31st Year

Pursuit of Excellence

JOTI JOURNAL

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MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

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SUBJECT – INDEX

endorse scientific or invasive techniques like narco-analysis, brain mapping or polygraph tests.

अनुच्छेद 20(3) एवं 21 – स्वयं को दोषयुक्त करने से संरक्षण – व्यक्तिगत स्वतंत्रता – नार्को–विश्लेषण परीक्षण – न्यायालय, जब जमानत याचिका पर विचार कर रहा हो, तब वैज्ञानिक या आक्रामक तकनीकों जैसे नार्को–विश्लेषण, ब्रेन मैपिंग या पॉलीग्राफ परीक्षण का आदेश नहीं दे सकता और न ही उसका समर्थन कर सकता। **202 485**

Article 21 – See section 6 of the Protection of Children from Sexual Offences Act, 2012.

अनुच्छेद 21 – देखें लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 की धारा 6। **238 573**

Article 21 – See section 84 of the Indian Penal Code, 1860.

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Section 12 – Contempt of court – *Locus standi* – Contempt jurisdiction cannot be invoked to enforce directions that were not intended for the benefit of the petitioner.

धारा 12 – अवमानना का प्रकरण – पक्षकारता – अवमानना क्षेत्राधिकार का प्रयोग उन निर्देशों को लागू करने के लिए नहीं किया जा सकता जो याचिकाकर्ता के लाभ के लिए नहीं थे। **203 486**

COPYRIGHT ACT, 1957
प्रतिलिप्यधिकार अधिनियम, 1957

Sections 63 and 65 – See section 2 (wa), 372, 374 and 378 of the Criminal Procedure Code, 1973.

धाराएं 63 एवं 65 – देखें दण्ड प्रक्रिया संहिता, 1973 की धाराएं 2(बक), 372, 374 एवं 378। **204 488**

CRIMINAL PROCEDURE CODE, 1973
दण्ड प्रक्रिया संहिता, 1973

Sections 2 (wa), 372, 374 and 378 – Right of victim to appeal – Maintainability – Scope – Distinction between "victim" and "complainant/informant"**.**

धाराएं 2(बक), 372, 374 एवं 378 – पीड़ित के अपील के अधिकार – स्वीकार्यता – क्षेत्र – "पीड़ित" और "शिकायतकर्ता /सूचनादाता" के बीच अंतर। **204 488**

Sections 154, 156(3), 190, 300 and 482 – FIR – Application u/s 156(3) CrPC – Preconditions and scope – Ordinarily, complainant must exhaust remedies u/s 154(1) and (3) before invoking Section 156(3), but failure to do so is a procedural irregularity, not illegality.

धाराएं 154, 156(3), 190, 300 एवं 482 – प्रथम सूचना रिपोर्ट – धारा 156(3) दं.प्र.स. के अंतर्गत आवेदन – पूर्व शर्तें और क्षेत्र – सामान्यतः, शिकायतकर्ता को धारा 154(1) और (3) के अनुरूप उपचारों का अनुसरण करने के उपरांत ही धारा 156(3) का सहारा लेना चाहिए, लेकिन ऐसा न करना प्रक्रिया संबंधी त्रुटि है, अवैधता नहीं।

205 491

Sections 155(2), 195 and 482 – Quashing of proceedings – Ingredients of offences – Cognizance based on police report violates Section 195 CrPC, which mandates complaint by aggrieved public servant or superior.

धाराएं 155(2), 195 एवं 482 – कार्यवाही को अपास्त करना – अपराधों के तत्व – अभियोग पत्र के आधार पर संज्ञान लेना धारा 195 दण्ड प्रक्रिया संहिता का उल्लंघन है, जो पीड़ित लोक सेवक या उसके वरिष्ठ द्वारा शिकायत को अनिवार्य करता है।

206 494

Section 200 – See section 138 of the Negotiable Instruments Act, 1881.

धारा 200 – देखें परक्राम्य लिखत अधिनियम, 1881 की धारा 138।

233 558

Sections 215, 223 and 464 – Misjoinder of Charges – Defective Charge – Held, minor irregularities in the framing of charges or joint trial do not ipso facto vitiate proceedings unless they cause "failure of justice".

Joint trial – Procedure cannot override the cause of justice.

धाराएं 215, 223 एवं 464 – अभियुक्त का गलत संयोजन – दोषपूर्ण आरोप – अभिनिर्धारित, आरोप तय करने या संयुक्त विचारण में मामूली त्रुटियाँ स्वयं में कार्यवाही को अमान्य नहीं बनाती जब तक कि वे "न्याय की विफलता" का कारण न बने।

संयुक्त विचारण – प्रक्रिया न्याय के उद्देश्य पर प्रभावी नहीं हो सकती।

237(ii) & (iii) 566

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धाराएं 291 एवं 293 – देखें स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 की धाराएं 8(ग), 20(ख)(ii)(ग) एवं 52–क एवं साक्ष्य अधिनियम, 1872 की धारा 65ख।

232 556

Sections 307, 363, 366-A and 376 – DNA Evidence – Non-examination of experts – Mere exhibiting of a DNA report under Section 293 CrPC is insufficient without testing its methodology, chain of custody and expert testimony.

धाराएं 307, 363, 366–क एवं 376 – डीएनए साक्ष्य – विशेषज्ञों की परीक्षा नहीं – धारा 293 दं.प्र.स. के अंतर्गत डीएनए रिपोर्ट को मात्र प्रदर्शित करना पर्याप्त नहीं है जब तक उसकी कार्यप्रणाली, अभिरक्षा की श्रृंखला और विशेषज्ञ साक्ष्य की जांच न की जाए। **223 536**

Section 376 – See sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and sections 215, 223 and 464 of the Criminal Procedure Code, 1973.

धारा 376 – देखें लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 की धाराएं 4 एवं 6 एवं दण्ड प्रक्रिया संहिता, 1973 की धाराएं 215, 223 एवं 464। **237 566**

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धारा 498–क – पति और रिश्तेदारों द्वारा क्रूरता – रिश्तेदारों के विरूद्ध आरोप अस्पष्ट और सामान्य प्रकृति के होन से प्रथम दृष्टया कोई प्रकरण नहीं बनना पाया गया – अपील स्वीकार की गई। **224(i) 539**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000

Sections 7A, 15 and 16 – Plea of juvenility – Stage at which can be raised.

धाराएं 7क, 15 एवं 16 – किशोरावस्था का अभिवाक् – किस स्तर पर उठाया जा सकता है। ***225 541**

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

किशोर न्याय (बालकों की देखरेख और संरक्षण) नियम 2007

– See sections 7A, 15 and 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

– देखें किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 की धाराएं 7क, 15 एवं 16। ***225 541**

LIMITATION ACT, 1963

परिसीमा अधिनियम, 1963

Article 136 – See sections 47 and 151 of the Civil Procedure Code, 1908.

Sections 138 and 142(2)(a) – Dishonour of cheque – Territorial jurisdiction to file complaint**.**

धाराएं 138 एवं 142(2)(क) – चैक का अनादरण – शिकायत दर्ज करने के लिए क्षेत्रीय अधिकारिता। **235** **561**

PREVENTION OF CORRUPTION ACT, 1988

भ्रष्टाचार निवारण अधिनियम, 1988

Sections 2(c)(i), 7 and 13(1)(d) r/w/s 13(2) – Public servant – Licensed stamp vendor – Demand and acceptance of illegal gratification – Trap case – Whether a licensed stamp vendor falls within the ambit of "public servant"?

धाराएं 2(ग)(i), 7 एवं 13(1)(घ) सहपठित धारा 13(2) – लोक सेवक – लाइसेंसधारी स्टाम्प विक्रेता – अवैध लाभ की मांग और स्वीकृति – जाल बिछाने का मामला – क्या एक लाइसेंसधारी स्टाम्प विक्रेता "लोक सेवक" की परिभाषा में आता है? **236** **563**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012

Sections 4 and 6 – Rape – Held, slight inconsistencies in testimony natural and not fatal.

Principle of "Beyond Reasonable Doubt" – Acquittal of actual offenders on hyper-technical grounds undermines justice and public confidence.

धाराएं 4 एवं 6 – बलात्कार – अभिनिर्धारित, साक्ष्य में साधारण असंगतियाँ स्वाभाविक हैं और दोषसिद्धि को प्रभावित नहीं करतीं।

"संदेह से परे" सिद्धांत – अत्यधिक तकनीकी आधारों पर वास्तविक अपराधियों को दोषमुक्त करना न्याय और जन विश्वास को कमजोर करता है। **237(i) & (iv)** **566**

Sections 4 and 8 – See **s**ections 201, 302, 363 and 376(2)(i) of the Indian Penal Code, 1860.

धाराएं 4 एवं 8 – देखें भारतीय दण्ड सहिता, 1860 की धाराएं 201, 302, 363 एवं 376(2)(i)। **217** **517**

Sections 5(g), 5(j)(iii)(m) and 5(r) r/w/s 6 – See sections 307, 363, 366-A and 376 of the Indian Penal Code, 1860.

धाराएं 5(छ), 5(ञ)(iii) (ड) एवं 5(द) सहपठित 6 – देखें भारतीय दण्ड संहिता, 1860 की धाराएं 307, 363, 366–क एवं 376। **223** **536**

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Part-IIA
(GUIDELINES)

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EDITORIAL

Esteemed readers,

In a world where the contours of law are being reshaped daily by technology, the judiciary stands at a pivotal juncture. Never has continuous learning been as critical as it is today. Courts are increasingly called upon to adjudicate matters involving artificial intelligence, digital marketplaces, algorithmic decisions, online transactions and cross-border legal frameworks. These issues evolve far more rapidly than statutory reforms can keep pace with, making it essential for judges to cultivate a habit of sustained intellectual renewal. Continuous learning is therefore, not merely an attribute of a modern judge; it is the cornerstone of judicial excellence and the foundation upon which justice in the digital era must rest.

The recent International Colloquium "Evolving Horizons: Navigating Complexity and Innovation in Commercial and Arbitration Law in the Digital World" organized at the Brilliant Convention Centre, Indore on 11th & 12th October, 2025 reaffirmed this truth with clarity and conviction. The discussions ranging from intermediary liability and cross-border disputes to the interface between technology and intellectual property demonstrated how quickly the global legal landscape is transforming. Judicial Officers engaged deeply with questions of digital accountability, arbitration trends, platform regulation and the delicate equilibrium between innovation and public interest. These exchanges highlighted that while technology may drive the speed of transformation it is only an informed and learning-oriented judiciary that can guide this transformation with fairness, sensitivity and constitutional fidelity.

This colloquium builds on an ongoing journey of international engagement that the Academy has consciously nurtured. Only last year, in partnership with the United Kingdom Intellectual Property Office and the International Trademark Association, the Academy had organized a Special Colloquium on Intellectual Property Rights. That dialogue compelled judges to examine emerging questions surrounding AI-generated works, digital enforcement, dynamic injunctions, cross-border infringements and the unique vulnerabilities of the online space. The intellectual continuity between the UK collaboration and the present partnership with Denmark reflects Madhya Pradesh's growing presence in global judicial discourse and underscores our belief that a judiciary enriched by international perspectives is better equipped to uphold justice.

I would like to add that such initiatives flourish because of the vision and leadership that guide this institution. I extend my profound gratitude to Hon'ble the Chief Justice Sanjeev Sachdeva, Patron-in-Chief of the Academy, whose commitment to expanding the horizons of judicial learning has ushered in an unprecedented degree of international exposure for the State's judiciary. His emphasis on knowledge, openness and institutional growth has allowed the Academy to elevate its academic standards and align itself with global best practices. I also express my sincere thanks to Hon'ble Justice Vivek Agarwal, Chairman of the Academy, whose guidance and intellectual clarity have shaped every dimension of this colloquium and Lordship's continuous and unwavering support to strengthen the Academy's mission of rigorous judicial training.

In the past two months, the Academy has also conducted Specialised Educational Programme on Motor Accident Claim Cases on 20.09.2025 through virtual mode and

Workshop on Labour Laws for the Presiding Judges of Labour Courts on 27.09.2025 & 28.09.2025 in the Academy. Apart that, the Academy also conducted online Computer Skills Enhancement Programme – Level I & II (ECT_13_2025) for the Judicial Officers of District Judiciary. A Special Workshop for Advocates (having 0-5 years practice) practicing at High Court of Madhya Pradesh, Jabalpur was also conducted in the Academy. All these programmes aimed at strengthening the very bedrock of our justice delivery system.

