पहुंच आदि को ध्यान में नहीं रखा जा सकता है क्योंकि अधिनियम, 2013 के अंतर्गत दिये गये मापदण्डों को अपनाया जाना बाध्यकर है। धारा 26(1) यह उपबंधित करती है कि भूमि के बाजार मूल्य का निर्धारण या अवधारण करने में कलेक्टर निम्नलिखित मापदण्ड अपनाएगा एवं इनमें से जो भी अधिक हो वह बाजार मूल्य होगा–

(I) भारतीय स्टाम्प अधिनियम, 1899 में विनिर्दिष्ट बाजार मूल्य या

(II) उसी प्रकार की भूमि के लिए औसत विक्रय कीमत या

(III) प्राइवेट कंपनियों के लिए या पब्लिक प्राइवेट भागीदारी परियोजनाओं के लिए भूमि के अर्जन के मामले में धारा 2 की उपधारा (2) के अधीन करार पाए गए प्रतिकर की सम्मत रकम,

(I) भारतीय स्टाम्प अधिनियम, 1899 में विनिर्दिष्ट बाजार मूल्य –

माननीय उच्चतम न्यायालय द्वारा भूमि अधिग्रहण अधिनियम, 1894 की धारा 23 के अंतर्गत बाजार मूल्य के निर्धारण के संबंध में न्यायदृष्टांत **भारत संचार निगम लिमि. विरूद्ध मेसर्स नेमी चंद दामोदर दास व अन्य, एआईआर 2022 एस.सी. 3458** में यह अभिनिर्धारित किया गया कि भारतीय स्टाम्प अधिनियम के अंतर्गत निर्मित 'तैयार संगणक' (*Ready Reckoner*) का उद्देश्य स्टाम्प शुल्क का आंकलन होता है उसे प्रतिकर के निर्धारण के लिए आधार नहीं माना जा सकता है। **(जवाजी नागनाथन विरूद्ध राजस्व खण्ड अधिकारी, अदिलाबाद, आंध्रप्रदेश व अन्य, (1994) 4 एससीसी 55, लाल चंद्र विरूद्ध भारत संघ व अन्य, एआईआर 2010 एससी 170)**

माननीय म.प्र. उच्च न्यायालय द्वारा न्यायदृष्टांत **म.प्र. रोड डिबेलपमेंट कार्पोरेशन विरूद्ध मो. शहबुद्दीन, 2022 (3) एम.पी.एल.जे. 674 (डीबी)** के मामले यह अभिनिर्धारित किया

गया कि भू–अर्जन अधिनियम 1984 की धारा 23 केवल अधिसूचना के प्रकाशन की दिनांक पर भूमि के बाजार मूल्य के बारे में बात करती है, जबकि अधिनियम, 2013 की धारा 26(1)(क) में बाजार मूल्य, भारतीय स्टाम्प अधिनियम, 1899 में निर्दिष्ट अनुसार निर्धारित किया जा सकता है। पूर्व अधिनियम एवं वर्तमान अधिनियम में भूमि के बाजार मूल्य के निर्धारण के लिए प्रयुक्त भाषा और निर्धारित सूत्र में स्पष्ट अंतर है। अधिनियम, 2013 का अधिनियम स्टाम्प अधिनियम में निर्दिष्ट बाजार मूल्य को वैधानिक मान्यता देता है। निर्वचन के स्वर्णिम सिद्धांत को दृष्टिगत रखते हुये अधिनियम, 2013 की धारा 26(1)(क) में प्रयुक्त नवीन अभिव्यक्ति को पूर्ण अर्थ और प्रभाव दिया जाना चाहिए। भारतीय स्टाम्प अधिनियम में निर्धारित विनिर्दिष्ट बाजार मूल्य को नजरअंदाज नहीं किया जा सकता है और कलेक्टर द्वारा भूमि के बाजार मूल्य के निर्धारण के लिए ये कारक अत्यंत महत्वपूर्ण हैं।

माननीय उच्चतम न्यायालय के न्यायदृष्टांत **भारत संघ विरूद्ध सावित्री देवी, 2017 एम.पी.एल.जे. ऑनलाईन (एस.सी.) 132** में यह अभिनिर्धारित किया गया था कि स्टाम्प शुल्क का उद्देश्य से निर्धारित सर्किल दरों (*circle rates*) को बाजार मूल्य निर्धारित करने के लिये आधार नहीं बनाया जा सकता है, किन्तु उच्चतम न्यायालय के समक्ष बाजार मूल्य निर्धारण के वैज्ञानिक पद्वति आदि के संबंध में सामग्री नहीं रखी गई थी इस पृष्ठभूमि में उच्चतम न्यायालय द्वारा यह अभिनिर्धारित किया गया कि सर्किल दर, बाजार मूल्य निर्धारण का आधार नहीं हो सकता है और माननीय म.प्र. उच्च न्यायालय द्वारा यह अभिनिर्धारित किया गया कि भारतीय स्टाम्प अधिनियम के अंतर्गत निर्धारित 'बाजार मूल्य दिशानिर्देश' (***Market Value Guidelines***) या सर्किल रेट बाजार मूल्य निर्धारण के लिये उपयोग में ली जा सकती है। (**म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666, ए.आई.आर. 2025 एस.सी. 1825**)

माननीय उच्चतम न्यायालय द्वारा न्यायदृष्टांत **म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666** में यह अभिनिर्धारित किया गया कि धारा 26 (1) (क) उस क्षेत्र में अनुबंध या विक्रय–विलेख के पंजीकरण के लिए स्टाम्प अधिनियम में निर्दिष्ट बाजार मूल्य के विचार को निर्धारित करता है जहां संबंधित भूमि स्थित है। यह ध्यान रखना महत्वपूर्ण है कि अधिनियम, 2013 की धारा 26(1) के खंड (क), (ख) और (ग) के अनुसार गणना किए गए मूल्यों का औसत नहीं निकाला जाना चाहिए। खंड (क), (ख) और (ग) द्वारा निर्धारित मूल्यों में से उच्चतम मूल्य को अधिनियम, 2013 की धारा 26(1) के अंतर्गत बाजार मूल्य माना जाएगा।

माननीय उच्चतम न्यायालय द्वारा न्यायदृष्टांत **म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666** में यह स्पष्ट रूप से अभिनिर्धारित किया गया है कि अधिनियम, 2013 के अंतर्गत बाजार मूल्य निर्धारण में कटौती के सिद्धांत को लागू करके राशि में कोई कमी नहीं की जा सकती। कलेक्टर की राय में

यदि आवश्यक है तो वह धारा 26(1) के माध्यम से निर्धारित बाजार मूल्य में समायोजन विवेकानुसार कर सकता है। माननीय उच्चतम न्यायालय द्वारा अपीलार्थी के इस तर्क को स्वीकार नहीं किया गया कि सर्किल रेट बेसलाइन या फ्लोर रेट नहीं है, और बहुत अधिक है। संबंधित अधिकारियों को वैज्ञानिक तरीके से और विधि के अनुसार सर्किल रेट तय करना चाहिए। यह सुनिश्चित करना उनकी जिम्मेदारी है कि सर्किल रेट न तो बढ़े हुए हों और न ही अनुपातहीन रूप से कम हों। जब नागरिकों को अधिसूचित सर्किल दर पर स्टाम्प शुल्क का भुगतान करना आवश्यक होता है, तो निजी व्यक्तियों से भूमि अधिग्रहण करने वाले राज्य विकास निगमों सहित सार्वजनिक प्राधिकरणों को इसका पालन करना चाहिए।

(II) उसी प्रकार की भूमि के लिए औसत विक्रय कीमत –

अधिनियम, 2013 की धारा 26(1) के खंड (ख) में यह उपबंधित है कि कलेक्टर भूमि के बाजार मूल्य निर्धारण के लिए निकटवर्ती ग्राम या समीप के क्षेत्र में स्थित उसी प्रकार की भूमि के लिए औसत विक्रय कीमत को अपना सकता है। इस खंड के अंतर्गत औसत विक्रय मूल्य के आधार पर बाजार मूल्य के अवधारण हेतु धारा 26(1) के स्पष्टीकरण सुसंगत एवं महत्वपूर्ण हैं। स्पष्टीकरण मूलरूप में इस प्रकार हैं–

> *"**1**.–खंड (ख) में निर्दिष्ट औसत विक्रय कीमत का अवधारण, उस वर्ष के, जिसमें भूमि का ऐसा अर्जन किए जाने की प्रस्थापना है, ठीक पूर्ववर्ती तीन वर्षों के दौरान निकटवर्ती ग्राम या निकटवर्ती सामीप्य क्षेत्र में उसी प्रकार के क्षेत्र के लिए रजिस्ट्रीकृत विक्रय विलेखों या विक्रय के करारों को हिसाब में रख कर किया जाएगा।*
>
> *2.– स्पष्टीकरण 1 में निर्दिष्ट औसत विक्रय कीमत का अवधारण करने के लिए, ऐसे विक्रय विलेखों या विक्रय करारों की, जिनमें उच्चतम विक्रय कीमत का उल्लेख किया गया है, कुल संख्या के आधे को हिसाब में लिया जाएगा।*
>
> ***3.**– इस धारा के अधीन बाजार मूल्य का तथा स्पष्टीकरण 1 या स्पष्टीकरण 2 में निर्दिष्ट औसत विक्रय कीमत का अवधारण करते समय इस अधिनियम के उपबंधों के अधीन जिले में किसी पूर्ववर्ती अवसर पर अर्जित भूमि के लिए प्रतिकर के रूप में संदत्त किसी कीमत को विचार में नहीं लिया जाएगा।*
>
> ***4.**– इस धारा के अधीन बाजार मूल्य का तथा स्पष्टीकरण 1 या स्पष्टीकरण 2 में निर्दिष्ट औसत विक्रय कीमत का अवधारण करते समय, ऐसी किसी संदत्त कीमत को, जो कलेक्टर की राय में वस्तुतः विद्यमान बाजार मूल्य की सूचक नहीं है, बाजार मूल्य की संगणना करने के प्रयोजनों के लिए कम किया जा सकेगा।"*

अधिनियम, 2013 की धारा 26(1) में उपरोक्त चार स्पष्टीकरण के संबंध में माननीय उच्चतम न्यायालय द्वारा न्यायदृष्टांत **म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666** में यह अभिनिर्धारित किया गया कि धारा 26(1) के स्पष्टीकरण मुख्य प्रावधान के समान ही महत्वपूर्ण हैं। खंड (क), (ख) और (ग) के

अंतर्गत प्रक्रिया को स्पष्ट करने के अलावा, स्पष्टीकरण भी प्रदान करते हैं और उस विवेक का संदर्भ देते हैं जिसका प्रयोग कलेक्टर अधिग्रहित भूमि का बाजार मूल्य निर्धारित करने में कर सकता है।

(III) प्राइवेट कंपनियों के लिए या पब्लिक–प्राइवेट भागीदारी परियोजनाओं के लिए भूमि के अर्जन के मामले में करार पाए गए प्रतिकर की सम्मत रकम–

अधिनियम, 2013 की धारा 26(1) के खंड (ग) के अंतर्गत यह उपबंध किया गया है कि जब प्राईवेट कंपनियों के लिए या पब्लिक–प्राईवेट भागीदारी परियोजनाओं के लिए भूमि का अर्जन किया जाता है तो ऐसे मामले में अधिनियम, 2013 की धारा 2 की उपधारा (2) के अधीन किये गये करार के अंतर्गत स्वीकृत की गई प्रतिकर की रकम बाजार मूल्य होगी।

अधिनियम, 2013 की धारा 26(1) के खंड (क) या (ख) या (ग) के अनुसार गणना किए गए मूल्यों में से जो भी अधिक हो वह बाजार मूल्य होगा एवं इन खंडों में निकाले गये विक्रय मूल्य का औसत नहीं लिया जाना चाहिए। कलेक्टर या भूमि अधिग्रहण प्राधिकरण को अधिनियम, 2013 की धारा 26(1) के खंड (क), (ख) और (ग) में विनिर्दिष्ट मापदंड को अपनाया जाना बाध्यकारी है किन्तु कुछ दशाओं में यह धारा विवेकिक अधिकार प्रदान करती है।

बाजार मूल्य निर्धारण में विवेकाधिकार–

अधिनियम, 2013 की धारा 26(1) भूमि के बाजार मूल्य निर्धारण में खण्ड (क) या (ख) या (ग) इनमें से जो भी अधिक हो के लिए बाध्यकारी मापदण्ड प्रस्तुत करता है किन्तु न्यायदृष्टांत **म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666** में यह अभिनिर्धारित किया गया कि स्पष्टीकरण के अनुसार गणना किए गए मूल्य को बढ़ाया, घटाया या यहां तक कि त्यागा भी जा सकता है। चतुर्थ स्पष्टीकरण धारा 26(1) के अंतर्गत बाजार मूल्य की गणना करते समय विवेक के तत्व को प्रकट करता है। जो दो भागों में विभाजित किया गया है। प्रथम भाग धारा 26 की उप–धारा (1) को संदर्भित करता है – अधिनियम, 2013 की धारा 26(1) के खंड (क), (ख) और (ग) के अनुसार निर्धारित उच्च मूल्य। द्वितीय भाग स्पष्टीकरण 1 और 2 के साथ धारा 26(1) के खंड (ख) में निर्दिष्ट औसत बिक्री मूल्य के लिए विनिर्दिष्ट है। किसी भी मामले में, जहां कलेक्टर की राय है कि इन प्रावधानों को लागू करके गणना की गई कीमत वास्तविक प्रचलित बाजार मूल्य का संकेत नहीं है, वे सटीक बाजार मूल्य पर पहुंचने के लिए इसे छूट दे सकते हैं या बढ़ा सकते हैं।

स्पष्टीकरण 4 में स्पष्टीकरण के दो भागों में उल्लेखित मूल्यों को जोड़ने के लिए "और" शब्द का उपयोग किया गया है। ऐसा कलेक्टर के विवेकाधिकार के प्रयोग के क्षेत्र को पूरे प्रावधान तक विस्तारित करने के लिए किया गया है, जैसा कि *"इस धारा के अंतर्गत बाजार मूल्य निर्धारित करते समय"* वाक्यांश से भी स्पष्ट है। विवेकाधिकार की व्याख्या स्पष्टीकरण 1 और 2 के अंतर्गत केवल औसत बिक्री मूल्य तक ही सीमित रखने के रूप में नहीं की जानी चाहिए। दोनों भागों को एक अलग–अलग तरीके से पढ़ा जाना चाहिए, जिससे

स्पष्टीकरण 4 का अनुप्रयोग आकर्षित हो, जब दोनों में से कोई भी मूल्य वास्तविक बाजार मूल्य को प्रतिबिंबित नहीं करता है। इस प्रकार, यद्यपि "और" शब्द का उपयोग दो भागों को जोड़ने के लिए किया जाता है, लेकिन विधायी आशय को प्रभावी बनाने के लिए इसे "या" के रूप में पढ़ा जाना चाहिए। **(महर्षि महेश योगी वैदिक विश्वविद्यालय विरूद्ध मध्य प्रदेश राज्य, (2013) 15 एससीसी 677)**

स्पष्टीकरण 4 के अंतर्गत, कलेक्टर की राय का निर्माण और मूल्य में कोई छूट या वृद्धि अभिलिखित किये जाने वाले कारणों से समर्थित होनी चाहिए। इस स्तर पर, यदि कलेक्टर स्पष्टीकरण 4 के अंतर्गत बाजार मूल्य में समायोजन करना चुनता है, तो कटौती का सिद्धांत *(The theory of deduction)*, बेल्टिंग का सिद्धांत *(The principle of belting)* और अन्य भौतिक कारकों को भी ध्यान में रखा जाएगा। इसके दो कारण हैं– **प्रथमः** सटीक बाजार मूल्य की गणना एक सटीक विज्ञान नहीं है, और इसलिए कलेक्टर को उन अद्वितीय कारकों के बारे में सावधान रहना चाहिए जो भूमि के एक टुकड़े के मूल्यांकन को प्रभावित करते हैं। **द्वितीयः** धारा 26(1) के खंड (ख) के अलावा, अन्य दो खंडों (क) और (ग) के अंतर्गत गणना की अनिवार्य प्रक्रिया, इन सिद्धांतों और कारकों को ध्यान में नहीं रखती है, जिसके परिणामस्वरूप अशुद्धि हो सकती है। (**म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666**)

जहां बाजार मूल्य अवधारित नहीं किया जा सकता है वहॉ प्रकिया–

अधिनियम, 2013 की धारा 26 की उपधारा (3) उस स्थिति को स्पष्ट करती है जिसमें धारा 26 की उपधारा (1) या उपधारा (2) के अधीन बाजार मूल्य अवधारित नहीं किया जा सकता है। उपधारा (3) के अनुसार–

> *''जहॉ उपधारा (1) या उपधारा (2) के अधीन बाजार मूल्य निम्नलिखित कारण से अवधारित नहीं किया जा सकता है कि –*
>
> *(क) भूमि ऐसे क्षेत्र में स्थित है जहॉ भूमि संबंधी संव्यवहार उस क्षेत्र में तत्समय प्रवृत्त किसी अन्य विधि द्वारा या उसके अधीन निर्बंधित है; या*
>
> *(ख) उसी प्रकार की भूमि के लिए उपधारा (1) के खंड (क) में यथावर्णित पूर्ववर्ती ठीक तीन वर्ष पूर्व के रजिस्ट्रीकृत विक्रय–विलेख या विक्रय–करार उपलब्ध नहीं हैं; या*
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> *(ग) समूचित प्राधिकारी द्वारा बाजार मूल्य भारतीय स्टाम्प अधिनियम, 1899 के अधीन विनिर्दिष्ट नहीं किया गया है,*
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> *वहां संबंधित राज्य सरकार, ठीक लगे हुए क्षेत्रों में स्थित उसी प्रकार की भूमि की बावत उपधारा (1) में विनिर्दिष्ट रीति में संगणित कीमत के आधार पर, उक्त भूमि की भू–क्षेत्र कीमत या प्रति यूनिट क्षेत्र न्यूनतम कीमत विनिर्दिष्ट करेगी :*

परंतु ऐसी दशा में, जहां अपेक्षित निकाय भूमि के अर्जन के लिए प्रतिकर के भागरूप भूमि के स्वामियों को (जिनकी भूमि का अर्जन किया गया है) अपने शेयर प्रस्थापित करता है, वहां किसी भी दशा में, ऐसे शेयर, यथास्थिति, उपधारा (1) या उपधारा (2) या उपधारा (3) के अधीन इस प्रकार संगणित मूल्य के पच्चीस प्रतिशत से अधिक नहीं होंगे :

परंतु यह और कि अपेक्षित निकाय किसी भी दशा में, भूमि के किसी स्वामी को (जिसकी भूमि का अर्जन किया गया है) अपने ऐसे शेयर लेने के लिए बाध्य नहीं करेगा, जिनका मूल्य उपधारा (1) के अधीन संगणित भूमि के मूल्य में कटौती योग्य है:

परंतु यह भी कि कलेक्टर, किसी क्षेत्र में भूमि अर्जन की कोई कार्यवाही आरंभ करने के पूर्व उस क्षेत्र में प्रचलित बाजार दर के आधार पर भूमि के बाजार मूल्य को पुनरीक्षित और अद्यतन करने के लिए सभी आवश्यक कदम उठाएगा :

परंतु यह भी कि समुचित सरकार यह सुनिश्चित करेगी कि किसी धार्मिक या भाषाई अल्पसंख्यक द्वारा स्थापित और प्रशासित किसी शैक्षणिक संस्था की किसी भूमि या संपत्ति के अर्जन के लिए अवधारित बाजार मूल्य ऐसा होगा जिससे उनका अपने विकल्प की शैक्षणिक संस्थाओं की स्थापना करने और उनका प्रशासन करने का अधिकार निर्बंधित या निराकृत न हो।''

यदि धारा 26(3) के खंड (क) से (ग) में बताई गई तीन स्थितियों में से कोई भी स्थिति आती है, तो राज्य सरकार को भूमि के लिए प्रति इकाई क्षेत्र न्यूनतम मूल्य निर्दिष्ट करना आवश्यक है। यह न्यूनतम मूल्य धारा 26(1) के अंतर्गत प्रक्रिया के अनुसार गणना की गई, तत्काल निकटवर्ती क्षेत्रों में स्थित समान प्रकार की भूमि की कीमत पर आधारित होना चाहिए। धारा 26(3) के खंड (ख) की वैधानिक भाषा में, धारा 26(1) के खंड (क) का संदर्भ त्रुटिपूर्ण प्रतीत होता है। धारा 26(1) के स्पष्टीकरण 1 के अनुसार पिछले तीन वर्षों के विक्रय विलेखों या विक्रय समझौतों का प्रतिफल धारा 26(1) के खंड (ख) के अंतर्गत औसत विक्रय मूल्य की गणना के लिए है, न कि धारा 26(1) के खंड (क) के अंतर्गत। **(म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666)**

विनिर्दिष्ट कारक से गुणा किया जाना–

अधिनियम, 2013 की धारा 26 की उपधारा (2) यह उपबंधित करती है कि

''उपधारा (1) के अनुसार संगणित बाजार मूल्य को पहली अनुसूची में विनिर्दिष्ट कारक से गुणा किया जाएगा।''

म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666 के मामले में माननीय उच्चतम न्यायालय द्वारा यह व्यक्त किया गया

है कि धारा 26 उपधारा (1) के अंतर्गत संगणित बाजार मूल्य, स्पष्टीकरण 4 के अंतर्गत किसी भी समायोजन सहित, अधिनियम, 2013 की प्रथम अनुसूची में निर्धारित कारकों से गुणा किया जाएगा।

अधिनियम, 2013 की प्रथम अनुसूची के क्रमसंख्या 2 में ग्रामीण क्षेत्रों की दशा में ''शहरी क्षेत्र में परियोजना की ऐसी दूरी के आधार पर 1.00 (एक) से 2.00 (दो) जो समुचित सरकार द्वारा अधिसूचित की जाये बाजार मूल्य में गुणित किया जाना है तथा शहरी क्षेत्र में 1.00 (एक) का गुणा किया जाना है। समुचित सरकार को अधिनियम, 2013 की धारा 3(ड़) में परिभाषित किया गया है जिसके अनुसार ग्रामीण क्षेत्र के मामले में गुणित किये जाने वाले कारक का निर्धारण केन्द्र सरकार या राज्य सरकार द्वारा यथास्थिति किया जाता है।

अधिनियम, 2013 कि अनुसूची 1 में उल्लेखित कारक के रूप में **मध्यप्रदेश राज्य की अधिसूचना एफ. 16–15–(9) –2014 सात–शा., दिनांक 29.09.2014** के अनुसार ग्रामीण क्षेत्र की दशा में यह गुणक 1.00 (एक) होगा।

माननीय मध्यप्रदेश उच्च न्यायालय द्वारा **बद्रीलाल धाकड़ पुत्र श्री नरसिंह धाकड़ एवं अन्य विरूद्ध भारत संघ एवं अन्य, 2022 एससीसी ऑनलाइन एम.पी. 280** में यह अभिनिर्धारित किया गया कि चाहे अधिग्रहित भूमि राज्य के अधीन हो किन्तु वह केन्द्र के प्रयोजन के लिये अधिग्रहीत की जाती है तो समुचित सरकार केंद्र सरकार होगी। राष्ट्रीय राजमार्ग अधिनियम के अंतर्गत अधिग्रहीत की जाने वाली भूमि के संबंध में यह अभिनिर्धारित किया कि समुचित सरकार केन्द्र सरकार है। अतः केंद्र सरकार द्वारा जारी दिनांक 09.02.2016 की अधिसूचना लागू होगी जिसमें ग्रामीण क्षेत्र के लिए गुणक 2.00(दो) है।

माननीय मध्यप्रदेश उच्च न्यायालय द्वारा **मध्य प्रदेश राज्य विरूद्ध मधोलाल मीणा एवं अन्य फर्स्ट अपील नंबर 1400/2023 निर्णय दिनांक 05.02.2025** के मामले में रेल्वे लाईन हेतु भूमि का अधिग्रहण किया गया, जिससे असंतुष्ट होकर अधिनियम, 2013 की धारा 64 के अंतर्गत रिफरेंस प्रस्तुत किया गया। अधिकरण द्वारा धारा 26 उपधारा (2) के अंतर्गत गुणक 2.00(दो) लागू कर प्रतिकर संदाय किया गया। माननीय मध्य प्रदेश उच्च न्यायालय द्वारा गुणक 2.00(दो) लागू कर प्रतिकर संदाय किये जाने को समुचित ठहराया गया है।

प्रतिकर की रकम का अवधारण –

अधिनियम, 2013 की धारा 27 प्रतिकर की राशि के निर्धारण से संबंधित है, जो यह उपबंधित करती है कि–

> *''कलेक्टर, अर्जन की जाने वाली भूमि का बाजार मूल्य अवधारित करने पर, भूमि से संलग्न सभी आस्थियों को सम्मिलित करके, भूमि के स्वामी (जिसकी भूमि का अर्जन किया गया है) को संदत्त किये जाने वाले प्रतिकर की संपूर्ण रकम की संगणना की जायेगी।''*

धारा 26 के अंतर्गत भूमि का बाजार मूल्य निर्धारित करने के बाद कलेक्टर को अधिनियम, 2013 की धारा 23 के अनुसार भूमि स्वामी को भुगतान की जाने वाले प्रतिकर की राशि की गणना करनी होती है। जबकि अधिनियम, 2013 की धारा 26(1) खंड (क) से (ग)

के अंतर्गत उच्चतम मूल्य की गणना के लिए ''मानदंड'' शब्द का उपयोग करती है, और यह अनिवार्य करती है कि यह कार्य धारा 26 (1) के चारों स्पष्टीकरणों को लागू करते हुए किया जाए। धारा 26(1) के साथ–साथ धारा 23 के खण्ड (ख) की भाषा से भी स्पष्ट है, जिसमें *''जो उनकी (कलेक्टर की) राय में भूमि के लिए अनुज्ञात किया जाना चाहिए''* अभिव्यक्ति का उपयोग किया गया है। **(म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666)**

अधिनियम, 2013 की धारा 28 वे मापदण्ड जिन पर कलेक्टर द्वारा अधिनिर्णय का अवधारण करने में विचार किया गया जाएगा को स्पष्ट करती है जिसके अनुसार –

''कलेक्टर, इस अधिनियम के अधीन अर्जित भूमि के लिए अधिनिर्णीत किए जाने वाले प्रतिकर की रकम का अवधारण करने में निम्नलिखित पर विचार करेगा –

1. *धारा 26 के अधीन यथा अवधारित बाजार मूल्य और पहली तथा दूसरी अनुसूची के अनुसार अधिनिर्णित की गई रकम;*
2. *हितबद्ध व्यक्ति को ऐसी खड़ी फसलों और वृक्षों को, जो कलेक्टर द्वारा उनका कब्जा लिए जाने के समय उस भूमि पर हों, कब्जे में लेने के कारण हुआ नुकसान;*
3. *कलेक्टर द्वारा भूमि का कब्जा लेने के समय हितबद्ध व्यक्ति को, उस भूमि को उसकी अन्य भूमि से अलग किए जाने के कारण हुआ नुकसान (यदि कोई हो);*
4. *भूमि का कब्जा लेने के समय अन्य जंगम या स्थावर संपत्ति पर होने वाला नुकसान (यदि कोई हो);*
5. *हितबद्ध व्यक्ति को कलेक्टर द्वारा भूमि के अर्जन के परिणामस्वरूप अपना निवास – स्थान या कारबार के स्थान में परिवर्तन करने के लिए विवश होने की दशा में, ऐसे परिवर्तन के आनुशांगिक युक्तियुक्त व्यय (यदि कोई हो) ;*
6. *धारा 19 के अधीन घोषणा के प्रकाशन के समय और कलेक्टर द्वारा भूमि का कब्जा लिए जाने के समय के बीच भूमि से लाभों में कमी होने के परिणामस्वरूप होने वाला कोई वास्तविक नुकसान (यदि कोई हो);*
   और
7. *ऐसा कोई अन्य आधार, जो प्रभावित कुटुंबों के लिए साम्यापूर्ण, न्याय के हित में और उनके लिए फायदाप्रद हो।''*

यह धारा प्रतिकर के रूप में देय राशि की गणना के लिए सात कारकों को संदर्भित करती है। प्रथम कारक धारा 26 के अंतर्गत निर्धारित बाजार मूल्य है, और अधिनियम, 2013 की पहली और दूसरी अनुसूचियों के अनुसार अधिनिर्णीत की गई प्रतिकर की रकम है। अन्य खंड खड़ी फसलों या पेड़ों की हानि, भूमि का विच्छेदन, अन्य संपत्ति पर प्रतिकूल प्रभाव, आय की हानि और निवास या व्यवसाय के स्थान में परिवर्तन से होने वाले खर्च या हानि जैसे कारकों के कारण होने वाले नुकसान को आवृत करते हैं। लाभ में कमी के परिणामस्वरूप

होने वाली हानि, यदि कोई हो, का भी हिसाब लगाया जाना चाहिए। सातवां आधार विशेष रूप से महत्वपूर्ण है जो यह बताता है कि कलेक्टर किसी भी अन्य आधार पर विचार कर सकता है जो प्रभावित कुटुम्बों के लिए साम्यापूर्ण, न्याय एवं फायदाप्रद हो। माननीय उच्चतम न्यायालय द्वारा यह अभिनिर्धारित किया गया है कि यह खंड धारा 26 के अंतर्गत निर्धारित भूमि के बाजार मूल्य को कम करने के लिए लागू नहीं होगा **(म.प्र. रोड डेव्हलपमेंट कार्पोरेशन विरूद्ध विन्सेन्ट डेनीयल एवं अन्य, 2025 एससीसी ऑनलाईन एस.सी. 666)**

अधिनियम, 2013 की धारा 29 भूमि या भवन से संलग्न वस्तुओं के मूल्य के अवधारण हेतु कलेक्टर को विशेषज्ञों एवं अनुभव रखने वाले व्यक्तियों की सेवायें लेने के लिये शक्ति प्रदान करती है इस शक्ति का प्रयोग भू–अर्जन प्राधिकरण प्रतिकर के अवधारण हेतु धारा 69 के आलोक में कर सकता है धारा 29 के अनुसार–

''(1) कलेक्टर, ऐसी भूमि या ऐसे भवन से जिनका अर्जन किया जाना हैं संलग्न भवन और अन्य स्थावर संपत्ति या आस्तियों के बाजार मूल्य का अवधारण करने में सुसंगत क्षेत्र में किसी सक्षम इंजीनियर या ऐसे किसी अन्य विशेषज्ञ की ऐसी सेवाओं का जो उसके द्वारा आवश्यक समझी जाएं, उपयोग कर सकेगा।

(2) कलेक्टर, अर्जित भूमि संलग्न वृक्षों और पौधों के मूल्य का अवधारण करने में कृषि, वनविज्ञान, उद्यानकृषि, रेशम कीट पालन के क्षेत्र में या किसी अन्य क्षेत्र में अनुभव रखने वाले ऐसे व्यक्तियों की सेवाओं का, जो उसके द्वारा आवश्यक समझी जाएं, उपयोग कर सकेगा।

(3) कलेक्टर, भूमि अर्जन की प्रक्रिया के दौरान नुकसानग्रस्त खड़ी फसलों के मूल्य का निर्धारण करने के प्रयोजन के लिए, कृषि के क्षेत्र में ऐसे अनुभव रखने वाले व्यक्तियों की सेवाओं का, जो उसके द्वारा आवश्यक समझी जाएं, उपयोग कर सकेगा।''

तोषण की रकम का अधिरोपण

अधिनियम, 2013 की धारा 30 की उपधारा (1) उपबंधित करती है कि –

''(1) कलेक्टर, संदत्त किए जाने वाले संपूर्ण प्रतिकर का अवधारण करने पर, अंतिम अधिनिर्णय पर पहुॅचने के लिए और शत–प्रतिशत प्रतिकर की रकम के समतुल्य ''तोषण'' की रकम अधिरोपित करेगा।

स्पष्टीकरण – शंकाओं को दूर करने के लिए एतद्द्वारा यह घोषित किया जाता है कि तोषण की रकम, ऐसे व्यक्ति को, जिसकी भूमि का अर्जन किया गया है, संदेय प्रतिकर के अतिरिक्त होगी।''

कलेक्टर द्वारा धारा 26 के अंतर्गत अधिनिर्णीत किये गये बाजार मूल्य एवं धारा 28 के मापदण्डों के अनुसार भूमि से संलग्न सभी अस्तियों के प्रतिकर की रकम की संगणना करते हुये, धारा 27 के अंतर्गत प्रतिकर की रकम का अवधारण करता है और ऐसी अवधारित प्रतिकर पर शत–प्रतिशत तोषण की रकम संदेय होती है।

माननीय उच्चतम न्यायालय द्वारा पूर्वोक्त न्यायदृष्टांत **आर.बी. डीलर्स (पी) लिमिटेड** में यह अभिनिर्धारित किया गया है कि अधिनियम, 2013 धारा 30 की उप–धारा (1) के अंतर्गत परिकल्पित क्षतिपूर्ति की गणना केवल बाजार मूल्य के साथ–साथ भूमि से जुड़ी परिसंपत्तियों के मूल्य के आधार पर की जानी चाहिए, प्रतिकर में तोषण की देय राशि निर्धारण के लिये धारा 30 की उप–धारा (3) के अंतर्गत देय ब्याज की अतिरिक्त राशि शामिल नहीं होगी।

ब्याज का संदाय

अधिनियम, 2013 की धारा 30(3) के अंतर्गत 12 प्रतिशत की दर से धारा 4 की उपधारा (2) के अंतर्गत जारी अधिसूचना की दिनांक से बाजार मूल्य पर ब्याज के संदाय का उपबंध किया गया है, इसके अतिरिक्त धारा 80 के अंतर्गत ब्याज के संदाय का यदि प्रतिकर की रकम भूमि का कब्जा लेने या उसके पूर्व संदाय या जमा नहीं की जाती है तो कब्जा लेने के समय से संदाय के समय तक एक वर्ष की अवधि तक 9 प्रतिशत और एक वर्ष की अवधि के समाप्ति के पश्चात् 15 प्रतिशत प्रतिवर्ष की दर से ब्याज का संदाय किया जायेगा।

धारा 30 (3) यह उपबंधित करती है कि –

> *''धारा 26 के अधीन उपबंधित भूमि के बाजार मूल्य के अतिरिक्त, कलेक्टर प्रत्येक मामले में, उस भूमि की बावत् ऐसे बाजार मूल्य पर धारा 4 की उपधारा (2) के अधीन सामाजिक समाघात निर्धारण अध्ययन की अधिसूचना के प्रकाशन की तारीख से ही प्रारंभ होने वाली और कलेक्टर के निर्णय की तारीख तक या भूमि का कब्जा लेने की तारीख तक, इनमें से जो भी पूर्वतर हो, की अवधि के लिए बारह प्रतिशत प्रति वर्ष की दर पर संगणित रकम अधिनिर्णीत करेगा।''*

उपसंहार

अधिनियम, 2013 के उद्देश्य व्यक्ति की सम्पत्ति के अधिकार को अधिमान्यता देते हुये लोक प्रयोजन के लिए भू–अर्जन की दशा में अर्जन से प्रभावित हुये व्यक्ति को न्यायोचित और ऋजु प्रतिकर प्रदान करना है। अधिनियम, 2013 की धारा 23 कलेक्टर को भू–अर्जन के अधिनिर्णय में धारा 27 के अधीन प्रतिकर का अवधारण एवं उसका प्रभाजन करते हुये अधिनिर्णय पारित करना बाध्यकर बनाती है। जब हितबद्ध व्यक्ति ऐसे अधिनिर्णय को स्वीकार नहीं करता है तो वह कलेक्टर को धारा 64 के अंतर्गत आवेदन कर निर्देश हेतु निवेदन कर सकता है और भू–अर्जन प्राधिकरण ऐसा निर्देश प्राप्त होने पर धारा 69 के अनुसार इस बात का अवधारण करेगा कि कलेक्टर द्वारा समुचित मापदण्डों का पालन कर अर्जित की गई भूमि के लिए प्रतिकर की रकम का अवधारण एवं संदाय किया गया है या नहीं। इस प्रकार इस आलेख में इस बात पर विचार किया गया है कि अधिनियम, 2013 के अंतर्गत प्रतिकर के निर्धारण के मापदण्डों का पालन करते हुये भू–अर्जन प्राधिकरण किस प्रकार प्रभावित व्यक्ति या कुटुम्ब को भू–अर्जन की दशा में न्यायोचित एवं ऋजु प्रतिकर संदाय कर सम्पत्ति के अधिकार की रक्षा करते हुये अधिनियम के विधायी उद्देश्य को पूर्ण करे।

●

"Women worldwide are becoming more and more assertive of their rights and want to be free to make their own choices, which is not an entirely uncommon or unreasonable approach. But it is necessary to work towards a change in mindset of people in general not only by way of laws and other forms of regulations, but also by way of providing suitable amenities for those who want to get out of this trap and to either improve their existing conditions or to begin a new life altogether. Whichever way one looks at it, the matter requires the serious attention of the State and its authorities, if the dignity of women, as a whole, and respect for them, is to be restored."

- Altamas Kabir, C.J. in ***para 147 of State of Maharashtra v. Indian Hotel & Restaurants Assn., (2013) 8 SCC 519***

PART- II

NOTES ON IMPORTANT JUDGMENTS

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

Suit for eviction – Default in payment of rent – Plaintiff/landlord instituted suit u/s 12(1)(a) of the Act on the ground of arrears of rent – Defendant/tenant admitted tenancy but disputed rate of rent; pleaded that it was agreed between them that defendant shall pay house tax and the same will be adjusted in the monthly rent – Trial Court fixed provisional rent at ₹12/- per month but tenant failed to deposit even that amount in accordance with Section 13(1) of the Act – Both Trial Court and First Appellate Court dismissed the suit, holding that tenant has not defaulted – In Second Appeal, High Court held that failure to deposit rent as per provisional order amounts to default; plea of adjustment of house tax not proved – Tenant cannot occupy premises without paying rent – Held, plaintiff entitled to decree of eviction and arrears of rent – Decrees of courts below set-aside.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धाराएं 12(1)(क) एवं 13 (1) बेदखली का वाद – किराया भुगतान में व्यतिक्रम – वादी/ भू–स्वामी ने किराए के बकाया के आधार पर अधिनियम की धारा 12(1)(क) के अंतर्गत वाद संस्थित किया – प्रतिवादी/भाड़ेदार ने किरायेदारी स्वीकार की परंतु किराए की दर को विवादित किया; अभिवचन किया कि उनके मध्य यह करार हुआ था कि प्रतिवादी मकान कर का भुगतान करेगा एवं उसका मासिक किराये में समायोजन किया जाएगा – विचारण न्यायालय ने 12/– रूपये प्रतिमाह अंतरिम भाड़ा निर्धारित किया किंतु भाड़ेदार, अधिनियम की धारा 13(1) के अंतर्गत उक्त राशि भी जमा करने में असफल रहा – विचारण न्यायालय और प्रथम अपील न्यायालय, दोनों ने वाद को इस आधार पर खारिज कर दिया कि भाड़ेदार ने व्यतिक्रम नहीं किया – द्वितीय अपील में, उच्च न्यायालय ने अभिनिर्धारित किया कि अंतरिम आदेश के अनुसार किराया जमा करने में विफल रहना व्यतिक्रम माना जाएगा; मकान कर के समायोजन का अभिवचन प्रमाणित नहीं – भाड़ेदार बिना किराया भुगतान के स्थान का आधिपत्य नहीं रख सकता है – अभिनिर्धारित, वादी बेदखली की डिक्री एवं बकाया किराये का हकदार – अधीनस्थ न्यायालयों की डिक्री अपास्त की गई।

Kabeer Ahmed (dead) through LRs. and ors. v. Sheikh Habib (dead) through LRs.

Judgment dated 06.03.2025 passed by the High Court of Madhya Pradesh in Second Appeal No. 1222 of 1999, reported in 2025 (3) MPLJ 164

Relevant extracts from the judgment:

Plaintiff instituted the suit on the ground under Section 12(1)(a) of the Act as well as for recovery of arrears of rent, with the allegations that the defendant is tenant on the basis of oral agreement of tenancy on monthly rent of Rs. 50/- but he never paid the rent timely and is in arrears of rent w.e.f. 01.09.1982, which he has not paid in spite of issuance/service of notice of demand dated 12.02.1985 (Ex.P/1). After service of notice he did not even reply the notice and neither paid arrears of rent nor vacated the house.

Findings recorded by Courts below are in respect of arrears of rent claimed by the plaintiff @ Rs.50/- p.m. from the defendant on the date of issuance of notice, but here in the present case, there being dispute of rate of rent, trial Court vide order dated 12.08.1986 fixed the provisional rent @ Rs.12/- per month, which was required to be deposited necessarily by the defendant in accordance with Section 13(1) of the Act, which from the record does not appear to have been deposited by the defendant.

It is well settled that a tenant cannot be permitted to occupy the rented premises without payment of rent and decree of eviction can be passed even on a single default.

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152. CIVIL PROCEDURE CODE, 1908 – Section 11, Order 2 Rule 2 and Order 23 Rules 3 and 3A

Compromise decree – Plaintiff filed a suit for declaring a compromise decree as null and void and also for relief of partition of ancestral property – Only remedy against a compromise decree is to file a recall application before the court which had passed the decree – As consent decree was never questioned, a fresh suit is not a valid remedy – Appeal dismissed.

सिविल प्रक्रिया संहिता, 1908 – धारा 11, आदेश 2 नियम 2 एवं आदेश 23 नियम 3 एवं 3क

समझौता डिक्री – वादी ने समझौता डिक्री को शून्य एवं निष्प्रभावी घोषित किये जाने एवं पैतृक संपत्ति के विभाजन के अनुतोष हेतु वाद प्रस्तुत किया –

समझौता डिक्री के विरूद्ध केवल यह उपचार उपलब्ध है कि जिस न्यायालय द्वारा डिक्री पारित की गई थी के समक्ष डिक्री निरस्त करने हेतु वापसी आवेदन प्रस्तुत करना चाहिए – सहमति डिक्री पर कभी प्रश्न नहीं उठाया गया था, एक नवीन वाद एक वैध उपाय नहीं है – अपील खारिज की गई।

Manjunath Tirakappa Malagi and anr. v. Gurusiddappa Tirakappa Malagi (dead) through LRs.

Judgment dated 21.04.2025 passed by the Supreme Court in Civil Appeal No. of 2025, reported in 2025 (2) MPLJ 640 (SC)

Relevant extracts from the judgment:

A reading of the above provision makes it clear that before passing a decree on the basis of a compromise, the Court has to satisfy itself that the suit has been adjusted by a lawful compromise. Once the Court passes a compromise decree after such a satisfaction, the decree cannot be challenged in an appeal as no appeal lies against a compromise decree.

Also, a compromise decree cannot be challenged by filing a fresh suit as there is a bar on filing a fresh suit challenging the consent decree on the ground of the legality of the compromise under Order 23 Rule 3A of CPC, which reads as follows:

"***3-A. Bar to suit*** – No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

The only remedy against a compromise decree is to file a recall application. This Court in ***Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566*** summed up the position of law as follows:

"The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) Civil Procedure Code.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made…"

Thus, even if we accept the contention of the appellants that their father was coerced by his brothers and father (appellants' grandfather) to enter into a compromise, which led to the passing of the consent decree, a fresh suit is still not a valid remedy. In that situation, the appellants' father should have filed a recall application before the Court that had passed the decree. The appellants' father has never done so! Moreover, he had admitted the consent decree and never questioned its validity.

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153. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 3A
TRANSFER OF PROPERTY ACT, 1882 – Section 52
Transfer of property during pendency of suit – Scope and applicability – Transferee purchaser during the suit steps into the shoes of vendor – In a case where property was transferred during the trial of a suit, plaintiff may claim relief against the newly added defendants also – Provisions of Order 1 Rule 3A CPC cannot be made applicable to those defendants to whom the property was sold by the co-defandants during pendency of suit – Plaintiff is not required to file fresh suit against the newly added defendants.

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 3क
संपत्ति अंतरण अधिनियम, 1882 – धारा 52
वाद के लंबित रहने के दौरान संपत्ति का अंतरण – विस्तार और प्रयोज्यता – वाद के दौरान अंतरिती क्रेता, विक्रेता की प्रास्थिति ग्रहण कर लेता है – एक ऐसे मामले में, जहाँ वाद के लंबन के दौरान संपत्ति का अंतरण किया गया था, वादी नवीन संयोजित प्रतिवादीगण के विरूद्ध भी अनुतोष की मॉग कर सकता है – आदेश 1 नियम 3क सीपीसी के प्रावधान ऐसे प्रतिवादीगण पर लागू नहीं किए जा सकते जिन्हें वाद के लंबित रहने के दौरान सह–प्रतिवादियों द्वारा संपत्ति बेची गई थी – वादी को नवीन संयोजित प्रतिवादीगण के विरूद्ध नवीन वाद दायर करने की आवश्यकता नहीं है।

Vijay Singh Devakar (dead) through LRs. v. Jairaj Singh and ors.

Order dated 13.02.2025 passed by the High Court of Madhya Pradesh in Civil Revision No. 39 of 2012, reported in 2025 (2) MPLJ 659

Relevant extracts from the order:

A question in relation to scope of Order 1 Rule 3A of CPC came into consideration before a coordinate Bench of Himachal Pradesh High Court in the case of ***State Bank of Patiala v. Hypine Carbons Ltd. (in Liquidation) and ors, AIR 1990 HP 10***. Relevant paragraph 26 of this judgment is quoted as under:

> "26. The basic principles which emerge from the discussion made in these decisions are these: The plaintiff may join, in the same suit, several defendants and causes of action where there is community of interest between the defendants or if the evidence, which was sufficient to enable the plaintiff to get a decree against all the defendants, is the same. There should be some nexus which should enable the plaintiff to join various defendants in one suit. The nexus may take the form of the right to relief which the plaintiff is claiming as flowing from the same transaction or series of transactions involving the various defendants. It may also take the form of the same question of law being involved for decision in the suit upon which may depend the right of the plaintiff to seek relief against fall the defendants. The nexus may also be that on a common set of facts the plaintiff may claim relief against the defendants. It is not necessary that all the questions of fact arising in the suit are common to each and every defendant. It would be sufficient if one common question of fact arose. Merely because some additional fact was required to be established in regard to some defendant or the other, which was not common to all of them, it would not mean that the causes of action against the defendants cannot be combined in one suit."

It is well settled that transferee purchaser during the suit, steps into the shoes of his vendor. Undisputedly, in the instant case transfers were made during the suit. In these circumstances the plaintiff on a common set of facts, may claim relief against the newly added defendants also, as there is clear nexus of the relief which is being claimed by the plaintiff against all the defendants.

In view of the aforesaid, it can very well be said that the provision of Order 1 Rule 3A of CPC cannot be made applicable to those defendants who were sold

the suit property by the defendant(s) during pendency of suit and similarly on the basis of such transfer, it cannot be said that the plaintiff is required to file fresh suit(s) against such defendants, who have acquired rights in the suit property during pendency of suit.

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154. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10 Suit for specific performance and permanent injuction – Impleadment of necessary parties – Application filed under Order 1 Rule 10 CPC to implead legal heirs of the original owner as defendants – Trial Court dismissed the application on the ground of delay as the case was pending for more than five years – Heirs of original owner had fair semblance of title or interest and were necessary for effective adjudication, though not party to the said contract – Principle of *dominus litis* is also applicable, as plaintiff himself sought impleadment – Order of Trial Court set aside – Petition allowed, trial Court directed to implead proposed parties as defendants.

सिविल प्रक्रिया संहिता,1908 – आदेश 1 नियम 10

विनिर्दिष्ट अनुपालन एवं स्थायी निषेधज्ञा का वाद – आवश्यक पक्षकारों का संयोजन – आदेश 1 नियम 10 सीपीसी के अंतर्गत वास्तविक स्वामी के विधिक उत्तराधिकारियों को प्रतिवादीगण के रूप में संयोजित किये जाने के लिए आवेदन – विचारण न्यायालय ने प्रकरण पांच वर्ष से अधिक लंबित होने के कारण विलंब के आधार पर आवेदन निरस्त किया – वास्तविक स्वामी के उत्तराधिकारी यद्यपि उक्त संविदा के पक्षकार नहीं थे, किंतु संपत्ति में उनके स्वत्व या हित निहित होने का उचित आभास होने से वे प्रकरण के प्रभावशाली निर्णयन के लिए आवश्यक थे – डोमिनस लिटिस का सिद्धांत भी लागू होता है क्योंकि स्वयं वादी ने पक्षकारों के संयोजन की मांग की – विचारण न्यायालय का आदेश अपास्त किया गया – याचिका स्वीकार कर विचारण न्यायालय को निर्देशित किया गया कि प्रस्तावित पक्षकारों को प्रतिवादीगण के रूप में संयोजित करें।

Ankit Gupta v. Badrilal and ors.

Order dated 03.03.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 4885 of 2022, reported in 2025 (3) MPLJ 169

Relevant extracts from the order:

Court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added

as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to Printed using casemine.com by licensee: Sanskriti Rawat (Student) completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff.

In this case it emerges as undisputed fact that proposed defendants are heirs of Laxman, who is the real owner of the suit property. In these conditions no executable decree can be passed without impleading them as a party. Certainly, they are the third party because they are not party of the said contract, however, in the considered opinion of this Court, it cannot be laid down as a absolute proposition, that whenever a suit for specific performance is filed by the plaintiff (P) against defendant (D), the third party (T) can never be impleaded in that suit. If there is a fair semblance of title or interest is available in favour of third party (T), he can be impleaded as a party. It is also necessary in order to prevent multiplicity of suits.

The proposed defendants are said to be the heirs of original owner of the suit land and they are relatives of defendant No. 2 & 3, on this aspect the principle of dominus litis, is also applied. Actually, plaintiff is the dominus litis of the suit and in this case Sanskriti Rawat (Student) petitioner/plaintiff has himself requested to implead the proposed respondent/defendants as parties.

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155. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 3
EVIDENCE ACT, 1872 – Section 90
LAND REVENUE CODE, 1959 (M.P.) – Section 158
MADHYA BHARAT ZAMINDARI ABOLITION ACT, SAMVAT 2008 – Sections 3 and 4

(i) Ownership – Proof of title – Certified translated copy of document without original or complete annexures, held insufficient to prove ownership – Plaintiff could not produce the original deed of transfer –And also, failed to establish the identity of property due

to absence of survey numbers – Mere translated version without original has no evidentiary value – Presumption u/s 90 of the Evidence Act held inapplicable to the contents of document; it only applies to execution of genuine, original documents – Mutation entries or Khasra records without proof of valid source of title do not create ownership.

(ii) Identification of property – Requirement under Order 7 Rule 3 CPC – Where document lacks clear identification of disputed property, including survey numbers and fails to connect itself with suit land, Court cannot draw inference in regard to the identity – Finding of trial court relying on such incomplete document held, perverse and unsustainable.

(iii) Abolition of proprietary rights – Upon enforcement of Madhya Bharat Zamindari Abolition Act, proprietary rights stood vested in the State – In absence of lease for agricultural use or other lawful grant, plaintiff cannot claim title merely based on long possession or entry in revenue records.

सिविल प्रकिया संहिता, 1908 – आदेश 7 नियम 3

साक्ष्य अधिनियम, 1872 – धारा 90

भू–राजस्व संहिता, 1959 (म.प्र.) – धारा 158

मध्य भारत जमीदारी उन्मूलन अधिनियम, सवंत 2008 – धाराएं 3 एवं 4

(i) स्वामित्व – स्वत्व का प्रमाण – मूल या पूर्ण अनुलग्नक के बिना दस्तावेज की प्रमाणित अनुवादित प्रतिलिपि को स्वामित्व प्रमाणित करने के लिए अपर्याप्त निर्धारित किया गया – वादी हस्तांन्तरण का मूल विलेख प्रस्तुत नहीं कर पाया – सर्वेक्षण सख्यांक के अभाव के कारण संपत्ति की पहचान स्थापित करने में भी असफल रहा – मूल के बिना केवल अनुवादित रूप का कोई साक्ष्यिक मूल्य नहीं है – साक्ष्य अधिनियम की धारा 90 के अंतर्गत उपधारणा केवल वास्तविक मूल दस्तावेजों के निष्पादन पर लागू होती है उक्त उपधारणा दस्तावेज की अन्तर्वस्तु के लिए प्रयोज्य न होना अभिनिर्धारित किया गया – स्वत्व के वैध स्त्रोत के प्रमाण के बिना नामांतरण प्रविष्टियां अथवा खसरा अभिलेख स्वामित्व का सृजन नहीं करते।

(ii) संपत्ति की पहचान – आदेश 7 नियम 3 सीपीसी के अंतर्गत आवश्यकता – जहां दस्तावेज में सर्वेक्षण संख्या सहित विवादित संपत्ति की स्पष्ट पहचान का अभाव है एवं दस्तावेज वादग्रस्त भूमि से अपने आप को संबंधित करने में असफल रहता है, वहाँ न्यायालय पहचान के संबंध में

अनुमान नहीं निकाल सकती – इस तरह के अधूरे दस्तावेज पर विश्वास करते हुए दिया गया विचारण न्यायालय का निष्कर्ष स्थिर रखे जाने योग्य न होना और अनुचित अभिनिर्धारित किया गया।

(iii) सांपत्तिक अधिकारों का उन्मूलन – मध्य भारत जमींदारी उन्मूलन अधिनियम के लागू होने पर सांपत्तिक अधिकार राज्य में निहित हो गए – कृषि उपयोग अथवा अन्य वैध अनुदान के लिए पट्टे के अभाव में, वादी केवल दीर्घ आधिपत्य अथवा राजस्व अभिलेख की प्रविष्टि के आधार पर स्वत्व का दावा नहीं कर सकता है।

Nagar Parishad Kailaras v. M/s. Banmore Cements Works Limited & anr.

Judgment dated 30.05.2024 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 231 of 2016, reported in ILR 2024 MP 2335

Relevant extracts from the judgment:

As per plaint pleadings, the erstwhile Scindia State (Ex-ruler) granted a Mining lease for the period of 30 years from 1.7.1920 till 30.06.1950 for the land measuring 632 bigha for the purpose of Manufacturing Cement from Limestone to the Gwalior Cement Company limited, which was registered under the Gwalior Companies Act Samvat 1933 and the lease deed was said to be executed in writing, however, the said lease deed has not been produced by the plaintiff before the learned trial court. Therefore, the execution of any deed on 1/7/1920 in respect to 632 bigha, which allegedly includes the disputed land is not found to be proved.

As per further plaint pleadings, with the permission of the Scindia State (Ex-ruler), the Associate Cement Companies Limited who was predecessor of the respondent no.1/plaintiff purchased all assets of the Gwalior Cement Company limited with its mining lease rights for the remaining period under the lease deed dated 01.07.1920 from the Gwalior Cement Company limited for the consideration of Rs.7,89,000/-. To prove this, plaintiff has filed Ex. P-3. However, the plain reading of Exhibits P/3 indicates that it is a certified copy of the translated copy of the document and as observed by the learned trial court at para 30 of the court statement of PW-1 K.S. Bahal that the original copy of Ex. P-3 is not available. Document Ex. P-3 is also incomplete because its annexures having details of the assets as mentioned in the said document are not enclosed with it. The original deed was drafted and executed in English language as mentioned in Exhibit P-3 itself but that original version is not produced by the plaintiff. Since exhibit P-3 is only a

translated version of the original document, in absence of original document/version, the translation has no value which is also incomplete.

Learned counsel for the respondent argued that as mentioned on Ex. P-3 it was compared with the original. But as discussed above the learned trial court, during the recording of evidence witness of plaintiff-respondent, PW-1, K.S. Bahal, has observed at para 30 that original copy of Ex. P-3 is not available and, therefore, the alleged comparison with the original is not found to be believable. Even the document Exhibit P-3 indicates that the deed was said to be executed by a company in favour of another company, however, survey numbers, in respect to which this document is executed, are not mentioned in it. When there is no identity of the survey number then Court was not within the jurisdiction to consider the same whereas mandate of Order 7 Rule 3 provides unless identification of the property clearly mentioned Court cannot draw the inference in regard of the identity. Hence, the finding of the learned trial court that on the basis of Ex.P-3 the plaintiff-respondent is the owner of disputed property is perverse and bad in law and, therefore, is not sustainable. Since it is not proved that Ex.P-3 belongs to the disputed land and, therefore, on the basis of Ex.P-3 it is also not proved that plaintiff is the owner of disputed land.

The learned trial Court has also erred in drawing the inference by applying the provisions of section 90 of the Evidence Act in respect to Ex.P-3. Learned trial court also committed error by holding that the contents of the document are correct in the light of section 90 of the Evidence Act because Section 90 of the Evidence Act only applies about its execution when the document is genuine and original. Section 90 does not confer jurisdiction upon the Court for drawing the presumption in regard of the correctness of contents.

The Madhya Bharat Zamindari Abolition Act Samvat 2008 came in force and by virtue of provisions of Section 3 and 4 Chapter II of the said Act Proprietary Rights have been vested to the State. There are no pleadings or evidence that the disputed land is an agriculture land which was granted on lease to the plaintiff for the cultivation thereon. Merely on the basis of the entries of the name of the company in some Khasra does not create any title of the land because as discussed above the plaintiff has failed to prove its ownership on the basis of execution of the alleged deed Ex.P-3.Without proving the source of title, the khasra entry do not prove the ownership.

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156. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11

Rejection of plaint – Bar of limitation – No proper cause of action disclosed – Plaintiffs filed suit for partition pleading that their legitimate share in ancestral property had been denied to them – Material on record showed that partition had taken place long ago, based on which family members had disposed of properties by registered sale deeds and suit was filed after 55 years – Predecessors of plaintiffs would be presumed to have notice of registered sale deeds – Supreme Court held that trial Court had rightly found that the plaint did not disclose a proper cause of action and suit was barred by limitation – High Court erred in holding that there were triable issues in the case and it could not be dismissed merely on an application under Order 7 Rule 11 of CPC.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

वादपत्र का नामंजूर किया जाना – परिसीमा का वर्जन – उचित वाद कारण का प्रकट ना होना – वादीगण ने विभाजन के लिए वाद प्रस्तुत कर अभिवचन किया कि उसकी पैतृक संपत्ति में उनके वैध हिस्से से वंचित कर दिया गया है – अभिलेख से प्रकट हुआ कि विभाजन बहुत पहले हो चुका था, जिसके आधार पर परिवार के सदस्यों ने पंजीकृत विक्रय विलेखों द्वारा संपत्तियों को विक्रय किया था और वाद 55 वर्षों के बाद संस्थित किया गया था – वादीगण के पूर्ववर्तियों को पंजीकृत विक्रय विलेखों की सूचना होने की उपधारण की जाएगी – उच्चतम न्यायालय द्वारा अभिनिर्धारित किया गया कि विचारण न्यायालय ने उचित अवधारित किया था कि वादपत्र वाद हेतुक प्रकट नहीं करता है और वाद परिसीमा अवधि द्वारा वर्जित था – उच्च न्यायालय ने यह मानने में त्रुटि की कि प्रकरण में विचारणीय विवाद्यक थे और उन्हे केवल आदेश 7 नियम 11 सीपीसी के अंतर्गत आवेदन के आधार पर खारिज नहीं किया जा सकता था।

Smt. Uma Devi and ors. v. Anand Kumar and ors.

Judgment dated 02.04.2025 passed by the Supreme Court in Civil Appeal No. 4718 of 2025, reported in AIR 2025 SC 1670

Relevant extracts from the judgment:

In the case at hand, partition took place way back in the year 1968, which is evident from the revenue record entries. The suit is filed in the year 2023 i.e. after a period of 55 years. Further, many of the family members had executed registered sale deeds in the year 1978. These sale deeds have been attached, and on perusal it

is observed that these were in fact registered sale deeds. A registered document provides a complete account of a transaction to any party interested in the property. This Court in ***Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana [Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351 : (2012) 169 Comp Cas 133 : (2012) 340 ITR 1]*** held as under : (SCC pp. 664-65, para 15)

> "15. Registration of a document [when it is required by law to be, and has been effected by a registered instrument] [Ed.: Section 3 Explanation I TPA, reads as follows: "S. 3 Expln. I – Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration…" (emphasis supplied)] gives notice to the world that such a document has been executed.
>
> Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified

Applying this settled principle of law, it can safely be assumed that the predecessors of the plaintiffs had notice of the registered sale deeds (executed in 1978), flowing from the partition that took place way back in 1968, by virtue of them being registered documents. In the lifetime of Mangalamma, these sale deeds have not been challenged, neither has partition been sought. Thus, the suit (filed in

the year 2023) of the plaintiffs was prima facie barred by law. The plaintiffs cannot reignite their rights after sleeping on them for 45 years.

In our considered opinion, the trial court had rightly allowed the application of the appellant-defendants under Order 7 Rule 11CPC, holding that the suit filed by the plaintiffs was a meaningless litigation, that it did not disclose a proper cause of action and was barred by limitation. There were thus no justifiable reasons for the appellate court to have remanded the matter to the trial court.

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157. CIVIL PROCEDURE CODE, 1908 – Order 9 Rule 13 and Order 18 Rule 2

(i) Application to set aside *exparte* decree under Order 9 rule 13 – Legality – Suit was filed for specific performance of agreement to sale – Defendant had appeared and filed a written statement – Counsel for the defendant did not appear on the date when the case was fixed for cross-examination of plaintiff and his witnesses – Trial Court proceeded *exparte* against the defendant and passed the judgment and decreed the suit in favour of the plaintiff – Whether Trial Court was justified in passing *exparte* decree? Held, No – Trial Court should have fixed the case for evidence of the defendant since the written statement was on record – *Exparte* decree set-aside and suit was directed to be restored.

(ii) *Exparte* proceedings – Right to adduce evidence – Even after proceeding *exparte*, the defendant can participate in further proceedings – Where written statement filed by the defendant is on record, he has a right to adduce evidence in support of his case.

सिविल प्रक्रिया संहिता, 1908 — आदेश 9 नियम 13 एवं आदेश 18 नियम 2

(i) एकपक्षीय निर्णय को अपास्त करने हेतु आदेश 9 नियम 13 सी.पी.सी. के अंतर्गत प्रस्तुत आवेदन — वैधानिकता — विक्रय अनुबंध के विनिर्दिष्ट अनुपालन हेतु वाद प्रस्तुत किया गया था — प्रतिवादी ने उपस्थित होकर लिखित कथन प्रस्तुत कर दिया — जिस दिन प्रकरण वादी और उसके साक्षियों के प्रतिपरीक्षण के लिये नियत था, प्रतिवादी के अधिवक्ता न्यायालय में उपस्थित नहीं हुए — विचारण न्यायालय ने प्रतिवादी के विरूद्ध एकपक्षीय कार्यवाही करते हुए वादी के पक्ष में निर्णय और डिक्री पारित की — क्या एकपक्षीय डिक्री पारित करने में विचारण न्यायालय न्यायानुमत था? अभिनिर्धारित, नहीं — विचारण न्यायालय को एकपक्षीय

कार्यवाही करने के बाद भी प्रकरण प्रतिवादी की साक्ष्य हेतु नियत किया जाना चाहिए था क्योंकि लिखित कथन अभिलेख पर था – एकपक्षीय डिक्री अपास्त की गई और वाद पुनर्स्थापित किए जाने के लिये निर्देशित किया गया।

(ii) एकपक्षीय कार्यवाही – साक्ष्य प्रस्तुत करने का अधिकार – एकपक्षीय कार्यवाही के बाद भी प्रतिवादी आगे की कार्यवाही में भाग ले सकता है – जहां प्रतिवादी द्वारा प्रस्तुत लिखित कथन अभिलेख पर हो, वहां उसे अपने पक्ष समर्थन में साक्ष्य प्रस्तुत करने का अधिकार होता है ।

Dhannalal v. Mohan Singh and ors.

Order dated 16.10.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 2610 of 2014, reported in ILR 2025 MP 124

Relevant extracts from the order:

It is pertinent to mention here that in the present case, the defendant 1 had already filed his written statement denying the averments made in the plaint, on that basis trial Court framed issues and proceeded to record evidence of the plaintiff and on 18.10.2013 case was fixed for examination and cross examination on the plaintiff and his witnesses. In the case, even during the course of additional chief examination of plaintiff and his witness, the counsel of defendant 1 did not appear, resultantly the Court proceeded ex-parte against the defendant 1.

It is well settled that even after proceeding ex-parte, the defendant can participate in further proceedings. In the light of provisions contained in Order 18 Rule 2 CPC, the right to give evidence is guaranteed to both the plaintiff and the defendant. As such even after proceeding ex-parte, the defendant 1 in view of his written statement on record, had right to adduce evidence in support of his case, therefore, trial Court ought to have fixed the case for evidence of the defendant 1, which was not fixed.

Apparently while passing the impugned order on the application under Order 9 Rule 13 CPC, the Court below has not taken into consideration this aspect of the matter, which has also vitiated the impugned order. Needless to mention here that in the present case, suit is for specific performance of agreement of sale in which property rights of defendant 1 in respect of his land Khasra No.178/4 area 1 acre out of area 1.214 hectare, are at stake.

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158. CIVIL PROCEDURE CODE, 1908 – Order 14 Rule 2 and Order 13 Rule 4
EVIDENCE ACT, 1872 – Section 59
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 64
Preliminary issues – Scope and limitation – Only issues relating to (i) jurisdiction of the Court, and (ii) statutory bar to the suit can be decided as preliminary issues, only when they do not require evidence – If decided against the plaintiff, suit can be dismissed; if decided in favour, Court shall proceed to decide the suit on merits after recording evidence – Where pleadings raised disputed facts requiring proof, and plaintiff failed to adduce evidence despite several opportunities, trial Court was found to have acted within jurisdiction in dismissing the suit for want of evidence.