In keeping with this broader commitment to fostering continuous learning, the Academy has taken a significant step by transitioning the JOTI Journal to an online-only format from August 2025 onwards. As detailed in the official notice, this shift not only reduces the recurring expenditure associated with printing and distribution but also aligns with sustainable and environmentally conscious practices. Publishing digitally ensures faster access, simplifies distribution, and offers readers the convenience of downloading and archiving issues as needed. The availability of an advanced search engine further enhances research efficiency and ensures that judges and judicial officers can seamlessly access a rich repository of legal knowledge whenever required. The move to a fully digital Journal is thus, not merely a structural change but a reaffirmation of the Academy's commitment to modern, accessible and progressive knowledge dissemination.

In Part IIA of this edition, two significant judgments of the Hon'ble Supreme Court, ***Sanjabij Tari v. Kishore S. Borcar & anr., 2025 INSC 1158*** and ***CBI v. Mir Usman @ Ara, 2025 INSC 1155*** find place. These decisions have been included to deepen judicial understanding, ensure doctrinal consistency and support informed adjudication across courts. Each contribution to this journal is curated with the belief that even a single well-articulated judgment or scholarly insight can refine judicial thought and enhance the quality of justice delivery. We are also publishing the life journey of the legendary Justice H.R. Khanna, a name which needs no introduction. I hope our readers find time to visit/revisit the life journey of this legend.

As we reflect on the deliberations of the International Colloquium, one core message resonates above all: technology may set the pace of change, but it is continuous learning that gives direction, meaning and balance to that change. A judiciary that continues to learn continues to serve. In an era defined by fluid knowledge, shifting norms and rapidly emerging challenges, learning is not simply a professional obligation, it is a judicial duty, a constitutional responsibility and an ethical commitment. As we move forward, may this spirit of sustained learning illuminate our path and strengthen our collective resolve to build a justice system prepared not just for today, but for the many tomorrows that await.

In sincerely hope that the content in this issue will offer meaningful guidance to our readers in performing their duties. We look forward to you continued contributions and feedback.

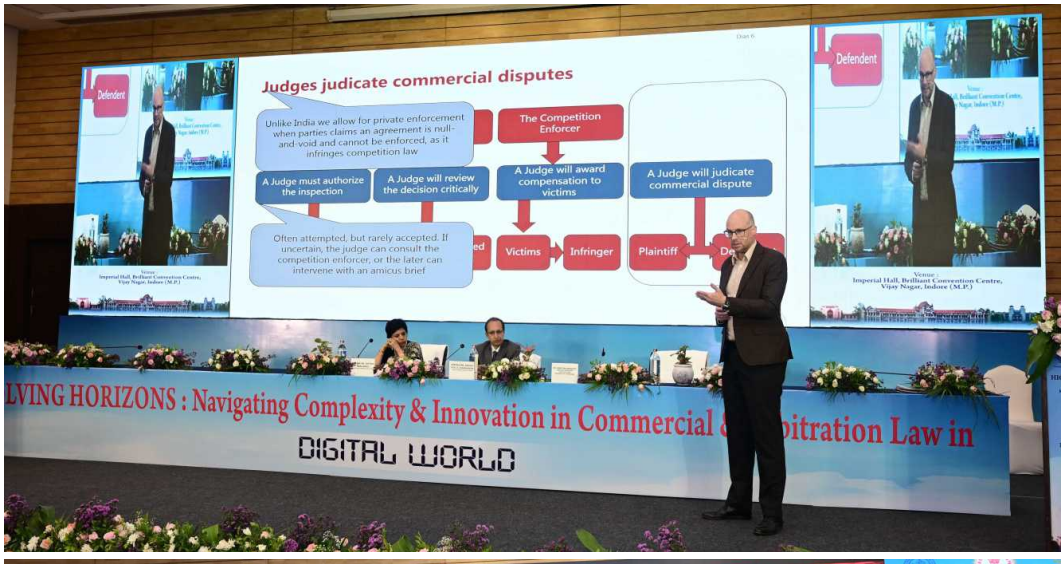
Umesh Pandav
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

International Colloquium on Evolving Horizons: Navigating Complexity Innovation in Commercial and Arbitration Law in the Digital World

(11th & 12th October 2025)

GLIMPSES OF THE COLLOQUIUM



ONGOING TECHNICAL SESSIONS

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Workshop on - Key issues relating to the Protection of Children from Sexual Offences Act, 2012
(06.09.2025 & 07.09.2025)

Workshop on - Labour Laws
(27.09.2025 & 28.09.2025)

HON'BLE SHRI JUSTICE VIVEK KUMAR SINGH ASSUMES CHARGE AS JUDGE OF HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Vivek Kumar Singh, on His Lordship's transfer from Madras High Court, was administered oath of office on 24th July, 2025 by Hon'ble the Chief Justice Shri Sanjeev Sachdeva.

Hon'ble Shri Justice Vivek Kumar Singh was born on 25th March, 1968. After obtaining the degrees of B.A. from Allahabad University, LL.B. from APS University, Rewa and Masters in Arts (Political Science) from Kanpur University, His Lordship was enrolled as an Advocate with the Bar Council of Allahabad on 30th August, 1993.

His Lordship practiced in Civil and Criminal side at Allahabad High Court. His Lordship served as Standing Counsel, Retainer, Ex-Officio Assistant Solicitor General of India. His Lordship also served as Additional Chief Standing Counsel for Government of U.P. His Lordship was State Law Officer, Government of U.P. from 2004-2017. His Lordship was Trained Mediator/Trainer appointed by Mediation and Conciliation Project Committee (MCPC), Supreme Court of India.

His Lordship was appointed as Judge of the High Court of Allahabad on 22nd September, 2017. Thereafter, His Lordship was transferred to High Court of Madras on 23rd November, 2023. On His Lordship's transfer to High Court of Madhya Pradesh, took oath as Judge of High Court of Madhya Pradesh on 24th July, 2025.

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

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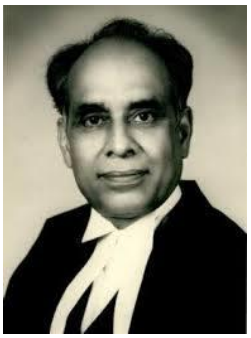
PART – I

OUR LEGENDS

JUSTICE H.R. KHANNA
THE CONSCIENCE OF THE BENCH



In the annals of Indian constitutional history, few names evoke stronger respect for courage, principle and fidelity to the person than Hans Raj "H.R." Khanna. He remains most remembered for a lonely dissent in the ADM Jabalpur (Habeas Corpus) case during the Emergency and as one of the key voices in the *Kesavananda Bharati case*, which gave constitutional shape to the doctrine of basic structure. But behind these public milestones, was a man of deep introspection, legal learning and moral conviction.

Early Life, Family and Legal Career

Justice Khanna was born on 3rd July, 1912 in Amritsar, Punjab, into a family rooted in the legal and public life of the region. His father, Sarb Dayal Khanna, was a lawyer and local civic figure. Young Khanna had his schooling at DAV High School, Amritsar, then proceeded to Hindu College and Khalsa College in Amritsar. He read law at Law College, Lahore and after his call to the Bar began practice in Amritsar, becoming known for clarity of thought, integrity and a humane approach to legal issues.

In 1952, he entered judicial service as a District & Sessions Judge (in Ferozepur) in Punjab. Over the years he served in the Punjab High Court, was transferred to the Delhi High Court, eventually becoming Chief Justice of the Delhi High Court. On 22nd September, 1971 he was elevated to the Supreme Court of India.

On the personal front, he married Uma Mehra in 1934, and they had four children (three sons and one daughter). Those close to him describe him as modest, unassuming, endlessly reflective and ever prepared in his judicial work. His later years saw him as a prolific writer and speaker, authoring works such as Judicial Review or Confrontation, Constitution and Civil Liberties, Making of India's Constitution, Judiciary in India and Judicial Process and his memoir Neither Roses Nor Thorns.

Kesavananda Bharati and The Birth Of Basic-Structure Thinking

When the Supreme Court convened a 13-Judge Bench in 1973 to adjudicate the extent of Parliament's amending power in ***Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461***, it was a turning point in Indian constitutionalism. The core question was: can Parliament amend even the foundational features of the Constitution, or must there be some inviolable "basic structure" beyond reach?

Justice Khanna contributed one of the seminal opinions in that case. While many judges delivered nuanced, often divergent opinions, his writing emphasized that certain features of the Constitution – democracy, rule of law, separation of powers, judicial review, fundamental rights themselves – must be preserved against any attempt by Parliament to obliterate them under the guise of amendment. In effect, he helped to anchor the doctrine of limitation: that the amending power under Article 368 does not permit Parliament to destroy the Constitution's identity and core architecture.

Though he was not the sole "swing vote" (the 13-judge bench was a complex tapestry of alignments), his voice was recognized as part of the final, enduring structure of ***Kesavananda Bharati.***

Later, during the emergency controversies, he also confronted amendments such as the 39th Amendment which had attempted to place certain election decisions beyond judicial review, indicating that even in the realm of "constitutional amendment," there are democratic boundaries that must not be transgressed.

The ADM Jabalpur (Habeas Corpus) Case and The Dissent

In June 1975, the Government of India declared Emergency. As part of that, under Article 359, the President was empowered to issue orders suspending the enforcement of certain fundamental rights (notably under Part III). A flood of habeas corpus petitions were filed in High Courts challenging illegal detentions under preventive detention laws, such as MISA (Maintenance of Internal Security Act). The Government appealed to the Supreme Court, in ***ADM Jabalpur v. Shivkant Shukla, 1976 AIR SC 1207***. The majority held in what would become one of India's most controversial judgments, that once the right to move any court under Article 21 is suspended by a valid proclamation under Article 359, no person can move any court for enforcement of the right to life or personal liberty, even if their detention is mala fide. In short, the majority gave the Executive almost absolute power over personal liberty during Emergency. It is noteworthy that Justice H. R. Khanna stood alone in dissent.

Justice Khanna's dissent deserves close reading, because it shows both legal rigor and moral resolve. Below are important excerpts and paraphrases:

On Article 21 and the notion of personal liberty:

> "Sanctity of life and liberty was not something new when the Constitution was drafted … the principle that no one shall be deprived of his life or liberty without the authority of law … was not the gift of the Constitution."

He rejects the contention that Article 21 is the sole repository of the right to life and personal liberty, insisting that even without Article 21, the State has no power to deprive a person of life or liberty without authority of law:

> "Article 21 cannot be considered to be the sole repository of the right to life and personal liberty … Even in the absence of Article 21 in the Constitution, the State has got no power to deprive a person of his life or personal liberty without the authority of law."

He points out that suspension of the right to move courts under Article 21 may affect procedure, but cannot extinguish the substantive principle that the State must justify any deprivation of life or liberty by law:

> "The suspension of the right to move any court for the enforcement of the right conferred by Article 21 in my opinion is that when a petition is filed in a court, the court would have to proceed upon the basis that no reliance can be placed upon that Article for obtaining relief … Question then arises whether … the rule that no one shall be deprived of his life or personal liberty without the authority of law still survives during the period of Emergency … I am of the opinion that it does."

On interpreting the suspension power narrowly and in favour of individual liberty:

> "If two constructions of the Presidential order were possible, the Court should lean in favour of a view which does not result in such startling consequences."

He also raises a hypothetical during the arguments, recorded in his memoir *Neither Roses Nor Thorns* and referred in commentators' discussions: he asked the Attorney General whether, if a police officer by personal enmity killed a person, could there be any legal remedy during Emergency. The AG's answer, as Khanna recounts, was (in effect) that no remedy would lie as long as the Emergency was on. Khanna later wrote:

> "I have prepared my judgment, which is going to cost me the Chief Justiceship of India."

At his farewell dinner, he famously said:

> "There can be no greater indication of the decay in the rule of law than a docile Bar, a subservient judiciary and a society with a choked or coarsened conscience. Fearlessness is the tradition of the Bar … Where fear is, justice cannot be."

Impact of The Dissent

Khanna's dissent did not prevail immediately. In fact, the majority ruled in favor of the government, and the decision was widely criticized. But over time, that dissent became a lodestar. The 44th Constitutional Amendment (1978) made it clear that Articles 20 and 21 could not be suspended even during Emergency, effectively correcting the legal vacuum that the ***ADM Jabalpur*** majority had created. Scholars, judges, lawyers and constitutional writers have celebrated Khanna's dissent as an act of judicial courage.

In ***Justice KS Puttaswamy v. Union of India, 2019 (1) SCC 1,*** a nine-judge bench overruled ADM Jabalpur insofar as it held that no jurisdiction remained during Emergency; the Supreme Court accepted that the basic view propounded in Khanna's dissent about inviolability of life and personal liberty and the continuing enforceability of rights was to be honoured. As Justice D. Y. Chandrachud observed, "the view taken by Justice Khanna must be accepted, and accepted in reverence for the strength of its thoughts and courage of its convictions."