सिविल प्रक्रिया संहिता,1908 – आदेश 14 नियम 2 एवं आदेश 13 नियम 4
साक्ष्य अधिनियम, 1872 – धारा 59
भारतीय साक्ष्य अधिनियम, 2023 – धारा 64
प्रारंभिक विवाद्यक – क्षेत्र–विस्तार एवं सीमा – केवल (i) न्यायालय के क्षेत्राधिकार, एवं (ii) वाद के विरूद्ध वैधानिक वर्जन से संबंधित विवाद्यकों का प्रारंभिक विवाद्यक के रूप में निराकरण केवल तभी किया जा सकता है जब उनके लिए साक्ष्य की आवश्यकता न हो – यदि वादी के विरूद्ध निराकृत हुआ, तब वाद निरस्त किया जा सकेगा, यदि पक्ष में निराकृत हुआ, तब न्यायालय साक्ष्य अभिलिखित करने के उपरान्त गुण–दोष पर वाद के निराकरण के लिए अग्रसर होगा – जहां अभिवचन से विवादित तथ्य उत्पन्न होते है, जिन्हे प्रमाण की आवश्यकता है, एवं अनेक अवसर होते हुए वादी साक्ष्य प्रस्तुत करने में असफल रहा, वहाँ साक्ष्य के अभाव में वाद को खारिज करने में विचारण न्यायालय द्वारा क्षेत्राधिकार के अधीन कार्यवाही किया जाना माना गया।

Union of India & ors. v. M/s. Man Transport Company & anr.
Judgment dated 29.04.2024 passed by the High Court of Madhya Pradesh in Second Appeal No. 566 of 2000, reported in ILR 2024 MP 2312

Relevant extracts from the judgment:

It is clear that, (i) the issue of jurisdiction of the Court; and (ii) the issue of a bar to the suit created by any law for the time being in force, only can be decided as preliminary issue(s), that too when such issue(s) does/do not require evidence. It further makes clear that if such preliminary issue(s) is/are decided against the plaintiff, then the Court can dismiss the suit and if such issue(s) is/are decided in

favour of the plaintiff, the Court shall proceed to decide the suit on merits after following the procedure prescribed under the law.

As per pleadings made in the plaint and written statement, several facts were in dispute and because the defendants did not admit the claim of plaintiff, therefore, the pleadings were required to be proved by evidence also. As has already been said in above paragraphs, after deciding the preliminary issues, either trial Court should have dismissed the suit or in any case suit could not have been decreed in absence of any evidence and resultantly trial Court ought to have proceeded further with the suit for final adjudication after recording evidence of the parties. Because in the present suit, the plaintiff despite giving several opportunities did not adduce evidence, therefore, trial Court was well within its jurisdiction to dismiss the suit for want of evidence.

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159. CIVIL PROCEDURE CODE, 1908 – Order 22 Rule 4

Substitution of legal representatives in appeal – Plaintiff had instituted a suit for declaration of title and permanent injunction against defendant No. 1 and 2 – Defendant No. 2 did not contest the suit and passed away during the pendency of the suit – Later, suit was dismissed on merits – In appeal, plaintiff filed an application under order 22 rules 4 of CPC to bring legal representatives of defendant No. 2 on record – Appellate court rejected the application and decided the appeal – Whether the appellate court can entertain the application for substitution of the legal representatives without setting aside the abatement? Held, No – Once the appellate Court had recorded a finding that the appeal stands abated then it could not have proceeded to decide the same on merits – Substitution could not have been permitted in absence of setting aside of abatement which question could have only been considered by the trial Court.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 4

अपील में विधिक प्रतिनिधियों का प्रतिस्थापन – वादी ने प्रतिवादी क्रमांक 1 और 2 के विरुद्ध स्वामित्व की घोषणा और स्थायी निषेधाज्ञा के लिए वाद प्रस्तुत किया – प्रतिवादी क्रमांक 2 ने वाद का प्रतिवाद नहीं किया और वाद के लंबित रहते हुए उसकी मृत्यु हो गई – पश्चात् में, वाद गुण–दोष के आधार पर खारिज कर दिया गया – अपील में, वादी ने प्रतिवादी क्रमांक 2 के विधिक प्रतिनिधियों को अभिलेख पर लाने के लिए संहिता के आदेश 22 नियम 4 के अंतर्गत आवेदन प्रस्तुत किया – अपील न्यायालय ने आवेदन को अस्वीकार कर दिया और अपील का निर्णय कर दिया – क्या अपील न्यायालय उपशमन

को अपास्त किए बिना विधिक प्रतिनिधियों के प्रतिस्थापन के आवेदन पर विचार कर सकता है? अभिनिर्धारित, नहीं – एक बार जब अपील न्यायालय ने यह निष्कर्ष दे दिया कि अपील उपशमित हो गई है, तो वह गुण–दोष के आधार पर निर्णय नहीं कर सकता था – उपशमन को निरस्त किए बिना प्रतिस्थापन की अनुमति नहीं दी जा सकती थी, और यह प्रश्न केवल विचारण न्यायालय द्वारा ही विचाराधीन हो सकता था।

Dudhalal v. Karulal and ors.

Judgment dated 18.02.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 2736 of 2022, reported in 2025 (2) MPLJ 630

Relevant extracts from the judgment:

In the present case, Rughnath had died during pendency of the Civil Suit before the trial Court. The decree hence passed by the trial Court in ignorance of the said fact was a nullity. Application for substitution of his legal representatives was filed in the appeal. It could not have been decided by the appellate Court. It should have set aside the decree passed by the trial Court and remanded the matter to it for affording the plaintiff an opportunity to file an application for setting aside abatement resulting due to death of Rughnath. Substitution could not have been permitted in absence of setting aside of abatement which question could have only been considered by the trial Court. Though in appeal application for setting aside abatement was not filed and only substitution application was filed then also the appellate Court had no jurisdiction to decide that application since firstly question of setting aside abatement was required to be considered which could have only been done by the Trial Court.

The Appellate Court instead of sending the application for substitution to the trial Court has itself decided and rejected it. Thereafter, it has heard the appeal on merits and has dismissed the same. Once the appellate Court had recorded a finding that the appeal stands abated then it could not have proceeded to decide the same on merits. In doing so it has committed patent illegality.

In view of the aforesaid discussion, the substantial questions of law as framed are answered in favour of the plaintiff and against defendant No.1. The judgment and decree passed by the Courts below are set aside and the matter is remanded back to the trial Court for adjudication of application for substitution of legal representatives of deceased Rughnath. It shall also be open for the plaintiff to file an application for setting aside of abatement resulting due to death of Rughnath and also an application for condonation of delay in filing the application for setting aside abatement.

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

Suit for Permanent Injunction – Boundary Dispute – Appointment of Commissioner for spot inspection – Plaintiffs claimed ownership and possession of Survey No. 72/82/2 (0.809 hectare) purchased by their predecessor through registered sale deed of 1961 – Plaintiffs alleged encroachment by defendants – Defendants asserted ownership over distinct Survey No. 3 area 2.561 acre – Trial Court decreed suit in favour of plaintiffs which was affirmed in first appeal – In second appeal, it was held that the dispute was not about title but regarding demarcation of lands – Courts below erred in deciding the dispute without appointment of a Local Commissioner under Order 26 Rule 9 CPC – Law settled that in cases of boundary/encroachment disputes, local investigation through commissioner's report is a legal necessity – Decrees of courts below set aside – Matter remanded to Trial Court for fresh decision after obtaining Commissioner's report.

सिविल प्रक्रिया संहिता, 1908 – आदेश 26 नियम 9

स्थायी निषेधाज्ञा का वाद – सीमा का विवाद – स्थल निरीक्षण हेतु कमिश्नर की नियुक्ति – वादीगण ने उनके पूर्वज द्वारा 1961 के पंजीकृत विक्रय पत्र के माध्यम से क्रय सर्वे नंबर 72/82/2 (0.809 हेक्टेयर) के स्वामी एवं आधिपत्यधारी होने का दावा किया – वादीगण ने प्रतिवादीगण द्वारा अतिक्रमण का आक्षेप लगाया – प्रतिवादीगण ने अतिक्रमण जो भिन्न सर्वे नंबर 3 रकबा 2.561 एकड पर स्वामित्व का अभिकथन किया – विचारण न्यायालय ने वादीगण के पक्ष में दावा डिक्री किया जिसकी प्रथम अपील में पुष्टि हुई – द्वितीय अपील में यह अभिनिर्धारित हुआ कि विवाद स्वत्व संबंधी नहीं है अपितु भूमि के सीमांकन से संबंधित है – आदेश 26 नियम 9 सीपीसी के अंतर्गत स्थानीय कमीश्नर की नियुक्ति किये बिना विवाद का निराकरण करने में अधीनस्थ न्यायालयों द्वारा त्रुटि कारित की गई – विधि स्थापित है कि सीमा/अतिक्रमण के मामलों में कमिश्नर की रिपोर्ट द्वारा स्थानीय निरीक्षण किया जाना एक विधिक आवश्यकता है – अधीनस्थ न्यायालयों की डिक्री अपास्त की गई – प्रकरण विचारण न्यायालय को कमिश्नर रिपोर्ट प्राप्त करने के उपरान्त निराकरण हेतु प्रतिप्रेषित किया गया।

Bagdiram v. Ramsingh

Order dated 06.03.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 23 of 2005, reported in 2025 (3) MPLJ 116

Relevant extracts from the order:

From the pleadings of the parties it is evident that there is no dispute as regards title between them. While the plaintiffs contend that they are owners of survey No.72/82/2, the defendants contend that they are owners of survey No.3. The plaintiffs have alleged that defendants are encroaching over their land whereas the defendants have stated that they are in possession of their own land and have not encroached over plaintiff's land. The dispute is hence purely a boundary dispute i.e. whether the suit land forms part of survey No.72/82/2 owned by the plaintiffs or forms part of Survey No.3 owned by the defendants. The said dispute ought not to have been decided by the Courts below without appointing a local Commissioner as envisaged under Order 26 Rule 9 of the CPC for demarcation of the suit land and submission of spot inspection report.

In ***Loknath Gautam v. State of M.P. 2018 SCC Online MP 600*** it has been held by this Court that whenever there is dispute as to encroachment the fact whether there is an encroachment or not cannot be determined in absence of agreed map except by appoinmentt of a Commissioner under Order 26 Rule 9 of the CPC.

Application under Order 26 Rule 9 of the CPC can be filed at any stage of the proceedings. It is purely a legal question that can also be raised at the appellate stage.

When there is a dispute about demarcation it is the duty of the Court itself to issue commission by appointing an employee of Revenue Department not below the rank of Revenue Inspector to get the land in dispute demarcated and for its identification no application is required for that purpose.

If there is a dispute about demarcation of boundaries or where there is a dispute as to encroachment the fact whether there is such an encroachment or not and for the purpose of determining identity of land by local investigation in absence of an agreed map, exercise of power under under Order 26 Rule 9 of the CPC by appointment of a competent Commissioner is necessary. In case of such a dispute best evidence can be obtained only by appointment of a Commissioner and ascertainment of the extent of lands in possession or enjoyment of the parties. The same is the law of land and is a legal necessity in absence of which the Court would not be in a position to act with the conclusive proof which could be relied upon. When there is a dispute about demarcation, it is the duty of the Court itself to issue commission and it can issue such commission suo moto also if in the facts and circumstances of the case it is deemed necessary that a local investigation is required for elucidating any dispute in the matter. For that purpose, no application is required. It is not necessary that either or both the parties must apply for issue of

commission. An application under under Order 26 Rule 9 of the CPC can be filed at any stage of the proceedings even prior to the defendants marking their presence before the Court or at the final stage of the proceedings. It is purely a legal question that can also be raised at the appellate stage. Though exercise of power is discretionary but in case local investigation is requisite and proper it should be exercised so that a just decision is rendered in the case since it is the duty of the Courts to ensure that substantial justice is delivered to the parties.

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161. CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 and 2

Temporary Injunction – Plaintiff sought specific performance of agreement to sale which is neither stamped nor registered – Said document is inadmissible without proper stamp duty which is also a condition precedent for considering prayer of injunction – Further, there is no delivery of possession and instead of full payment of earnest money very small amount is paid – Injunction to restrain alienation cannot be granted on basis of such document.

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 1 एवं 2

अस्थायी निषेधाज्ञा – वादी द्वारा विक्रय अनुबंध के विनिर्दिष्ट अनुपालन की मांग की गई जो न तो स्टाम्पित है और न ही रजिस्ट्रीकृत – उक्त दस्तावेज पर्याप्त स्टाम्प शुल्क के बिना अग्राह्य है जो निषेधाज्ञा की प्रार्थना पर विचार हेतु भी पूर्वगामी शर्त है – यह भी, कि कब्जे का परिदान नहीं हुआ एवं अग्रिम राशि के पूर्ण भुगतान के स्थान पर अत्यन्त कम राशि का भुगतान किया गया – ऐसे दस्तावेज के आधार पर अंतरण को रोकने हेतु निषेधाज्ञा प्रदान नहीं की जा सकती।

Kailash v. Bhagwatilal & ors.

Order dated 06.01.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 4644 of 2024 (2) MPLJ 41

Relevant extracts from the order:

The document which has been produced by plaintiff before the trial Court being an agreement to sale was required to be duly stamped and registered. The same is however neither stamped nor registered and is instead written on a plain piece of paper. Nothing has been brought on record by the plaintiff to suggest that any proceeding has been instituted by him for impounding of the said document. As has been held by the Apex Court in ***Avinash Kumar Chauhan v. Vijay Krishna Mishra, (2009) 2 SCC 532***, a document which is required to be duly stamped and

registered if is deficiently stamped and is unregistered, then the same is inadmissible in evidence for any purpose whatsoever.

In ***Amit Dixit v. Smt. Sandhya Singh and ors., 2015 MPLJ Online 94***, this Court held that payment of stamp duty is condition precedent for considering prayer for injunction also. Unless duty is paid on an instrument it shall not be admitted in evidence for any purpose including collateral purpose. The very basis for establishing right i.e. agreement to sell cannot be considered unless it is duly stamped.

In the present case also the agreement to sale executed between the parties is for a total consideration of 36,11,000/-. The agreement is neither stamped nor is registered though was required to be so and is written on a plain piece of paper. The plaintiff has also alleged to have paid an amount of 50,000/- only to defendant No. 1 by way of earnest money which is an extremely paltry amount. It has also not been averred that possession of the suit land was delivered to plaintiff and in the agreement to sale also there is no recital as regards delivery of possession.

Thus in view of the aforesaid discussion, I am of the considered opinion that the appellate Court has not committed any error of law in setting aside the order passed by the trial Court and in rejecting plaintiff's application for issuance of temporary injunction.

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162. CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 27

Partition and Succession – Claim of half share in ancestral property – Plaintiff/appellant claimed to be biological son of late Vasudev Tiwari (Sharma) through his second marriage however defendant No.1 (daughter from first marriage) had mutated her name as sole heir – Plaintiff relied on scholar register, appointment records, marriage card, affidavit of Vasudev Tiwari and pleaded possession and performance of last rites – Defendant denied second marriage, asserting that she is the only heir, being daughter from first wife Kamla Sharma – Trial Court dismissed the suit First Appellate Court rejected plaintiff's application under Order 41 Rule 27 CPC for producing additional evidence (scholar register) and conducting DNA test – In Second Appeal, High Court held rejection of application under Order 41 Rule 27 CPC was illegal, as scholar register and adoption deed were material for adjudicating paternity; further held DNA test necessary to determine biological relationship – Adoption deed relied upon by defendant estops her from denying its effect – Suit decreed, declaring plaintiff entitled to ½ share in disputed property.

सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 27

विभाजन एवं उत्तराधिकार – पैतृक संपत्ति में आधे अंश का दावा – वादी/अपीलार्थी ने दावा किया कि वह स्व. वासुदेव तिवारी (शर्मा) के द्वितीय विवाह से जैविक पुत्र है जबकि प्रतिवादी क्रमांक 1 (प्रथम विवाह से उत्पन्न पुत्री) ने एकमात्र उत्तराधिकारी के रूप में स्वयं का नामांतरण करा लिया – वादी ने शाला रजिस्टर, नियुक्ति अभिलेख, विवाह पत्रिका, वासुदेव तिवारी के शपथ–पत्र पर निर्भरता व्यक्त करते हुए अभिवचन किया कि उसका आधिपत्य है एवं अंतिम संस्कार संपन्न करने का उल्लेख किया – प्रतिवादी ने द्वितीय विवाह से इंकार करते हुए व्यक्त किया कि वह पहली पत्नी कमला शर्मा की पुत्री होने से एकमात्र उत्तराधिकारी है – विचारण न्यायालय ने वाद खारिज कर दिया – प्रथम अपील न्यायालय ने वादी द्वारा अतिरिक्त साक्ष्य (शाला रजिस्टर) प्रस्तुत करने एवं डीएनए परीक्षण कराने हेतु प्रस्तुत आवेदन अंतर्गत आदेश 41 नियम 27 सीपीसी को खारिज कर दिया – द्वितीय अपील में, उच्च न्यायालय ने अभिनिर्धारित किया कि आदेश 41 नियम 27 सीपीसी के अंतर्गत आवेदन को निरस्त करना अवैधानिक है, क्योंकि शाला रजिस्टर और दत्तक विलेख पितृत्व निर्धारण के लिए आवश्यक थे, यह भी निर्धारित किया कि जैविक संबंध निर्धारित करने के लिए डीएनए परीक्षण आवश्यक है – प्रतिवादी द्वारा दत्तक विलेख पर निर्भरता व्यक्त करने के कारण वह उसके प्रभाव से इंकार करने से विबंधित हो जाता है – वाद डिक्री करते हुए वादी को वादग्रस्त संपत्ति के 1/2 अंश का अधिकारी होने की घोषणा की गई।

Praveen Tiwari v. Anita Upadhyay and ors.

Judgment dated 01.04.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 322 of 2020, reported in 2025 (3) MPLJ 200

Relevant extracts from the judgment:

It is the case of appellant that land bearing Survey Nos.711, 528, 529, 530 Min-2, 1679, 1680, 1683, 1684, 1690, 1829 Min-2, 2012 Min-3, 2089, 2382 Min-1, 2516 Min-3, 2540, 2544, 236, 237, 262 and 2515/1 situated in village Sankhni, Tahsil Bhitarwar, District Gwalior (M.P.) and Survey No.72 Min-2, 109, 110 situated in village Jhau, Tahsil Bhitarwar, District Gwalior (M.P.) is the ancestral property of plaintiff and defendant No.1. After death of father of plaintiff and defendant No.1 namely late Vasudev Tiwari, it is alleged that plaintiff and defendant No.1 got 1/2 share each. However, defendant No.1 got her name mutated in the revenue records by claiming herself to be the sole legal representative, whereas plaintiff has ½ share in the property. Appellant was born out of the relationship of his mother Kamla @ Manorama and late Vasudev Tiwari. It was

further claimed that late Vasudev Tiwari had never informed that defendant No.1 is his daughter and Kamla d/o Mayaram R/o Kankar is his wife.

It is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in clauses (a), (aa) and (b). We are concerned here with clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, clause (b) enables it to adopt that course. Invocation of clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of the material or record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.

The controversy in the present case is with regard to paternity of appellant. Appellant has based his case claiming to be biological son of Vasudev Tiwari (Sharma). In view of scholar register, which was filed by appellant along with his application under Order 41 Rule 27, CPC, this Court is of considered opinion that although appellant should have filed this document at the stage of trial, but in view of Order 41 Rule 27(1)(b) of the CPC which provides that if the appellate Court requires any document to be produced or any witness to be examined to pronounce the judgment for any other substantial cause then the application can be allowed and additional evidence can be taken on record, coupled with the effect of adoption deed (Ex.D/2), this Court is of considered opinion that the appellate Court committed material illegality by rejecting the application under Order 41 Rule 27, CPC by which the appellant wanted to bring the scholar register on record.

Appellant had filed an application under Order 41 Rule 27 CPC, for conducting the DNA test along with defendant No.1 or elder brother of Vasudev Sharma.

In the present case, question is with regard to paternity leading to rights in the property. Under these circumstances, this Court is of considered opinion that the appellate Court should have directed for conducting DNA test of appellant as

well as elder brother of late Vasudev Sharma or defendant No.1. However, as already pointed out, none of the parties are in a position to make a statement as to whether elder brother of Vasudev Sharma is still alive or not? Therefore, it is directed that in case if elder brother of Vasudev Sharma is not alive, then defendant No.1 shall undergo DNA test to find out as to whether appellant is biological son of Vasudev Tiwari (Sharma) or not.

The Adoption Deed (Ex.D/2), according to which appellant was adopted by Vasudev Sharma was relied upon by the defendant herself. Although counsel for respondent tried to wriggle out of the adoption deed by submitting that consent of the first wife was not taken, therefore, adoption deed was not valid, but this Court is of considered opinion that after having relied upon the adoption deed (Ex.D/2), defendant cannot challenge the authenticity of adoption deed (Ex.D/2). Furthermore, it is the case of appellant that the first wife and daughter from first wife were not residing with Vasudev Sharma. Therefore, it is held that even otherwise by virtue of adoption deed (Ex.D/2), appellant is entitled for 1/2 share in the property.

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163. COMMERCIAL COURTS ACT, 2015 – Section 2(1)(c)(vi)
CIVIL PROCEDURE CODE, 1908 – Section 9
Jurisdiction of Commercial Court – Plaintiff who is a builder entered into an agreement dated 10.10.2023 for reconstruction of residential house of defendants – Due to non-compliance of condition of agreement, plaintiff filed a suit for specific performance for execution of sale deed – At the stage of final argument, defendant filed an application u/s 15(2) Commercial Court Act, 2015 read with Order 7 Rule 10 CPC alleging that subject-matter of the suit is a 'commercial dispute' therefore, suit ought to have been transferred to the Commercial Court – Commercial dispute would be one where the nature of the agreement or the consequences arising therefrom would take the effect of the agreement beyond the private sphere of contracting parties and create effect of commercial movement between the parties – Use of the term 'Construction and infrastructure contracts has to be taken as single phrase – Subject matter of the suit is only a construction agreement and the element of infrastructure is missing – Agreement executed is purely a private contract and does not fall within definition of commercial dispute – Order of trial court upheld.

वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 2(1)(ग)(vi)
सिविल प्रक्रिया संहिता, 1908 – धारा 9

वाणिज्यिक न्यायालय का क्षेत्राधिकार – वादी जो एक बिल्डर है, ने प्रतिवादीगण के आवासीय भवन के पुनर्निर्माण के लिए दिनांक 10.10.2023 को एक अनुबंध किया – अनुबंध की शर्तो का पालन न करने के कारण, वादी ने विक्रय विलेख के निष्पादन के लिए संविदा के विनिर्दिष्ट अनुपालन हेतु वाद प्रस्तुत किया – अंतिम तर्क के चरण पर, प्रतिवादी ने आदेश 7 नियम 10 सीपीसी तथा धारा 15 (2) वाणिज्यिक न्यायालय अधिनियम, 2015 के अंतर्गत आवेदन प्रस्तुत किया, जिसमें यह आपत्ति ली कि वाद की विषय–वस्तु एक 'वाणिज्यिक विवाद' है, इसलिए, वाद वाणिज्यिक न्यायालय में स्थानांतरित किया जाना चाहिए था – वाणिज्यिक विवाद वह होगा जहां अनुबंध की प्रकृति या उससे उत्पन्न होने वाले परिणाम, अनुबंध के पक्षकारों के निजी क्षेत्र से परे अनुबंध का प्रभाव डालेंगे और पक्षकरों के मध्य वाणिज्यिक संव्यवहार का प्रभाव उत्पन्न करेंगे – 'निर्माण और अधोसंरचना संविदाओं' शब्द का प्रयोग एकल चरण के रूप में किया जाना चाहिए – वाद की विषय–वस्तु केवल एक निर्माण का अनुबंध है और अधोसंरचना का तत्व मौजूद नहीं है – निष्पादित करार विशुद्ध रूप से एक निजी संविदा है और वाणिज्यिक विवाद की परिभाषा के अंतर्गत नहीं आता – विचारण न्यायालय का आदेश स्थिर रखा गया।

Hema Sharma and ors. v. New Agrawal Construction

Order dated 26.03.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Civil Revision No. 247 of 2025, reported in 2025 (2) MPLJ 520

Relevant extracts from the order:

In essence, a commercial dispute would be one where the nature of the agreement or the consequence arising therefrom would take the effect of the agreement beyond the private sphere of contracting parties and create a ripple effect of commercial movement between the parties to the agreement. The specific nomenclatures of the agreements in Section 2(1)(c) of the Act indicates that a dispute cannot readily be presumed to be a commercial dispute. The object and specific clauses of the agreement would always be the determinant of whether the source agreement fits into one or more of the sub-clauses to Section 2(1)(c) of the Act. The criterion is whether the parties to the agreement understood and envisaged the agreement as one falling under sub-clauses (i) to (xxii) of Section 2(1)(c) of the Act and intended to treat the agreement as such.

Section 2(1)(c)(iv) includes within it the commercial disputes relating to "construction and infrastructure contracts, including tenders". The use of the term

'construction and infrastructure contracts' has to be taken as a single phrase and cannot be read as construction contract and infrastructure contracts separately. The term 'construction' has been defined in Oxford learners dictionary as "the process or method of building or making something" while the "infrastructure mean the basic physical and organizational structures and facilities (e.g. buildings, roads, power supplies) needed for the operation of a society or enterprise". Had it been only a construction agreement, the subject matter of suit i.e. reconstruction of the residential house of defendants, may have fallen under Clause (vi) of Section 2(1)(c) of the Act of 2015. However, for satisfying the requirement of Section 2(1)(c)(vi) of the Act of 2015, the agreement has to be construction and infrastructure contract. A commercial dispute arising out of a construction and infrastructure contract must necessarily have an impact which stretches beyond the contracting parties. In other words, a construction and infrastructure contract must partake of a commercial character in terms of conception of the project, the performance of it and end with a commercial product - one that premises good exchange value in terms of profitability.

In the agreement between the parties in this case, the element of infrastructure is missing. There is no commercial element involved so far as the defendants are concerned. It may be that the activity of plaintiff, being a builder, is commercial, but at the same time it is purely a private activity so far as the defendants are concerned. Considering the pleadings of the present case and the recitals of agreement between the parties, it is clear and evident that the agreement executed is purely a private contract for reconstruction of a residential building and does not fall within the definition of commercial dispute under Section 2(1)(c)(vi) of the Act of 2015.

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164. CONSTITUTION OF INDIA – Article 141
MOTOR VEHICLES ACT, 1988 – Section 168

(i) Compensation u/s 168 – Determination of income – Tax returns can be accepted to determine income – Only if they are properly brought into evidence to enable Tribunal/Court to calculate income.

(ii) Section 168 of the Act – Mandates grant of "just compensation"

(iii) Law declared by Supreme Court – Effect on pending cases – Article 141 of Constitution of India – When in a decision Supreme Court enunciates a principle of law, it is applicable to all cases irrespective of stage of pendency thereof – Because it is to be assumed that what is enunciated by Supreme Court is, in fact, the law from inception.

भारत का संविधान – अनुच्छेद 141

मोटरयान अधिनियम, 1988 – धारा 168

(i) धारा 168 के अंतर्गत प्रतिकर – आय का निर्धारण – आय का निर्धारण करने हेतु आयकर रिटर्न स्वीकार किए जा सकते हैं – केवल तभी जब उन्हें विधिवत साक्ष्य के रूप में प्रस्तुत किया गया हो ताकि अधिकरण/न्यायालय आय की गणना कर सके।

(ii) अधिनियम की धारा 168 – ''उचित प्रतिकर'' प्रदान करने का अनिवार्य प्रावधान है।

(iii) उच्चतम न्यायालय द्वारा घोषित विधि – लंबित मामलों पर प्रभाव – भारत के संविधान का अनुच्छेद 141 – जब किसी निर्णय में उच्चतम न्यायालय कोई विधिक सिद्धांत प्रतिपादित करता है, तो वह सभी मामलों पर लागू होता है, चाहे वे किसी भी चरण में लंबित हो – क्योंकि यह माना जाता है कि उच्चतम न्यायालय द्वारा प्रतिपादित विधि वास्तव में प्रारंभ से ही प्रभावी है।

New India Assurance Company Limited v. Sonigra Juhi Uttamchand

Judgment dated 02.01.2025, passed by the Supreme Court in Civil Appeal No. 24 and 27 of 2025, reported in (2025) 3 SCC 23

Relevant extracts from the judgment:

As held by this Court in ***Sarla Verma and ors. v. Delhi Transport Corporation, (2009) 6 SCC 121*** in the matter of assessment of compensation, hypothetical considerations would be involved, but nevertheless such assessments should be objective. As noticed hereinbefore, the accident had occurred in the year 2007, and the father of the appellant, who claimed to had been running a jewellery shop, was aged only 48 years at the time of the accident. In the case of the mother of the appellant, she was aged only 38 years at the time of the accident and she was also not a mere housewife and claimed to had been running a jewellery shop. The Tribunal could not be said to have committed any mistake in not accepting the xerox copies of the tax returns and virtually adopted guess work relying on the attending circumstances to fix the monthly income of the parents of the appellant for calculation purpose.

In tune with the question of law No. C, the respondent-insurer took a ground in the appeal contending that the High Court had gone wrong in granting amount in excess of Rs.70,000/- under the conventional heads. In this context, the learned counsel appearing for the respondent drew our attention to the law laid down by this Court in the decision in ***National Insurance Co. Ltd. v. Pranay Sethi &***

ors., (2017) 16 SCC 680. Paragraph 59.8 of the said decision would reveal that this Court held that under the conventional heads, only a total amount of Rs.70,000/- ; the split-up being Rs. 15,000/- under the head loss of estate, Rs.40,000/- under the head loss of consortium and Rs.15,000/- towards funeral expenses, is grantable.

It is to be noted that after having held thus, this Court went on to hold that the amounts thus fixed under the conventional heads should be revisited every three years and the enhancement should be at the rate of 10% in a span of three years. Even while taking into account the said position laid down by this Court in ***Pranay Sethi's*** case, we are of the view that the Tribunal and the High Court cannot be found at fault with fixing the amounts in excess of the aforesaid amounts fixed by this Court as the award and the judgment of the High Courts were passed prior to the pronouncement of the judgment of this Court in ***Pranay Sethi's*** case.

But at the same time, it is to be noted that in the decision in ***M.A. Murthy v. State of Karnataka and ors., (2003) 7 SCC 517***, this Court held that when in a decision this Court enunciates a principle of law, it is applicable to all cases irrespective of the stage of pendency thereof because it is to be assumed that what is enunciated by this Court is, in fact, the law from inception. We may hasten to add that we shall not be understood to have held that pursuant to enunciation of a principle of law, matters that attained finality shall be reopened solely for the purpose of applying the law thus laid. But at the same time, if the matter is pending, then, irrespective of the stage, the principle cannot be ignored.

That apart, while calculating compensation it is to be borne in mind that Section 168 of the Motor Vehicles Act mandates grant of 'just compensation'. In a family of 4 members, viz., the parents and two children including the appellant, three of them died, leaving the appellant. After bestowing our anxious consideration on all aspects, we are of the considered view that after taking into account all parameters, just compensation was assessed and granted by the High Court as per the impugned common judgment by way of enhancement, which cannot be said to be excessive or exorbitant. In such circumstances, in the name of correcting the law, we do not think it appropriate to interfere with justice done to the appellant by the High Court by granting enhanced compensation.

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165. CRIMINAL PROCEDURE CODE, 1973 – Section 197
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 218
Sanction of prosecution – Demolition of illegal construction by public servant – Act performed in discharge of official duties – Complaint filed under Section 200 CrPC without prior sanction under Section 197

– Appellant, District Town Planner (Enforcement), carried out demolition as per departmental instructions – High Court erroneously refused to quash proceedings on ground that sanction issue could be decided at trial – Supreme Court held that demolition was in reasonable nexus with official duty – Absence of prior sanction renders complaint and cognizance invalid – Law well settled that protection under Section 197 CrPC applies even where act is alleged to be in excess of authority, if reasonably connected to official duty – Cognizance taken without sanction violates mandatory statutory protection – Summoning order and consequential proceedings quashed.

दण्ड प्रक्रिया संहिता, 1973 – धारा 197

भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 218

अभियोजन की स्वीकृति – लोक सेवक द्वारा अवैध निर्माण का ध्वस्तीकरण – आधिकारिक कर्तव्यों के निर्वहन में किया गया कार्य – धारा 200 दण्ड प्रक्रिया संहिता के अंतर्गत पूर्व स्वीकृति के बिना परिवाद प्रस्तुत – अपीलकर्ता, जिला नगर योजनाकार (प्रवर्तन), ने विभागीय निर्देशों के अनुसार ध्वस्तीकरण किया – उच्च न्यायालय ने कार्यवाही को अपास्त करने से त्रुटिपूर्वक इंकार किया कि स्वीकृति का विषय विचारण के समय निर्णीत किया जा सकता है – उच्चतम न्यायालय ने माना कि ध्वस्तीकरण का कार्य आधिकारिक कर्तव्यों से युक्तियुक्त रूप से जुड़ा हुआ था – पूर्व स्वीकृति के अभाव में परिवाद और उस पर संज्ञान लेना अमान्य है – विधि स्पष्ट रूप से स्थापित है कि धारा 197 द.प्र.सं. के अंतर्गत संरक्षण तब भी लागू होता है जब कार्य को प्राधिकार से अधिक बताया गया हो, यदि वह कार्य आधिकारिक कर्तव्यों से युक्त रूप से जुड़ा हो – स्वीकृति के बिना लिया गया संज्ञान अनिवार्य वैधानिक सुरक्षा का उल्लंघन है – समन आदेश और उससे संबंधित कार्यवाही को अपास्त किया गया।

Gurmeet Kaur v. Devender Gupta and anr.

Judgment dated 26.11.2024 passed by the Supreme Court in Criminal Appeal No. 4825 of 2024, reported in (2025) 5 SCC 481

Relevant extracts from the judgment:

In ***D. Devaraja v. Owais Sabeer Hussain, (2020) 7 SCC 695***, the facts were that the High Court had disposed ***[H. Siddappa v. Owais Sabeer Hussain, 2018 SCC OnLine Kar 3805]*** of the application under Section 482 CrPC which was filed for quashing the order passed by the Additional Chief Metropolitan Magistrate III, Bengaluru City in taking cognizance of a private complaint, inter alia, against the appellant-accused therein, for offences punishable under Sections 120-B, 220, 323,

330, 348 and 506 Part II read with Section 34IPC. The High Court did not quash the impugned order of the Additional Chief Metropolitan Magistrate dated 27.12.2006, but remitted the complaint back to the learned Additional Chief Metropolitan Magistrate instead, with, inter alia, liberty to the appellant-accused therein to apply for discharge.

The question considered by this Court was whether the learned Magistrate could, at all, have taken cognizance against the appellant therein, in the private complaint, in the absence of a sanction under Section 197CrPC read with Section 170 of the Karnataka Police Act, 1963, as amended by the Karnataka Police (Amendment) Act, 2013, and if not, whether the High Court should have quashed the impugned order of the Magistrate concerned, instead of remitting the complaint to the Magistrate concerned and requiring the appellant-accused therein to appear before him and file an application for discharge.

Referring to several judgments of this Court, Indira Banerjee, J. speaking for the Bench observed in para 66 to para 71 as under: ***D. Devaraja case (supra***)

> 66. "Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.
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> 67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would

certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.

71. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act."

It was concluded in ***D. Devaraja case*** *(supra)*, that the High Court had erred in law refusing to exercise its jurisdiction under Section 482CrPC to set aside the impugned order of the learned Magistrate taking cognizance of the complaint, after having held that it was a recognised principle of law that sanction was a legal requirement which empowers the court to take cognizance. This Court allowed the appeal and set aside the judgment and order under appeal and the complaint was quashed for want of sanction.

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166. CRIMINAL PROCEDURE CODE, 1973 – Sections 202(1)(a) and 156(3)

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 225 and 175

INDIAN PENAL CODE, 1860 – Sections 120-B, 196, 199, 406, 420, 467, 468, and 471

BHARATIYA NYAYA SANHITA, 2023 – Sections 61 (2), 233, 236, 316(2), 318(4), 467, 338, 336 (3) and 340 (2)

Police investigation in complaint cases – Scope of Magistrate's powers under Section 202(1)(a) CrPC – Where the offences alleged are exclusively triable by the Court of Session, Judicial Magistrate cannot direct police investigation under Section 202 – Power to direct investigation in such cases lies under Section 156(3) CrPC at the pre-cognizance stage and not under Section 202 which operates at post-cognizance stage – Magistrate having taken cognizance, cannot revert back to Section 156(3) – In present case, offences under Sections 467, 468 and 471 IPC being triable by Court of Session, Magistrate's direction for police investigation under Section 202 held without jurisdiction.

दंड प्रकिया संहिता, 1973 – धाराएं 202(1) (क) एवं 156 (3)

भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 225 एवं 175 (3)

भारतीय दंड संहिता, 1860 – धाराएं 120–ख, 196, 199, 406, 420, 467, 468 एवं 471

भारतीय न्याय संहिता, 2023 – धाराएं 61 (2), 233, 236, 316(2), 318 (4), 467, 338, 336(3) एवं 340 (2)

परिवाद प्रकरणों में पुलिस अन्वेषण – धारा 202 (1) (क) दंड प्रकिया संहिता के अंतर्गत मजिस्ट्रेट की शक्तियों का विस्तार – जहाँ आरोपित अपराध अनन्यत्रः सत्र न्यायालय द्वारा विचारणीय है, वहाँ न्यायिक मजिस्ट्रेट धारा 202 के अंतर्गत पुलिस अन्वेषण का निर्देश नहीं दे सकता – ऐसे मामलों में अन्वेषण का निर्देश देने की शक्ति धारा 156(3) दंड प्रकिया संहिता के अंतर्गत संज्ञान पूर्व प्रक्रम पर होती है एवं धारा 202 के अंतर्गत नहीं, जो संज्ञान पश्चात प्रक्रम पर प्रभावी होता है – मजिस्ट्रेट ने संज्ञान ले लिया इसलिए धारा 156(3) में वापस नहीं जा सकता – वर्तमान मामले में, धारा 467, 468 और 471 भारतीय दंड संहिता के अंतर्गत अपराध सत्र न्यायालय द्वारा विचारणीय होने के कारण, मजिस्ट्रेट का धारा 202 के अंतर्गत पुलिस अन्वेषण का निर्देश बिना क्षेत्राधिकार होना निर्धारित किया गया।

Arun Kumar Gupte v. Arvind Kumar

Order dated 19.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 36340 of 2023, reported in ILR 2024 MP 2392

Relevant extracts from the order:

From the bare perusal of provisions of Section 202(1)(a) of Cr.P.C. it is crystal clear that no such direction shall be made where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session. In the case in hand, it is crystal clear that the complaint was lodged under Sections 196, 199, 406, 420, 467, 468, 471 and 120-B of IPC, thus, the offence is triable by Court of Sessions and hence, no cognizance of direction can be made by Judicial Magistrate First Class.

The Full Bench of Supreme Court in the case of ***Devarapally Lakshminarayana Reddy v. V. Narayana Reddy***, ***AIR 1976 SC 1672***, has held that in view of first proviso to Section 202 (1) of the CrPC a Magistrate who receives a complaint disclosing offences exclusively triable by the Court of Session, is not debarred from sending the same to the police for investigation under Section 156 (3) of the Code. The power to order police investigation under Section 156 (3) is different from the power to direct investigation conferred by Section 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156 (3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190 (1) (a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Sect. 156 (3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1) of CrPC.

Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section, an

investigation for the purpose of deciding whether or not there is sufficient ground for proceeding.

Therefore, the object of an investigation under Section 202 is not toinitiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him. The same view hasbeen reiterated by Hon'ble Apex Court in another case of ***Rameshbhai Pandurao Hedau v. State of Gujarat***, ***AIR 2010 SC 1877***, as well.

Actually, the power to direct an investigation to the police authorities is available to the Magistrate under Section 156(3) of CrPC but not under Section 202 of CrPC when the case is exclusively triable by Session Judge. As such, in the case exclusively triable by Session Judge, a Magistrate cannot order for police investigation under Section 202 of the CrPC In this case at hand, since the offences are pertaining to Section 467, 468 and 471 of IPC which are exclusively triable by Session Judge, the learned Magistrate has wrongly passed the order for police investigation under Section 202 of CrPC

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167. CRIMINAL PROCEDURE CODE, 1973 – Section 319
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 358
Summoning of additional accused – Investigating Officer did not find the involvement of three additional accused – Three separate enquiry conducted by DSP led to filing the reports where involvement of additional accused was found lacking – Initial statement of complaint referred to fact that one additional accused had held him facilitating stabbing by main accused, who gave a knife blow in waist followed by another blow near his heart which penetrated up to his lungs and as regards another additional accused, it was alleged that he had threatened the complainant – Considering version of complainant in course of examination-in-chief, Sessions Judge formed a satisfaction higher than a prima facie satisfaction of alleged involvement of additional accused persons and held that their complicity in crime would have to be examined and tested on evidence being led at trial – Conclusion drawn by Sessions Judge in summoning additional accused was a plausible conclusion – The impugned order of the High Court set aside – The Sessions Judge order of summoning additional accused was restored.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 358

अतिरिक्त अभियुक्तगण को आहूत करना – अनुसंधान अधिकारी ने तीन अतिरिक्त अभियुक्तगण की संलिप्तता नहीं पाई – उप–पुलिस अधीक्षक द्वारा किये गये तीन पृथक–पृथक अनुसंधानों के उपरांत रिपोर्ट प्रस्तुत की गई, जिसमें अतिरिक्त अभियुक्तगण की संलिप्तता नहीं पाई गई – परिवादी के प्रारंभिक कथन में इस तथ्य का उल्लेख किया गया था कि एक अतिरिक्त अभियुक्त ने उसे मुख्य अभियुक्त द्वारा छूरा घोंपने में सहायता करने हेतु पकड़ रखा था, जिसने कमर पर चाकू से वार किया और उसके बाद उसके हृदय के पास एक और वार किया जो उसके फेफड़ों तक पहुंच गया और दूसरे अतिरिक्त अभियुक्त के संबंध में, यह आरोप लगाया गया था कि उसने परिवादी को धमकी दी थी – मुख्य परीक्षण के दौरान परिवादी के कथन पर विचार करते हुए, सत्र न्यायाधीश ने अतिरिक्त अभियुक्त की कथित संलिप्तता को प्रथम दृष्टया मामले से अधिक संतुष्टिप्रद पाते हुए माना कि अपराध में उनकी सहभागिता विचारण में प्रस्तुत साक्ष्य से परीक्षित एवं परखी जानी चाहिए – सत्र न्यायाधीश द्वारा अतिरिक्त अभियुक्त को आहूत करना द्वारा एक संभाव्य निष्कर्ष था – उच्च न्यायालय के प्रष्नगत आदेश को अपास्त कर दिया गया – अतिरिक्त अभियुक्तगण को आहूत किये जाने के सत्र न्यायाधीश के आदेश को पुनः स्थापित किया।

Sarbir Singh v. Rajesh Kumar and ors.

Judgment dated 01.04.2025 passed by the Supreme Court in Criminal Appeal No. 1487 of 2025, reported in AIR 2025 SC 1649

Relevant extracts from the judgment:

The law on the point of summoning additional accused in exercise of power conferred by Section 319 CrPC is well settled. One may profitably refer to and rely on the Constitution Bench decision of this Court in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***, where law has been authoritatively declared. We consider it proper to quote the conclusions reached by this Court qua the questions arising for decision, hereunder:

"We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

– What is the stage at which power under Section 319 CrPC can be exercised?

– Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected

during investigation or the word "evidence" is limited to the evidence recorded during trial?

Answer

In **Dharam Pal v. State of Haryana, (2014) 3 SCC 306**, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

In view of the above position the word "evidence" in Section 319CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii) – Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv) – What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

Though under Section 319(4)(*b*) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge [In para 106, the Court held : [***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***. Thus, we hold that though only a *prima facie* case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC."]. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v) – Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has

been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh."

Quite recently, a coordinate Bench of this Court in ***Jitendra Nath Mishra v. State of U.P., (2023) 7 SCC 344***, upon ***considering Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***, had the occasion to observe as follows:

"Section 319 CrPC, which envisages a discretionary power, empowers the court holding a trial to proceed against any person not shown or mentioned as an accused if it appears from the evidence that such person has committed a crime for which he ought to be tried together with the accused who is facing trial. Such power can be exercised by the court qua a person who is not named in the FIR, or named in the FIR but not shown as an accused in the charge-sheet. Therefore, what is essential for exercise of the power under Section 319 CrPC is that the evidence on record must show the involvement of a person in the commission of a crime and that the said person, who has not been arraigned as an accused, should face trial together with the accused already arraigned. However, the court holding a trial, if it intends to exercise power conferred by Section 319 CrPC, must not act mechanically merely on the ground that some evidence has come on record implicating the person sought to be summoned; its satisfaction preceding the order thereunder must be more than prima facie as formed at the stage of a charge being framed and short of satisfaction to an extent that the evidence, if unrebutted, would lead to conviction."

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168. CRIMINAL PROCEDURE CODE, 1973 – Sections 451 and 457
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 497 and 503
NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, ACT, 1985 – Sections 51, 52-A, 63(2), 21(b) and 36-C

(i) Interim custody of vehicle involved in offence under NDPS Act – Whether there is any specific bar/ restriction under the Act for interim release of vehicle? Held, no specific bar/restriction under the Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance in the interim pending disposal of the criminal case – In absence of any specific bar and considering section 51 of the Act, the Court was found empowered

to invoke the general power u/s 451 and 457 CrPC for return of the seized vehicle pending final decision of the criminal case.

(ii) Application for Interim custody of seized vehicle – Risk of misuse of the released vehicle by the accused or third party, though cannot be ruled out, yet the Court held, on the basis of fear or suspicion or hypothetical situation it cannot take coercive action – Held, interim custody cannot be denied on the ground of vehicle being a critical piece of material evidence.

(iii) Interim custody of vehicle – Discretion of the trial Court and Permissibility – Law clarified.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 451 एवं 457

भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 497 एवं 503

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 – धाराएं 51, 52–क, 63(2), 21(ख) एवं 36–ग

(i) एनडीपीएस अधिनियम के अंतर्गत अपराध में संलिप्त वाहन की अंतरिम अभिरक्षा – क्या अधिनियम में वाहन के अंतरिम रिहाई के लिए कोई विशेष प्रतिबंध वर्जन है? अभिनिर्धारित, अधिनियम में ऐसा कोई विशेष प्रतिबंध या वर्जन नहीं है जो किसी जब्त वाहन को, जो मादक पदार्थ या मनःप्रभावी पदार्थ के परिवहन में प्रयुक्त हुआ हो, आपराधिक मामले के अंतिम निपटारे तक अंतरिम रूप से लौटाने से रोके – किसी विशेष वर्जन के अभाव में और अधिनियम की धारा 51 को दृष्टिगत रखते हुए, न्यायालय को दण्ड प्रक्रिया संहिता की धारा 451 और 457 के अंतर्गत सामान्य अधिकारों का प्रयोग कर जब्त वाहन को आपराधिक मामले के अंतिम निर्णय तक वापस करने का अधिकार है।

(ii) जब्त वाहन की अंतरिम अभिरक्षा हेतु आवेदन – उन्मुक्त किए गए वाहन के अभियुक्त या किसी तीसरे पक्ष द्वारा दुरुपयोग की संभावना को पूरी तरह नकारा नहीं जा सकता, इसके उपरान्त भी न्यायालय ने अवधारित किया कि केवल भय, संदेह या काल्पनिक स्थिति के आधार पर कोई दंडात्मक कार्यवाही नहीं की जा सकती – अभिनिर्धारित, वाहन को महत्वपूर्ण भौतिक साक्ष्य होने के आधार पर अंतरिम अभिरक्षा से वंचित नहीं किया जा सकता।

(iii) वाहन की अंतरिम अभिरक्षा – विचारण न्यायालय का विवेक और वैधता – विधि स्पष्ट की गई।

Bishwajit Dey v. State of Assam

Judgment dated 07.01.2025 passed by the Supreme Court in the Criminal Appeal No. 87 of 2025, reported in (2025) 3 SCC 241

Relevant extracts from the judgment:

Upon a reading of the NDPS Act, this Court is of the view that the seized vehicles can be confiscated by the trial court only on conclusion of the trial when the accused is convicted or acquitted or discharged. Further, even where the Court is of the view that the vehicle is liable for confiscation, it must give an opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order of confiscation. However, the seized vehicle is not liable to confiscation if the owner of the seized vehicle can prove that the vehicle was used by the accused person without the owner's knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person.

This Court is further of the opinion that there is no specific bar/restriction under the provisions of the NDPS Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance in the interim pending disposal of the criminal case.

In the absence of any specific bar under the NDPS Act and in view of Section 51 of NDPS Act, the Court can invoke the general power under Sections 451 and 457 of the CrPC for return of the seized vehicle pending final decision of the criminal case. Consequently, the trial Court has the discretion to release the vehicle in the interim. However, this power would have to be exercised in accordance with law in the facts and circumstances of each case.

Though seizure of drugs/substances from conveyances can take place in a number of situations, yet broadly speaking there are four scenarios in which the drug or substance is seized from a conveyance. Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. Secondly, where the contraband is recovered from the possession of the agent of the owner i.e. like driver or cleaner hired by the owner. Thirdly, where the vehicle has been stolen by the accused and contraband is recovered from such stolen vehicle. Fourthly, where the contraband is seized / recovered from a third-party occupant (with or without consideration) of the vehicle without any allegation by the police that the contraband was stored and transported in the vehicle with the owner's knowledge and connivance. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or his agent would not be arrayed as an accused.

This Court is of the view that criminal law has not to be applied in a vacuum but to the facts of each case. Consequently, it is only in the first two scenarios that

the vehicle may not be released on *superdari* till reverse burden of proof is discharged by the accused-owner. However, in the third and fourth scenarios, where no allegation has been made in the charge-sheet against the owner and/or his agent, the vehicle should normally be released in the interim on *superdari* subject to the owner furnishing a bond that he would produce the vehicle as and when directed by the Court and/or he would pay the value of the vehicle as determined by the Court on the date of the release, if the Court is finally of the opinion that the vehicle needs to be confiscated.

This Court clarifies that the aforesaid discussion should not be taken as laying down a rigid formula as it will be open to the trial Courts to take a different view, if the facts of the case so warrant.

In the present case, this Court finds that after conclusion of investigation, a charge-sheet has been filed in the Court of Special Judge, NDPS Karbi Anglong. In the said charge-sheet, neither the owner of the Vehicle nor the driver has been arrayed as an accused. Only a third-party occupant has been arrayed as an accused. The police after investigation has not found that the appellant i.e. the owner of the vehicle, has allowed his vehicle to transport contraband drugs/ substances with his knowledge or connivance or that he or his agent had not taken all reasonable precautions against such use. Consequently, the conveyance is entitled to be released on *superdari*.

In fact, the Supreme Court in similar facts in ***Sainaba v. State of Kerala and anr., 2022 SCC OnLine SC 1784*** has held as under:-

> "The appellant has urged inter alia that as per Section 36-C read with Section 51 of the NDPS Act, Criminal Procedure Code would be applicable for proceedings by a Special Court under NDPS Act and Section 451 has an inbuilt provision to impose any specific condition on the appellant while releasing the vehicle. The appellant is undoubtedly the registered owner of the vehicle but had not participated in the offence as alleged by the prosecution nor had knowledge of the alleged transaction.
>
> Learned counsel seeks to rely on the judgment of this Court in ***Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283*** opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required at any point of time.
>
> On hearing learned counsel for parties and in the conspectus of the facts and circumstances of the case, and the legal provisions

referred aforesaid, we are of the view that this is an appropriate case for release of the vehicle on terms and conditions to be determined by the Special Court.

The appeal is accordingly allowed leaving parties to bear their own costs."

This Court is also of the view that if the Vehicle in the present case is allowed to be kept in the custody of police till the trial is over, it will serve no purpose. This Court takes judicial notice that vehicles in police custody are stored in the open. Consequently, if the Vehicle is not released during the trial, it will be wasted and suffering the vagaries of the weather, its value will only reduce.

On the contrary, if the Vehicle in question is released, it would be beneficial to the owner (who would be able to earn his livelihood), to the bank/financier (who would be repaid the loan disbursed by it) and to the society at large (as an additional vehicle would be available for transportation of goods).

Consequently, the present Criminal Appeal is allowed with directions to the trial Court to release the Vehicle in question in the interim on *superdari* after preparing a video and still photographs of the vehicle and after obtaining all information/documents necessary for identification of the vehicle, which shall be authenticated by the Investigating Officer, owner of the Vehicle and accused by signing the same. Further, the appellant shall not sell or part with the ownership of the Vehicle till conclusion of the trial and shall furnish an undertaking to the trial court that he shall surrender the Vehicle within one week of being so directed and/or pay the value of the Vehicle (determined according to Income Tax law on the date of its release), if so ultimately directed by the Court.

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***169. EVIDENCE ACT, 1872 – Section 145**
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 23(2)
CRIMINAL PROCEDURE CODE, 1973 – Sections 161 and 162
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 180 and 181
Improvement, contradiction and omission in the evidence – Procedure for contradicting a witness with prior statement recorded under section 161 CrPC – The portion of the prior statement shown to the witness for contradicting him must be proved through the investigating officer – Unless the said portion of the prior statement used for contradiction is duly proved, it cannot be reproduced in the deposition of the witnesses – The correct procedure is that the trial Judge should mark the portions of the prior statements used for contradicting the witness –

The said portions can be put in bracket and marked as "AA", "BB" etc. – The marked portions cannot form a part of the deposition unless the same are proved.

साक्ष्य अधिनियम, 1872 – धारा 145
भारतीय साक्ष्य अधिनियम, 2023 – धारा 23(2)
दंड प्रक्रिया संहिता, 1973 – धाराएं 161 एवं 162
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 180 एवं 181
साक्ष्य में सुधार, विरोधाभास एवं लोप – दण्ड प्रक्रिया संहिता की धारा 161 के अंतर्गत लेखबद्ध पूर्व कथन से साक्षी का खंडन करने की प्रक्रिया – साक्षी का खंडन करने के लिए उसे दिखाए गये उसके पूर्व कथन के उस भाग को अनुसंधान अधिकारी के माध्यम से प्रमाणित करना होगा – जब तक विरोधाभास के लिए उपयोग किए गए पूर्व कथन के उक्त भाग को विधितः प्रमाणित नहीं किया जाता है, तब तक इसे साक्षियों के साक्ष्य में पुनः प्रस्तुत नहीं किया जा सकता है – उचित प्रक्रिया यह है कि विचारण न्यायाधीश को साक्षी का खंडन करने के लिए उपयोग किए गए पूर्व कथनों के भागों को चिह्नित करना चाहिए – उक्त भागों को कोष्ठक में रखकर और ''अअ'' ''बब'' आदि के रूप में चिह्नित किया जा सकता है – चिह्नित भाग साक्ष्य का हिस्सा नहीं बन सकते जब तक कि उन्हें इस प्रकार प्रमाणित न किया जाए।

Vinod Kumar v. State (Government of NCT of Delhi)

Judgment dated 13.02.2025 passed by the Supreme Court in Criminal Appeal No. 2482 of 2014, reported in (2025) 3 SCC 680

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170. EVIDENCE ACT, 1872 – Sections 145 and 155
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 148 and 158
INDIAN PENAL CODE, 1860 – Sections 302 r/w/s 149
BHARATIYA NYAYA SANHITA – Section 103 r/w/s 190

(i) Statement u/s 161 of the Code are previous statement for the purpose of section 145 of the Evidence Act – Can be used to cross-examine a witness – But this is only for a limited purpose to "contradict" such a witness.

(ii) Eyewitness – Contradictions in testimony – When material? Held, only such of the inconsistent statement which is liable to be contradicted, would affect the credit of the witness – Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in complete discredition.

(iii) Appreciation of evidence – "*Noscitur a sociis*" principle – Used for interpretation of statutes – Held, meaning of a word can be determined by the context of the sentence and it is to be judged by the company it keeps.

(iv) Principle of "*falsus in uno falsus in omnibus* – Held, not applicable to the Indian criminal jurisprudence.

(v) Faulty investigation – Enough corroboration to drive home the guilt of the accused persons available on record – Accused not entitled to claim acquittal on the ground of faulty investigation done by the prosecuting agency – Duty of Court explained.

(vi) Interestedness of witnesses – Effect and duty of Court – Explained.

साक्ष्य अधिनियम, 1872 – धाराएं 145 एवं 155

भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 148 एवं 158

भारतीय दंड संहिता, 1860 – धारा 302 सहपठित धारा 149

भारतीय न्याय संहिता, 2023 – धारा 103 सहपठित धारा 190

(i) साक्ष्य अधिनियम की धारा 145 के कथन अंतर्गत धारा 161 दं.प्र.सं. ''पूर्वतन कथन'' होते हैं – इन्हें साक्षी का प्रतिपरीक्षण करने के लिए उपयोग किया जा सकता है – किंतु यह प्रयोजन ऐसे साक्षी को ''खंडित'' करने मात्र तक सीमित होता है ।

(ii) चक्षुदर्शी साक्षी – साक्ष्य में विरोधाभास – कब तात्विक है? अभिनिर्धारित, केवल ऐसे विरोधाभासी कथन, जिनका खंडन किया जा सकता है, साक्षी की विश्वसनीयता को प्रभावित करेंगे – यहाँ तक कि, यदि बचाव पक्ष, साक्षी का खंडन करने में सफल हो जाता है, तब भी इसका अर्थ हमेशा यह नहीं होगा कि उसके दो कथनों में विरोधाभास के परिणामस्वरूप, उसकी साक्ष्य पूर्णतः अविश्वसनीय है।

(iii) साक्ष्य का मूल्यांकन – ***"Noscitur a sociis"*** का सिद्धांत – संविधियों के निर्वचन में प्रयुक्त – अभिनिर्धारित, एक शब्द का अर्थ, वाक्य के संदर्भ से निर्धारित किया जा सकता है और यह उसकी संगति से आंकना होता है।

(iv) ***"Falsus in uno falsus in omnibus"*** का सिद्धांत – अभिनिर्धारित, भारतीय दांडिक विधिशास्त्र में प्रयोज्य नहीं।

(v) दोषपूर्ण विवेचना – अभियुक्तगण को दोषिता को उजागर करने के लिए पर्याप्त संपुष्टि अभिलेख पर उपलब्ध – अभियुक्त अभियोजन द्वारा की गई दोषपूर्ण विवेचना के आधार पर दोषमुक्ति का दावा करने का अधिकारी नहीं – न्यायालय का कर्तव्य समझाया गया।

(vi) साक्षीगण की हितबद्धता – प्रभाव और न्यायालय का कर्तव्य – समझाया गया।

Edakkandi Dineshan @ P. Dineshan and ors. v. State of Kerala

Judgment dated 06.01.2025 passed by the Supreme Court in Criminal Appeal No. 118 of 2013, reported in (2025) 3 SCC 273

Relevant extracts from the judgment:

The law relating to material contradiction in witness testimony has been discussed by this Court in the judgment of ***Rammi v. State of M.P., (1999) 8 SCC 649*** It was held that:

> "It is common practice in trial court to make out contradictions from the previous statements. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No Doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness.
>
> Only such of the inconsistent statement which is capable to be "contradicted" would affect the credit of the witness''

The abovementioned settled position of law was again reiterated by this Court in the judgment of ***Birbal Nath v. State of Rajasthan, (2024) 15 SCC 190*** wherein it was held as under:

> "No doubt statement given before police during investigation under section 161 are "previous statements" under section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this only for a limited purpose, to "contradict" such a witness. Even if the defense is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is ere that we feel that the learned judges of the High Court have gone wrong."
>
> "In the landmark case of ***Tehshildar Singh v. State of UP, 1959 SCC Online SC 17*** this Court has held that to contradict a witness would mean to "discredit" a witness. Therefore, unless and until the former statement of this witness is capable "discrediting" a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgment, including ***Rammi*** (supra)".

Bearing in mind the abovementioned settled position of law, this court is of the considered opinion that though there is a variance in the statements of the witnesses, it is minor and not of such a nature which would drive their testimony untrustworthy. This court finds the deposition of witnesses PW1, 2 and 4 to be honest, truthful, and trustworthy. Hence, the observations made by the High Court in this regard are well reasoned.

It is worthwhile to mention that in his examination in chief, PW1- V K Jithesh had mentioned that Sunil was not seen. In his cross examination, PW1 had stated that he had told the police at the picket post that Sunil was missing. This was apparently in contradiction to the stand of the defence that death of Sunil was mentioned in the FIR at 3 am itself while his body was found only at 7:30 am in the morning. The statement of PW1 to the police mentioning that Sunil is "missing" cannot be seen in an abstract. "*Noscitur a sociis*" is a well-recognized principle used for interpretation of statutes. It means that the meaning of a word can be determined by the context of the sentence; it is to be judged by the company it keeps. Though this principle Is used for interpretation of words in a statute, the inherent principle can very well be applied to the facts of the present case which have be seen in the context of the entire set of events that had transpired that night. The High Court has also, in its well-reasoned judgment considered the fact that while struggling for his life, injured Sunil might have made some movements and while so he might have fallen into the slushy area and happened to be amidst the bushes which is the reason for him being allegedly "missing".

It is a settled position that *'falsus in uno, falsus in omnibus'* (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgements. In the case of ***Ram Vijay Singh v. State of UP, (2021) 15 SCC 241***, a Three Judge bench of this Hon'ble Court had held that:

> "..We do not find any merit in the arguments raised by the learned counsel for the Appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the Court. The maxim *falsus in uno, falsus in omnibus* is not the rule applied by the courts in India. This Court recently in a judgement ***IIangovan v. State of T.N.,(2020) 10 SCC 533*** held that Indian Courts have always been reluctant to apply the principle as it is only a rile of caution. It was held as under:

"The Counsel for the Appellant lastly argued that once the witnesses had been disbelieved with respect to the co accused, their testimonies with respect to the present accused must also be discarded. The Counsel is, in effect, relying on the legal maxim "*falsus in uno, falsus in omnibus*", which Indian Courts have always been reluctant to apply. A three Judge bench of this Court, as far back as in 1957, in ***Nisar Ali v. State of UP, 1957 SCC Online SC 42*** held on this point as follows:

> "This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of Caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded.
>
> The Doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of Evidence"

Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony if the said witness cannot be disregarded qua the present Appellant. Still, further it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality if evidence which is relevant in criminal trial and not the quantity.

Hence, as can be seen from above, it has being a consistent stand of this Hon'ble Court that the principle *'falsus in uno, falsus in omnibus'* is not a rule of evidence and if the court inspires confidence from the rest of the testimony of such a witness, it can very well rely on such a part of the testimony and base a conviction upon it.

It has been held by this court in the case of ***Raju alias Balachandran and ors. v. State of Tamil Nadu***, ***(2012) 12 SCC 701***:

> "..The sum and substance is that the evidence of a related or interested witness should be meticulous and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in ***Dalip Singh v. State of Punjab, (1953) 2 SCC 36*** and pithily reiterated in ***Sarwan Singh v. State of Punjab, (1976) 4 SCC 369*** in the following words:

> "..The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, to as a rule of law, that the evidence of such witnesses should be scrutinized with little care. Once that approach is made and the court is satisfied that the evidence of the witnesses has a ring of truth such evidence could be relied upon even without corroboration."

Bearing in mind the above legal position of the interested witnesses the testimonies of PW1, PW2 and PW4 is the only piece of evidence available of the eye- witnesses. Even if it is assumed that they are interested witnesses there is no such inconsistency in their statements which would raise a reasonable suspicion about their evidence being concocted and untruthful. They were present at the spot where the incident took place and they have delivered a version which is palpable one. Their versions about seeing and hearing the appellants inflicting injuries on the bodies of the deceased Sunil and Sujeesh are in harmony with each other.

The entire submissions of the appellants were that since there are contradictions, the entire story of the prosecution is false. As we have already mentioned above, the principle of *'falsus in uno, falsus in omnibus'* does not apply to the Indian criminal jurisprudence and only because there are some contradictions which in the opinion of this Court are not even that material, the entire story of the prosecution cannot be discarded as false. It is the duty of the Court to separate the grain from the chaff. In a given case, it is also open to the Court to differentiate the accused who had been acquitted from those who were convicted where there are a number of accused persons, like in the present case.

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171. HINDU MARRIAGE ACT, 1955 – Section 13(1)(ia)

(i) Divorce on the ground of mental cruelty – After solemnization of marriage, couple lived together only for three days – Husband and family members intimated the wife that she cannot continue her studies and harassed her for bringing very meager amount of dowry and demanded one lakh cash and motor cycle – Wife was also subjected to unnatural sexual intercourse and also physically abused – Both were living separately for 10 years which indicates a case of irretrievable break down of marriage – Husband treated wife with mental cruelty and wife is entitled for divorce.

(ii) Appreciation of evidence – Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence – Inference to be drawn from the facts and circumstances of each case.

हिन्दू विवाह अधिनियम, 1955 – धारा 13(1)(ia)

(i) मानसिक क्रूरता के आधार पर विवाह विच्छेद – विवाह संपन्न होने के उपरांत, दंपत्ति केवल तीन दिनों के लिए एक साथ रहे – पति और परिवार के सदस्यों ने पत्नी को सूचित किया कि वह अपनी पढ़ाई जारी नहीं रख सकती है और दहेज की बहुत कम राशि लाने के लिए उसे परेशान किया एवं एक लाख नकद और मोटर साइकिल की मांग की – उसके साथ अप्राकृतिक कृत्य किया और शारीरिक रूप से दुर्व्यवहार किया गया – 10 वर्ष से दोनों अलग–अलग रह रहे थे, जो विवाह के अपरिवर्तनीय विघटन की ओर इंगित करता है – पति द्वारा पत्नी के साथ मानसिक क्रूरता की गई और पत्नी विवाह–विच्छेद की अधिकारी है।

(ii) साक्ष्य का मूल्यांकन – शारीरिक क्रूरता के मामले से भिन्न, मानसिक क्रूरता को प्रत्यक्ष साक्ष्य द्वारा स्थापित करना कठिन है – प्रत्येक मामले के तथ्यों और परिस्थितियों के आधार पर निष्कर्ष निकाला जाना चाहिए।

Bhuribai v. Bheemsingh

Judgment dated 06.03.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in First Appeal No. 377 of 2020, reported in 2025 (2) MPLJ 683 (DB)

Relevant extracts from the judgment:

Before re-appreciating the evidence this court is referring the principle applicable for determining whether the conduct complained of amounts to cruelty. Unlike the case of physical cruelty mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. Feeling of anguish, disappointment and frustration in one spouse caused by the conduct of other can only be appreciated on assessing the attending facts and circumstances as held in ***Praveen Mehta v. Inderjit Mehta, AIR 2002 SC 2562***.

It is also a fact that during the period of 10 years from the solemnization of marriage on 01.05.2015 petitioner and respondent were together only for a period of 3 days in the month of July, 2016 and that experience of the wife was a nightmare and thereafter they never came in the company of each other.

Compelling the wife to discontinue her studies or creating such an atmosphere that she is put in a position not to continue her studies is equivalent to destroy her dreams in the beginning of their marital life and forcing her to live with a person who is neither educated nor eager to improve himself certainly amounts to mental cruelty and we hold that it constitutes a ground of divorce under section 13(1)(ia) of the Hindu Marriage Act, 1955. Principal Judge, Family Court, Shajapur

recorded the finding regarding issues No.1 & 2 ignoring this fact in RCS HM No.62/2016 and this is not a case where she was taking advantage of her own fault but this is a case where wife was putting to sacrifice her dreams, career in the name of marital obligations. Accordingly, findings of the trial court on issues No.1 & 2 are set aside and it is found proved that respondent/husband treated the petitioner/wife with mental cruelty and treating the petitioner/wife with cruelty was a reasonable excuse to live separately from the husband and trial court committed error regarding issue No.1 in RCS HM No.61/2018 and it is found proved that appellant/wife has withdrawn the society of respondent/husband with reasonable excuse.