When the judgment in ***ADM Jabalpur*** came, Justice Khanna was expected as the senior-most judge to become Chief Justice of India. But in January 1977, in a widely criticized move, he was superseded: the government appointed Justice M. H. Beg instead. Many saw this as punishing him for his dissent. In protest, Khanna tendered his resignation effective from 12th March 1977.

Legal commentators ever since have viewed this supersession as one of the darker episodes in the politicization of judicial appointments.

Later Years, Legacy and Full-Court Tributes

After leaving the Supreme Court, Justice Khanna did not retire into quiet oblivion. He chaired the Law Commission, without taking any remuneration, was nominated as a candidate for President of India, served briefly as Union Law Minister and continued in arbitration, writing, lecturing and public reflection on law and democracy. In 1999, he was awarded the Padma Vibhushan for his service to public life. His portrait was unveiled in the Supreme Court during his lifetime, a rare honor for former judges.

He passed away on 25th February 2008, in New Delhi, aged 95. At the full-court reference, a gathering of the Supreme Court, bar, jurists and scholars solemnly paid homage. The speeches and memorial remarks emphasized several recurring themes:

- His judicial independence, especially during the darkest constitutional crisis (the Emergency)
- His dissenting judgment as not just a legal document but a moral act
- The notion that his supersession and forced resignation itself became a testimony to his integrity
- Reflections that future generations would remember his courage and that he had, in the words of some, "given dignity back to the robe of a judge."

The full-court reference transcript and condolence resolutions also quoted the New York Times editorial circulated in Khanna's own ***Neither Roses Nor Thorns*** which had said:

> "If India ever finds a way back to the freedom and democracy that were proud hallmarks of its first eighteen years as an independent nation, someone will surely erect a monument to Justice H.R. Khanna of the Supreme Court."

In sum, when India looked for a judge who would not bow to power, Justice Khanna's name came forward. His life and judgments continue to serve as a moral compass to legal minds who believe that the protection of dignity, liberty and the individual must not falter even when the storm threatens.

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THE PRE-COGNIZANCE HEARING U/S 223 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: REFORM AND JUDICIAL CHALLENGES

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The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), marks a watershed reform in India's criminal procedural framework, replacing the half-century-old Code of Criminal Procedure, 1973 (CrPC). Among its many innovations, Section 223 introduces a pre-cognizance hearing, a procedural safeguard allowing the accused to be heard before a Magistrate formally takes cognizance of an offence. This provision seeks to balance fairness with efficiency, ensuring that frivolous or vexatious complaints do not proceed unchecked while protecting the liberty of individuals.

Background and Rationale

Under the previous CrPC regime, once a complaint was filed before a Magistrate, the accused had no right to participate or be heard until the court took cognizance and issued summons under Section 204. This unilateral procedure often led to situations where individuals were summoned without sufficient legal basis, causing unnecessary harassment, reputational harm and financial loss. The accused would then have to approach higher courts to seek quashing of the proceedings, further burdening the judiciary.

The BNSS, 2023, aims to correct this procedural imbalance. It introduces a pre-cognizance hearing mechanism that allows the accused to raise certain preliminary objections before the court proceeds to take cognizance. The objective is not to convert the process into a trial but to ensure that only those complaints that disclose a prima facie case and fall within the jurisdiction of the Magistrate move forward. This reform reflects a conscious effort by lawmakers to strengthen the principles of natural justice and to protect citizens from unwarranted criminal prosecution.

Meaning and Nature of Pre-Cognizance Hearing

Cognizance is not a mechanical act; it requires a Magistrate to apply judicial mind to the material presented, forming an opinion that an offence appears to have been committed. The pre-cognizance hearing is therefore a procedural innovation designed to test whether such judicial application of mind should proceed further at all.

Under the BNSS, the Magistrate is now required to afford an opportunity to the accused to make a limited representation before cognizance is taken. This opportunity is confined to specific grounds such as jurisdictional defects, limitations, maintainability, or the absence of ingredients necessary to constitute an offence. It is not meant to evaluate evidence or conduct a detailed inquiry into the merits of the complaint. Thus, it serves as a preliminary judicial filter designed to weed out complaints that are legally defective or clearly frivolous.

The Hon'ble Supreme Court in ***R.R. Chari v. State of U.P., 1951 SCR 312,*** observed that What is taking cognizance has not been defined in the Criminal Procedure Code, and I have no desire to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter – proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202.

What Does Not Amount to Taking Cognizance

The Supreme Court further clarified in ***R.R. Chari*** (supra) that when the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter but for taking action of some other kind (e.g., ordering investigation u/s 156(3) or issuing a search warrant for the purpose of the investigation), he cannot be said to have taken cognizance of the offence.

Statutory Basis: Section 223 BNSS

Section 223 of the BNSS corresponds broadly to Sections 200-204 of the CrPC but introduces a substantive departure through its first proviso, which prohibits the Magistrate from taking cognizance without giving the accused an opportunity of being heard. This marks a structural shift in criminal procedure, from unilateral initiation to bilateral scrutiny at inception.

On this change in the BNSS, the Calcutta High Court in ***Tutu Ghosh v. Enforcement Directorate, 2025 SCC Online Cal 5924,*** observed that, "the Legislature, in its wisdom, has deliberately introduced the first proviso to Section 223, thereby conferring on the accused the right to have an opportunity of hearing at the pre-cognizance stage, despite the Legislature being obviously aware of the subsequent stages of a proceeding and criminal trial where a right of hearing is again given to the accused."

The legislative intent appears rooted in addressing misuse of complaint procedures by specialized investigative bodies such as the Directorate of

Enforcement (ED) and the Serious Fraud Investigation Office (SFIO), which file complaints instead of police reports. The Supreme Court in ***Kushal Kumar Agarwal v. Directorate of Enforcement 2025 SCC OnLine SC 1221***, affirmed that such pre-cognizance hearings apply equally to complaints filed under the Prevention of Money Laundering Act, 2002.

The reform does not dilute the Magistrate's discretion; rather, it supplements it with an additional procedural safeguard. The Magistrate continues to act independently but now with the advantage of considering both sides of the preliminary legal issues before taking judicial notice of the offence.

The Coordinate Bench of the Delhi High Court in ***Neeti Sharma v. Saranjit Singh, 2025 SCC OnLine Del 2329***, observed that the first proviso to Section 223(1) of the BNSS puts an embargo on the power of the Court to take cognizance upon a complaint, by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. This proviso marks a substantive procedural safeguard that did not exist under the earlier regime.

Judicial Interpretation and Emerging Trends

The Calcutta High Court in ***Kaberi Dey v. Sourav Bhattacharjee, 2025 SCC OnLine Cal 5928*** is the first authoritative pronouncement interpreting Section 223. The Court reaffirmed that at the cognizance stage, the inquiry is limited to whether a prima facie offence is disclosed and that the accused may raise only technical or jurisdictional objections. It reiterated the classical principle that a court takes cognizance of the offence and not of the offender.

However, the pre-cognizance hearing u/s 223 complicates this doctrinal clarity. Once the accused is permitted to participate before cognizance, the boundary between "taking cognizance" and "issuance of process" becomes porous, warranting a fresh judicial reconsideration of their distinction.

Stage of Hearing the Accused

Recently, the Hon'ble Karnataka High Court in ***Sri Basanagouda R. Patil v. Sri Shivananda S. Patil, 2024 SCC OnLine Kar 96,*** observed that on presentation of the complaint, it would be the duty of the Magistrate/concerned Court to examine the complainant on oath, which would be his sworn statement, and to examine the witnesses present, if any, and that the substance of such examination should be reduced into writing. The question of taking cognizance would not arise at this juncture. The Magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, cognizance may be taken and the procedure regulated thereafter.

On careful scrutiny, it appears that notice of hearing to the accused is to be issued once the complainant and witnesses are examined before the Magistrate or concerned court.

The Supreme Court in ***Chandra Deo Singh v. Prokash Chandra Bose & anr., AIR 1963 SC 1430*** held that the inquiry u/s 200 of the CrPC was intended solely to determine whether sufficient material existed to justify the issuance of process and that the accused had no right to participate at that preliminary stage. This ensured a clear demarcation, the complainant bore the burden of establishing a prima facie case, while the accused's right of defence arose only after cognizance and issuance of process. However, Section 223 of the BNSS fundamentally alters this procedural architecture. The introduction of the proviso mandating an "opportunity of being heard" to the accused before cognizance is taken represents a paradigm shift in the Indian criminal complaint process.

While judicial decisions such as ***Basanagouda*** (supra) have clarified when such notice must be issued (i.e., after the Magistrate records sworn statements but before cognizance), the nature and extent of the opportunity to be heard remain unclear.

The High Courts have uniformly emphasised that this opportunity should not be a mere formality. However, the BNSS provides no explicit guidance on what this "opportunity" entails.

Critical ambiguities persist, such as:

i. **Nature of Participation:** Whether the accused's right is limited to oral submissions on the material already available on record or whether the accused may also submit documents, affidavits or other materials in defence at this stage.
ii. **Right to Cross-examine Witnesses:** The proviso is silent on whether the accused may cross-examine the complainant or witnesses examined under Section 223(1) before cognizance. Permitting such cross-examination could transform this stage into a quasi-trial, potentially frustrating the very purpose of preliminary inquiry.
iii. **Disclosure Obligations:** The Karnataka High Court in ***Basanagouda*** (supra) emphasised that the accused must be supplied with the complaint, the sworn statement of the complainant, and the statements of any witnesses before being called upon to respond. However, no uniform procedure has yet been codified for ensuring such disclosure across jurisdictions.
iv. **Standard of Judicial Satisfaction:** Section 223(1) does not clarify whether the Magistrate must record reasons for accepting or rejecting the accused's submissions at the pre-cognizance stage, or whether such reasons are implicit in the eventual decision to take or refuse cognizance.

v. **Consequences of Violation:** The provision is also silent on the procedural consequence of failure to provide a genuine opportunity to be heard. It remains to be seen whether such non-compliance would render subsequent proceedings *void ab initio* or merely irregular.

As the law presently stands, judicial interpretation suggests that the accused, at the pre-cognizance stage under Section 223, may:

- File a written reply;
- Present documentary evidence; and
- Address oral submissions before the Magistrate.

However, the precise boundaries of these rights remain judicially unsettled. There is a pressing need for either a clarificatory amendment or a judicial pronouncement by the Supreme Court to define the contours of "opportunity to be heard," ensuring uniformity and preventing procedural inconsistency across jurisdictions.

Negotiable Instruments Act, 1881 as an exception to Section 223 of BNSS

The Hon'ble Apex Court in ***Sanjabij Tari v. Kishore S. Borkar, 2025 INSC 1158,*** held that since the Negotiable Instruments Act, 1881, is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (u/s 223 of BNSS) of complaints filed under Section 138 of the NI Act. The Court agreed with the view taken by the High Court of Karnataka and directed that there shall be no requirement to issue summons to the accused at the pre-cognizance stage.

Retrospective Application of the Provision

The question of retrospective applicability of the proviso is sub judice before the Hon'ble Apex Court. However, recently, the Punjab and Haryana High Court in ***Sikander Singh v. Directorate of Enforcement, Gurugram, CRM-M-29954 of 2025*** (decided on 29.07.2025), observed that Sections 200 CrPC and 223 BNSS are *pari materia* except for the first proviso to the latter, which has created a new procedure for taking cognizance only after giving an opportunity of hearing to the accused.

Issuing process of a criminal offence has serious repercussions for the accused and that is the reason the Legislature deemed it appropriate to provide prior hearing to the person sought to be summoned. The right of hearing is one of the most cherished rights in criminal jurisprudence and is embedded in the principles of natural justice permeating the constitutional scheme especially Articles 14 and 21 guaranteeing the right to a fair trial. Therefore, there is no reason why the benefit

of hearing should not be afforded to the accused after the coming into force of the BNSS, even if the complaint against him was filed before 01.07.2024.

Concerns and Legal Lacunae

i. **Unequal Procedural Treatment:** The pre-cognizance hearing applies only to complaint cases and not to cases initiated by police reports. This asymmetry lacks a clear legal rationale and arguably violates Article 14, introducing procedural discrimination between similarly situated accused persons.

ii. **Limited Scope of Inquiry:** The Magistrate cannot assess evidence or weigh merits. Yet, the accused's right to be heard is hollow if confined to technical objections without access to the complaint's contents.

iii. **Risk of Duplication and Delay:** The pre-cognizance stage mirrors the later discharge hearing resulting in procedural redundancy and further burdening already strained Magistrate courts.

iv. **Logistical Ambiguity:** Section 223 does not prescribe how the accused is to be notified or whether a copy of the complaint must be supplied. This procedural vagueness risks inconsistent application and unnecessary litigation.