It is a case of irretrievable break down of marriage also as the appellant and the respondent are living separately since July, 2016 and there is no possibility of reunion of the parties, hence in the light of above, the orders of the Principal Judge, Family Court in RCS HM No.62/2016 & RCS HM No.61/2018 are liable to be set aside. Accordingly, both the appeals are allowed and the marriage solemnized on 01.05.2015 between the appellant and respondent is dissolved on the ground mentioned in section 13(1) (ia) of the Hindu Marriage Act, 1955 and the decree of restitution of conjugal rights in favour of the respondent/husband and against the appellant is set aside.

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172. INDIAN PENAL CODE, 1860 – Sections 107 and 306
BHARATIYA NYAYA SANHITA, 2023 – Sections 45 and 108
Abetment to suicide – Instigation – Conviction under Section 306 IPC requires a clear mens rea and an active or direct act of instigation or intentional aiding in commission of suicide – Mere trivial domestic discord or ordinary wear and tear of matrimonial life cannot be treated as abetment – Allegations of not cooking food in time by wife, compelling husband to do household work, or ordinary disputes of and like nature, even if accepted, held cannot be said to be an abetment and are insufficient to attract offence under Section 306 – Instigation must be proximate, deliberate and of such intensity that it leaves the deceased with no option but to end life – Charge under Section 306 IPC held unsustainable in absence of such material. (*Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750 & Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618* referred)

भारतीय दंड संहिता, 1860 – धाराएं 107 एवं 306
भारतीय न्याय संहिता, 2023 – धाराएं 45 एवं 108
आत्महत्या का दुष्प्रेरण – उकसाना – भारतीय दंड संहिता की धारा 306 के अंतर्गत दोषसिद्धि के लिए स्पष्ट आपराधिक मनःस्थिति एवं आत्महत्या के लिए उकसाने का सक्रिय अथवा प्रत्यक्ष कृत्य अथवा आत्महत्या कारित करने में साशय सहायता प्रदान करना आवश्यक है – मामूली घरेलू कलह अथवा वैवाहिक जीवन में सामान्य झगड़े को दुष्प्रेरण के समान नहीं लिया जा सकता – पत्नी द्वारा समय पर खाना न पकाने, पति को घरेलू काम के लिए मजबूर करने, अथवा सामान्य प्रकृति के विवाद के आरोप यदि स्वीकार भी कर लिये जाए, तब भी वह धारा 306 के अंतर्गत अपराध को आकृष्ट करने के लिए अपर्याप्त होना निर्धारित किया गया – उकसावा सन्निकट, जानबूझकर और इतनी तीव्रता का होना चाहिए कि मृतक के पास जीवन समाप्त करने के अतिरिक्त कोई विकल्प शेष न रहे – ऐसी सामग्री के अभाव में भारतीय दंड संहिता की धारा 306 के अंतर्गत आरोप को स्थिर रखे जाने योग्य न होना अभिनिर्धारित किया गया। (*गंगुला मोहन रेडडी विरूद्ध आंध्र प्रदेश राज्य, (2010) 1 एससीसी 750 एवं रमेश कुमार विरूद्ध छत्तीगढ़ राज्य (2001) 9 एससीसी 618* अनुसरित)

Nisha Saket v. State of M.P. & anr.

Order dated 20.03.2024 passed by the High Court of Madhya Pradesh in Criminal Revision No. 3161 of 2022, reported in ILR 2024 MP 2376

Relevant extracts from the order:

The Supreme Court in the case of ***Gangula Mohan Reddy v. State of Andhra Pradesh, (2010) 1 SCC 750*** needs mentioned here, in which Hon'ble Apex Court has held that "abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained. In order to convict a person under section 306 IPC, there has to be a clear mens rea to commit offence. It also requires an active act or directact which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide. Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstances individual in a given society to commit suicide,

conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty.

The Supreme Court in the case of ***Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 648*** has held that "a word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

Not preparing the food in time, compelling the husband to do the work of mopping, cleaning as well as washing clothes, dancing in the marriage of her own brother, compelling the deceased to immediately go back to their place of resident i.e. Pali Project and going to the market along with other persons for shopping purposes, cannot be said to be an abetment.

The allegations which have been made against the applicant are of trivial in nature which generally took place in every house.

Even if the entire allegations are accepted, it cannot be presumed that there was any instigation on the part of the applicant. In cases of abetment of suicide, there must be proof of direct or indirect acts or incitement of commission of suicide. Acts involve multifaceted and complex attributes of human behaviour and reactions or in the cases of abetment, Court must look for cogent and convincing proof of acts of incitement of commission of suicide. Instigation means to goad, urge forward, provoke, incite, urge or encourage to do an act.

Accordingly, charge under Section 306 of IPC which was framed by the Court below cannot be upheld.

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***173. INDIAN PENAL CODE, 1860 – Section 302/34**
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)/3(5)
ARMS ACT, 1959 – Section 25(1B)(a)
EVIDENCE ACT, 1872 – Section 32
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 26

(i) Oral dying declaration – Given to wife and brother of deceased – Reliability – Testimonies of wife and brother of deceased, as regards dying declaration allegedly made to them by deceased were consistent and had remained unshaken in cross-examination – No suggestion was given to the witness that the deceased was not in the position to speak – As accused were known to deceased for quite some time, it was possibile that deceased might have recognized them even in darkness – Evidence of witnesess on dying declaration made by the deceased is consistent and reliable – Their version of the dying declaration has not been shaken in the cross-examination – Held, dying declaration is reliable.

(ii) Ballistic expert report – The ballistic expert could not give a definite opinion on the question of whether the cartridge recovered from the body of the deceased was fired by the revolver recovered at the instance of the accused, is not relevant at all – Once the dying declarations are duly proved, this lacuna is insignificant.

(iii) Murder and common intention – Common intention of other accused was duly proved from their conduct – Conviction was proper.

भारतीय दण्ड संहिता, 1860 – धारा 302/34

भारतीय न्याय संहिता, 2023 – धारा 103(1)/3(5)

आयुध अधिनियम, 1959 – धारा 25(1ख)(क)

साक्ष्य अधिनियम, 1872 – धारा 32

भारतीय साक्ष्य अधिनियम, 2023 – धारा 26

(i) मौखिक मृत्युकालिक कथन – मृतक की पत्नी और भाई को दिया गया – विश्वसनीयता – मृतक द्वारा कथित रूप से उन्हें दिए गए मृत्युकालिक कथन के संबंध में मृतक की पत्नी और भाई की साक्ष्य एकरूप थी और प्रतिपरीक्षण में स्थिर रही – साक्षी को ऐसा कोई सुझाव नहीं दिया गया कि मृतक बोलने की स्थिति में नहीं था – यद्यपि अभियुक्तगण की मृतक से काफी समय से पहचान थी इसलिए यह संभव था कि मृतक उन्हें अंधेरे में भी पहचान लेता – मृतक द्वारा दिए गए मृत्युपूर्व कथन पर साक्षीगण की साक्ष्य एकरूप और विश्वसनीय है – प्रतिपरीक्षण में उनके मृत्युपूर्व कथन का संस्करण अस्थिर नहीं हुआ अभिनिर्धारित, मृत्युकालिक कथन विश्वसनीय है।

(ii) बैलिस्टिक विशेषज्ञ की रिपोर्ट – यह बिल्कुल भी सुसंगत नहीं है कि बैलिस्टिक विशेषज्ञ इस प्रश्न पर कोई निश्चित राय नहीं दे सके कि मृतक के शरीर से बरामद कारतूस अभियुक्त की निशानदेही पर बरामद रिवॉल्वर से चलाया गया था – एक बार जब मृत्युकालिक कथन विधिवत् प्रमाणित हो जाते हैं, तो यह कमी महत्वहीन हो जाती है।

(iii) हत्या और सामान्य आशय – अन्य अभियुक्तगण का सामान्य आशय उनके आचरण से विधिवत प्रमाणित हो गया – दोषसिद्धि उचित थी।

Suresh alias Hanumant v. State (Govt. of NCT Delhi)

Judgment dated 05.03.2025 passed by the Supreme Court in Criminal Appeal No. 2685 of 2023, reported in AIR 2025 SC 1708

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174. INDIAN PENAL CODE, 1860 – Sections 304-B and 498-A
BHARATIYA NYAYA SANHITA, 2023 – Sections 80 and 85
EVIDENCE ACT, 1872 – Sections 6 and 113-B
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 4 and 118

(i) Dowry death and cruelty – Liability of in-laws – Death by burning – Charges u/s 302 r/w/s 304B and 498A of the Code – The Trial Court acquitted the accused/appellants form the charge u/s 302, but convicted them u/s 304B – Acquittal from charge of murder – Justification – There found not worthwhile evidence to show that, except for burn injuries, which could be self-inflicted the deceased suffered any other antimortom injury – Moreover, the presence of the accused in the matrimonial home at the time of occurrence also not proved on record – Hence, acquittal from charge of murder held justified – In the factual circumstances of the present case, since the Act of cruelty or harassment in relation to any demand for dowry at the instance of the appellant's was not proven beyond doubt – Held, that all essential components of dowry death have not been proven – Therefore, the presumption u/s 113B cannot be drawn – The conviction u/s 304B has also been quashed and the accused/appellants acquitted.

(ii) Applicability of section 304-B of the Code – Whether permissible in case of suicidal death? Held, phrase "otherwise than under normal circumstances", is wide enough to encompass a suicidal death – This would not make a difference for commission of an offence punishable u/s 304-B, if all the other ingredients of dowry death stand proved.

(iii) Presumption as to dowry death u/s 113-B of the Act – Held, is not applicable in respect of commission of an act of cruelty or harassment in connection with any demand for dowry, which is one of the essential ingredients for the offence of dowry death – To prove the essential ingredients of offence, burden is on the prosecution – If all the necessary ingredients of dowry death is not proved beyond reasonable doubt, the presumption u/s 113-B of the Act would not be available to the prosecution.

भारतीय दंड संहिता, 1860 – धाराएं 304–ख एवं 498–क
भारतीय न्याय संहिता, 2023 – धाराएं 80 एवं 85
साक्ष्य अधिनियम, 1872 – धाराएं 6 एवं 113–ख
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 4 एवं 118

(i) दहेज मृत्यु एवं क्रूरता – ससुराल वालों का दायित्व – जलने से मृत्यु – भारतीय दंड संहिता की धारा 302 सहपठित धारा 304 ख एवं 498–क के अंतर्गत आरोप – विचारण न्यायालय द्वारा अभियुक्त/अपीलकर्तागण को धारा 302 के आरोप से दोषमुक्त किया गया किंतु धारा 304 ख के अंतर्गत दोषसिद्ध किया गया – हत्या के आरोप से दोषमुक्ति – औचित्य – यह दर्शित करने के लिए कोई सार्थक प्रमाण नहीं मिला कि जलने की चोट, जो स्वकारित हो सकती हैं, के अतिरिक्त मृतिका को कोई अन्य मृत्युपूर्व उपहति कारित हुई थी – इसके अतिरिक्त, घटना के समय वैवाहिक घर में अभियुक्त की उपस्थिति भी अभिलेख पर प्रमाणित नहीं थी – अतः हत्या के आरोप से दोषमुक्ति को उचित ठहराया गया – प्रकरण की तथ्यात्मक परिस्थितियों में अपीलकर्तागण के स्तर पर दहेज की किसी मांग के संबंध में क्रूरता या उत्पीड़न किया जाना संदेह से परे प्रमाणित नहीं, – अभिनिर्धारित, दहेज मृत्यु के सभी आवश्यक घटक प्रमाणित नहीं है – अतः धारा 113–ख के अंतर्गत उपधारणा निर्मित नहीं की जा सकती है – धारा 304ख के अंतर्गत भी दोषसिद्धि अपास्त एवं अभियुक्त/अपीलकर्तागण को दोषमुक्त किया गया।

(ii) संहिता की धारा 304ख की प्रयोज्यता – क्या आत्महत्यात्मक मृत्यु के मामले में अनुज्ञेय है? अभिनिर्धारित, वाक्यांश सामान्य परिस्थितियों से अन्यथा आत्महत्यात्मक मृत्यु को आवृत करने के लिए पर्याप्त विस्तृत है – यदि दहेज मृत्यु के अन्य सभी आवश्यक घटक सिद्ध हों तो इससे धारा 304(ख) के अंतर्गत दंडनीय अपराध घटित होने से कोई अंतर नहीं पड़ेगा।

(iii) अधिनियम की धारा 113ख के अंतर्गत 'दहेज मृत्यु' की उपधारणा – अभिनिर्धारित, दहेज के लिए किसी मांग के संबंध में, क्रूरता या उत्पीड़न का कार्य किए जाने के संबंध में प्रयोज्य नहीं होती है, जो कि दहेज मृत्यु के अपराध के आवश्यक घटकों में से एक है – अपराध के आवश्यक घटकों को प्रमाणित करने का भार अभियोजन पर होता है – यदि दहेज मृत्यु के सभी आवश्यक घटक युक्तियुक्त संदेह से परे प्रमाणित नहीं होते हैं तो अधिनियम की धारा 113ख के अंतर्गत उपधारणा अभियोजन को उपलब्ध नहीं होगी।

Shoor Singh and anr. v. State of Uttarakhand

Judgment dated 20.09.2024 passed by the Supreme Court in Criminal Appeal No. 249 of 2013, reported in (2025) 2 SCC 815

Relevant extracts from the judgment:

Before we proceed to test the merit of the rival submissions, it would be useful to cull out certain facts as regards which there is no serious dispute. These are:

(a) the deceased was married to the son of the appellants within seven years of her death;

(b) the deceased died an unnatural death on account of ante-mortem burn injuries;

(c) place of death of the deceased was her matrimonial home;

(d) just 18 days before her death, the deceased had given birth to a male child;

(e) prior to her death there was no police complaint or FIR in respect of harassment of the deceased for any reason whatsoever;

(f) there is no evidence that any of the accused demanded dowry, or a motorcycle, or cash from the family members of the deceased either before the marriage or at the time of marriage; and

(g) there is no evidence that the deceased was physically assaulted by any of the accused in connection with demand for dowry or motorcycle or cash.

To constitute a 'dowry death', punishable under Section 304- B7 IPC, following ingredients must be satisfied:

i. death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances;

ii. such death must have occurred within seven years of her marriage;

iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

iv. such cruelty or harassment must be in connection with any demand for dowry.

The phrase 'otherwise than under normal circumstances' is wide enough to encompass a suicidal death.

When all the above ingredients of 'dowry death' are proved, the presumption under Section 113-B of the Evidence Act is to be raised against the accused that he has committed the offence of 'dowry death'. What is important is that the presumption under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of

the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of commission of the offence of 'dowry death' by the accused when all the essential ingredients of 'dowry death' are proved beyond reasonable doubt by ordinary rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death' the burden is on the prosecution.

In the instant case, it is not in dispute that the deceased died otherwise than under normal circumstances within seven years of her marriage. However, the issue between the parties is about her being subjected to cruelty or harassment by her husband or his relative, soon before her death, in connection with any demand for dowry.

The testimonies of PW-1, PW-2 and PW-3 do not indicate that any demand for dowry was made by the accused-appellants either before or at the time of marriage of the deceased with their son. Further, there is no evidence that the accused appellants directly demanded a motorcycle or cash from any of the above witnesses. In fact, evidence is to the effect that the deceased had informed PW-1 and PW-2 on 4.1.2007 and 11.1.2007 about the demand for a motorcycle and cash. Further, from the deposition of PW-1 and PW-2, it appears that the aforesaid demand was not in connection with marriage but as a mark of celebration on birth of a male child.

Thus, there appears to be a knee-jerk reaction to the unnatural death of their daughter to make out a case of dowry death. Besides that, no independent witness of the vicinity was examined. In our considered view, therefore, one of the essential ingredients of dowry death, namely, any demand for dowry, was not proved beyond reasonable doubt.

Indisputably, the accused have not been convicted for murder, and rightly so, because there was no worthwhile evidence to show that except for the burn injuries, which could be self- inflicted, the accused suffered any other ante- mortem injury. Moreover, the presence of the accused in the house at the time of occurrence is not proved. In such circumstances, the death was most probably suicidal though this would not make a difference for commission of an offence punishable under Section 304-B IPC if all the other ingredients of dowry death stand proved. But, as noted above, here harassment/ cruelty at the instance of the appellants in connection with any demand for dowry has not been proved beyond reasonable doubt.

As regards the reason to commit suicide, though it is not necessary for us to dwell upon, suffice it to say that husband of the deceased was in service and stayed away from the deceased. Suggestion was given to the prosecution witnesses, and statement was also made under Section 313 CrPC, that the deceased used to remain depressed for being unable to join her husband at the place of his posting due to

lack of residential quarter. That apart, a photograph of the deceased (Ex. Kha 1), regarding which no dispute was raised by the prosecution witnesses, showing her alone with a male stranger had surfaced. In the statement under Section 313 CrPC a stand was taken that this photograph had shamed her.

Be that as it may, once all the necessary ingredients of dowry death have not been proved beyond reasonable doubt, the presumption under Section 113-B of the Evidence Act would not be available to the prosecution. Hence, in our considered view, the appellants are entitled to be acquitted of the charge of offences punishable under Section 304-B and 498-A IPC.

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175. INDIAN PENAL CODE, 1860 – Sections 307 and 326
BHARATIYA NYAYA SANHITA, 2023 – Sections 109 and 118(2)
CRIMINAL PROCEDURE CODE, 1973 – Section 320
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 359

(i) Offence of attempt to murder and causing grievous hurt by dangerous weapon and means – Single victim injured – Conviction under Sections 307 and 326 IPC not sustainable simultaneously when injury is to only one person – In such case, charge and conviction must be under the graver section alone – Held, where accused caused grievous injury with intent to kill, he would be convicted only Under Section 307 IPC and not under Section 326 of IPC.

(ii) Compromise in non-compoundable offence – Effect on sentencing – Though offence under Section 307 IPC is non-compoundable, compromise between accused and injured can be considered for reduction of sentence – Parties were residing peacefully in same locality post-incident and compromise was genuine, sentence reduced to period already undergone (approx. 5½ months) with enhanced fine of ₹ 10,000 in place of ₹ 2,000

भारतीय दंड संहिता 1860 – धाराएं 307 एवं 326
भारतीय न्याय संहिता, 2023 – धाराएं 109 एवं 118(2)
दण्ड प्रक्रिया संहिता, 1973 – धारा 320
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 359

(i) हत्या के प्रयास और खतरनाक आयुध एवं साधनों से घोर उपहति कारित करने का अपराध – एकल पीडित आहत – जब उपहति केवल एक व्यक्ति को कारित हुई है, तब धारा 307 और 326 भारतीय दंड संहिता के अंतर्गत एक साथ दोषसिद्धि स्थिर रखे जाने योग्य नहीं – ऐसे मामले

में, आरोप एवं दोषसिद्धि केवल गुरूत्तर धारा में की जानी चाहिए – अभिनिर्धारित, जहाँ अभियुक्त ने हत्या के आशय से घोर उपहति कारित की वहाँ उसे केवल धारा 307 भारतीय दंड संहिता के अंतर्गत दोषसिद्ध किया जाएगा एवं धारा 326 भारतीय दंड संहिता के अंतर्गत नहीं किया जाएगा।

(ii) अशमनीय अपराध में राजीनामा – दण्ड पर प्रभाव – यद्यपि धारा 307 भारतीय दंड संहिता के अंतर्गत अपराध अशमनीय है, दण्डादेश को कम करने हेतु अभियुक्त और आहत के मध्य हुए राजीनामा पर विचार किया जा सकता है – घटना के बाद पक्षकार एक ही क्षेत्र में शांतिपूर्वक रह रहे थे एवं राजीनामा वास्तविक था, दंडादेश पहले से ही भुगती गई अवधि (लगभग 5½ माह) तक कम कर दी गई तथा जुर्माने की राशि 2,000/– रूपये के स्थान पर बढ़ा कर राशि 10,000/– रूपये कर दी गई।

Shravan v. State of M.P.

Judgment dated 13.04.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 1084 of 2024, reported in ILR 2024 MP 2370

Relevant extracts from the judgment:

Having gone through the record of the case it is found that in this case injured is only one person Amol Jain (P.W.1), however, in spite of that learned trial Court has convicted the appellant for offence under Section 326 and 307 of IPC and passed the punishment in both the sections. As per law when only one person has been injured charged can be framed only under grave section and conviction can also be passed only in grave section. In these conditions offence under Section 326 of IPC is not sustainable.

If the accused caused a grievous injury by a sharp weapon to injured with intention to cause his death, the accused would be convicted for only 307 of IPC for attempt to murder but not for offence under 326 or 325 of IPC for the same injured. Hence, charge can be framed for 307 of IPC, but if attempt to murder is not established, he may be convicted for 326 or 325 of IPC or even 324 of IPC. In this case the offence of 307 of IPC is made out hence the appellant cannot be convicted for lesser offence of 326 of IPC.

Now, the Court is turning to the sentencing part of non-compoundable offence under Section 307 of IPC and effect of compromise placed by the complainant/injured and accused persons.

As the offence under Section 307 of the Indian Penal Code are not compoundable under Section 320 of the Code of Criminal Procedure, 1973, it is not possible to pass the order of acquittal on the basis of compromise but, it is by now well settled that such a compromise can be taken into account for reduction of sentence. The appellant and the complainant are living in the same society, they are residing happily since last so many years, they want to live with peace, and therefore, to meet the ends of justice, the sentence of imprisonment awarded against the appellants may be reduced to the period already undergone.

Taking into consideration that the incident had taken place in the year 2022 and further the appellant has already undergone jail sentence of approximately five and half Months and no fruitful purpose would be served in keeping the appellants in jail even after the compromise between the parties, this Court is of the view that while maintaining the conviction under sections 307 of IPC, the jail sentence under these offences is reduced to the period already undergone by enhancing fine amount from Rs. 2,000/- to Rs. 10000/-.

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176. INDIAN PENAL CODE, 1860 – Section 376
BHARATIYA NYAYA SANHITA, 2023 – Section 64
EVIDENCE ACT, 1872 – Sections 3 and 118
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2 and 124
Rape of minor girl – Circumstantial evidence – Testimony of child witness – Allegation of committing rape of minor girl – Effect of silence of prosecutrix – Trial court had recorded that when asked about incident, girl child was silent and only shed tears – Silence of the child would not accrue benefit to accused – Absence of evidence of prosecutrix is not in all cases, a negative to be accounted for in the prosecution case – There was contradiction in statement recorded in FIR and statement made in Court about position of accused found by informant – Said discrepancy was not put to informant so as to get an answer from him in this regard – Doctor's opinion that cause of injury could be through sexual intercourse or accident and finding that injury on genital organ of accused being possible only due to forceful intercourse with a minor female, pointed to accused having committed offence against prosecutrix – No animosity between accused and father of prosecutrix was established – Acquittal was set aside.

भारतीय दंड संहिता, 1860 – धारा 376
भारतीय न्याय संहिता, 2023 – धारा 64
साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 118
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2 एवं 124

अवयस्क बालिका का बलात्संग – परिस्थितिजन्य साक्ष्य – बाल साक्षी की साक्ष्य – अवयस्क बालिका के साथ बलात्संग करने का आरोप – अभियोक्त्री के मौन रहने का प्रभाव – विचारण न्यायालय ने अभिलिखित किया था कि जब घटना के बारे में पूछा गया, तो अभियोक्त्री चुप थी और केवल आंसू बहा रही थी – बालिका के चुप रहने का लाभ आरोपी को नहीं मिलेगा – प्रत्येक मामले में अभियोक्त्री के साक्ष्य की अनुपलब्धता, अभियोजन मामले के लिये नकारात्मक नहीं है – प्रथम सूचना रिपोर्ट में लिखित कथन और सूचनाकर्ता द्वारा आरोपी की स्थिति के बारे में न्यायालय में दिए गए कथन में विरोधाभास था – सूचनाकर्ता का सामना उक्त विरोधाभास से नहीं कराया गया ताकि उससे इस संबंध में उत्तर मिल सके – डॉक्टर की राय कि चोट का कारण संभोग या दुर्घटना हो सकता है और यह निश्कर्श कि आरोपी के जननांग अंग पर चोट केवल एक अवयस्क बालिका के साथ बलपूर्वक संभोग के कारण संभव है, यह इशारा करते हैं कि अभियुक्त ने अभियोक्त्री के साथ अपराध कारित किया है – अभियुक्त एवं अभियोक्त्री के पिता के मध्य शत्रुता स्थापित नहीं – दोषमुक्ति को अपास्त किया गया।

State of Rajasthan v. Chatra

Judgment dated 18.03.2025 passed by the Supreme Court in Criminal Appeal No. 586 of 2017, reported in AIR 2025 SC 1755

Relevant extracts from the judgment:

Recently, a coordinate Bench of this Court in ***State of Madhya Pradesh v. Balveer Singh, 2025 SC***C ***OnLine 390***, speaking through J.B. Pardiwala, J., considered a large number of prior decisions of this Court to lay down guidelines for the appreciation of the evidence of a child witness. We have perused through the same.

Reference can also be made to other judgments in ***State of M.P v. Ramesh, (2011) 4 SCC 786, Panchhi v. State of U.P., (1998) 7 SCC 177*** and ***State of U.P. v. Ashok Dixit, (2000) 3 SCC 70*** etc.

The principles that can be adduced from an overview of the aforesaid decisions are:

a. No hard and fast rule can be laid down *qua* testing the competency of a child witness to testify at trial.

b. Whether or not a given child witness will testify is a matter of the Trial Judge being satisfied as to the ability and competence of said witness. To determine the same the Judge is to look to the manner of the witness, intelligence, or lack thereof, as may be apparent; an understanding of the distinction between truth and falsehood etc.
c. The non-administration of oath to a child witness will not render their testimony doubtful or unusable.
d. The trial Judge must be alive to the possibility of the child witness being swayed, influenced and tutored, for in their innocence, such matters are of ease for those who may wish to influence the outcome of the trial, in one direction or another.
e. Seeking corroboration, therefore, of the testimony of a child witness, is well-placed practical wisdom.
f. There is no bar to cross-examination of a child witness. If said witness has withstood the cross-examination, the prosecution would be entirely within their rights to seek conviction even solely relying thereon.

Therefore, we move to the statement of the other witnesses. The ground adopted by the High Court in disbelieving the statement of PW-2 is that there was a material contradiction between his statement which formed part of the FIR, and his deposition before the Court. The FIR, as reproduced supra, states that when PW-2 reached the spot of the offence, the garment worn by the accused (Dhoti) was in loose, open condition and he ran out upon seeing the deponent. Whereas, in the deposition made before the Court, also reproduced supra, the statement is to the effect that when he saw the accused, he was bent down and 'seated' upon the victim, which he had allegedly mentioned to the authorities, and they neglected to mention the same in the report. At this juncture, it is important to note the testimony of PW-2 does not reveal whether he is able to read/write, it does not speak to the factum of who wrote the report, and neither is it clear that if someone else, that is a scribe, wrote the report, as to whether he was examined or not.

The question that arises for consideration is whether this contradiction in the FIR versus the statement made in Court is material, in as much as, to discredit his statement, thereby landing a fatal blow to the prosecution case. A Constitution Bench of this Court in *State of Punjab* v. *Kartar Singh*[35] speaking through Pandian J., held that the purpose of cross-examination is to discredit the witness/elicit facts from such person, which may favour the other party, etc. Having gone through the cross-examination of this witness, we find none of these criteria to have been met. Even this discrepancy was not put to him so as to get an answer from the witness in this regard.

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177. INDIAN PENAL CODE, 1860 – Sections 377 and 498-A
BHARATIYA NYAYA SANHITA, 2023 – Section 85
CRIMINAL PROCEDURE CODE, 1973 – Section 482
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 528

(i) Dowry demand – Allegations of dowry demand and subsequent harassment are omnibus, without specific dates and events in complaint, implicating relatives of husband just to exert pressure over husband to succumb, after filing of divorce petition – FIR quashed being afterthought, false and fabricated.

(ii) Unnatural sex – Allegation against husband that offence was committed around April-May, 2018 for first time – Circumstances – Marriage was solemnized on 29.04.2018, couple last resided together on 06.08.2020 and complaint was made for the first time on 24.01.2021, on which FIR was registered – No offence made out in absence of medical evidence regarding injuries.

(iii) FIR, when lodged with delay – Duty of Court – Delay is not always the vital ground to discard the complaint, however it is duty of court to circumspect about the allegations, its nature as revealed from evidence, so that innocent people may not suffer.

भारतीय दण्ड संहिता, 1860 – धाराएं 377 एवं 498–क
भारतीय न्याय संहिता, 2023 – धारा 85
दण्ड प्रक्रिया संहिता, 1973 – धारा 482
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 528

(i) दहेज की मांग – दहेज की मांग और पष्चातवर्ती उत्पीड़न के आरोप सर्वव्यापी है, परिवाद में विशिष्ट दिनांक एवं घटनाक्रम के बिना, विवाह विच्छेद याचिका प्रस्तुत होने के उपरान्त पति पर झुकने का दबाव बनाने के लिए पति के नातेदारों को संलिप्त किया गया – प्रथम सूचना रिपोर्ट बाद में सोच–विचार कर, मिथ्या एवं मनगढ़ंत होने से अपास्त की गई।

(ii) अप्राकृतिक यौन संबंध – पति के विरूद्ध आरोप कि प्रथम बार अप्रैल–मई, 2018 के आसपास अपराध कारित किया गया था – परिस्थितियां – विवाह दिनांक 29.04.2018 को संपन्न हुआ, युगल अंतिम बार दिनांक 06.08.2020 को एक साथ निवासरत रहे एवं प्रथम बार दिनांक 24.01.2021 को परिवाद प्रस्तुत किया गया, जिस पर प्रथम सूचना रिपोर्ट पंजीकृत की गई – उपहति के संबंध में चिकित्सा साक्ष्य के अभाव में कोई अपराध नहीं बनता है।

(iii) प्रथम सूचना रिपोर्ट, जब विलंब से दायर की गई – न्यायालय का कर्तव्य – विलंब हमेशा परिवाद को खारिज करने का सारवान आधार नहीं होता, किन्तु यह न्यायालय का कर्तव्य है कि वह आरोपों, साक्ष्य से ज्ञात उसकी प्रकृति का अवलोकन करे, जिससे निर्दोष प्रभावित व्यथित न हो।

Major Amit Pathak v. State of M.P. and anr.

Order dated 01.07.2024 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Criminal Case No. 51674 of 2022, reported in ILR 2024 MP 2413

Relevant extracts from the order:

It appears that marriage was solemnized on 29.04.2018 and contents of written complaint on which FIR was registered indicates that after marriage when both went to Manali, purportedly for honeymoon, then petitioner committed offence of unnatural sex for the first time with respondent No.2. Therefore, as alleged offence of unnatural sex was committed around April -May, 2018 for the first time whereas the complaint was made for the first time on 24.01.2021 on which FIR was registered. Therefore, after commission of offence for the first time, respondent No.2 took 2 years and 9 months to lodge FIR regarding commission of offence under Section 377 of IPC against her husband. During this period, she went many a times to her parents' home at Bhind but never told anyone about such incident.

Therefore, it is difficult to assume that a lady who is so proactive about her disposition, never raised her voice against such act of unnatural sex either wither senior officers of petitioner or when counseling undertaken between the parties by the senior officers of the petitioner. Therefore, allegations are to be tested with caution.

Although delay is not always the vital ground on which complaint can be discarded but once such inordinate delay occurred then Court has to be circumspect about the allegations and its nature as surfaced in the evidence, so that innocent people may not suffer.

In medical examination, no injuries were found over her person/private parts.

So far as allegation of dowry demand and subsequent harassment is concerned, all allegations are omnibus in nature. No specific dates and events have been given by the complainant. She only refers allegations about demand of Fortuner Car. Looking to the conduct of complainant which compelled the petitioner to write letter dated 11.12.2020 to the Police Station Jalukie, Nagaland about mental condition and suicidal tendency of the complainant and different

counseling sessions held by senior officers of petitioner for mercurial behaviour of complainant, there is no iota of doubt that it is an afterthought. All allegations precipitated after filing of divorce petition. Prior to it she never made any allegation of harassment for dowry demand. She has also filed an application under Section 12 of the Act of 2005 before the JMFC, Gwalior on 22.06.2021 which is pending consideration. All these proceedings are subsequent to complaints made by petitioner and divorce case filed.

Therefore, in the present facts and circumstances of the case, allegations of dowry demand is false and fabricated. It is an afterthought vis-a-vis complaints made by petitioner.

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178. INDIAN PENAL CODE, 1860 – Sections 392 and 397
BHARATIYA NYAYA SANHITA, 2023 – Sections 309(4) and 311
ARMS ACT, 1959 – Section 25

Robbery – Accused persons convicted by the Trial Court for the offence punishable u/s 392/397 IPC and Section 25 of the Arms Act – High Court upheld conviction – Supreme Court found discrepancies in prosecution evidence regarding identification and arrest of accused – No test identification parade conducted – Some witnesses stated that accused were not the robbers – Recovery of weapons and looted articles not proved – Benefit of doubt given to accused – Conviction set aside – Accused persons acquitted.

भारतीय दण्ड संहिता, 1860 – धाराएं 392 एवं 397
भारतीय न्याय संहिता, 2023 – धाराएं 309(4) एवं 311
आयुध अधिनियम, 1959 – धारा 25

लूट – अभियुक्तगण को विचारण न्यायालय द्वारा भा0दं0सं0 की धारा 392/397 और आयुध अधिनियम की धारा 25 के अंतर्गत दंडनीय अपराध के लिए दोषसिद्ध किया गया – उच्च न्यायालय ने दोषसिद्धि को यथावत रखा – उच्चतम न्यायालय ने अभियुक्तगण की पहचान और गिरफ्तारी के संबंध में अभियोजन की साक्ष्य में विसंगतियां पाई – पहचान परेड नहीं कराई गई – कुछ साक्षियों ने कहा कि अभियुक्त लुटेरे नहीं थे – आयुधों और लूटी गई वस्तुओं की बरामदगी प्रमाणित नहीं हुई – अभियुक्तगण को संदेह का लाभ दिया गया – दोषसिद्धि अपास्त – अभियुक्तगण को दोषमुक्त किया गया।

Wahid v. State Govt. of NCT of Delhi

Judgment dated 04.02.2025 passed by the Supreme Court in Criminal Appeal No. 201 of 2020, reported in AIR 2025 SC 1087

Relevant extracts from the judgment:

In the instant case, neither the accused persons were named nor they were known either to the complainant or the witnesses from before. Prosecution case is rather too simple, that is, two days later, on 05.12.2011, PW-1 himself noticed the accused persons standing near DTC Bus Depot at Nand Nagri; immediately thereafter he informed the police about their presence; the police went to the spot, arrested them, and, upon search of those persons, recovered from them weapons including screw driver, as described in the FIR, used by the robbers to threaten the passengers.

The aforesaid prosecution story of four accused persons, not belonging to one family, being spotted together at a public place (i.e., bus depot), that too near a police station, just two days after the incident, that too with weapons corresponding to the weapons held by the robbers mentioned in the FIR, appears too well-crafted to be real. More so, when we consider it in conjunction with the arrest memorandums of the four accused which indicate that they were arrested post 10 pm on 05.12.2011. This is quite an odd hour for any person to venture out on a winter night. PW-1, who is a witness to the arrest memorandums, in his statement-in- chief said that while he was going to the police station to handover mobile purchase receipt, he spotted the accused persons. Such a story appears improbable because PW-1, who is not a resident of Nand Nagri, and had suffered an act of robbery just two days before, in ordinary circumstances would not venture out so late in the night, just to hand over receipt regarding purchase of his robbed mobile. These circumstances make the prosecution story relating to the manner of arrest highly improbable. Therefore, it should have put the court on guard as to look for corroborative pieces of evidence before accepting the prosecution story as credible. One such corroborative piece of evidence could be recovery of looted articles from the accused which, in the present case, is absent inasmuch as the trial court has already acquitted the appellant(s) of the charge of offence punishable u/s 411 IPC.

Once we doubt the manner in which the accused were stated to have been arrested, the alleged recovery of screw driver, knives and country- made pistol made at the time of arrest is rendered unacceptable. Moreover, weapons /articles allegedly recovered are not so unique that they cannot be arranged.

Normally, where accused persons are unknown and are not named in the FIR, if the prosecution case as regards the manner in which they were arrested is disbelieved, the Court should proceed cautiously with other evidence and objectively determine whether all other circumstances were proved beyond reasonable doubt. In this light we shall now consider the evidence relating to

identification of the accused persons. Admittedly, this is a case of night incident. Though seven eye witnesses of the incident were examined by the prosecution, only three (i.e., PW-1, PW-5 and PW-6) identified the accused in court. Out of the remaining four, three including the driver categorically stated that the accused persons are not those who robbed the passengers that night. The fourth one stated that it was too dark, therefore, he is unable to recognise. PW-1, at whose instance the arrest of the accused persons was allegedly effected, during cross-examination, stated that he saw the accused persons first on the date of the incident and second on the date fixed in the case. Admittedly, no test identification parade was conducted and the statement of PW-1 was recorded in court on 28.05.2013, that is, after 16 months of the incident. In such circumstances, not much reliance can be placed on his statement.

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179. INDIAN PENAL CODE, 1860 – Sections 415 and 420
BHARATIYA NYAYA SANHITA, 2023 – Sections 318(1) and 318(4)
Offence of cheating – Commercial dispute – Quasment of FIR and criminal proceedings – Allegation that accused posing himself as reputed and trustworthy businessman purchased huge quantity of coal from complainant but failed to make payment for majority purchases – Between 2015 and 2017, accused and complainant were engaged in continuous business transaction wherein latter supplied coal under various invoices with a 15 days' credit limit – Despite repeated breaches of credit limit and failure to pay by accused, complainant continues to supply coal, resulting in outstanding dues – Material collected during investigation, including statements from two bankers and a builder, showed that accused had substantial landed properties mortgaged to banks, had repaid loans regularly until 2016 and even an additional loan was sanctioned to him in 2018 – This demonstrated that accused was a businessman of substance and no evidence suggested that he was bankrupt or had knowingly suppressed his financial situation – Mere failure to fulfill a promise to pay does not indicate dishonest intention, unless deception was present at outset of transaction – No evidence indicated that additional supplies were made or that complainant suffered a wrongful loss – Business losses and financial setbacks could not be clothed with culpability to utilize process of criminal law to recover outstanding dues – FIR and criminal procceedings were quashed.

भारतीय दंड संहिता, 1860 – धाराएं 415 एवं 420
भारतीय न्याय संहिता, 2023 – धाराएं 318(1) एवं 318(4)

छल का अपराध – वाणिज्यिक विवाद – प्रथम सूचना रिपोर्ट और दाण्डिक कार्यवाही को अपास्त करना – आरोप है कि अभियुक्त ने स्वयं को प्रतिष्ठित और भरोसेमंद व्यवसायी के रूप में प्रस्तुत करते हुए परिवादी से भारी मात्रा में कोयला क्रय किया, लेकिन अधिकांश क्रय के लिए भुगतान करने में विफल रहा – 2015 और 2017 के मध्य, आरोपी और परिवादी निरंतर व्यापारिक लेनदेन में संलिप्त थे, जिसमें परिवादी ने 15 दिनों की क्रेडिट सीमा के साथ विभिन्न चालान के अंतर्गत कोयले की आपूर्ति की – क्रेडिट सीमा के निरंतर उल्लंघन और आरोपी द्वारा भुगतान करने में विफलता के उपरांत भी, परिवादी ने कोयले की आपूर्ति जारी रखी, जिसके परिणामस्वरूप राशि अधिषेष हो गई – अनुसंधान के दौरान एकत्र की गई सामग्री, जिसमें दो बैंकरों और एक बिल्डर के कथन शामिल हैं, से ज्ञात हुआ कि आरोपी के पास बैंकों के पास गिरवी रखी गई पर्याप्त भूमि–संपत्ति थी, उसने 2016 तक नियमित रूप से ऋण के भुगतान किये थे और यहां तक कि 2018 में उसे एक अतिरिक्त ऋण भी मंजूर किया गया था – इससे यह दर्शित होता है कि अभियुक्त एक प्रभावशाली व्यवसायी था और ऐसी कोई साक्ष्य नहीं थी कि वह दिवालिया था या उसने जानबूझकर अपनी वित्तीय स्थिति को छुपाया था – मात्र भुगतान करने का वचन पूर्ण न करना बेईमानी को इंगित नहीं करता है, जब तक कि संव्यवहार के प्रारंभ में प्रवंचना विद्यमान न हो – साक्ष्य से ऐसा दर्षित नहीं कि अतिरिक्त आपूर्ति की गई थी या परिवादी को सदोष अभिलाभ कारित हुआ था – व्यवसायिक नुकसान और वित्तीय असफलताओं को अधिशेष राशि वसूलने के लिए दाण्डिक विधि की प्रक्रिया का उपयोग कर अभियोज्य नहीं किया जा सकता – प्रथम सूचना रिपोर्ट और दाण्डिक कार्यवाही अपास्त की गई।

Manish v. State of Maharashtra and anr.

Judgment dated 02.04.2025 passed by the Supreme Court in Criminal Appeal No. 1742 of 2025, reported in AIR 2025 SC 1773

Relevant extracts from the judgment:

There is no cavil that in some cases a commercial dispute may give rise to a criminal offence in addition to a civil cause of action. The test to determine whether a case would attract penal consequences is as follows: –

> "Did the offending party make dishonest representation at the inception of the transaction and induce the other party to part with property, or act in a manner which but for such representation, the latter would not have done ***[Hridaya Ranjan Prasad Verma and***

ors. v. State of Bihar and ors., (2000) 4 SCC 168 Satishchandra Ratanlal Shah v. State of Gujarat and anr., (2019) 9 SCC 148 Delhi Race Club (1940) Ltd. and ors. v. State of Uttar Pradesh and anr., (2024) 10 SCC 690]"

This fine distinction is brought out in illustration (g) of Section 415 of IPC which reads as follows: –

> "(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

In order to attract the penal provision, the uncontroverted allegations including material collected during investigation must disclose that pursuant to the assurance in the subsequent agreement, the 2nd non applicant had parted with property, that is to say made further supplies and suffered wrongful loss. It is nobody's case after the subsequent agreement further supplies had been made or the 2nd nonapplicant had been subjected to wrongful loss.

On the contrary, appellant had clarified he had suffered continuous business setbacks. Due to losses, he was unable to pay the 2nd non-applicant. He had sold the coal to a brick manufacturer and suffered losses thereto. Vicissitudes in the commercial market are well known. Failure to pay due to unfortunate business losses cannot be clothed with culpability and the process of criminal law utilized to recover outstanding dues. ***[Sarabjit Kaur v. State of Punjab, (2023) 5 SCC 360]***

The proposition of law declared in ***Mohsinbhai Fateali v. Emperor, 1931 SCC OnLine Bom 55*** does not help the 2nd non applicant. In the said case, the Bench held merely because the accused had subsequently filed for insolvency, it cannot be held that he had no reasonable expectation to pay for the goods on the date of contract.

Beaumont J. opined to prove the offence of cheating, the prosecution must establish: –

> "……at the date of the contract the circumstances of the accused were such that he must have known that it was practically impossible that he would be able to pay for the goods"
>
> Nothing has been placed on record to demonstrate the appellant was in dire financial straits at the time when the 2nd non-applicant had supplied coal.

In ***Khoda Bakhsh v. Bakeya Mundari, 1905 SCC OnLine Cal 170,*** the accused had deceived the complainant to part with money on the assurance to liquidate a mortgage debt and utilized the money to repay another debt which he had suppressed. No such divergence of funds/goods is made out in the factual matrix to show 'deception' by the appellant.

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180. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 9(2) and 94

Juvenility – Claim raised post-conviction before Supreme Court – Determination based on school records and statutory inquiry – Applicant aged 17 years 3 months on date of offence – Entitled to protection under Juvenile Justice (Care and Protection of Children) Act, 2015 – Delay in raising claim immaterial – Right to claim juvenility can be exercised at any stage, including post final conviction – Sessions Court enquiry confirmed age based on documentary and oral evidence – Minor discrepancy in name immaterial where parentage is undisputed – Conviction by Supreme Court set aside on proof of juvenility – Applicant acquitted – Law reiterated that juvenile status must be determined in accordance with statutory safeguards, even after finality of criminal proceedings.

किशोर न्याय (बालाकों की देख–रेख और संरक्षण) अधिनियम, 2015 – धाराएं 9(2) एवं 94

किशोरावस्था – उच्चतम न्यायालय के समक्ष दोषसिद्धि के उपरांत उठाया गया दावा – विद्यालय अभिलेख और वैधानिक जांच के आधार पर निर्धारण – अपराध दिनांक को आवेदक की आयु 17 वर्ष 3 माह थी – किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 के अंतर्गत संरक्षण का पात्र – दावा उठाने में विलंब अप्रासंगिक – किशोरावस्था का दावा किसी भी चरण में किया जा सकता है, अंतिम दोषसिद्धि के बाद भी – सत्र न्यायालय की जांच ने दस्तावेजी और मौखिक साक्ष्य के आधार पर आयु की पुष्टि की – जब अभिभावकता निर्विवाद हो तब नाम में मामूली अंतर अप्रासंगिक – उच्चतम न्यायालय द्वारा की गई दोषसिद्धि किशोरावस्था के प्रमाण पर निरस्त – आवेदक दोषमुक्त – विधि को पुनः दोहराया कि किशोर की स्थिति का निर्धारण वैधानिक मापदण्डो के अनुसार किया जाना चाहिए, भले ही आपराधिक कार्यवाही अंतिम रूप ले चुकी हो।

State of Madhya Pradesh v. Ramji Lal Sharma and anr.

Judgment dated 23.09.2024 passed by the Supreme Court in Miscellaneous Application No. 261 of 2024 in Criminal Appeal No. 293 of 2022, reported in (2025) 5 SCC 697

Relevant extracts from the judgment:

It is noted that in respect of the incident dated 17.01.2002, the applicant was convicted on 24.02.2006 by the Special Sessions Judge, Bhind. Thereafter, he was acquitted by the High Court vide judgment dated 13-12-2018 ***[Ramjilal Sharma v. State of M.P., 2018 SCC OnLine MP 1834]***. Subsequently, in the appeal filed by the respondent State, this Court by judgment dated 09.03.2022 ***[State of M.P. v. Ramji Lal Sharma, (2022) 14 SCC 619]***, convicted the applicant. It is thereafter that the applicant has undergone sentence of four years and three months in all.

Subsequently, this miscellaneous application was filed and this Court vide order dated 16.05.2024 ***[State of M.P. v. Ramji Lal Sharma, 2024 SCC OnLine SC 3097]*** directed that the enquiry be conducted. Subsequently, the learned Sessions Judge has passed his order on 16.07.2024 and has submitted his report to this Court. Pursuant to the order of this Court on 16.05.2024 ***[State of M.P. v. Ramji Lal Sharma, 2024 SCC OnLine SC 3097]***, the applicant has been released on interim bail.

Therefore, on perusal of this report, we note that not only the applicant herein, but the mother as well as the Head Master of school have been examined as PW 1, PW 2 and PW 3, respectively, and as many as five documents were also considered by the learned Sessions Judge. It is on consideration of the same and having regard to Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 that the learned Sessions Judge found that the applicant was below eighteen years of age as on the date of the incident.

Although the application has been filed subsequent to the conviction ordered by this Court, we have regard to the judgment of this Court as noted above and in judgment dated 17.01.2004 in Criminal Appeal No. 64 of 2012, titled as ***Pramila v. State of Chhattisgarh, (2024) 15 SCC***, that an application for claiming juvenility may be made even after the judgment and order of conviction and sentence has been granted against a person which has attained finality.

Bearing in mind the aforesaid judgments and the report submitted by the learned Sessions Judge, pursuant to the directions of this Court, we find that the date of birth of the applicant has been proved to be 4-10-1984. Consequently, the claim of juvenility made by the applicant, who was arrayed as Accused 3 is upheld and the conviction as recorded against him by this Court is set aside and he stands acquitted. As he is on interim bail, his bail bonds stand cancelled.

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181. LAND REVENUE CODE, 1959 (M.P.) – Sections 131 and 257
CIVIL PROCEDURE CODE, 1908 – Section 80 and Order 1 Rule 3A

(i) Jurisdiction of court in easementary right – Right of way – Suit for permanent injunction was filed by plaintiff for restraining defendants to enter on the disputed property which is a private land and in possession of plaintiff – Objection raised on the ground that easement of right of way can be granted by Tehsildar u/s 131 MPLRC and suit for injunction is barred by section 257 MPLRC – Held, if the land is a private land then order passed by revenue authorities u/s 131 MPLRC can very well be challenged before the civil court despite bar contained u/s 257 MPLRC.

(ii) Necessary party in relation to private land – Disputed land is not a Government land – Suit is related to right of way on a private land – State Government is a necessary party but it is not necessary to implead the revenue authority who has passed the order u/s 131 MPLRC as a party.

भू–राजस्व संहिता, 1959 (म.प्र.) – धाराएं 131 एवं 257
सिविल प्रक्रिया संहिता, 1908 – धारा 80 एवं आदेश 1 नियम 3–क

(i) सुखाधिकार के मामले में न्यायालय का क्षेत्राधिकार – मार्ग का अधिकार – वादी द्वारा स्वयं के आधिपत्य की निजी भूमि पर निषेधित करने के लिए स्थायी निषेधाज्ञा का वाद प्रस्तुत किया कि प्रतिवादी को विवादित संपत्ति पर प्रवेश से रोका जाये इस आधार पर आपत्ति उठाई गई है कि रास्ते के अधिकार पर सुखाधिकार का निर्धारण तहसीलदार द्वारा धारा 131 भू–राजस्व संहिता के अंतर्गत किया जा सकता है और निषेधाज्ञा के लिए वाद धारा 257 भू–राजस्व संहिता द्वारा वर्जित है – अभिनिर्धारित, यदि भूमि एक निजी भूमि है तो धारा 257 भू–राजस्व संहिता के अंतर्गत वर्जित होते हुए भी राजस्व अधिकारियों द्वारा धारा 131 भू–राजस्व संहिता में पारित आदेश को सिविल न्यायालय के समक्ष चुनौती दी जा सकती है।

(ii) निजी भूमि के संबंध में आवश्यक पक्षकार – विवादित भूमि शासकीय भूमि नहीं है – वाद एक निजी भूमि पर रास्ते के अधिकार से संबंधित है – राज्य सरकार एक आवश्यक पक्षकार है परंतु यह आवश्यक नहीं है कि जिन राजस्व अधिकारीगण द्वारा धारा 131 भू-राजस्व संहिता के अंतर्गत आदेश पारित किया है उन्हें भी पक्षकार बनाया जाए।

Tolaram and ors. v. Madanlal and ors.

Order dated 17.02.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 4881 of 2023, reported in 2025 (2) MPLJ 568

Relevant extracts from the order:

Section 131 of the Code provides for adjudication by the Tehsildar disputes raised by a cultivator, relating to private easementary rights. What would be decided under Section 131 of the Code would inter alia be a dispute relating to a claim for a customary easement over a private land relating to a right of way. Definition of different easements, the manner of imposition and acquisition and the incidents and remedies in case of interference or disturbance with easement are governed by the provisions of Indian Easements Act, 1882. Easements Act refers to different methods by which easements are acquired or imposed. A private easement including a right of way to a person's land cannot be acquired in a manner not contemplated or prescribed by the Easements Act. The Code nowhere bars jurisdiction of the Civil Courts to decide upon easementary rights relating to agricultural or other lands. It neither creates nor recognizes any new category of private easementary rights not covered by the provisions of the Easements Act or which are not required to fulfil the requirements prescribed by the Easements Act. When the dominant owner has an easementary right and the servient owner disturbs, obstructs or interferes with or denies it, the remedy of the dominant owner is to approach the Civil Court for relief of declaration and/or injunction. When a person who does not have any easementary right tries to assert or exercise any easementary right over other person's land, the owner of such land can resist such assertion or obstruct exercise of easementary right and also approach the Civil Court to declare that the defendant has no easementary right of the nature claimed. It was specifically held that a suit for enforcement of any easementary right or for a declaration that the defendant does not have any easementary right or a suit for injunction to restrain defendant from exercising any easementary right is not barred by the Code. Such suits do not fall under any of the excluded matters enumerated in clauses (a) - (z-2) of Section 250 of the Code.

In addition to the fact that Section 131 of the Code does not deal with acquisition of any special easement by some method which is not referred to in the Easement Act, Sub-Section (2) of Section 131 of the Code as it then existed was also taken into consideration for holding that despite a decision under Section 131(1) of the Code a civil suit against finding of the Tehsildar would be maintainable since Sub-Section (2) provided that no order passed under Sub-Section (1) shall debar any person from establishing such rights of easement as he may claim by a civil suit but that was only an additional ground or factor, which

was taken into consideration. Sub-Section (2) of the then existing Section 131 of the Code was not the only reason for holding that a civil suit for enforcement of any easementary right or for a declaration that defendant does not have any easementary right or a suit for injunction to restrain a defendant from interfering with exercise of easementary right over plaintiff's property is not barred by the Code. Thus the principle as has been laid down in the aforesaid decision that despite passing of an order under Section 131 of the Code the aggrieved person can still approach the Civil Court by instituting a civil suit based upon easementary rights would still continue to hold the field regardless of omission of Sub-Section (2) of Section 131 of the Code providing for express remedy of instituting a civil suit in respect of an order passed under Sub-Section (1) of Section 131 of the Code. The jurisdiction of the Civil Court would still not be barred merely by virtue of Section 257 of the Code.

Thus, substantial question of law No. (A) is answered holding that the jurisdiction of the trial Court is not barred by virtue of provisions of Section 257 of the Code for challenging the orders passed by the revenue authorities under Section 131 thereof.

Admittedly, the disputed land is not Government land but is private land. The dispute between the parties is as regards a right of way. Orders have been passed by the revenue authorities in exercise of their quasi judicial authority. The suit is not in respect of any act purporting to be done by any public officer in his official capacity. There was hence no necessity for impleading the authorities whose orders are under challenge in the suit as parties thereto. Since it is their orders which are challenged and not any act done by them in their official capacity and the suit is against private persons and not against the Government, there was no requirement of compliance with the provisions of Section 80 of the Civil Procedure Code.

It may be noticed that the disputed land is agricultural land. In view of amendment to Order 1 Rule 3A of the CPC in the State of M.P. State government would be a necessary party to the same even though a formal party. Plaintiff was enjoined to implead State of M.P. as a party to the suit. However, merely for him not doing so the suit cannot be said to be bad in law and instead the plaintiff ought to be directed to implead State of M.P. as a party which can still be done.

The substantial question of law (B) is hence answered to the effect that State of M.P. is a necessary party to the suit and plaintiff is required to implead it as a party. However, the authorities who had passed the orders which have been challenged in the suit are neither necessary nor proper parties to the suit. There was no requirement of compliance with provisions of Section 80 of the CPC by the plaintiff.

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182. LAND REVENUE CODE, 1959 (M.P.) – Section 165(6)
SPECIFIC RELIEF ACT, 1963 – Sections 34 and 38
Suit for declaration of title and permanent injunction – Land belongs to Scheduled Tribe category – Plaintiff claimed the title over suit land property on the basis of Will – Without obtaining permission from Collector, land belongs to Scheduled Tribe category cannot be transferred on the basis of Will – Even if the defendant has not contested the same, it is the duty of the court to see that permission of Collector u/s 165(6) of MPLRC is obtained or not – Without such permission decree of declaration cannot be granted.

भू–राजस्व संहिता, 1959 (म.प्र.) – धारा 165(6)
विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 34 एवं 38
स्वत्व घोषणा एवं स्थायी निषेधाज्ञा के लिए वाद – अनुसूचित जनजाति श्रेणी की भूमि – वादी वसीयत के आधार पर वादग्रस्त संपत्ति पर स्वत्व का दावा करता है – कलेक्टर से अनुमति प्राप्त किए बिना, अनुसूचित जनजाति श्रेणी की भूमि को, वसीयत के आधार पर हस्तांतरित नहीं किया जा सकता – प्रतिवादी ने यद्यपि इसे चुनौती नहीं दी है परंतु यह न्यायालय का कर्तव्य है कि वह इस बात पर विचार करे कि धारा 165 (6) भू–राजस्व संहिता के अंतर्गत कलेक्टर से अनुमति प्राप्त की गई है या नहीं – ऐसी अनुमति के बिना, घोषणा की डिक्री प्रदान नहीं की जा सकती है।

Ankush Tiwari v. State of M.P. and ors.

Judgment dated 17.02.2025 passed by the High Court of Madhya Pradesh in Second Appeal No. 2837 of 2022, reported in 2025 (2) MPLJ 548

Relevant extracts from the judgment:

Courts have considered different aspects of sale and transfer and also considered the requirement of seeking permission in respect of the land which is held by a person from the State Government and a person acquiring Bhumi Swami rights or occupancy land is granted by the State Government or he is a licensee of the Government and later on becomes Bhumi Swami then the said land without permission of the revenue officer below the rank of Collector cannot be transferred. In case of ***Chambaram v. Chanda & ors., 1993 MPLJ 80***, the High Court of M.P. has very specifically dealt with the respective provision i.e. Section 165(6) of the Code, 1959 and also considered the very object of the Statute for formulating such a provision putting rider upon transfer of land belonging to tribes and also considered that if mode of Will is used for transferring a land then as to how and in

what manner the very purpose of putting rider to save the interest of the tribes would be frustrated. Not only this, but the Court has also held that the suit cannot be decreed only because the defendants have not contested the same and observed that it is the duty of the Court to see that even in absence of any opposition the claim, if any, is raised by the plaintiff is lawful then only the decree can be granted.

However, learned counsel for the appellant by relying upon the judgments has tried to emphasize that the transfer by way of a Will has not been considered to be a document of transfer of title as per Section 54 of the Transfer of Property Act and therefore, as per the language used by the Statute under Section 165(6) of the Code, 1959, the document of Will is not a document of transfer of title and therefore, the Will does not fall within the ambit of requirement of Section 165(6) of the Code, 1959. The Supreme Court recently in case of ***Sanjay Sharma v. Kotak Mahindra Bank Ltd. & ors., 2024 MPLJ Online (SC) 74*** has observed as under:

> "Section 54 of the Transfer of Property Act, 1882, defines a "sale" as the transfer of ownership in exchange for a price that is either paid, promised, or part-paid and part-promised. This provision further describes the manner in which a sale is effected. It stipulates that, in the case of tangible immovable property valued at one hundred rupees or more, the transfer can be made only through a registered instrument. The use of the term "only" signifies that, for tangible immovable property valued at one hundred rupees or more, a sale document lawful only when it is executed through a registered instrument. Where the sale deed requires registration, ownership does not pass until the deed is registered, even if possession is transferred, and consideration is paid without such registration. The registration of the sale deed for an immovable property is essential to complete and validate the transfer. Until registration is effected, ownership is not transferred.
>
> This Court in ***Babasheb Dhondiba Kute v. Radhu Vithoba Barde in SLP(C) No.29462 of 2019*** held that the conveyance by way of sale would take place only at the time of registration of a sale deed in accordance with Section 17 of the Registration Act, 2008. Till then, there is no conveyance in the eyes of law."

But, still this Court is of the opinion that the High Court in the case of ***Chambaram*** (supra) has not only considered the scope of Section 165(6) of the Code, 1959, but has also considered the very object of the word 'transfer' in the respective provision and also observed that the word 'transfer' should be interpreted in a particular manner so as to consider the object of word 'transfer' and its significance to that of the object putting embargo for seeking permission of the Collector before transferring the land holding by aboriginal tribe to a non-aboriginal.

In view of the aforesaid, this Court has no reason to take a different stand than the stand taken by the Court in case of ***Chambaram*** (supra). I do not find any weakness in the opinion of the Court so as to defer with the same, and, in fact, I am also of the opinion that if such type of transaction is approved only because the said transaction does not come within the purview of Section 54 of the Transfer of Property Act, the very purpose of formulating the respective provision by the makers of law would become redundant and the sole purpose of putting rider on such transactions would be frustrated and as such I don't find that both the courts below have committed any illegality holding that the decree of declaration cannot be granted in favour of plaintiff/appellant.

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183. MOHAMMEDAN LAW:
TRANSFER OF PROPERTY ACT, 1882 – Sections 122, 123 and 129
REGISTRATION ACT, 1908 – Section 17

(i) Partition in Mohammadan Law – Requirement of registration and stamping of *Mehrnama* – Plaintiff is the daughter of deceased father, who has filed a suit for partition against her brother and mother – Defendant alleged that disputed property was given to the mother by father as *Mehr* – *Mehrnama* was executed on plain paper and is not stamped and registered – In view of the provisions of Transfer of Property Act and Registration Act, *Mehrnama* is required to be compulsorily registered – Document is not admissible in evidence.

(ii) Gift or *Hiba* – Mother, who is defendant No. 3, through written document, has gifted the disputed property to her sons who are defendant Nos. 1 and 2 – Gift under Mohammadan Law can be made orally and its validity is not affected because it was not reduced in writing – Document does not invalidite for want of registration – Mandatory ingredients to establish gift under

Mohammadan Law are: (1) Declaration of gift by donor, (2) Express or implied acceptance of gift by donee, (3) Delivery of possession and taking of possession by donee – At the time of execution of gift, defendant No. 1 and 2 were not present, gift deed does not have signature, attesting witnesses did not depose about delivery of possession to defendant No. 1 and 2 – Gift not established – Decree of Trial Court confirmed.

मुस्लिम विधिः

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 122, 123 एवं 129

रजिस्ट्रेशन अधिनियम, 1908 – धारा 17

(i) मुस्लिम विधि में विभाजन – *मेहरनामा* के रजिस्ट्रीकृत एवं स्टाम्पित होने की आवश्यकता – वादी मृतक पिता की बेटी है, जिसने अपने भाई और मां के विरूद्ध विभाजन के लिए वाद प्रस्तुत किया है – प्रतिवादी ने अभिकथन किया कि विवादित संपत्ति पिता द्वारा माता को *मेहर* के रूप में दी गई थी – *मेहरनामा* सादा कागज पर निष्पादित किया गया था और रजिस्ट्रीकृत एवं स्टाम्पित नहीं – संपत्ति अंतरण अधिनियम और रजिस्ट्रेशन अधिनियम के प्रावधानों के अनुसार, *मेहरनामा* अनिवार्य रूप से रजिस्ट्रीकृत होना आवश्यक है – दस्तावेज साक्ष्य में ग्राह्य नहीं है।

(ii) दान या *हिबा* – माँ, जो प्रतिवादी कमांक 3 है, ने प्रतिवादी कमांक 1 और 2 जो उसके बेटे है को लिखित दस्तावेज के माध्यम से विवादित संपत्ति दान में दी है – मुस्लिम विधि के अंतर्गत दान मौखिक रूप से किया जा सकता है और उसकी वैधता को केवल इस आधार पर चुनौती नहीं दी जा सकती कि वह लिखित में नहीं है – दस्तावेज रजिस्ट्रीकृत न होने के कारण अविधिमान्य नहीं माना जा सकता – मुस्लिम विधि के अंतर्गत दान स्थापित करने के लिए अनिवार्य घटक हैंः (1) दाता द्वारा दान की घोषणा, (2) आदाता द्वारा दान स्वीकृति की घोषणा, (3) कब्जा प्रदान किया जाना और आदाता द्वारा कब्जा लेना – दान के निष्पादन के समय, प्रतिवादी कमांक 1 और 2 मौजूद नहीं थे, दान विलेख पर हस्ताक्षर नहीं है, अनुप्रमाणित साक्षीगण ने प्रतिवादी कमांक 1 और 2 को कब्जे के अंतरण के संबंध में कथन नहीं किया – दान स्थापित नहीं – विचारण न्यायालय की डिक्री की पुष्टि की गई।

Abdul Rashid and ors. v. Sajida and ors.

Order dated 27.02.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 129 of 2010, reported in 2025 (2) MPLJ 608

Relevant extracts from the order:

The Apex Court in the case of ***Radhakishan Laxminarayan Toshniwal v. Shridhar Ramchandra Alshi and ors., AIR 1960 SC 1368*** held in Para 10 as under:-

> "10. In the Allahabad case ***Begum and ors v. Mohammad Yakub and anr., ILR 16 All 344 (FB)***, there was a verbal sale of a house which was followed by possession but there was no registered document. No doubt there the learned Chief Justice in the. majority judgment did say that to import into the Mohammedan law of pre-emption the definition of the word "sale" with restrictions contained in section 54 of the Transfer of Property Act would materially alter Mohammedan law of pre-emption and afford fraudulent persons to avoid the law of pre-emption; with this view Bannerji J. did not agree. But in our opinion the transfer of property where the Transfer of Property Act applies has, as was held by the Privy Council also, to be under the provisions of the Transfer of Property Act only and Mohammedan Law of transfer of property cannot override the statute law. ***Mahmood, J. in Janki v. Girjadat and anr, ILR 7 All 482 (FB)***, though in a minority (four judges took a different view) was of the opinion that a valid and perfected sale was a condition precedent to the exercise of the right of pre-emption and until such sale had been effected the right of preemption could not arise."

From the aforesaid pronunciation of law by the Apex Court, it is to be held that the provision of the Transfer of Property Act and the Registration Act would prevail and no relaxation is given under the Muslim Law from registration of the deed. Thus, the document (Ex.D/1) is not admissible in evidence for want of registration and payment of adequate stamp duty.

The Apex Court in the case of ***Hafeeza Bibi and ors. v. Shaikh Farid (Dead) by LRs. and ors., (2011) 5 SCC 654*** in paragraphs 26 & 27 held as under:

> "26. Mulla, Principles of Mahomedan Law (19th Edn.). p. 120, states the legal position in the following words:

> "Under the Mahomedan law the three essential requisites to make a gift valid are: (1) declaration of the gift by the donor, (2) acceptance of the gift by the donee expressly or impliedly, and (3) delivery of possession to and taking possession thereof by the donee actually or constructively. No written document is required in such a case. Section 129 of the Transfer of Property Act excludes the rule of Mahomedan Law from the purview of Section 123 which mandates that the gift of immovable property must be effected by a registered instrument as stated therein. But it cannot be taken as a sine qua non in all cases that whenever there is a writing about a Mahomedan gift of immovable property there must be registration thereof. Whether the writing requires registration or not depends on the facts and circumstances of each case."
>
> 27. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by a Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. e The form is immaterial. If all the three essential requisites are satisfied constituting a valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law."