It is pertinent to mention that, the provision of Section 223(1) BNSS has its share of shortcomings, as highlighted in ***Mannargudi Bar Association v. Union of India and ors., W.P.(C) No. 625/2024.***

The points on which the provision is challenged are:

i. Cognizance is to be taken of the offence, not the offender. What the Magistrate needs to see is the accusation, not the accused.

ii. In a complaint case, there may not always be an identifiable accused. Notice and/or opportunity of hearing cannot be granted in such cases.

iii. There is no reason to distinguish between a complaint case and a police report case. This results in a situation where, in one category, cognizance can be taken only after the accused is heard, and in the other, such opportunity is denied.

Possible Pleas at the Pre-Cognizance Stage

The ambit and scope of hearing the proposed accused at the pre-cognizance stage can be said to be extremely limited, in the sense that the court, at that stage, cannot consider, one way or another, the merits of the allegations in the complaint or the defence, if any, put up by the accused.

Keeping this aspect in mind, the nature of the pleas that could be raised by the proposed accused at the pre-cognizance stage may be stated as follows:

i. The court lacks jurisdiction to take cognizance of the offences alleged in the complaint.
ii. The complaint is filed by a person who is not competent in law to do so.
iii. The complaint or the offences alleged in the complaint are barred by limitation.
iv. The court cannot take cognizance of the offence without sanction from a competent authority as prescribed by any law.
v. The allegations in the complaint, even if accepted as true in their entirety, do not disclose the ingredients of any offence.
vi. When there are multiple accused, the allegations in the complaint, even if accepted as true, do not disclose commission of any offence by one or more of them.

This list is not exhaustive. Similar technical objections regarding the maintainability of the complaint may be raised by the proposed accused at the pre-cognizance stage.

These permissible pleas underscore that the accused's participation is not meant to transform the hearing into a mini-trial but only to assist the Magistrate in preventing misuse of the process.

Conclusion

The pre-cognizance hearing under Section 223(1) of the BNSS represents an ambitious legislative attempt to infuse fairness and accountability into the criminal justice process. It strengthens the Magistrate's gatekeeping function, protecting individuals from unwarranted prosecution. Yet, its success will depend on its judicial construction and administrative execution. Unless accompanied by clear procedural guidelines, adequate judicial training, and digital integration, the provision may inadvertently complicate rather than clarify the process. The challenge before courts will be to interpret Section 223 as a summary safeguard, not a substantive battleground, ensuring that justice remains both fair and efficient.

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PART- II

NOTES ON IMPORTANT JUDGMENTS

196. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 12(1)(a), 12(1)(f) and 13(6)

Striking out of defence – Scope – Tenant's right to contest arrears of rent – Distinction between eviction and arrears of rent – When defence is struck out u/s 13(6) of the Act for non-deposit of provisional rent, the tenant is barred from contesting eviction on the statutory grounds u/s 12(1) but not precluded from contesting the issue of arrears of rent or leading evidence on that aspect – Defence against eviction is confined to the relief of eviction and does not extend to claims for arrears which remain triable under common law – Denying the tenant opportunity to adduce evidence on arrears would amount to illegality and deprivation of a fair hearing – Trial Court's order rejecting tenant's application to lead evidence on arrears of rent set aside.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धाराएं 12(1)(क), 12(1)(च) एवं 13(6) प्रतिरक्षा को समाप्त करना – विस्तार – किरायेदार का शेष किराए पर आपत्ति करने का अधिकार – निष्कासन और बकाया किराए में अंतर – जब अधिनियम की धारा 13(6) के अंतर्गत किराया जमा न करने पर प्रतिरक्षा समाप्त की जाती है, तो किरायेदार धारा 12(1) के वैधानिक आधारों पर निष्कासन का विरोध करने से बाधित हो जाता है, लेकिन शेष किराए के बिंदू पर आपत्ति करने या उस पर साक्ष्य प्रस्तुत करने में रोक नहीं है – निष्कासन के विरुद्ध बचाव केवल निष्कासन से राहत तक सीमित होता है और शेष किराए के दावों तक विस्तारित नहीं होता, जो सामान्य विधि के अंतर्गत विचारणीय रहते हैं – किरायेदार को शेष किराए पर साक्ष्य प्रस्तुत करने का अवसर न देना अवैधता और निष्पक्ष सुनवाई से वंचित करने के समान होगा – विचारणीय न्यायालय द्वारा किरायेदार के आवेदन को निरस्त करने का आदेश, जिसमें वह शेष किराए पर साक्ष्य देना चाहता था, अपास्त कर दिया गया।

Krishna Devi Santar v. Atul Lalwani

Order dated 21.01.2025 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 6468 of 2024, reported in 2025 (2) MPLJ 280

Relevant extracts from the order:

In the case at hand, a decree of eviction has been claimed by the respondent-plaintiff under Section 12(1)(a) and 12(1)(f) of Act, 1961 and also claimed a decree of arrears of rent. As regards decree of eviction, the plaintiff cannot be permitted to lead evidence in pursuance to the order of striking out of his defence passed by the court exercising power under Section 13(6) of Act, 1961 and that order was also affirmed by this Court. However, so far as issue of arrears of rent and decree thereof is concerned, the defendant-tenant can disapprove this claim by leading cogent evidence because the legal position as has been involved in this case has already been considered by the court and also observed that striking out of defence is confined to the decree of eviction claimed under Section 12(1) of Act, 1961 but decree of arrears of rent is not included therein and as such the order of striking out of defence does not debar the tenant to disapprove the stand of the plaintiff. Ergo, if he is not permitted to lead evidence to that effect, would not only tantamount to illegality in the eyes of law, but would also amount to depriving the tenant from defending other issues available to him/her under the common law. Adverting to the case of ***Manorama Devi and ors. v. Suresh and ors., 1999 (1) MPLJ 436*** as relied upon by learned counsel for the respondent, I find that this decision does not answer the issue in hand. Albeit, in that case, it has been observed that once defence is struck of, the defendant cannot be permitted to lead evidence on the plea/ground which is not part of written-statement. Thus, such a law has no applicability in the fact-situation at hand.

In view of the above discourse, based on underlying factual and legal assimilation, I am of the unwavering opinion that the impugned order passed by the trial court precluding the defendant petitioner to lead evidence to disapprove the decree of arrears of rent, is vulnerable. The defendant has denied the arrears of rent in her written statement and has taken a stand that certain amount has already been deposited by her with the plaintiff, which is required to be adjusted and such a stand has to be proved by her before the court. Accordingly, the impugned order dated 11.11.2024 is set aside. The trial Court is directed to permit the defendant confining her to lead evidence with respect to the issue of arrears of rent only.

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197. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 7, 11 and 34
CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17
Amendment of objections u/s 34 – Withdrawal of admission – Jurisdictional plea – Belated challenge to arbitration clause – Petitioner

sought amendment to objections u/s 34 of the Act, 1996, to introduce a plea that the arbitral tribunal lacked jurisdiction since the arbitration clause was deleted by an addendum – Petitioner had himself repeatedly invoked and acted upon the arbitration clause, sought appointment of arbitrator u/s 11, participated in proceedings and filed claim without protest – Having unequivocally admitted existence of valid arbitration agreement and acted thereon for nearly nine years, petitioner could not be allowed to withdraw admission or raise a plea of lack of jurisdiction at a belated stage – Even if the original clause was deleted, subsequent conduct and correspondence amounted to a fresh arbitration agreement u/s 7 of the Act.

माध्यस्थम् एवं सुलह अधिनियम, 1996 – धाराएं 7, 11 एवं 34
सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17
धारा 34 की आपत्तियों में संशोधन – स्वीकृति की वापसी – क्षेत्राधिकार का दावा – मध्यस्थता खंड को लेकर विलंबित चुनौती – दावाकर्ता ने अधिनियम, 1996 की धारा 34 के अंतर्गत आपत्तियों में संशोधन की मांग की, जिससे यह याचिका संयोजित की जा सके कि मध्यस्थ न्यायाधिकरण को क्षेत्राधिकार नहीं था क्योंकि मध्यस्थता खंड को एक परिशिष्ट द्वारा हटा दिया गया था – याचिकाकर्ता ने स्वयं लगातार मध्यस्थता खंड को संदर्भित किया और उसके आधार पर धारा 11 के अंतर्गत मध्यस्थ की नियुक्ति प्रार्थित की, कार्यवाही में भाग लिया और बिना आपत्ति के दावा दायर किया – एक वैध मध्यस्थता समझौते के अस्तित्व को स्पष्ट रूप से स्वीकार कर लगभग नौ वर्षों तक उसके अधीन कार्य करने के उपरांत, याचिकाकर्ता को स्वीकृति वापस लेने या विलंबित चरण में क्षेत्राधिकार की कमी का दावा उठाने की अनुमति नहीं दी जा सकती – भले ही मूल खंड को विलोपित कर दिया गया हो तथापि बाद की कार्यवाही और पत्राचार को अधिनियम की धारा 7 के अंतर्गत एक नवीन मध्यस्थता अनुबंध माना जाएगा।

Wagad Infraprojects Pvt. Ltd. v. Aryavrat Projects Developers Pvt. Ltd.

Order dated 08.11.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 6219 of 2024, reported in 2025 (2) MPLJ 318 (DB)

Relevant extracts from the order:

Conduct of the petitioner as noticed hereinabove clearly establishes that there was a valid and subsisting arbitration agreement between the parties and thus, the contention of the Petitioner that Arbitral Tribunal inherently lacked jurisdiction

cannot be sustained and accordingly Petitioner cannot be permitted to amend the objection under Section 34 of the Act at this belated stage and withdraw the admission made.

Reliance placed by learned Senior counsel for Petitioner on the judgment of Supreme Court in ***Hindustan Zinc Limited v. Ajmer Vidyut Vitran Nigam Ltd., 2019 MPLJ OnLine (SC) 2022*** is misplaced for the reason that in the said case the Supreme Court was considering the issue of constitution of the Arbitral Tribunal by one of the parties to the dispute. Said case pertained to reference of the disputes to the Statutory Arbitration Mechanism under section 86 of the Electricity Act and the Supreme Court held that the State Commission could not both decide the disputes itself and also refer the same to an arbitrator. Said judgment is not applicable to the factual matrix of the present case.

Reliance placed on the judgment of State of ***Sate of Chhatisgarh v. M/s. Sal Udyog Private Ltd., 2021 MPLJ OnLine (SC) 148*** is misplaced for the reason that though a plea of inherent lack of jurisdiction could be taken by a subsequent amendment to the objections under Section 34 of the Act, however, in the factual matrix of the present case, as noticed hereinabove, Petitioner cannot be permitted to amend the objections and resile from an unequivocal admission that there exists a valid arbitration agreement between the parties. Said judgment is also not applicable to the facts of the present case.

Further reliance placed on the judgment of ***Sushil Kumar Mehta v. Gobind Ram Bohra, (1990) 1 SCC 193*** to contend that defect of jurisdiction cannot be cured by consent or waiver, is also not applicable to the facts of the present case. The present case is not one where respondents had been contending the existence and validity of an Arbitration agreement and Petitioner consented or waived its objections to the same. In the present case, the Petitioner itself, despite denial by the respondent, had been time and again reiterating the existence and validity of the original arbitration agreement. Petitioner cannot be permitted to blow hot and cold with regard to the existence of the arbitration agreement. Consequently, said judgment also does not further the case of the petitioner.

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198. ARBITRATION AND CONCILIATION ACT, 1996 – Section 8

Arbitration agreement – Suit for trademark infringement and passing off – Reliefs based on alleged fraudulent assignment deeds – Commercial Court referred parties to arbitration u/s 8 – High Court affirmed – Allegations of fraud and forgery were alleged but found insufficient to

oust arbitration clause – Dispute found contractual in nature and arbitrable – Supreme Court upheld the view that once parties have agreed to arbitration, civil court has no discretion to retain jurisdiction.

माध्यस्थम् एवं सुलह अधिनियम, 1996 – धारा 8

मध्यस्थता अनुबंध – ट्रेडमार्क उल्लंघन और पासिंग ऑफ हेतु वाद – कथित कपटपूर्ण हस्तांतरण विलेखों के आधार पर अनुतोष – वाणिज्यिक न्यायालय ने पक्षकारों को धारा 8 के अंतर्गत मध्यस्थता के लिए भेजा – उच्च न्यायालय ने पुष्टि की – कपटपूर्णता और कूटरचना के आक्षेप लगाए गए लेकिन मध्यस्थता खंड को निष्क्रिय करने के लिए अपर्याप्त पाए गए – विवाद को संविदात्मक प्रकृति का और मध्यस्थता योग्य पाया गया – उच्चतम न्यायालय ने यह दृष्टिकोण यथावत रखा कि एक बार पक्षकार मध्यस्थता के लिए सहमत हो जाएं तो सिविल न्यायालय के पास अधिकार क्षेत्र बनाए रखने का कोई विवेकाधिकार नहीं होता।

K. Mangayarkarasi and anr. v. N.J. Sundaresan and anr.

Judgment dated 09.05.2025 passed by the Supreme Court in Special Leave Petition (Civil) No. 13012 of 2025, reported in AIR 2025 SC 3021

Relevant extracts from the judgment:

The law is well settled that allegations of fraud or criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the arbitral tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement.

Once an application in due compliance with Section 8 of the Act of 1996 is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law – *generalia specialibus non derogant*. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court. (***A. Ayyasamy v. A Paramasivam and ors., in AIR 2016 SC 4675***).

Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration.

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199. ARBITRATION AND CONCILIATION ACT, 1996 – Section 11

Quashing of FIR – Partnership dispute – Civil nature of dispute – Arbitration clause – Abuse of process – Petitioner and respondent No. 2 were partners in a Limited Liability Partnership engaged in manufacture and export of soya products – Following business disputes, both filed cross-complaints alleging siphoning of funds and removal of stock – Police, upon inquiry, found no case in petitioner's complaint, whereas Magistrate, on respondent's application u/s 156(3) CrPC, directed registration of FIR against the petitioner for misappropriation of stock worth ₹ 3.61 crore – Revisional Court upheld the direction – Petitioner invoked section 482 CrPC contending that the matter was civil in nature and covered by an arbitration clause under the partnership deed – Held, the existence of a civil remedy or arbitration clause under the Arbitration and Conciliation Act does not preclude initiation of criminal proceedings where allegations disclose a cognizable offence.

माध्यस्थम और सुलह अधिनियम, 1996 – धारा 11

प्रथम सूचना रिपोर्ट को अपास्त करना – साझेदारी विवाद – विवाद का सिविल स्वरूप – मध्यस्थता खंड – प्रक्रिया का दुरुपयोग – याचिकाकर्ता और प्रतिवादी क्रं. 2 एक सीमित देयता साझेदारी में भागीदार थे जो सोया उत्पादों के निर्माण और निर्यात में संलग्न थी – व्यापारिक विवादों के बाद, दोनों ने धन की हेराफेरी और स्टॉक हटाने के आरोप लगाते हुए परस्पर शिकायतें दर्ज की – पुलिस जांच में याचिकाकर्ता की शिकायत में कोई मामला नहीं पाया गया, जबकि मजिस्ट्रेट ने प्रतिवादी द्वारा धारा 156(3) दं.प्र.स. के अंतर्गत प्रस्तुत आवेदन पर ₹ 3.61 करोड़ मूल्य के स्टॉक के गबन के आरोप में याचिकाकर्ता के विरुद्ध एफआईआर दर्ज करने का निर्देश दिया – पुनरीक्षण न्यायालय ने निर्देश को यथावत रखा – याचिकाकर्ता ने धारा 482 दं.प्र.स. के अंतर्गत यह कहते हुए अनुतोष मांगा कि मामला सिविल प्रकृति का है और साझेदारी विलेख के अंतर्गत मध्यस्थता खंड से संदर्भित है – अभिनिर्धारित, मध्यस्थता और सुलह अधिनियम

के अंतर्गत दीवानी उपाय या मध्यस्थता खंड की उपस्थिति उस स्थिति में आपराधिक कार्यवाही शुरू करने से नहीं रोकती जब आरोप संज्ञेय अपराध को दर्शाते हैं।

Navneet Garg v. Pravin Kumar Dadoo

Order dated 01.04.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in Arbitration Case No. 25 of 2023, reported in 2025 (3) MPLJ 526

Relevant extracts from the order:

Having considered the rival submissions and on perusal of the documents filed on record, including the decisions rendered by the Supreme Court as aforesaid, this Court finds that admittedly, in the partnership firm between the parties, a serious dispute has arisen regarding the misappropriation of the commodities worth crores of rupees, and a criminal case has also been registered against the applicant by the Police Station Badgonda, Indore at the instance of the respondent, whereas, a similar complaint lodged by the applicant against the respondent in respect of the same commodities has met with dismissal by the police.

It is found that the FIR has been lodged at the instance of the respondent alleging the theft or siphoning of the same material by the applicant on which the HDFC Bank also has a charge. Thus, it cannot be said that the alleged offence was purely private in nature, and there was no public element involved. The Supreme Court has also observed in the case of ***Vidya Drolia and ors. v. Durga Trading Corporation, 2020 MPLJ OnLine (SC) 76*** that, "Criminal cases again are not arbitrable as they relate to sovereign functions of the State. Further, violations of criminal law are offences against the State and not just against the victim".

In the facts and circumstances, this Court is of the considered opinion that the appointment of the Arbitrator would not be expedient in the present case, as both the parties are alleging fraud against each other, and now the matter would be tried in the criminal Court, also touching upon the same issues which will be tried by the arbitrator, if appointed, i.e., as to who has committed the fraud and against whom.

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200. CIVIL PROCEDURE CODE, 1908 – Sections 47 and 151
LIMITATION ACT, 1963 – Article 136
Permanent injunction – Execution – Successive execution petitions maintainable – No limitation under proviso to Article 136 of the Limitation Act, 1963 exists – No limitation to enforce or execute a decree

granting perpetual injunction – Satisfaction in earlier execution petition does not bar enforcement on fresh breach – *Res judicata* not attracted.

सिविल प्रक्रिया संहिता, 1908 – धाराएं 47 एवं 151
परिसीमा अधिनियम, 1963 – अनुच्छेद 136
स्थायी निषेधाज्ञा – निष्पादन – क्रमिक निष्पादन याचिकाएं प्रचलनशील – परिसीमा अधिनियम, 1963 के अनुच्छेद 136 के उपबंध के अंतर्गत कोई रोक नहीं है – स्थायी निषेधाज्ञा प्रदान करने वाली आज्ञप्ति को प्रभावी करने या निष्पादित करने के लिए कोई परिसीमा नहीं है – पूर्व निष्पादन याचिका में संतुष्टि पुनः नवीन उल्लंघन पर प्रवर्तन को नहीं रोकती – पूर्व न्याय आकर्षित नहीं होता।

Saraswati Devi and ors. v. Santosh Singh and ors.

Judgment dated 16.05.2025 passed by the Supreme Court in Civil Appeal No. 6902 of 2025, reported in AIR 2025 SC 2872

Relevant extracts from the judgment:

The decree was one of permanent prohibitory injunction from interference to the peaceful possession of the scheduled property. A satisfaction recorded in one EP would not result in the dismissal of a further EP filed on the ground of a subsequent interference caused.

It is also to be noticed that Article 136 of the Schedule to the Limitation Act, 1963 provides for limitation, for execution of any decree other than a decree granting a mandatory injunction or the order of any Civil Court. While 12 years is provided as the period of limitation the proviso specifically provides that there would be no limitation to enforce or execute a decree granting perpetual injunction. When a permanent injunction is granted it operates perpetually against the judgment debtors, their assignees and successors and it could be enforced at any time, breach is occasioned. The decree-holder; their assignees and successors, has a perpetual right *in personam* against the decree holders their assignees and successors.

We find the order of the High Court to be flawed, and the order of the executing Court as affirmed by the revisional Court also to be bad and we set aside the orders. The EP shall stand restored. Our observations regarding the claim raised under Section 47 of the CPC is only prima facie and it shall not govern the consideration of such objection by the executing Court. The judgment-debtor will also be entitled to produce before the executing Court the result of the alleged proceedings initiated for cancellation of the decree. With the above observation, we

remit the case back to the Court of Civil Judge, Senior Division, Champaran wherein E.P. No. 2 of 2012 would stand restored. The matter shall be considered afresh in the light of the findings hereinabove, except those regarding the sustainability of the decree and the contention raised regarding the cancellation sought before the same Court; which shall fall for consideration by the Executing Court.

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201. CIVIL PROCEDURE CODE, 1908 – Section 100 and Order 41 Rule 27
Declaration of title and possession – Cooperative housing society – Special Patta – Claim of State to resume possession – No proof of surrender or resumption – Land was granted to a co-operative housing society under a special patta and the State failed to produce any legally proved document showing resumption or surrender of the land – Society's title and possession stand established – Typed copy of an alleged letter showing surrender, without signature or proof, had no evidentiary value – Letters produced by the State merely reflected offers of surrender that were never accepted or acted upon – There was no order or record showing resumption of possession – Substantial question of law is absent – First Appellate Court rightly decreed the society's suit after considering all evidence and complying with the directions issued in the previous remand.

सिविल प्रक्रिया संहिता, 1908 – धारा 100 एवं आदेश 41 नियम 27
स्वामित्व और आधिपत्य की घोषणा – सहकारी आवास समिति – विशेष पट्टा – राज्य द्वारा पुनः आधिपत्य लेने का दावा – समर्पण या पुनः आधिपत्य लेने का कोई प्रमाण नहीं – भूमि एक विशेष पट्टे के अंतर्गत एक सहकारी आवास समिति को प्रदान की गई थी और राज्य ऐसा कोई भी विधिक रूप से प्रमाणित दस्तावेज प्रस्तुत करने में विफल रहा जो भूमि के समर्पण या पुनः आधिपत्य लेने को दर्शाता हो – समिति का स्वामित्व और आधिपत्य सिद्धी हो चुका है – समर्पण को दर्शाने वाले बिना हस्ताक्षर या प्रमाण की एक कथित पत्र की टाइप की गई प्रति, कोई साक्ष्यिक मूल्य नहीं रखती – राज्य द्वारा प्रस्तुत पत्र केवल समर्पण के प्रस्ताव को दर्शाते हैं जिन्हें कभी स्वीकार नहीं किया गया या उन पर कोई कार्यवाही नहीं हुई – पुनः आधिपत्य लेने का कोई आदेश या अभिलेख मौजूद नहीं – विधि का महत्वपूर्ण प्रश्न अनुपस्थित है – प्रथम अपीलीय न्यायालय ने समस्त साक्ष्यों पर विचार करने और पूर्व पुनर्विचार में दिए गए निर्देशों का पालन करने के बाद समिति के पक्ष में उचित रूप से वाद का निर्णय दिया।

State of M.P. and ors. v. Shri Gandhinagar Gruh Nirman Sahakari Sanstha and ors.

Judgment dated 20.12.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 216 of 2020, reported in 2025 (2) MPLJ 324

Relevant extracts from the judgment:

The appellant trust had no independent rights in the land in question and the appellant trust is claiming through The State of Madhya Pradesh only. Even otherwise in previous round of litigation the Trust was given right of audience at the time of final hearing of Second Appeal No 507/1998 which was also filed by the State of Madhya Pradesh. Said appeal was allowed vide Judgment dated 23.07.2010 and matter was remanded back to Trial Court to decide all the issues afresh.

After the remand of the case the appellant Trust never applied before the Trial Court for their impleadment as defendant in the Suit. The Suit was decided 27.09.2017 and the appeal filed against the said Judgment was decided by the impugned order on 16.10.2019. For almost nine long years the case was pending before the courts below but no action was taken by the Trust for its impleadment despite having full knowledge of the pendency of the matter and now the second appeal has been filed by the Trust. The appellant Trust could also have filed a Civil suit for appropriate reliefs if their rights were affected but the trust did not choose to file any civil suit either. It appears that the Trust as 'B' team of the appellant State is acting in collusion with State to frustrate the respondent society.

The appeal filed by the State of M.P. and ors., being devoid of merits as no question of law much less substantial question of law is found involved in this appeal for consideration, fails and is hereby dismissed. The judgments in ***Santosh Hazari (ibid)*** and ***Chandra bhan (ibid)*** have no bearing in specific factual matrix of the case.

Since the appellant Trust do not have any independent rights in the suit property and the trust is claiming through the State of Madhya Pradesh and appeal filed by the State of Madhya Pradesh has been dismissed by this Court therefore the application for permission to prosecute this appeal is devoid of merits and the same is also liable to dismissed and is hereby dismissed and consequently this second appeal is also dismissed.

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202. CONSTITUTION OF INDIA – Articles 20(3) and 21

Protection against self-incrimination – Personal liberty – Narco-analysis test – Court while considering a bail application, cannot order or endorse scientific or invasive techniques like narco-analysis, brain mapping or polygraph tests – Such actions amount to transgressing into investigative functions and violate personal liberty and privacy – An accused may request to undergo a narco-analysis test voluntarily at the appropriate stage of trial but has no indefeasible right to demand it – Law discussed.