Thus, in view of the aforesaid, I am of the considered opinion that gift under the Mohammadan law can be made orally and its validity is not affected merely because it has been reduced in writing. Thus, the document (Ex.D/2) does not get invalidated for want of registration. However, as has been held by the Apex Court in the case ***Hafeeza Bibi and ors. v. Shaikh Farid (dead) by LRs., 2011 (4) MPLJ (SC) 46***. The three mandatory ingredients for establishing the gift under the Mohamed Law are;

(i) Declaration of the gift by the doner;

(ii) Exceptance of the gift by the donee, expressly or impliedly;

(iii) Delivery of possession too and taking possession thereof by the donee.

In the instant case, the trial Court has recorded a finding that at the time of execution of gift deed (Ex.D/2), defendants No.1 and 2 were not present. The document (Ex.D/2) also does not bear the sign of defendants No.1 & 2. Further, the attesting witnesses of Ex.D/2 also did not depose about delivery of possession to defendants No.1 & 2. The counsel for the appellants could not point out any reason to interfere with said findings of learned trial Court. Thus, the important ingredients viz. acceptance of the gift and delivery of possession of the property is not established by defendants No.1 & 2.

Thus, the foundation of the defendants' claim being based upon Ex. D-1 and D-2 is found to be not established. The trial Court findings in this regard are, therefore, just and proper and does not want any interference by this Court.

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184. MOTOR VEHICLES ACT, 1988 – Sections 11 and 149
CENTRAL MOTOR VEHICLES RULES, 1989 – Rule 9
Motor Accident – Liability of insurer – Pay and recover – Two persons, a bicyclist and a pedestrian, died in motor accident involving an oil tanker – Tribunal passed award directing insurance company to pay compensation and to recover it from owner and driver, as the accident occurred due to rash and negligent driving of the driver – The driver did not possess driving licence to carry vehicle holding goods of dangerous and hazardous nature, as it was lacking mandatory endorsement – Even certificate of training of driver produced at the appellate level, without satisfactory explanation for its non-production before tribunal, could not be considered, as no contention was taken by the driver himself before the tribunal regarding its non-production – Order affirmed with a direction to the insurance company to pay compensation and to recover it from owner of oil tanker.

मोटरयान अधिनियम, 1988 – धाराएं 11 एवं 149
केन्द्रीय मोटरयान नियम, 1989 – नियम 9
मोटर दुर्घटना – बीमाकर्ता का दायित्व – भुगतान करे एवं वसूल करें – मोटर दुर्घटना जिसमें एक तेल टैंकर सम्मिलित था, से दो व्यक्ति, एक साईकिल चालक और एक पैदल यात्री की मृत्यु हुई – अधिकरण ने बीमा कंपनी को प्रतिकर देने और वाहन स्वामी एवं चालक से वसूल किये जाने का निर्देश दिया, क्योंकि दुर्घटना वाहन चालक की उपेक्षा एवं उतावलेपन के परिणामस्वरूप

कारित हुई थी – चालक, खतरनाक और हानिकारक प्रकृति के माल परिवहन की चालन अनुज्ञप्ति धारण नहीं करता था, क्योंकि उसमें अनिवार्य पृष्ठांकन का अभाव था – अपितु अपीलीय स्तर पर वाहन चालक के प्रशिक्षण का प्रमाणपत्र, अधिकरण के समक्ष प्रस्तुत न करने के संतोषप्रद स्पष्टीकरण के बिना विचार में नहीं लिया जा सकता, चूंकि चालक द्वारा स्वयं अधिकरण के समक्ष इसे प्रस्तुत न करने के संबंध में कोई तर्क प्रस्तुत नहीं किया गया – आदेश की पुष्टि बीमा कंपनी को इस निर्देश के साथ की गई कि प्रतिकर का भुगतान करे एवं तेल टैंकर के स्वामी से वसूल करे।

Chatha Service Station v. Lalmati Devi and ors.

Judgment dated 08.04.2025 passed by the Supreme Court in Civil Appeal No. 5089 of 2025, reported in 2025 (3) MPLJ 31(SC)

Relevant extracts from the judgment:

The appeals are filed by the owner of the offending vehicle involved in the motor accident, in which the breadwinners of the claimants' family, who were respectively; riding a bicycle and a pedestrian, died in the accident involving an oil tanker.

National Insurance Company Ltd. v. Swaran Singh, (2004) 3 SCC 297 distinguished an 'effective licence' as used in Section 3 of the Act and the words 'duly licenced' used in Section 149 of the Act; as it existed before the amendment of 2019. The said decision considered the various contingencies in which the insurer could absolve themselves from their liability to indemnify. We are concerned in the present case, with a situation where the driver of the offending goods vehicle having licence to drive a transport vehicle, under which class a goods vehicle falls; which however does not enable him to drive a goods vehicle carrying dangerous & hazardous goods. To enable this a transport vehicle licence holder; which vehicle includes the description of a goods carriage vehicle, will have to submit an application and obtain an endorsement under Section 11 read with Rule 9 of the Act and Rules. As has been held in Swaran Singh5 it is incumbent on the Court/Tribunal considering a case of a licensee driving another type of vehicle, for which he has not obtained a licence, to take a decision as to whether this fact was the main or contributory cause of negligence. This factum of absence of licence to drive another type of vehicle is inconsequential if that is not the main or contributory cause of accident.

The eye-witness clearly deposed that the accident was caused by the reason of "rash and negligent driving of the vehicle" which the driver was not entitled to

drive for reason of lack of endorsement on his licence as required under Section 11 read with Rule 9 of the Act and Rules.

Admittedly, the driver did not have a licence as required under the Act and the Rules to drive a vehicle carrying dangerous and hazardous goods. There is also no dispute that the offending vehicle; the oil tanker, was a vehicle intended to carry goods of dangerous and hazardous nature.

The production of the certificate at the stage of the appeal is not worthy of acceptance looking at the contours of Order 41 Rule 27 of the CPC Admittedly, the certificate was not produced before the Tribunal and hence, there is no question arising of the Court from which the appeal arises having refused to accept the evidence proffered. There was also no explanation for non-production of the certificate before the Tribunal; which was produced at the appellate stage for the first time. Only if there is a satisfactory explanation for the non-production before the original court, i.e. despite exercise of due diligence or the same was not within the knowledge of the party or it could not be produced despite exercise of due diligence, could there be an acceptance of the document at the appellate stage. The transport vehicle driving licence produced by the driver, admittedly did not have an endorsement. The driver also did not have a claim that he had undergone a training as prescribed under the Rules; despite being cross-examined on the point of absence of a valid license.

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185. MOTOR VEHICLES ACT, 1988 – Sections 166 and 173 CONSTITUTION OF INDIA – Article 141

Determination of compensation – Future prospects – Government/Permanent Job – Nature of employment – A person employed in a job with annual increments or periodic salary revisions is to be treated as in "permanent job" for the purpose of applying future prospects – It is not necessary that only government servants are to be treated as permanent employees – In present case, deceased working as Assistant Professor in a private institute drawing periodically revised salary, held entitled to future prospects as a permanent employee. (*National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680* Referred)

मोटरयान अधिनियम, 1988 – धाराए 166 एवं 173

भारत का संविधान – अनुछेद 141

प्रतिकर का निर्धारण – भविष्य की संभावनाएं – शासकीय/स्थायी नौकरी – रोजगार की प्रकृति – वार्षिक वेतन वृद्धि या आवधिक वेतन संशोधन वाली नौकरी में नियोजित व्यक्ति को भविष्य की संभावनाओं को लागू करने के

उद्देश्य से ''स्थायी नौकरी'' के रूप में माना जाना चाहिए – यह आवश्यक नहीं है कि केवल शासकीय कर्मचारियों को ही स्थायी कर्मचारी माना जाए – वर्तमान मामले में, मृतक एक निजी संस्थान में सहायक प्रोफेसर के रूप में कार्य करते हुए आवधिक संशोधित वेतन प्राप्त कर रहा था, उसे एक स्थायी कर्मचारी के रूप में भविष्य की संभावनाओं का हकदार होना निर्धारित किया गया। (*नेशनल इंश्योरेंस कंपनी लिमिटेड वि. प्रणय सेठी, (2017) 16 एससीसी 680* अनुसरित)

Anjum Ansari (Smt.) & ors. v. R. Rajesh Rao & ors.

Order dated 20.07.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 2423 of 2018, reported in ILR 2024 MP 2365

Relevant extracts from the order:

From observations as well as principle of law laid down by Hon'ble Apex Court in ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680*** it is clearly evident that if a person is in such a job wherein his salary is increased periodically/receives annual increment etc., then, such person would be treated as being in "permanent job". Hence, in view of principle of law laid down in ***Pranay Sethi*** (supra), it is not correct that only government servant would be treated as being in "permanent job"

From evidence on record, it is clearly established that deceased was working as Assistant Professor in Corporate Institute of Science and Technology, Bhopal. From salary certificate Ex. P/12 and P/13, it is also evident that salary received by deceased was subject to periodical revision/hike etc. Therefore, in view of law laid down by Hon'ble Apex Court in ***Pranay Sethi*** (supra), deceased would be treated as being in "permanent job".

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186. MOTOR VEHICLES ACT, 1988 – Section 168

(i) Motor accident – Compensation – Claimant was a young boy of 21 years of age at the time of accident and had suffered quadriplegia which resulted in his 100% permanent disability – Claimant was learning work for becoming a Veterinary Doctor and was a good sportsman and had certain technical qualification to his credit – Assessment of income at less than minimum wage for unskilled worker was erroneous and hence reassessed – Multiplier of 18 was rightly applied – 40% of income was added towards future prospects – Claimant being 100% disabled, was

granted in lump sum, expenses towards attendant – Compensation towards special diet was enhanced – Considering significant impact of disability on life of claimant, amount towards pain and suffering was enhanced – Compensation was awarded for future medical expenses, loss of marriage prospects, physiotherapy and medical expenses – Compensation was enhanced accordingly.

(ii) Mode of payment of compensation – General practice followed by insurance companies, where compensation was not disputed, was to deposit same before the Tribunal – Instead of following that process, a direction can always be issued to transfer amount into bank accounts of claimants with intimation to Tribunal – Directions issued accordingly.

मोटरयान अधिनियम, 1988 – धारा 168

(i) मोटर दुर्घटना – प्रतिकर – दुर्घटना के समय दावाकर्ता 21 वर्ष का एक युवा लड़का था और उसे चतुरंगघात (क्वाड्रिप्लेजिया) हो गया था, जिसके परिणामस्वरूप उसे 100 प्रतिषत स्थायी विकलांगता हो गई थी – दावाकर्ता पशु चिकित्सक बनने के लिए काम सीख रहा था और वह एक अच्छा खिलाड़ी था और उसके पास कुछ तकनीकी योग्यताएं थीं – अकुशल श्रमिक के लिए न्यूनतम मजदूरी से कम आय का आंकलन गलत था और इसलिए इसका पुनर्मूल्यांकन किया गया – 18 का गुणक उचित से लागू किया गया था – भविष्य की संभावनाओं के लिए आय का 40 प्रतिशत जोड़ा गया था – दावाकर्ता 100 प्रतिशत विकलांग होने के कारण, उसे एकमुश्त राशि, परिचारिका के खर्च के लिए प्रदान की गई – विशेष आहार के लिए प्रतिकर को बढ़ाया गया था – दावाकर्ता के जीवन पर विकलांगता के महत्वपूर्ण प्रभाव को ध्यान में रखते हुए, दर्द और पीड़ा के लिए राशि बढ़ा दी गई – भविष्य के चिकित्सा व्यय, विवाह की संभावनाओं के नुकसान, फिजियोथेरेपी और चिकित्सा व्यय के लिए प्रतिकर दिया गया – तद्नुसार प्रतिकर को बढ़ा दिया गया।

(ii) प्रतिकर के भुगतान का ढंग – बीमा कंपनियों द्वारा अपनाई जाने वाली सामान्य प्रथा, जहां प्रतिकर पर विवाद नहीं था, उसे न्यायाधिकरण के समक्ष जमा करना था – उस प्रक्रिया का पालन करने के स्थान पर अधिकरण को सूचित करते हुए दावाकर्ताओं के बैंक खातों में राशि हस्तांतरित करने के लिए हमेशा निर्देश जारी किया जा सकता है – तद्नुसार दिशा–निर्देश जारी किए गए।

Parminder Singh v. Honey Goyal and ors.

Judgment dated 18.03.2025 passed by the Supreme Court in Civil Appeal No. 4299 of 2025, reported in AIR 2025 SC 1713

Relevant extracts from the judgment:

A lot of matters come to the Court in which the amount is required to be paid to the litigants. Normal practice used to be, and still prevalent is to deposit the amount in court and thereafter to be withdrawn by the litigant. This process is not only followed in the cases where huge amount is involved but it is also seen prevalent even in the cases of payment of a small amount of maintenance to the wife, when fixed by the court either under Section 125 CrPC or under Section 12 of the Domestic Violence Act, 2005 or any other statute. Withdrawal of the amount deposited in the court by any litigant certainly needs time and also expenses.

This Court in the case of ***Haryana State Industrial Development Corporation v. Pran Sukh, (2010) 11 SCC 175*** while considering a matter pertaining to payment of enhanced amount of compensation to the landowners, directed for transfering the same in their bank accounts. Relevant paras thereof are extracted below:

> "With a view to ensure that the land owners are not fleeced by the middleman, we deem it proper to issue following further directions:
>
> (i) The Land Acquisition Collector shall depute officers subordinate to him not below the rank of Naib Tehsildar, who shall get in touch with all the land owners and/or their legal representatives and inform them about heir entitlement and right to receive enhanced compensation.
>
> (ii) The concerned officers shall also instruct the land owners and/or their legal representatives to open saving bank account in case they already do not have such account.
>
> (iii) The bank account numbers of the land owners should be given to the land Acquisition Collector within three months.
>
> (iv) The Land Acquisition Collector shall deposit the cheques of compensation in the bank accounts of the land owners."

Referring to the aforesaid judgment of this Court considering the fact that even at the stage of acquisition of land, compensation is required to be paid to the landowners, High Court of Punjab & Haryana in the case of ***Haryana State Industrial & Infrastructure Development Corporation Ltd. v. Smt. Krishna Rani, 2011 SCC OnLine P&H 4167*** directed that even that amount should also be transferred in their bank accounts directly. Normal practice, which is followed in that process is that the compensation amount is deposited in the government treasury and the process of withdrawal is followed by the land owners. The relevant paras of that judgment are extracted below:

> "Taking lead from the aforesaid directions issued by Hon'ble the Supreme Court and finding that harassment of the land owners is not only at the stage when enhanced amount of compensation is to be paid, rather, it is even at the stage when the award by the Collector is announced as for the payment of compensation, the land owners are to run after the Patwaris or the officials in the office of the Collector.
>
> The land owners can be asked to furnish the details of their bank accounts in response to the notices issued to them under Section 9 of the Act and in all undisputed claims, the amount should directly be transferred by the Collector in the bank accounts of the land owners immediately after announcement of the award. This will not only save harassment of the land owners but also time and energy of the officials of the office of the Collector.
>
> The aforesaid system should not only be restricted to the State of Haryana, rather, the same system should be followed even in the State of Punjab and Union Territory, Chandigarh, where also the Collector at the time of issuance of notices under Section 9 of the Act should ask the land owners to furnish the details of their bank account particulars and the Collector shall be duty-bound to directly transfer the amount of compensation in their bank accounts in all the undisputed cases."

The case in hand pertains to the compensation awarded under the Motor Vehicles Act. The general practice followed by the insurance companies, where the compensation is not disputed, is to deposit the same before the Tribunal. Instead of following that process, a direction can always be issued to transfer the amount into the bank account(s) of the claimant(s) with intimation to the Tribunal.

For that purpose, the Tribunals at the initial stage of pleadings or at the stage of leading evidence may require the claimant(s) to furnish their bank account particulars to the Tribunal along with the requisite proof, so that at the stage of passing of the award the Tribunal may direct that the amount of compensation be transferred in the account of the claimant and if there are more than one then in their respective accounts. If there is no bank account, then they should be required to open the bank account either individually or jointly with family members only. It should also be mandated that, in case there is any change in the bank account particulars of the claimant(s) during the pendency of the claim petition they should update the same before the Tribunal. This should be ensured before passing of the final award. It may be ensured that the bank account should be in the name of the claimant(s) and if minor, through guardian(s) and in no case it should be a joint account with any person, who is not a family member. The transfer of the amount in the bank account, particulars of which have been furnished by the claimant(s), as mentioned in the award, shall be treated as satisfaction of the award. Intimation of compliance should be furnished to the Tribunal.

In some cases, where the compensation is awarded to minor claimant(s) or otherwise, the Tribunal directs for keeping a certain percentage of the amount in a fixed deposit. Such a direction can always be issued in the award itself to be complied with by the concerned bank. When the amount is transferred by the Insurance Company in the account of the claimant(s), it shall be the responsibility of the bank to ensure that specified portion thereof is kept in the fixed deposit. Compliance is to be reported by the bank(s) to the Tribunal.

It is also a fact that substantial amount of compensation in motor accident cases remains deposited in the Tribunal as the claimant(s) may not have approached the Tribunal for release thereof for various reasons. Delay for any reason in release of compensation in motor accident cases by the Tribunal to the claimant(s), where the amount is deposited in Tribunal, as directed, results in loss of interest to the claimant(s). In case the aforesaid process is followed, the gap would be bridged. The real object of the beneficial legislation, namely to compensate for the loss of earning member of the family or for the injuries suffered by the claimant(s), will be achieved and compensation can be disbursed without any delay.

We may add that directions are being issued for bank transfer of the amount of compensation in motor accident cases, but the Courts/Tribunals can always follow this process in any matter, whenever any amount is to be paid by one party to another, however, ensuring proper compliance.

The Registry is directed to send a copy of this order to (1) the Registrars General of all the High Courts for placing the same before the Chief Justice of the High Court for further circulation and compliance by the concerned Tribunals/Courts; and (2) the Directors of the National Judicial Academy and the State Judicial Academies.

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

Dishounor of cheque – Non-executive and independent Director(s) cannot be held liable u/s 138 r/w/s 141 of the Act unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant time – Appellant/accused had neither issued and signed dishonoured cheques nor had any role in their execution – Involvement of accused in company's affairs was purely non-executive – Mere fact that accused persons had attended board meetings, does not suffice to impose financial liability on them – Complaint lacked specific allegations to establish a direct *nexus* between accused person and financial transactions or to demonstrate their involvement in company's financial affairs – Accuseds cannot be held vicariously liable u/s 141 of the Act – Criminal proceedings against the accused/appellant were quashed.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 141

चैक का अनादरण – गैर–कार्यकारी और स्वतंत्र निदेशकों को अधिनियम की धारा 138 सहपठित धारा 141 के अंतर्गत तब तक उत्तरदायी नहीं ठहराया जा सकता जब तक कि विशिष्ट आरोप सुसंगत समय पर कंपनी के मामलों में उनकी प्रत्यक्ष भागीदारी को प्रदर्शित न करें – अपीलकर्ता/अभियुक्त ने न तो अनादरित चैक जारी किए और न ही उन पर हस्ताक्षर किए, न ही उनके निष्पादन में उनकी कोई भूमिका थी – कंपनी के मामलों में अभियुक्तगण की भागीदारी पूरी तरह से गैर–कार्यकारी थी – केवल यह तथ्य कि अभियुक्तगण ने बोर्ड की बैठकों में भाग लिया था, उन पर वित्तीय दायित्व अधिरोपित करने के लिए पर्याप्त नहीं है – परिवाद में अभियुक्त और वित्तीय लेनदेन के बीच सीधा संबंध स्थापित करने या कंपनी के वित्तीय मामलों में उनकी भागीदारी को प्रदर्शित करने के लिए विशिष्ट आरोपों का अभाव था – अभियुक्तगण को अधिनियम की धारा 141 के अंतर्गत उत्तरदायी नहीं ठहराया जा सकता – अभियुक्त/अपीलकर्ता के विरूद्ध आपराधिक कार्यवाही अपास्त की गई।

K.S. Mehta v. Morgan Securities and Credits Pvt. Ltd.

Judgment dated 04.03.2025 passed by the Supreme Court in Criminal Appeal No. 4774 of 2025, reported in AIR 2025 SC 1607

Relevant extracts from the judgment:

This Court has consistently held that non-executive and independent director(s) cannot be held liable under Section 138 read with Section 141 of the NI Act unless specific allegations demonstrate their direct involvement in affairs of the company at the relevant time.

Upon perusal of the record and submissions of the parties, it is evident that the Appellant(s) neither issued nor signed the dishonoured cheques, nor had any role in their execution. There is no material on record to suggest that they were responsible for the issuance of the cheques in question. Their involvement in the company's affairs was purely non-executive, confined to governance oversight, and did not extend to financial decision-making or operational management.

The complaint lacks specific averments that establish a direct nexus between the Appellant(s) and the financial transactions in question or demonstrate their involvement in the company's financial affairs. Additionally, the CGR(s) and ROC records unequivocally confirm their non-executive status, underscoring their limited role in governance without any executive decision-making authority. The mere fact that Appellant(s) attended board meetings does not suffice to impose financial liability on the Appellant(s), as such attendance does not automatically translate into control over financial operations.

Given the lack of specific allegations and in view of the aforesaid observations, the Appellant(s) cannot be held vicariously liable under Section 141 of the NI Act.

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188. PREVENTION OF MONEY LAUNDERING ACT, 2002 – Section 45 Money Laundering – Bail granted to accused by the High Court – High Court did not consider mandatory requirements u/s 45 of PMLA – Accused involved in laundering proceeds of crime amounting to ` 17.26 crores through *hawala* network for renovation of a resort and construction of a school – Money Laundering is aggravated form of crime that has serious transnational consequences and should not be treated like ordinary offences – Casual approach in granting bail without satisfying statutory conditions was held unsustainable – Supreme Court set aside the bail order and directed the accused to surrender within one week – Matter remanded to the High Court for fresh consideration.

धन–शोधन निवारण अधिनियम, 2002 – धारा 45

धन–शोधन – उच्च न्यायालय द्वारा अभियुक्त को जमानत प्रदान की गई – उच्च न्यायालय ने अधिनियम की धारा 45 के अंतर्गत अनिवार्य अपेक्षाओं पर विचार नहीं किया – अभियुक्त एक रिसॉर्ट के नवीनीकरण और एक विद्यालय के निर्माण के लिए हवाला नेटवर्क के माध्यम से ₹17.26 करोड़ की अपराध की आय के शोधन में शामिल था – धन–शोधन अपराध का गुरूत्तर रूप है जिसके गंभीर अंतर्राष्ट्रीय परिणाम होते हैं और इसे सामान्य अपराधों की तरह नहीं लिया जाना चाहिए – वैधानिक अपेक्षाओं को पूरा किए बिना सरसरी तौर पर जमानत देना स्थिर रखे जाने योग्य नहीं माना गया – उच्चतम न्यायालय ने जमानत आदेश को अपास्त कर अभियुक्त को एक सप्ताह के भीतर आत्मसमर्पण करने का निर्देश दिया – प्रकरण पुनर्विचार हेतु उच्च न्यायालय को प्रतिप्रेषित।

Union of India through the Assistant Director v. Kanhaiya Prasad

Judgment dated 13.02.2025 passed by the Supreme Court in Criminal Appeal No. 728 of 2025, reported in AIR 2025 SC 1028

Relevant extracts from the judgment:

So far as facts of the present case are concerned, the High Court in a very casual and cavalier manner, without considering the rigours of Section 45 granted bail to the respondent on absolutely extraneous and irrelevant considerations. There is no finding whatsoever recorded in the impugned order that there were reasonable grounds for believing that the respondent was not guilty of the alleged offence under the Act and that he was not likely to commit any offence while on bail. Non-compliance of the mandatory requirement of Section 45 has, on the face of it, made the impugned order unsustainable and untenable in the eye of law.

We also do not find any substance in the submission made by learned Senior Advocate Ranjit Kumar for the respondent that the respondent has not been shown as an accused in the predicate offence. It is no more *res integra* that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime, which had been derived or obtained as a result of criminal activity relating to or in relation to a schedule offence. Hence, involvement in any one of such process or activity connected with the Proceeds of Crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a schedule offence, except the Proceeds of Crime derived or obtained as a result of that crime. The precise

observations made in ***Vijay Madanlal Choudhary and ors. v. Union of India and ors., 2022 SCC OnLine 929*** in this regard may be reproduced hereunder:

> "Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act – for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.07.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in the Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.
>
> It was urged that the scheduled offence in a given case may be a non-cognizable offence and yet rigours of Section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money laundering is one wherein a person, directly or indirectly, attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process

> or activity connected with the proceeds of crime. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a non-cognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected."

The High Court has utterly failed to consider the mandatory requirements of Section 45 and to record its satisfaction whether any reasonable ground existed for believing that the respondent was not guilty of the alleged offence, and that he was not likely to commit any offence while on bail. Merely because the prosecution complaint had been filed and the cognizance was taken by the court that itself would not be the ground or consideration to release the respondent on bail, when the mandatory requirements as contemplated in Section 45 have not been complied with.

As well settled, the offence of money laundering is not an ordinary offence. The PMLA has been enacted to deal with the subject of money laundering activities having transnational impact on financial systems including sovereignty and integrity of the countries. The offence of money laundering has been regarded as an aggravated form of crime world over and the offenders involved in the activity connected with the Proceeds of Crime are treated as a separate class from ordinary criminals. Any casual or cursory approach by the Courts while considering the bail application of the offender involved in the offence of money laundering and granting him bail by passing cryptic orders without considering the seriousness of the crime and without considering the rigours of Section 45, cannot be vindicated.

The impugned order passed by the High Court being in teeth of Section 45 of PMLA and also in the teeth of the settled legal position, we are of the opinion that the impugned order deserves to be set aside, and the matter is required to be remanded to the High Court for fresh consideration. Accordingly, the impugned order is set aside, and the matter is remanded to the High Court for consideration afresh with the request to the Chief Justice to place the matter before the Bench other than the Bench which had passed the impugned order. We may clarify that we have not expressed any opinion on the merits of the case.

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189. RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 – Section 26

Determination of market value of land – Determination of compensation – Applicability of 'theory of deduction' – No reduction in the amount can be granted by applying the theory of deduction – The market values computed in terms of Clasues (a), (b) and (c) of section 26(1) of the Acquisition Act, 2013 are not to be averaged – Law pertaining to calculation explained.

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 – धारा 26

भूमि के बाजार मूल्य का अवधारण – प्रतिकर का अवधारण – 'कटौती के सिद्धांत' की प्रयोज्यता – कटौती के सिद्धांत को लागू करके राशि में कोई कमी नहीं की जा सकती – अधिग्रहण अधिनियम, 2013 की धारा 26(1) के खंड (क), (ख) और (ग) के अनुसार गणना किए गए बाजार मूल्यों का औसत नहीं निकाला जाना है – गणना से संबंधित विधि की व्याख्या की गई।

Madhya Pradesh Road Development Corporation v. Vincent Daniel and ors.

Judgment dated 27.03.2025 passed by the Supreme Court in Civil Appeal No. 3998 of 2024, reported in AIR 2025 SC 1825

Relevant extracts from the judgment:

Explanation 4 uses the word "and" in conjoining the values referred to in the two parts of the Explanation. This is done to expand the scope of application of the Collector's discretion to the entire provision, as is also evident from the phrase "while determining the market value under this section". The discretion should not be interpreted as restricting the discretion to only the average sale price under Explanations 1 and 2. The two parts must be given a disjunctive reading, attracting the application of Explanation 4 when either of the values does not reflect the actual market value. Thus, though the word "and" is used to connect the two parts, it should be read as "or" to effectuate the legislative intent. (***Maharishi Mahesh Yogi Vedic Vishwavidyalaya v. State of Madhya Pradesh, (2013) 15 SCC 677. See also, Justice G.P. Singh, Principles of Statutory Interpretation, 14th Edition., 530-534***)

This interpretation is also supported by the use of the same phrase in both Explanations 3 and 4. The first part of Explanation 3, which refers to determining the market value under this Section, will apply with equal vigour to both Clauses (b) and (c) of Section 26(1) of the Acquisition Act, 2013. The latter part of

Explanation 3 - as in the case of Explanation 4, which refers to Explanations 1 and 2 - will specifically apply to Clause (b).

Under Explanation 4, the formation of the Collector's opinion and any discounting or enhancing of the value must be supported by recorded reasons. At this stage, if the Collector chooses to make adjustments to the market value under Explanation 4, the theory of deduction, the principle of belting and other material factors will also be taken into account. The reason for this is two-fold. First, because the calculation of accurate market value is not an exact science, and therefore the Collector must be mindful of the unique factors which affect the valuation of a piece of land. Secondly, apart from Clause (b) to Section 26(1), the mandatory procedure of computation under the other two Clauses, (a) and (c), does not take into account these theories and factors, which may result in inaccuracy. Though not determinative in the facts of the present case, a contrary interpretation may cause injustice to the landowners in many situations.

The 2018 Rules framed by the State of Madhya Pradesh attempt to comprehensively address the variable factors that influence the price of land, and, therefore, lay the foundation for a more accurate valuation of land prices. In our opinion, other State Governments would also be well advised in formulating guidelines that can act as a ready reference for determining and revising circle rates regularly, in order for them to reflect market realities.

We now proceed to apply the above analysis to the facts of the present case, which is an acquisition under the Acquisition Act, 2013. To determine the compensation, the market value of the land must first be computed under Section 26 of the Acquisition Act, 2013. This requires the application of Clauses (a), (b), and (c) of Section 26(1). Clause (b) would have no application in the present case as there are no exemplars in the vicinity to draw a comparison and arrive at the average sale price in terms of Explanations 1 and 2 to Section 26(1). Further, as this acquisition does not involve private companies or public-private partnerships, Clause (c) would also not apply. Therefore, the highest value would be the one determined under Clause (a), i.e., the market value specified under the Stamp Act. In the present case, this value would be the circle rate fixed for the year 2014-2015 under the Collector's Guidelines framed under the Stamp Act. The Commissioner has applied the Collector's Guidelines by using the rate provided for non-converted agricultural land. The Commissioner has further supplemented this amount by accounting for the assets attached to the land and adding the solatium payable.

In view of the above-stated reasons, we hold that the compensation has been calculated in accordance with the mandate of the Acquisition Act, 2013. Thus, no

reduction in the amount can be granted by applying the theory of deduction. It has been left to the Collector's discretion to make adjustments to the market value determined through Section 26(1), if deemed necessary in the opinion of the Collector. In the facts of the present case, there was no such formation of opinion by the Competent Authority or the Commissioner.

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190. SPECIFIC RELIEF ACT, 1963 – Sections 6 and 34
CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 3
TRANSFER OF PROPERTY ACT, 1882 – Section 52

(i) Suit for declaration of title – Plaintiff/tenant claimed ownership on the basis of alleged compromise statement of parties recorded in earlier suit – Plaintiff requested that they had settled the dispute and suit be dismissed – Defendant claimed ownership on the basis of sale deed executed prior to said compromise – Whether, merely on the basis of the said statement recorded by the parties before the Court or without reducing the compromise into writing the requirements of Order 23 Rule 3 CPC are fulfiled? Held, No – Dismissal of suit would only mean that their status as tenant would continue.

(ii) Doctrine of *lis pendens* – Applicability – Sale deed executed during the pendency of the appeal – Before the Appellate Court, transferor gave statement that settlement has been arrived at between the parties and therefore, their suit be dismissed – Suit dismissed by the Appellate Court without declaring any rights – Such subsequent statement would be termed as collusive and dishonest – Doctrine of *lis pendens* would not be applicable.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 6 एवं 34
सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 3
संपत्ति अंतरण अधिनियम, 1882 – धारा 52

(i) स्वत्व की घोषणा का वाद – वादी/किराएदार द्वारा पूर्व के वाद में पक्षकारों के इस अभिलिखित समझौता कथन के आधार पर स्वत्व का दावा किया गया – वादी ने निवेदन किया कि उन्होंने विवाद को समझौते से तय कर लिया था इसलिये वाद निरस्त कर दिया जावे – प्रतिवादी द्वारा स्वामित्व का दावा उक्त समझौते से पूर्व निष्पादित विक्रय पत्र के आधार पर किया गया – क्या केवल पक्षकारों द्वारा न्यायालय के समक्ष दर्ज उक्त आशय के कथन अथवा समझौते को लेखबद्ध किए बिना आदेश 23 नियम

3 सीपीसी की अपेक्षा की पूर्ति हो सकती है? अभिनिर्धारित, नहीं – वाद को निरस्त किये जाने का अर्थ केवल यही होगा कि उनकी किराएदार की प्रास्थिति निरंतर रहेगी।

(ii) लंबित वाद का सिद्धान्त – प्रयोज्यता – अपील लंबित रहने के दौरान विक्रय पत्र निष्पादित किया गया – अपील न्यायालय के समक्ष अंतरणकर्ता द्वारा यह कथन दिया गया कि पक्षकारों के मध्य समझौता हो गया है इसलिए वाद निरस्त कर दिया जावे – अपील न्यायालय द्वारा किसी अधिकार की घोषणा किये बिना वाद निरस्त कर दिया गया – ऐसा पश्चातवर्ती कथन कपटपूर्ण और बेईमानी युक्त माना जाएगा – लंबित वाद का सिद्धान्त लागू नहीं होगा।

Amro Devi and ors. v. Julfi Ram (deceased) through LRs. and ors.