भारत का संविधान – अनुच्छेद 20(3) एवं 21

स्वयं को दोषयुक्त करने से संरक्षण – व्यक्तिगत स्वतंत्रता – नार्को–विश्लेषण परीक्षण – न्यायालय, जब जमानत याचिका पर विचार कर रहा हो, तब वैज्ञानिक या आक्रामक तकनीकों जैसे नार्को–विश्लेषण, ब्रेन मैपिंग या पॉलीग्राफ परीक्षण का आदेश नहीं दे सकता और न ही उसका समर्थन कर सकता है – ऐसे कार्य जांच संबंधी कार्यों में हस्तक्षेप करने और व्यक्तिगत स्वतंत्रता व गोपनीयता का उल्लंघन करते हैं – अभियुक्त विचारण की उपयुक्त अवस्था पर स्वेच्छा से नार्को–विश्लेषण परीक्षण कराने का अनुरोध कर सकता है, लेकिन इसे मांगने का उसे कोई अपरिहार्य अधिकार नहीं है – विधि वर्णित की गई।

Amlesh Kumar v. State of Bihar

Judgment dated 09.06.2025 passed by the Supreme Court in Criminal Appeal No. 2901 of 2025, reported in AIR 2025 SC 2753

Relevant extracts from the judgment:

It is clear that under no circumstances, is an involuntary or forced narco-analysis test permissible under law. Consequently, a report of such involuntary test or information that is discovered subsequently is also not *per se* admissible as evidence in criminal or other proceedings.

Adverting to the facts at hand, we cannot find a reason in the High Court accepting a submission by the Investigating Officer, stating that they will conduct a narco-analysis test of all the accused persons. Such a submission and its acceptance, is in direct contravention to the judgment of this Court in ***Selvi and ors. v. State of Karnataka, (2010) 7 SCC 263*** being hit by the protections under Articles 20(3) and 21 of the Constitution.

We are not inclined to accept the submission of the Respondent- State that since modern investigative techniques are the need of the hour, the High Court was correct in accepting the submission that narco-analysis test of all accused persons

will be conducted. While the need for modern investigative techniques may be true, such investigative techniques cannot be conducted at the cost of constitutional guarantees under Articles 20(3) and 21.

In the course of proceedings, the issue of undergoing a narco-analysis test voluntarily came to be raised, which brings us to the second question framed. As discussed above, this Court in ***Selvi*** (supra) had considered voluntary narco-analysis tests and opined that the reports thereof cannot be admitted directly into evidence. Information that is discovered, as a consequence thereof, can be admitted with the aid of Section 27 of the Indian Evidence Act, 1872.

Consequently, in our view, a report of a voluntary narco-analysis test with adequate safeguards as well in place, or information found as a result thereof, cannot form the sole basis of conviction of an accused person. The second question is, therefore, answered in the negative.

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203. CONTEMPT OF COURTS ACT, 1971 – Section 12
CIVIL PROCEDURE CODE, 1908 – Order 39 Rule 2A

Contempt of court – Application by co-appellant alleging disobedience of interim order restraining sale of property – *Locus standi* – Maintainability – Alleged contempt for sale of property despite interim order – Whether co-appellant can maintain contempt petition when interim order was passed on application filed by respondent in appeal? Held, interim order dated 28.09.2020 was passed in favour of the respondent in Second Appeal restraining appellants from executing any sale deed – Sale deed was executed by appellant No-2 after filing of a compromise application under Order 23 Rule 3 CPC, under a *bonafide* belief that the appeal had been settled – Petitioner had not sought any injunction and his rights were unaffected – He had no *locus* to maintain the present contempt petition – Contempt jurisdiction cannot be invoked to enforce directions that were not intended for the benefit of the petitioner – No willful disobedience made out – Petition dismissed.

न्यायालय अवमान अधिनियम, 1971 – धारा 12
सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 2क
न्यायालय की अवमानना का प्रकरण – सह–अपीलकर्ता द्वारा संपत्ति के विक्रय पर रोक लगाने वाले अंतरिम आदेश की अवहेलना का आक्षेप – सुने जाने का

सिद्धांत – स्वीकार्यता – आक्षेपित अवमानना कि अंतरिम आदेश के बावजूद संपत्ति का विक्रय किया गया – क्या सह–अपीलकर्ता अवमानना याचिका दायर कर सकता है जब अंतरिम आदेश अपील में प्रतिवादी द्वारा दायर आवेदन पर पारित हुआ था? अभिनिर्धारित दिनांक 28.09.2020 का अंतरिम आदेश द्वितीय अपील में प्रतिवादी के पक्ष में पारित हुआ था, जिसमें अपीलकर्ताओं को कोई विक्रय विलेख निष्पादित करने से रोका गया था – अपीलकर्ता क्रं.–2 ने आदेश 23 नियम 3 दं.प्र.स. के अंतर्गत समझौता आवेदन दायर करने के बाद, यह मानते हुए कि अपील का निपटारा हो गया है, विक्रय विलेख निष्पादित किया – याचिकाकर्ता ने कोई निषेधाज्ञा नहीं मांगी थी और उसके अधिकार अप्रभावित थे – उसे वर्तमान अवमानना याचिका प्रस्तुत करने का कोई अधिकार नहीं था – अवमानना क्षेत्राधिकार का प्रयोग उन निर्देशों को लागू करने के लिए नहीं किया जा सकता जो याचिकाकर्ता के लाभ के लिए नहीं थे – जानबूझकर अवहेलना प्रमाणित नहीं हुई – याचिका खारिज की गई।

Tejubai v. Madan Pawar

Order dated 11.07.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in Contempt Petition Civil No. 3883 of 2023, reported in 2025 (3) MPLJ 508

Relevant extracts from the order:

If the facts of the present case are examined in light of the law laid down by the Hon'ble Apex Court, it becomes evident that the interim order was not intended for the benefit of the co-appellant, but rather for the benefit of the respondent in the second appeal. Even in the present case, the coappellant (i.e. the present petitioner) cannot be said to be an aggrieved person, as there is not even a whisper in the contempt petition regarding how her rights have been affected by sale of the disputed property.

Contempt jurisdiction cannot be invoked to enforce unrelated directions or orders that originally had no bearing on the party raising the contempt issue.

During the arguments, learned counsel for the respondent pointed out that the present proceedings are nothing but an attempt to blackmail the respondent /appellant No.2, as the petitioner intends to obtain a portion of the sale consideration from appellant No.2.

The contention of the respondent appears to be valid. The present contempt petition by co-appellant No.7 against appellant No.2, without clearly stating any genuine grievance, indeed appears to stem from some ulterior motive.

The explanation tendered by the respondent, by referring to I.A. No.1301 of 2021, an application for compromise between the parties filed under Order 23 Rule 3 of the CPC and the subsequent circumstances under which the sale deed was executed, sufficiently explains the conduct of the respondent.

Thus, this Court is of the considered view that there was no wilful or deliberate violation of the order by the respondent through the execution of the sale deed particularly in relation to the present petitioner (appellant No.7).

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204. CRIMINAL PROCEDURE CODE, 1973 – Sections 2 (wa), 372, 374 and 378
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 2(1)(y), 413, 415 and 419
COPYRIGHT ACT, 1957 – Sections 63 and 65
Right of victim to appeal – Maintainability – Scope – Distinction between "victim" and "complainant/informant" – Appellant-company, holder of intellectual property rights in "Asian Paints" products, through its authorized representative, lodged complaint against Respondent No.1 for selling counterfeit paint buckets under its mark – Respondent convicted u/s 420 IPC and Sections 63 and 65 Copyright Act by Trial Court – Acquitted by First Appellate Court – Appellant's appeal under proviso to Section 372 CrPC dismissed by High Court as not maintainable on ground that appellant was not the complainant/victim and that appeal against an appellate acquittal lay only u/s 378 CrPC – Held, definition of "victim" in Section 2(wa) CrPC includes a company or body of persons which has suffered loss or injury by reason of an act or omission for which the accused is charged – Appellant having suffered financial and reputational loss due to counterfeit goods, squarely falls within meaning of "victim" – Proviso to Section 372 CrPC is a *standalone, self-contained and substantive* provision granting right of appeal to victim against any order of acquittal, conviction for lesser offence or inadequate compensation – It operates independently and is not controlled or limited by Section 378 – High Court erred in treating proviso to Section 372 as subordinate to Section 378 and in denying maintainability – Law clarified that "victim" need not be complainant or informant – Company suffering injury to reputation or property qualifies.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 2(बक), 372, 374 एवं 378
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 2(1)(म), 413, 415 एवं 419
प्रतिलिप्यधिकार अधिनियम, 1957 – धाराएं 63 एवं 65
पीड़ित के अपील के अधिकार – स्वीकार्यता – क्षेत्र – "पीड़ित" और "शिकायतकर्ता /सूचनादाता" के बीच अंतर – अपीलकर्ता कंपनी, जो "एशियन पेंट्स" उत्पादों में बौद्धिक संपदा अधिकार की धारक है, ने अपने अधिकृत प्रतिनिधि के माध्यम से प्रतिवादी कमांक 1 के विरुद्ध उसके चिह्न पर से नकली पेंट बाल्टियाँ बेचने की शिकायत दर्ज की – विचारण न्यायालय ने अभियुक्त को धारा 420 आईपीसी और कॉपीराइट अधिनियम की धारा 63 और 65 के अंतर्गत दोष सिद्ध किया – प्रथम अपीलीय न्यायालय ने आरोपी को दोषमुक्त किया – अपीलकर्ता की धारा 372 द.प्र.स. के उपबंध के अंतर्गत अपील को उच्च न्यायालय ने यह कहते हुए अस्वीकार कर दिया कि अपीलकर्ता शिकायतकर्ता/पीड़ित नहीं है और अपीलीय दोषमुक्ति के विरुद्ध अपील केवल धारा 378 दं.प्र.स. के अंतर्गत ही की जा सकती है – अभिनिर्धारित, धारा 2(बक) सीआरपीसी में "पीड़ित" की परिभाषा में वह कंपनी या व्यक्ति समूह शामिल है जिसे अभियुक्त के आरोपित कार्य या चूक के कारण हानि या चोट पहुँची हो – नकली माल के कारण अपीलकर्ता को वित्तीय और प्रतिष्ठात्मक हानि हुई, अतः वह "पीड़ित" की परिभाषा में स्पष्ट रूप से आता है – धारा 372 दं.प्र.स. का उपबंध एक स्वतंत्र, पूर्ण और वास्तविक प्रावधान है जो पीड़ित को दोषमुक्ति, कम गंभीर अपराध में दोषसिद्धि या अपर्याप्त प्रतिकर के विरुद्ध अपील का अधिकार देता है – यह स्वतंत्र रूप से कार्य करता है और धारा 378 द्वारा नियंत्रित या सीमित नहीं होता – उच्च न्यायालय ने धारा 372 के उपबंध को धारा 378 के अधीन मानकर स्वीकार्यता से इनकार कर त्रुटि की – विधि स्पष्ट की गई कि "पीड़ित" का शिकायतकर्ता या सूचनादाता होना आवश्यक नहीं – ऐसी कंपनी जिसे प्रतिष्ठा या संपत्ति को हानि पहुँची हो, वह भी योग्य है।

Asian Paints v. Ram Babu and anr.

Judgment dated 14.07.2025 passed by the Supreme Court in Criminal Appeal No. 2952 of 2025, reported in AIR 2025 SC 3322

Relevant extracts from the judgment:

The undisputed factual matrix would reveal that it was the Appellant which had given Power-of-Attorney to M/s Solution through its Proprietor Ajay Singh for protecting its IPR by undertaking survey(s), investigating and acting against any

person found to be engaged in violating/infringing the Appellant's IPR, including but not limited to, under the Trade Marks Act, 1999 and the Copyright Act.

In turn, M/s. Solution appointed Mr. Pankaj Kumar Singh to carry out the task assigned by the Appellant. Thus, whatever action was taken either by Mr. Pankaj Kumar Singh or by M/s. Solution related to the infringement of IPR with regard to the Appellant's products, was clearly for and on behalf of the Appellant. It was ultimately the interest of the Appellant which was sought to be served through the engagement of M/s. Solution, which in turn, engaged Mr. Pankaj Kumar Singh as its Field Operative. In the present case, it is clear that the allegation directly relates to wrongdoings on the part of Respondent No.1 in displaying, keeping in his shop and being in possession of materials/products which are similar to those manufactured/sold/distributed by the Appellant which also bore its mark on the outside packaging i.e., the bucket in which it was contained, to be specific 'paints' which indicated/mis-indicated that such products were of the Appellant.

Further, before the First Appellate Court, the Appellant had filed an application/petition for impleadment, whereupon order dated 10.02.2022 was passed to the following effect:

'Ld. Advocates for the parties are present. The arguments have already been made by the respondent Shri Suresh Sharma on the file. Similarly, in the criminal appeal, an application has been submitted on behalf of the complainant to the effect that he should also be given an opportunity of hearing.

Heard on the application.

The Appellant has no objection to the application and requested that the Complainant's Ld. Advocate can assist the Additional Public Prosecutor and his arguments should also be heard. In view of this consent, the complainant was heard on appeal.

In the file related to the present case, the Inspector stated that in the original case, the trial court had after concluding the trial, sentenced and convicted the accused. The appeal related to the conviction is also pending before this court. Therefore, the appeal against conviction and complainant's submissions should be heard together and decided. The arguments on side of Complaint has been heard before. The files related to the appeal were taken up for hearing today, and the advocate for the complainant, Mr. Naresh Sain, was given an opportunity to hear. The arguments between the appellant and the complainant were heard. Written

arguments were also presented by the appellant. If the complainant wishes, he can obtain a copy of the written argument from the court, and the advocate for the appellant also assured that he will provide the copy of the written argument to the advocate. If the complainant wants to present written argument, he can present written argument till 11 am on 15.02.2022 (sic).

Thus, though no formal order on the impleadment application/petition may have been passed but the Appellant's arguments were heard by the First Appellate Court, as the complainant. Neither the State nor Respondent No.1 objected to the application filed by the 17 of 28 Appellant. In fact, the order supra also records that Respondent No.1 had agreed that the Appellant be also heard.

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205. CRIMINAL PROCEDURE CODE, 1973 – Sections 154, 156(3), 190, 300 and 482

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 173, 175(3), 210, 337 and 528

FIR – Application u/s 156(3) CrPC – Preconditions and scope – Duty of Magistrate – Informant filed application u/s 156(3) CrPC without first approaching officer-in-charge or Superintendent of Police – Magistrate directed registration of FIR alleging cheating and conspiracy under MoU between parties – High Court refused to quash FIR – Ordinarily, complainant must exhaust remedies u/s 154(1) and (3) before invoking Section 156(3), but failure to do so is a procedural irregularity, not illegality – Magistrate remains competent if complaint discloses cognizable offence – Magistrate's order, though brief, showed application of mind and satisfied requirement of a speaking order – Order was upheld.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154, 156(3), 190, 300 एवं 482
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 173, 175(3), 210, 337 एवं 528
प्रथम सूचना रिपोर्ट – धारा 156(3) दं.प्र.स. के अंतर्गत आवेदन – पूर्व शर्तें और क्षेत्र – मजिस्ट्रेट का कर्तव्य – सूचनादाता ने बिना थाना प्रभारी या पुलिस अधीक्षक से संपर्क किए आवेदन अंतर्गत धारा 156(3) दं.प्र.स. प्रस्तुत किया – मजिस्ट्रेट ने पक्षकारों के मध्य हुए समझौता ज्ञापन के आधार पर कपट और षड़यंत्र के आरोप में प्रथम सूचना रिपोर्ट लेख करने का निर्देश दिया – उच्च न्यायालय ने एफआईआर अपास्त करने से इनकार किया – सामान्यतः,

शिकायतकर्ता को धारा 154(1) और (3) के अनुरूप उपचारों का अनुसरण करने के उपरांत ही धारा 156(3) का सहारा लेना चाहिए, लेकिन ऐसा न करना प्रक्रिया संबंधी त्रुटि है, अवैधता नहीं – यदि शिकायत संज्ञेय अपराध को दर्शाती है तो मजिस्ट्रेट सक्षम होता है – मजिस्ट्रेट का आदेश संक्षिप्त होते हुए भी विचारशील था और स्पष्ट आदेश की आवश्यकता को पूर्ण करता था – आदेश को यथावत रखा गया।

Anurag Bhatnagar and anr. v. State (NCT of Delhi) and anr.

Judgment dated 25.07.2025 passed by the Supreme Court in Special Leave Petition (Criminal) No. 18084 of 2024, reported in AIR 2025 SC 3427

Relevant extracts from the judgment:

On a conspicuous reading of the provisions of Sections 154, 156 and 190 of the CrPC together, it is crystal clear that an informant who wants to report about a commission of a cognizable offence has to, in the first instance, approach the officer-in-charge of the police station for setting the criminal law into motion by lodging an FIR. However, if such an information is not accepted by the officer-in-charge of the police station and he refuses to record it, the remedy of the informant is to approach the Superintendent of Police concerned. It is only subsequent to availing the above opportunities if he is not successful, he may approach the Magistrate under Section 156(3) CrPC for necessary action or of taking cognizance in accordance with Section 190 of the CrPC.

In the instant case, a bare perusal of the application filed under Section 156(3) of the CrPC dated 01.07.2005 would reveal that the informant therein had simply stated that an offence under Sections 420, 120-B and 34 of the IPC have been committed and that the informant had approached the "police officials" several times but in vain, but the application is completely silent as to when did the informant approach the Police or the Superintendent of Police. The application nowhere states that the informant has ever approached the officer-in-charge of the police station for lodging the FIR in accordance with Section 154 of the CrPC or that on refusal to record such information he has availed the remedy of approaching the Superintendent of Police concerned. The mere bald allegation without any details or proof thereof, that the police authorities were approached several times is not acceptable.

It is well recognized in law that the person aggrieved must first exhaust the alternative remedies available to him in law before approaching the court of law. In other words, he cannot ordinarily approach the court directly.

In the case at hand, the fact reveals that the informant had neither approached the officer-in-charge of the police station or the Superintendent of Police concerned as contemplated under Sections 154(1) and 154(3) of the CrPC but has directly gone to the Magistrate under Section 156(3) of the CrPC. In such a situation, the Magistrate ought not to have ordinarily entertained the application under Section 156(3) so as to direct the Police for the registration of the FIR, rather, it ought to have relegated the informant to first approach the officer-in-charge of the police station and then to the Superintendent of Police.

The Magistrate while passing the order dated 01.07.2005, directing for the registration of the FIR in exercise of power under Section 156(3) has not considered the above aspect as to whether the informant had exhausted his remedies available in law before approaching him under Section 156(3) of the CrPC.

In the facts and circumstances of the case, as the informant had directly moved the Magistrate under Section 156(3) of the CrPC without exhausting his statutory remedies, the Magistrate could have avoided taking action on the said application and could have refused to direct for the registration of the FIR. However, as entertaining an application directly by the Magistrate is a mere procedural irregularity and since the Magistrate in a given circumstance is otherwise empowered to pass such an order, the action of the Magistrate may not be illegal or without jurisdiction.

To sum up, the Magistrate ought not to ordinarily entertain an application under Section 156(3) CrPC directly unless the informant has availed and exhausted his remedies provided under Section 154(3) CrPC, but as the Magistrate is otherwise competent under Section 156(3) CrPC to direct the registration of an FIR if the allegations in the application/complaint discloses the commission of a cognizable offence, we are of the opinion that the order so passed by the Magistrate would not be without jurisdiction and would not stand vitiated on this count.

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206. CRIMINAL PROCEDURE CODE, 1973 – Sections 155(2), 195 and 482
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 174, 215 and 528
INDIAN PENAL CODE, 1860 – Sections 186 and 353
BHARATIYA NYAYA SANHITA, 2023 – Sections 221 and 132
Quashing of proceedings – Ingredients of offences – Abuse of process of law – *Mens rea* – Requirement of sanction and complaint by public servant – Appellants, members of NGO *Guria* engaged in anti-human

trafficking activities, accompanied Labour Enforcement Officers and police in a raid on a brick kiln to rescue bonded/child labourers – Allegation that appellants, without allowing officers to record statements at site, took labourers away in a dumper, thereby obstructing public servants – FIR registered u/s 186, 353 and 363 IPC – High Court refused to quash proceedings – On challenge it was held, mere physical movement of labourers cannot amount to use of "criminal force" or "assault" on public servants – Cognizance based on police report violates Section 195 CrPC, which mandates complaint by aggrieved public servant or superior – Police report cannot substitute such complaint – Explanation to section 2(d) CrPC does not cure this defect – Prosecution and proceedings quashed.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 155(2), 195 एवं 482
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 174, 215 एवं 528
भारतीय दण्ड संहिता, 1860 – धाराएं 186 एवं 353
भारतीय न्याय संहिता, 2023 – धाराएं 221 एवं 132
कार्यवाही को अपास्त करना – अपराधों के तत्व – विधि की प्रक्रिया का दुरुपयोग – आपराधिक मानसिकता – लोक सेवक द्वारा स्वीकृति और शिकायत की आवश्यकता – अपीलकर्ता, एनजीओ गुरिया के सदस्य थे, जो मानव तस्करी विरोधी गतिविधियों में संलग्न हैं, ने श्रम प्रवर्तन अधिकारियों और पुलिस के साथ एक ईंट भट्ठे पर छापे में भाग लिया ताकि बंधुआ श्रमिकों को बचाया जा सके – यह आक्षेपित किया गया कि अपीलकर्ताओं ने अधिकारियों को स्थल पर बयान दर्ज नहीं करने दिया और मजदूरों को डंपर में ले जाकर लोक सेवकों के कार्य में बाधा डाली – धारा 186, 353 और 363 संहिता, 1860 के अंतर्गत प्रथम सूचना रिपोर्ट पंजीबद्ध की – उच्च न्यायालय ने कार्यवाही अपास्त करने से इनकार किया – चुनौती पर यह माना गया कि केवल मजदूरों को शारीरिक रूप से स्थानांतरित करना "आपराधिक बल" या "हमला" नहीं माना जा सकता – अभियोग पत्र के आधार पर संज्ञान लेना धारा 195 दण्ड प्रक्रिया संहिता का उल्लंघन है, जो पीड़ित लोक सेवक या उसके वरिष्ठ द्वारा परिवाद को अनिवार्य करता है – अभियोग पत्र ऐसे परिवाद का विकल्प नहीं हो सकती – धारा 2(घ) दण्ड प्रक्रिया संहिता की व्याख्या इस दोष का उपचार नहीं है – अभियोजन और कार्यवाही अपास्त की गई।

Umashankar Yadav and anr. v. State of Uttar Pradesh and anr.
Judgment dated 08.05.2025 passed by the Supreme Court in Criminal Appeal No. 439 of 2018, reported in AIR 2025 SC 2571

Relevant extracts from the judgment:

As the High Court had not adverted to the facts of the case at all and mechanically recorded a finding that the case did not merit intervention at the preliminary stage, we have ourselves undertaken such exercise.

What emerges from scanning the allegations in the chargesheet and statements of witnesses is that the appellants had accompanied a team of Labour Enforcement Officers to verify the allegation that bonded/child labour were employed at the brick kiln. During inspection, a difference of opinion cropped up between the labour officers and the appellants as to the manner in which the inspection was to be conducted. While the appellants wanted the workmen and children to be brought to the Police Station for interrogation, the members of the labour officers intended to record their statements at the site before taking further action.

In this backdrop, the appellants had put the labourers and the children in a Dumper and carried them away from the site before their statements could be recorded. Thereby, it is alleged they had obstructed discharge of official duties.

Criminal force is defined as use of force by a person in order to commit an offence or done with the intention that such force is to cause or likely to cause injury, fear and annoyance to other person.

Assault involves any gesture or preparation which is done with the intention that such gesture or preparation will cause an apprehension about use of criminal force. Use of *criminal force* or *assault* on a public servant is essential to attract Section 353 IPC.

Coming to the facts of the case, uncontroverted allegations in the chargesheet do not disclose use of force or holding out threatening gestures giving rise to an apprehension of use of force towards public servant. Physical movement of the labourers would not amount to use of force far less criminal force on a public servant.

Given this situation, we can safely conclude uncontroverted allegations in the chargesheet do not disclose the ingredients of offence under Section 353 IPC.

Statements of labourers unequivocally show that no force was used to take them away and they were promptly released. These statements do not give an impression that such action was with the intention to impede discharge of official duty. It appears there was a genuine difference of opinion between the appellants and the officials concerned. Members of the social organization were of the impression that bonded labourers/children ought to be interrogated at a neutral place i.e. Police Station whereas the officers wanted to interrogate them at the site.

It goes without saying the manner and mode of interrogation was to be decided by the labour officers but appellants' endeavours were not to impede interrogation but to ensure it was conducted in a more effective manner. Such factual position denudes their action of the requisite *mens rea*, i.e. intention to obstruct official duty. When profile of the allegations emerging from the factual matrix of the case renders existence of *mens rea* patently absurd or inherently improbable, such prosecution is liable to be quashed as an abuse of process of law.