Judgment dated 15.07.2024 passed by the Supreme Court in Civil Appeal No. 7791 of 2024, reported in AIR 2024 SC 5513

Relevant extracts from the judgment:

The defendants, in the first round of litigation, were admittedly tenants. They could have become owners of the land in suit either by way of a registered sale deed in their favour or by way of a declaration by the Competent Civil Court whether on merits or by way of a compromise decree granting such declaration. Neither of the two happened. Merely because some statement of the parties is recorded by the first Appellate Court that they have settled the dispute and that the suit may be dismissed, would not make the defendants therein from tenants to owners. Dismissal of the suit would only mean that their status as tenants would continue.

The first Appellate Court and the High Court failed to consider that there was no challenge to the sale deed dated 22.08.1983. The doctrine of lis pendens or the restriction imposed under section 52 of the Transfer of Property Act, 18823 may not be relevant or applicable in present case considering the fact that one of the parties- plaintiffs in the proceedings and respondents in pending appeal having executed the sale deed during the pendency of appeal, by their subsequent conduct of giving a statement that their suit be dismissed, acted in dishonest and unfair manner. They were fully aware of having executed the sale deed, their subsequent statement would only be termed as collusive and dishonest. The order in the appeal court was not a decree on merits declaring any rights of the defendants to the suit (appellants in the appeal). In such circumstances, the sale deed dated 22.08.1983 could not be said to be hit by doctrine of *lis pendens*.

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191. SPECIFIC RELIEF ACT, 1963 – Sections 9, 10 and 19

(i) Suit for specific performance of agreement to sell – Plaintiff evidence through power of attorney holder – Plaintiff of different suits were purchaser of suit scheduled property – 7 suits were filed by them separately for specific performance of agreement to sell – In five suits, plaintiff evidence was given by one of the plaintiffs for himself and as power of attorney holder for other plantiffs in other suits – He was throughout present in the transaction of agreement to sell – He was himself one of the vendees – All the transactions in the 6 suits have taken place simultaneously on the same day, same time, and at the same place, he was well aware, personally of all the facts – In these factual matrix, execution of agreement to sale found proved, sufficiently and validly – Held, it was not necessary for each of the plantiffs in all suit to appear and prove the transaction of agreement.

(ii) Agreement to sell – Defence taken on the premise of executor/vendor *pradanashin* woman – Held, non-tenable – In the absence of pleadings or evidence, mere old age and illiteracy not sufficient for such classification.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 9, 10 एवं 19

(i) विक्रय अनुबंध के विनिर्दिष्ट अनुपालन के लिए वाद – मुख्तयारनामा धारक के माध्यम से वादी की साक्ष्य – विभिन्न वादों के वादी, वाद–अनुसूची संपत्ति के क्रेता थे – विक्रय अनुबंध के विनिर्दिष्ट अनुपालन के लिए उनके द्वारा पृथक–पृथक 7 वाद दायर किए गए थे – 5 वादों में एक वादी द्वारा वादी साक्ष्य से एक द्वारा स्वयं के लिए और अन्य वादों में अन्य वादियों के लिए मुख्तारनामा धारक के रूप में दिया गया था – वह विक्रय अनुबंध संव्यवहार में पूरे समय उपस्थित था – वह स्वयं क्रेताओं में से एक था – 6 वादों के सभी अनुबंध एक ही दिन, एक ही समय और एक ही स्थान पर एक साथ हुए थे, उसे सभी तथ्यों की व्यक्तिगत रूप से अच्छी जानकारी थी – इन तथ्यात्मक परिस्थितियों में, विक्रय अनुबंध का निष्पादन पर्याप्त और वैध रूप से सिद्ध पाया गया – अभिनिर्धारित, समस्त वादों में प्रत्येक वादी के लिए उपस्थित होना और अनुबंध के संव्यवहार को साबित करना आवश्यक नहीं था।

(ii) विक्रय अनुबंध – निष्पादक/विक्रेता पर्दानशीन महिला के आधार पर लिया गया बचाव – अभिनिर्धारित, पोषणीय नहीं – अभिवचन या साक्ष्य के अभाव में, केवल वृद्धावस्था और निरक्षरता ऐसे वर्गीकरण के लिए पर्याप्त नहीं।

Shyam Kumar Inani v. Vinod Agrawal and ors.

Judgment dated 12.11.2024 passed by the Supreme Court in Civil Appeal No. 2845 of 2015, reported in (2025) 3 SCC 286

Relevant extracts from the judgment:

In all, there are seven Agreements to sell executed by Sushila Devi in favour of different purchasers on 30.08.1990, and accordingly, seven suits were filed. Before us, only six purchasers are in appeal. With respect to the 7th purchaser, apparently the matter is pending before the High Court or the Trial Court. One of the purchasers is K. D. Maheshwari, who is the plaintiff in suit RCS No. 48-A/01. He held the Power of Attorney for the four other purchasers who are before us. K.D. Maheshwari appeared as PW-1 in five suits, either as the plaintiff in his own suit or as the Power of Attorney holder for the other four plaintiffs. In one case, the plaintiff Bharat Kumar Lathi had executed Power of Attorney in favour of Pankaj Maheshwari. In the said suit, he examined himself as PW-I.

K.D. Maheshwari proved the execution of the Agreement to sell, the payment of the full consideration to Sushila Devi, and also that Sushila Devi and the witnesses duly signed the Agreement to Sell. In addition, the plaintiffs examined one of the attesting witnesses to the Agreement to Sell, namely Dipesh Chandra Patni as PW-2.

Further, M. K. Maheshwari, who had a registered Power of Attorney from Sushila Devi executed on 04.09.1990, was also examined as PW-3, and he supported the plaintiffs stating that Sushila Devi had executed the Agreement to Sell after receiving the full consideration. The plaintiffs also examined Mr. R. K. Pathik, a handwriting expert, to prove that the signatures on the Agreement to Sell were that of Sushila Devi.

The plaintiff-appellants, thus, discharged their burden of proving the transaction between Sushila Devi and the plaintiffs on 13.08.1990, the passing of the consideration, and the execution of Agreement to Sell.

This clearly reflects that original defendants were trying to avoid to face the real facts and, therefore, they avoided Kailash Aggarwal from entering the witness box.

In the totality of consideration of evidence on record with regard to the execution of Agreement to Sell, we are of the view that the same had been validly proved by the plaintiff appellants and the defendants had failed to establish their claim that it was a forged document.

Any adverse inference drawn by the High Court for the reason that the plaintiffs did not enter the witness box to prove the Agreement to Sell, in our opinion, was completely misplaced. Mr. K.D. Maheshwari is one of the purchasers

and plaintiff in his suit for specific performance. He was throughout present in the transaction which took place on 30.08.1990. He held the Power of Attorney from the other plaintiffs and therefore, it was not necessary for each of the plaintiffs in separate suits to appear and prove the transaction of 30.08.1990. Mr. K. D. Maheshwari, who was examined as PW-1 in each of the suits whether in his capacity as plaintiff or as Power of Attorney from other plaintiffs, was fully justified in establishing the facts that transpired on 30.08.1990. The Trial Court had examined this aspect and had found favour with the plaintiffs. The finding of the High Court on this aspect is not approved in view of the above.

Firstly, there is neither any pleading nor any evidence to suggest that Sushila Devi was a *Pardanashin* lady who lived in seclusion; mere old age and illiteracy do not suffice to classify her as such. She had independently conducted property transactions in the past, including the purchase of the suit property in 1966, demonstrating her active involvement in legal and financial matters. Secondly, the plaintiffs have adequately discharged any burden of proof by providing credible evidence that the contents of the Agreement to sell and the General Power of Attorney were duly explained to her.

The attesting witness, PW-2, testified that the documents were read over and explained to Sushila Devi before she affixed her signature. Additionally, her son, Kailash Aggarwal, was present during the execution of these documents, and there is no allegation that he raised any objections or that any undue influence was exerted.

The defendants have failed to provide any evidence to the contrary or to establish that Sushila Devi did not understand the nature of the transactions. Therefore, the reliance on the principles laid down in ***MST. Kharbuja Kuer v. Jangbahadur Rai & Ors, AIR 1963 SC 1203*** is misplaced, as the circumstances of that case are distinguishable from the present one, and the respondents' argument on this ground cannot be sustained.

In this case, this Court clarified that while an attorney holder can definitely testify regarding the acts they have personally carried out on behalf of the principal, they cannot testify about matters requiring personal knowledge of the principal, such as the principal's state of mind or readiness and willingness to perform obligations under a contract.

In the present case, the power of attorney K. D. Maheshwari was himself one of the vendees and all the transactions in the six suits having taken place simultaneously on the same day, same time and at the same place he was well aware personally of all the facts.

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192. SPECIFIC RELIEF ACT, 1963 – Section 20
CONSTITUTION OF INDIA – Article 136

(i) Suit for specific performance – Conduct of purchaser – Cancellation and enforceability of agreement to sell – Purchaser had paid advance consideration and handed over three post-dated cheques at the time of execution of agreement – Purchaser had subsequently received a letter from seller cancelling agreement enclosing therewith five demand drafts alongwith two of the three post-dated cheques – Same was repudiation of agreement to sell by seller and encashment of demand drafts by purchaser without raising any objection regarding difference in cash amount and demand drafts, was acceptance of such repudiation – Conduct of purchaser in encashing demand drafts had established that she was not willing to perform her part of agreement – The entire advance consideration was not returned to purchaser, was irrelevant – Sale agreement was not enforceable.

(ii) Maintainability of suit for specific performance – Prayer for declaratory relief, when necessary? – Seller had issued a letter cancelling the agreement to sell prior to the institution of the suit, the same constitutes a *'jurisdictional fact'* till the said cancellation is set aside – The purchaser is not entitled to the relief of specific performance – Absence of prayer for declaratory relief that termination/cancellation of the agreement is bad in law – Suit for specific performance is not maintainable.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20
भारत का संविधान – अनुच्छेद 136

(i) विनिर्दिष्ट अनुपालन हेतु वाद – क्रेता का आचरण – विक्रय अनुबंध का रद्दकरण एवं प्रवर्तनीयता – क्रेता ने अग्रिम भुगतान कर दिया था और अनुबंध के निष्पादन के समय तीन उत्तर–दिनांकित चैक सौंप दिए थे – क्रेता को बाद में विक्रेता से अनुबंध रद्द करने का पत्र मिला, जिसमें पांच डिमांड ड्राफ्ट और तीन में से दो उत्तर–दिनांकित चैक संलग्न थे – यह विक्रेता द्वारा विक्रय अनुबंध का विखंडन था और नकद राशि और डिमांड ड्राफ्ट में अंतर के बारे में कोई आपत्ति उठाए बिना, क्रेता द्वारा डिमांड ड्राफ्ट के नगदीकरण विखंडन की स्वीकृति थी – डिमांड ड्राफ्ट को नगदीकरण में क्रेता के आचरण ने स्थापित किया था कि वह अनुबंध में अपने भाग के अनुपालन के लिए तैयार नहीं थी – संपूर्ण अग्रिम प्रतिफल

क्रेता को वापस नहीं किया गया था, जो सुसंगत नहीं था – विक्रय अनुबंध प्रवर्तनीय नहीं।

(ii) विनिर्दिष्ट अनुपालन हेतु वाद की पोषणीयता – घोषणात्मक अनुतोष के लिए प्रार्थना, कब आवश्यक है? – विक्रेता ने वाद के प्रस्तुत करने से पूर्व विक्रय अनुबंध को रद्द करने के लिए एक पत्र जारी किया था, यह एक 'क्षेत्राधिकार संबंधी तथ्य' है जब तक कि उक्त रद्दीकरण को अपास्त नहीं किया जाता है – विनिर्दिष्ट अनुपालन के अनुतोष को क्रेता प्राप्त करने का अधिकारी नहीं है – विधि की दृष्टि में अनुबंध की समाप्ति/रद्द करने के घोषणात्मक अनुतोष का अभाव दोषपूर्ण है – विनिर्दिष्ट अनुपालन हेतु वाद पोषणीय नहीं।

Sangita Sinha v. Bhawana Bhardwaj and ors.

Judgment dated 04.04.2025 passed by the Supreme Court in Civil Appeal No. 4972 of 2025, reported in AIR 2025 SC 1806

Relevant extracts from the judgment:

Continuous readiness and willingness on the part of the Respondent No.1-buyer /purchaser from the date of execution of Agreement to Sell till the date of the decree, is a condition precedent for grant of relief of specific performance. This Court in various judicial pronouncements has held that it is not enough to show the readiness and willingness up to the date of the plaint as the conduct must be such as to disclose readiness and willingness at all times from the date of the contract and throughout the pendency of the suit up to the decree.

The relevant portion of the judgment in ***R. Kandasamy (Since Dead) & ors. v. T.R.K. Sarawathy & anr. Civil Appeal No. 3015 of 2013 decided on 21st November, 2024*** is reproduced hereinbelow:

> "What follows from ***A. Kanthamani*** (supra) is that unless an issue as to maintainability is framed by the Trial Court, the suit cannot be held to be not maintainable at the appellate stage only because appropriate declaratory relief has not been prayed.
>
> In ***Shrisht Dhawan (Smt) v. Shaw Bros., (1992) 1 SCC 534,*** an interesting discussion on 'jurisdictional fact' is found in the concurring opinion of Hon'ble R. M. Sahai, J. (as His Lordship then was). It reads:
>
> "What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which

depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad (Wade, Administrative Law. In ***Raza Textiles [(1973) 1 SCC 633***] it was held that a court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly."

Borrowing wisdom from the aforesaid passage, our deduction is this. An issue of maintainability of a suit strikes at the root of the proceedings initiated by filing of the plaint as per requirements of Order VII Rule 1, CPC. If a suit is barred by law, the trial court has absolutely no jurisdiction to entertain and try it. However, even though a given case might not attract the bar envisaged by section 9, CPC, it is obligatory for a trial court seized of a suit to inquire and ascertain whether the jurisdictional fact does, in fact, exist to enable it (the trial court) to proceed to trial and consider granting relief to the plaintiff as claimed. No higher court, much less the Supreme Court, should feel constrained to interfere with a decree granting relief on the specious ground that the parties were not put specifically on notice in respect of a particular line of attack/defence on which success/failure of the suit depends, more particularly an issue touching the authority of the trial court to grant relief if the 'jurisdictional fact' imperative for granting relief had not been satisfied. It is fundamental, as held in ***Shrisht Dhawan*** (supra), that assumption of jurisdiction/refusal to assume jurisdiction would depend on existence of the jurisdictional fact. Irrespective of whether the parties have raised the contention, it is for the trial court to satisfy itself that adequate evidence has been led and all facts including the jurisdictional fact stand proved for relief to be granted and the suit to succeed. This is a duty the trial court has to discharge in its pursuit

for rendering substantive justice to the parties, irrespective of whether any party to the lis has raised or not. If the jurisdictional fact does not exist, at the time of settling the issues, notice of the parties must be invited to the trial court's prima facie opinion of non-existent jurisdictional fact touching its jurisdiction. However, failure to determine the jurisdictional fact, or erroneously determining it leading to conferment of jurisdiction, would amount to wrongful assumption of jurisdiction and the resultant order liable to be branded as ultra vires and bad.

Should the trial court not satisfy itself that the jurisdictional fact for grant of relief does exist, nothing prevents the court higher in the hierarchy from so satisfying itself. It is true that the point of maintainability of a suit has to looked only through the prism of section 9, CPC, and the court can rule on such point either upon framing of an issue or even prior thereto if Order VII Rule 11 (d) thereof is applicable. In a fit and proper case, notwithstanding omission of the trial court to frame an issue touching jurisdictional fact, the higher court would be justified in pronouncing its verdict upon application of the test laid down in ***Shrisht Dhawan*** (supra).

In this case, even though no issue as to maintainability of the suit had been framed in course of proceedings before the Trial Court, there was an issue as to whether the Agreement is true, valid and enforceable which was answered against the sellers. Obviously, owing to dismissal of the suit, the sellers did not appeal. Nevertheless, having regard to our findings on the point as to whether the buyer was 'ready and willing', we do not see the necessity of proceeding with any further discussion on the point of jurisdictional fact here."

Since in the present case, the seller had issued a letter dated 07th February, 2008 cancelling the agreement to sell prior to the institution of the suit, the same constitutes a jurisdictional fact as till the said cancellation is set aside, the respondent is not entitled to the relief of specific performance.

Consequently, this Court is of the opinion that in absence of a prayer for declaratory relief that termination/cancellation of the agreement is bad in law, a suit for specific performance is not maintainable.

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193. SUCCESSION ACT, 1925 – Sections 61 and 63

Will – Valid execution and genuineness connotation – Held, 'Will is validly executed' and a 'Will is genuine' cannot be said to be the same – Suspicious circumtances, if any have to be considered before recording the finding that Will is genuine – If Will is not validly executed then there would be no need to look into the suspicious circumstances – Even after holding that Will is genuine, Court has jurisdiction to hold that it cannot be acted upon as it is being shrouded with suspicious circumstances, which propounder failed to remove.

उत्तराधिकार अधिनियम, 1925 – धाराएं 61 एवं 63

वसीयत – वैध निष्पादन एवं वास्तविकता अर्थ – अभिनिर्धारित, 'वसीयत वैध रूप से निष्पादित किया गया' एवं 'वसीयत वास्तविक है' इसे समान नहीं कहा जा सकता – संदेहास्पद परिस्थितियाँ, यदि कोई हैं तब उन को वसीयत के वास्तविक होने के निष्कर्ष को अंकित करने के पूर्व विचार में लिया जाना चाहिए – यदि वसीयत वैध रूप से निष्पादित नहीं है तब संदेहास्पद परिस्थितियों पर विचार किये जाने की कोई आवश्यकता नहीं होगी – वसीयत को वास्तविक निर्धारित करने के उपरान्त भी न्यायालय को यह निर्धारित करने का क्षेत्राधिकार होगा कि उसे प्रभावी नहीं किया जा सकता क्योंकि वह संदेहास्पद परिस्थितियों से ग्रस्त है जिन्हे हटाने में प्रतिपादक विफल रहा।

Lilian Coelho & ors. v. Myra Philomena Coelho

Judgment dated 02.01.2025 passed by the Supreme Court in Civil Appeal No. 7198 of 2009, reported in 2025 (2) MPLJ 225

Relevant extracts from the judgment:

In the contextual situation, firstly, it is to be found out whether the learned Single Judge had arrived at a finding that the Will is genuine. No doubt, the exposition of law by the Division Bench that suspicious circumstances, if any, have to be taken into consideration before recording the finding that the Will is genuine and not after recording a finding that the Will is genuine is the correct enunciation of law. But then the question is whether the learned Single Judge in the Testamentary Suit had arrived at a finding that the Will is genuine. In this context, we cannot lose sight of the fact that holding that a 'Will is validly executed' and a 'Will is genuine' cannot be said to be the same. If a Will is found not validly executed, in other words invalid owing to the failure to follow the prescribed procedures, then there would be no need to look into the question whether it is shrouded with suspicious circumstances. Therefore, it can be said that even after the propounder is able to establish that the Will was executed in accordance with

the law, that will only lead to the presumption that it is validly executed but that by itself is no reason to canvass the position that it would amount to a finding with respect to the genuineness of the same. In other words, even after holding that a Will is genuine, it is within the jurisdiction of the Court to hold that it is not worthy to act upon as being shrouded with suspicious circumstances when the propounder failed to remove such suspicious circumstances to the satisfaction of the Court.

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194. SUCCESSION ACT, 1925 – Section 63(c)

WORDS AND PHRASES:

(i) Unprivileged Will – Is deemed to be executable u/s 63 (c) – When attesting witnesses have witnessed Will's testator signing or affixing, their mark on Will – Section 63(c) requires that: (1) two or more witnesses must attest Will, (2) each witness must either: (a) witness testator signing or affixing their mark; (b) witness another person, signing at testator's direction; or (c) receive personal acknowledgement from testator regarding their signature or mark – The part of the section that employs the term "direction", would come into play only when the testator to the Will would have to see some other person signing the Will – Such signing would explicitly have to be in the presence and upon the direction of the testator.

(ii) Will – Validity – Requisites for – Explained.

(iii) Words and phrases "or" and "and" – Principles of statutory interpretation tells that the word "or" is normally disjunctive while the word "and" is normally conjunctive.

उत्तराधिकार अधिनियम, 1925 – धारा 63 (ग)

शब्द एवं वाक्यांश

(i) ''विशेषाधिकार रहित वसीयत'' – धारा 63(ग) के अंतर्गत निष्पादन योग्य होना मानी जाती है – जब अनुप्रमाणक साक्षियों ने वसीयतकर्ता का वसीयत पर हस्ताक्षर किया जाना या निषान लगाया जाना देखा हो – धारा 63(ग) अपेक्षा करती है किः– (1) दो या अधिक साक्षीगण को वसीयत अनुप्रमाणित करनी चाहिए; (2) प्रत्येक साक्षी को या तोः (अ) वसीयतकर्ता को उसके हस्ताक्षर करते हुए देखा हो; (ब) किसी अन्य व्यक्ति को, वसीयतकार्ता के निर्देष पर हस्ताक्षर करते हुए देखा हो या; (स) वसीयतकर्ता से उसके हस्ताक्षर या निषान के संबंध में व्यक्तिगत अभिस्वीकृति प्राप्त की हो – धारा का वह भाग जो पद 'निर्देश' प्रयुक्त

करता है केवल तभी भूमिका में आएगा जब वसीयत का अनुप्रमाणक किसी अन्य व्यक्ति को वसीयत पर हस्ताक्षर करते हुए देखेगा – ऐसे हस्ताक्षर किया जाना स्पष्ट रूप से वसीयतकर्ता की उपस्थिति में और उस के 'निर्देश' पर होना अपेक्षित है।

(ii) वसीयत – वैधता – अपेक्षित शर्तें– स्पष्ट की गई ।

(iii) ''शब्द'' और ''वाक्यांश'' ''या'' एवं ''और'' – संविधियों के निर्वचन का सिद्धांत बताता है कि ''या'' शब्द सामान्यतः वियोजक होता है जबकि ''और'' शब्द सामान्यतः संयोजक होता है ।

Gopal Krishan and ors. v. Daulat Ram and ors.

Judgment dated 02.01.2025 passed by the Supreme Court in Civil Appeal No. 13192 of 2024, reported in (2025) 2 SCC 804

Relevant extract from the judgment:

Section 63(c) enumerates five distinct situations:

A is the testator of the Will in question. **B** and **C** have signed the Will. For **B** and **C** to qualify as attestors;

Situation 1:

Each of them has to have seen **A** sign the will or put his mark on it; OR

Situation 2:

They should have seen some other person, let's say D signs the will in the presence of and on the direction of A;

OR

Situation 3:

They ought to have received a personal acknowledgment from A to the effect that A had signed the Will or has affixed his mark thereon; with the use of the conjunctive, 'and' one further stipulation has been provided:

B, C, D or any other witness is required to sign the Will in the presence of A however it is not necessitated that more than one witness be present at the same time. The statutory language also clarifies that B and C, the attestors, are not required to follow any particular prescribed format.

The requisites for proving of a Will are well established. They were recently reiterated in a Judgment of this Court in ***Meena Pradhan and ors. v. Kamla Pradhan and anr., (2023) 9 SCC 734***. See also ***Shivakumar and ors. v. Sharanabasappa and ors., (2021) 11 SCC 277***. The principles as summarised by the former are reproduced as below:-

"…10.1. The court has to consider two aspects: firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfill all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier;

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation;

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind (***Shivakumar v. Sharanabasappa, (2021) 11 SCC 277***). Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc."

The language of section 63(c) of the Act uses the word 'OR'. It states that each Will shall be attested by two or more witnesses who have seen the Testator sign or affix his mark on the Will OR has seen some other persons sign the Will in the presence and by the direction of the Testator OR has received a personal acknowledgment from the Testator of his signature or mark etc. What flows therefrom is that the witnesses who have attested the Will ought to have seen the Testator sign or attest his mark OR have seen some other persons sign the Will in the presence of and on the direction of the Testator. The judgment relied on by the learned Single Judge in the impugned judgment, i.e., ***Kanwaljit Kaur v. Joginder***

Singh Badwal (deceased through LRs) RSA No.5252 of 2012 holds that the deposition of the attesting witness in the said case had not deposed in accordance with Section 63(c) of the Act, where two persons had undoubtedly attested the Will, but the aspect of the 'direction of the testator' was absent from such deposition.

In the considered view of this Court, the Learned Single Judge fell in error in arriving at such a finding for the words used in the Section, which already stands extracted earlier, read - *"or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a…"*. That being the case, there is no reason why the 'or' employed therein, should be read as 'and'. After all, it is well settled that one should not read 'and' as 'or' or vice-versa unless one is obliged to do so by discernible legislative intent. Justice G.P Singh's treatise, 'Principles of Statutory Interpretation' tells us that the word "or" is normally disjunctive while the word "and" is normally conjunctive. Further, it is equally well settled as a proposition of law that the ordinary, grammatical meaning displayed by the words of the statute should be given effect to unless the same leads to ambiguity, uncertainty or absurdity. None of these requirements, to read a word is which is normally disjunctive, as conjunctive herein, are present.

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195. UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 – Section 45 -D (5)
CRIMINAL PROCEDURE CODE, 1973 – Section 436-A
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 479
Offence under UAPA – Bail – Restrictions imposed u/s 45-D(5) may be relaxed, where there is no likelihood of trial being completed within a reasonable time and period of incarceration already undergone has exceeded a substantial part of sentence – Prosecution cannot oppose the bail or Court may not deny bail on the ground of seriousness of crime, when speedy trial is not ensured to the accused within the time frame.

विधिविरूद्ध क्रिया–कलाप (निवारण) अधिनियम, 1967 – धारा 45–घ (5)
दण्ड प्रक्रिया संहिता, 1973 – धारा 436–क
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 479
यूएपीए के अंतर्गत अपराध – जमानत – धारा 45–घ (5) के अंतर्गत अधिरोपित निर्बन्धन वहां षिथिल किये जा सकते है जहां युक्ति–युक्त समयावधि में विचारण पूर्ण होने की संभावना दर्शित न हो एवं भुगती जा चुकी निरोध की अवधि दण्डादेश के सारवान भाग से अधिक हो चुकी है – जहां समय सीमा में अभियुक्त को शीघ्र विचारण सुनिश्चत नहीं कराया गया वहाँ अभियोजन जमानत

का विरोध नहीं कर सकता अथवा न्यायालय अपराध की गंभीरता के आधार पर जमानत से इंकार नहीं कर सकता।

Javed Gulam Nabi Shaikh v. State of Maharashtra and anr.

Judgment dated 03.07.2024 passed by the Supreme Court in Criminal Appeal No. 2787 of 2024, reported in (2024) 9 SCC 813

Relevant extracts from the judgment:

The object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment.

A three-Judge Bench of this Court in ***Union of India v. K.A. Najeeb, (2021) 3 SCC 713*** had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under:

> "It is thus clear to us that the presence of statutory re strictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safe guard against the possibility of provisions like Section 43 D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."

In the recent decision, ***Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51***, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply.

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"Respect for law is one of the essential principles for an effective operation of popular Government. It is the courts and not the legislature that our citizens primarily feel with keen abiding faith for redress, the cutting edge of the law. If they have respect for the working of their courts, their respect for law will survive the shortcomings of every other branch of the Government. If they lose their respect for the work of the courts, their respect for law and order will vanish with it to the great detriment of the society.

— K. Ramaswamy, J. *at* ***para 399, Kartar Singh v. State of Punjab, (1994) 3 SCC 569***

PART – IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

भारतीय स्टाम्प अधिनियम, 1899 में संशोधन

क्रमांक 18 सन् 2025

भोपाल, 8 सितम्बर 2025

भारत गणराज्य के छिहत्तरवें वर्ष में मध्यप्रदेश विधानःमण्डल द्वारा निम्नलिखित रूप में यह अधिनियमित होः–

1. **संक्षिप्त नाम और प्रारंभ** – (1) इस अधिनियम का संक्षिप्त नाम भारतीय स्टाम्प (मध्यप्रदेश संशोधन) अधिनियम, 2025 है.

   (2) यह मध्यप्रदेश राजपत्र में इसके प्रकाशन की तारीख से प्रवृत् होगा.

2. **मध्यप्रदेश राज्य को लागू हुए रूप में केन्द्रीय अधिनियम, 1899 का संख्यांक 2 का संशोधन** – मध्यप्रदेश राज्य को लागू हुए रूप में भारतीय स्टाम्प अधिनियम, 1899 (1899 का संख्यांक 2) (जो इसमें इसके पश्चात् मूल अधिनियम के नाम से निर्दिषट् है) को इसमें इसके पश्चात् उपबंधित किया जाए.

3. **अनुसूची 1–क का संशोधन** – मूल अधिनियम की अनुसूची 1– क में,–

   (1) अनुच्छेद 5 में, कॉलम (2) में, शब्द ''पचास रूपए'' के स्थान पर, शब्द '' दो सौ रूपए'' स्थापित किए जाएं.

   (2) अनुच्छेद 6 में,–

   (एक) खण्ड (ड.) के उपखण्ड (दो) में, कॉलम (2) में, शब्द ''एक हजार रूपए'' के स्थान पर, शब्द ''पांच हजार रूपए'' स्थापित किए जाएं.

   (दो) खण्ड (छ ख) में, उपखण्ड (एक) और (दो) के स्थान पर, निम्नलिखित उपखण्डस्थापित किए जाएं, अर्थात् :–

''(एक)	यदि संविदा मूल्य पचास लाख रूपए तक है.	एक हजार रूपए
(दो)	यदि संविदा मूल्य पचास लाख रूपए''से अधिक है.	दस लाख रूपए की अधिकतम सीमा के अध्यधीन रहते हुए संविदा मूल्य का 0.2 प्रतिशत.''.

(तीन) खण्ड (ज) के स्थान पर, निम्नलिखित खण्ड स्थापित किए जाएं, अर्थात् :–

''(ज) यदि अन्यथा उपबंध न किया गया हो,–

(एक)	जहां मूल्य निहित है.	न्यूनतम एक हजार रुपए के अध्यधीन रहते हुए, प्रत्येक दस हजार रुपए या उसके भाग के लिए एक रुपया,
(दो)	उपर्युक्त (एक) के अंतर्गत न आने वाले मामले के लिए	एक हजार रुपए.''.

(3) अनुच्छेद 24 में, कॉलम (2) मे, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

(4) अनुच्छेद 32 में, कॉलम (2) में, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

(5) अनुच्छेद 38 के खण्ड (ख) के उपखण्ड (दो) के पश्चात्, निम्नलिखित उपखण्ड जोड़ा जाए, अर्थात् :–

''(तीन) उपर्युक्त (एक) एवं (दो) के अंतर्गत न आने वाले खनन पट्टों के लिए	ऐसे पट्टे के अधीन देय या परिदेय पूरी रकम का 2 प्रतिशत.''

(6) अनुच्छेद 41–क में,–

(एक) खण्ड (क) के उपखण्ड (एक) में, कॉलम (2) में, शब्द ''पांच हजार रुपए'' के स्थान पर, शब्द ''दस हजार रुपए'' स्थापित किए जाएं.

(दो) खण्ड (क) के उपखण्ड (दो) में, कॉलम (2) में, शब्द ''दो हजार रुपए'' के स्थान पर शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

(तीन) खण्ड (ख) के उपखण्ड (एक) में, कॉलम (2) में, शब्द ''दो हजार रुपए'' के स्थान पर, शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

(चार) खण्ड (ख) के उपखण्ड (दो) में, कॉलम (2) में, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''दो हजार रुपए'' स्थापित किए जाएं.

(7) अनुच्छेद 48 में, कॉलम (1) में, स्पष्टीकरण–एक में, शब्द ''नाती'' के पश्चात्, शब्द '' तथा भाई की मृत्यु की दषा में उसकी पत्नी व बच्चे'' जोडे जाएं.

(8) अनुच्छेद 49 में,–

(एक) खण्ड ख के उपखण्ड (क) में, कॉलम (2) में, शब्द ''दो हजार रुपए'' के स्थान पर, शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

(दो) खण्ड ख के उपखण्ड (ख) में, कॉलम (2) में, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

(9) अनुच्छेद 50 में,–

(एक) खण्ड (क) में, कॉलम (2) में, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''दो हजार रुपए'' स्थापित किए जाएं.

(दो) खण्ड ख के उपखण्ड (दो) में, कॉलम (2) में, शब्द ''दो हजार रुपए'' के स्थान पर, शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

(तीन) खण्ड (घ) में, उपखण्ड (एक) में, कॉलम (2) में, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''दो हजार रुपए'' स्थापित किए जाएं.

(चार) खण्ड (ड.) में, कॉलम (2) में, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''दो हजार रुपए'' स्थापित किए जाएं.

(पांच) खण्ड (च) में, कॉलम (2) में, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''दो हजार रुपए'' स्थापित किए जाएं.

(10) अनुच्छेद 53 में, कॉलम (2) मे, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

(11) अनुच्छेद 60 में, कॉलम (2) में, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

(12) अनुच्छेद 63 में, कॉलम (2) में, शब्द ''एक हजार रुपए'' के स्थान पर, शब्द ''पांच हजार रुपए'' स्थापित किए जाएं.

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

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मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्यप्रदेश राज्य न्यायिक अकादमी, जबलपुर

मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्यप्रदेश राज्य न्यायिक अकादमी

ब्योहारबाग, जबलपुर (म.प्र.) - 482 007

Website : www.mpsja.mphc.gov.in, E-mail : dirmpsja@mp.gov.in, Ph. : 0761-2628679