Malicious animus of the labour officials towards the appellants is evident from the reports annexed to the counter affidavit. Annexure CA/2 is a report of the Additional Labour Commissioner, U.P to National Commission for Protection of Child Rights regarding the incident. In the report, the Additional Commissioner had gone to the extent of alleging the appellants had offered bribes to the labourers to make false statements. Such insinuations are wholly unfounded and not borne out from the statements recorded during investigation. This hostile stance of the department fortifies our conclusion that registration of the criminal case was a product of malice and personal vendetta against the appellants.

Secondly, cognizance of offence under Section 186 IPC was taken on a police report in breach of section 195 CrPC section 195, *inter alia*, provides no court shall take cognizance of offence under section 186 save and except on a complaint in writing by the aggrieved public servant or his superior. In view of the aforesaid legal bar, cognizance taken of the offence under section 186 on a police report/chargesheet is impermissible in law.

It would be argued as FIR was registered for both cognizable (section 353 IPC) and non-cognizable offences (section 186), even if section 353 IPC is quashed, police report under section 186 may be treated as 'complaint' in view of the Explanation to Section 2(d) CrPC.

For the aforesaid reasons, impugned prosecution is quashed and the appeal is allowed. Pending applications, if any, shall stand disposed of.

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207. CRIMINAL PROCEDURE CODE, 1973 – Section 319
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 358
Summoning of accused – Power of court to proceed against other persons appearing to be guilty of offence – Test of satisfaction – During trial of murder case u/s 302, 307, 504 and 506 IPC, complainant sought summoning of R-2, who though named in FIR, was not chargesheeted – Trial Court after considering deposition of three eyewitnesses assigning a specific role to R-2, allowed application u/s 319 and issued summons – High Court, in revision, quashed the order holding that there was no specific role, motive or evidence linking R-2 and that summoning lacked basis – Held, High Court erred in conducting a mini-trial and re-evaluating evidence at summoning stage – Power u/s 319 CrPC is an enabling provision to ensure no guilty person escapes trial and must be exercised cautiously but effectively when evidence reveals involvement – Standard of satisfaction lies between prima facie case for charge and proof beyond reasonable doubt – Even evidence in examination-in-chief, if credible, is sufficient to invoke section 319 – Court need not await cross-examination – Witnesses consistently named R-2 and attributed specific role – Trial Court's order was upheld – Law reiterated.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 358
अभियुक्त को आहुत करना – अपराध में दोषी प्रतीत होने वाले अन्य व्यक्तियों के विरुद्ध कार्यवाही करने की न्यायालय की शक्ति – संतोष का परीक्षण – धारा 302, 307, 504 और 506 आईपीसी के अंतर्गत हत्या के प्रकरण की सुनवाई के दौरान, शिकायतकर्ता ने आर–2 को आहुत करने की प्रार्थना की, जिसे यद्यपि प्रथम सूचना रिपोर्ट में नामित किया गया था लेकिन अभियोग–पत्र में सम्मिलित नहीं किया गया – विचारण न्यायालय ने तीन प्रत्यक्षदर्शियों की गवाही पर विचार करते हुए, जिन्होंने आर–2 को विशिष्ट भूमिका दी थी, धारा 319 के अंतर्गत आवेदन स्वीकार किया और समन जारी किया – उच्च न्यायालय ने पुनरीक्षण में यह कहते हुए आदेश को अपास्त कर दिया कि आर–2 की कोई विशिष्ट भूमिका, उद्देश्य या साक्ष्य नहीं है और आहुत करने का कोई आधार नहीं था – अभिनिर्धारित, उच्च न्यायालय ने समन जारी करने के चरण में संक्षिप्त–विचारण कर और साक्ष्य का पुनर्मूल्यांकन कर त्रुटि की – धारा 319 दं.प्र.स. के अंतर्गत शक्ति एक सक्षम प्रावधान है ताकि कोई दोषी व्यक्ति विचारण से बच न सके और जब साक्ष्य संलिप्तता दर्शाते हैं तो इसे सतर्कतापूर्वक लेकिन प्रभावी रूप से प्रयोग किया जाना चाहिए – संतोष का मानक आरोप तय करने के लिए प्रथम दृष्टया

प्रकरण और संदेह से परे प्रमाण के मध्य होता है – यदि मुख्य परीक्षण में दी गई साक्ष्य विश्वसनीय हो तो भी धारा 319 प्रभावी की जा सकती है – न्यायालय को प्रतिपरीक्षा की प्रतीक्षा करने की आवश्यकता नहीं – साक्षियों ने लगातार आर–2 का नाम लिया और विशिष्ट भूमिका बताई – विचारण न्यायालय का आदेश यथावत रखा गया – विधि पुनः बताई गई।

Shiv Baran v. State of U.P. and anr.

Judgment dated 16.07.2025 passed by the Supreme Court in Criminal Appeal No. 3008 of 2025, reported in AIR 2025 SC 3349

Relevant extracts from the judgment:

The following statutory requisites for summoning any person not being the accused:

(a) such person has committed an offence;
(b) his complicity is revealed from the evidence collected during inquiry or trial; and
(c) for such offence, he can be tried together with the accused already facing trial.

The principles that the Trial Court ought to follow while exercising power under this Section are:

(a) This provision is a facet of that area of law which gives protection to victims and society at large, ensuring that the perpetrators of crime should not escape the force of law;
(b) It is the duty cast upon the Court not to let the guilty get away unpunished;
(c) The Trial Court has broad but not unbridled power as this power can be exercised only on the basis of evidence adduced before it and not any other material collected during investigation;
(d) The Trial Court is not powerless to summon a person who is not named in the FIR or Chargesheet; they can be impleaded if the evidence adduced inculpates him;
(e) This power is not to be exercised in a regular or cavalier manner, but only when strong or cogent evidence is available than the mere probability of complicity;
(f) The degree of satisfaction required is much stricter than the prima facie case, which is needed at the time of framing of charge(s);
(g) The Court should not conduct a mini-trial at this stage as the expression used is 'such person could be tried' and not 'should be tried'.

The evidence from all three alleged eyewitnesses, although prima facie, suggests the complicity of Rajendra (Respondent No. 2); a specific role being assigned to him, indicating that he was present at the scene of the occurrence, armed with a stick. The High Court tried to apply the same standard in deciding this application as is ordinarily used at the end of the trial in determining the conviction or otherwise of the accused. Whereas it ought to have considered that the standard of satisfaction required is short of the standard necessary for passing a final judgment after trial.

Rajendra, although not charge sheeted, was named in the FIR, and the evidence thus far, leads, prima facie, to reveal his role. Therefore, at this stage, there is sufficient material to put him on trial; whether he will ultimately be convicted or not is left to be determined by a full-fledged inquiry at the end of the trial. It would be premature to comment anything on his conviction. The first informant categorically mentioned him as the one who came along with the others, with a common intent, abusing and beating, causing the death of his brother, apart from causing serious injuries to the others.

In our considered view, the High Court proceeded to conduct a mini trial solely relying upon the affidavits submitted before the Superintendent of Police qua the innocence of Respondent No.2. It erred in giving a categorical finding on the merits of PW1, the injured eyewitness not to have named Respondent No.2, which we find is based on erroneous assumption and contrary to the factual position emerging from the record. The High Court erred in observing that witnesses have stated nothing about the motive of the crime; that the depositions are silent on the aspect of common intention; absence of the manner or sequence of occurrence of the incident; or that it cannot be inferred who is the aggressor. All these questions, amongst others, are relevant or not is a matter to be considered at the stage of final adjudication.

It is a settled law that the power under Section 319 CrPC must be exercised sparingly. However, where the evidence reveals the complicity of the prospective accused, it becomes obligatory for the authority to exercise the power provided under the said Section.

With the aforesaid observations, the appeal is accordingly allowed. The impugned order dated 23rd July, 2024 is set aside, and the summoning order dated 28th September, 2023 passed by the Trial Court in Sessions Trial No.109/2018, is restored.

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208. CRIMINAL PROCEDURE CODE, 1973 – Sections 386(b)(iii) and 401(3) BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 244(3) and 442

Revision and appellate powers – Scope – Appeal by accused against conviction u/s 354 and 448 IPC – Acquittal u/s 306 IPC – High Court, while dismissing appeal, exercised suo motu revisional powers and convicted the accused u/s 306 IPC as well – Held, impermissible – In an appeal filed by the accused, the High Court cannot enhance sentence or convict him for a higher offence in absence of appeal or revision by the State, complainant or victim – Revisional jurisdiction cannot be invoked suo motu to convert acquittal into conviction – Appellate power u/s 386(b)(iii) Code of Criminal Procedure allows alteration or reduction of sentence but 'not so as to enhance the same' – Order of conviction u/s 306 IPC set aside – Conviction u/s 354 and 448 IPC maintained – Appeal partly allowed.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 386(ख)(iii) एवं 401(3)
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 244(3) एवं 442
पुनरीक्षण और अपीलीय अधिकार – क्षेत्र – अभियुक्त द्वारा धारा 354 और 448 भा.द.स. के अंतर्गत दोषसिद्धि के विरुद्ध अपील – धारा 306 आईपीसी के अंतर्गत दोषमुक्ति – उच्च न्यायालय ने अपील खारिज करते समय स्वतः संज्ञान लेते हुए पुनरीक्षण अधिकार का प्रयोग किया और अभियुक्त को धारा 306 आईपीसी के अंतर्गत भी दोषसिद्ध कर दिया – अभिनिर्धारित, यह अनुचित है – अभियुक्त द्वारा प्रस्तुत अपील में, उच्च न्यायालय राज्य, शिकायतकर्ता या पीड़ित द्वारा अपील या पुनरीक्षण के अभाव में सजा बढ़ा नहीं सकता या उसे अधिक गंभीर अपराध के लिए दोषी नहीं ठहरा सकता – दोषमुक्ति को दोषसिद्धि में परिवर्तित करने हेतु पुनरीक्षण अधिकार का स्वतः संज्ञान लेकर प्रयोग नहीं किया जा सकता – दंड प्रक्रिया संहिता की धारा 386(ब)(iii) के अंतर्गत अपीलीय अधिकार सजा में परिवर्तन या कमी की अनुमति देता है लेकिन 'सजा बढ़ाने की अनुमति नहीं देता' – धारा 306 आईपीसी में दोषसिद्धि का आदेश अपास्त किया गया – धारा 354 और 448 आईपीसी के अंतर्गत दोषसिद्धि यथावत रखी गई – अपील आंशिक रूप से स्वीकार की गई।

Nagarajan v. State of Tamil Nadu

Judgment dated 04.06.2025 passed by the Supreme Court in Criminal Appeal No. 2892 of 2025, reported in AIR 2025 SC 3079

Relevant extracts from the judgment:

In the instant case, we find that the appellant/accused herein had filed the appeal against the conviction and sentence imposed by the Trial Court for the offences punishable under sections 354 and 448 of IPC. Insofar as section 306 of IPC is concerned, the Trial Court had acquitted the appellant. Being aggrieved by the said conviction under sections 354 and 448 of IPC, the appellant had filed the appeal before the High Court. Neither the State, nor the victim or complainant had sought for enhancement of sentence, or sought for conviction and sentence under section 306 of IPC before the High Court when the appellant had filed his appeal seeking setting aside of his conviction and sentence. The High Court, instead of considering the said appeal filed by the appellant on merits, sought to exercise *suo motu* revisional powers for convicting the appellant under section 306 of IPC also and thereby sentencing the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5,000/- and in default, to undergo simple imprisonment for three months. The sentences were to run concurrently. Thus, a conviction awarded for offences under sections 354 and 448 of IPC has also resulted in a conviction under section 306 of IPC and an enhanced sentence, that too, in an appeal filed by none other than the appellant.

We are of the view that in an appeal filed by the accused/convict and in the absence of any appeal filed by the victim, complainant or the State, the High Court cannot exercise *suo motu* revision either to enhance the sentence or to convict the appellant on any other charge. The reasons for coming to such a conclusion have been discussed above.

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209. EXCISE ACT, 1915 (M.P.) – Sections 47-A and 47-D
GOVANSH VADH PRATISHEDH ADHINIYAM, 2004 (M.P.) – Sections 4, 5, 6, 6-A, 6-B and 11(5)
CONSTITUTION OF INDIA – Articles 19(1)(g) and 300
Confiscation of vehicle – Power of collector – Related various provisions under the Govansh Vadh Pratishedh Adhiniyam and Excise Act discussed – Held, Section 47-A of the Excise Act, 1915 is ultra vires – Reference answered and directions issued.
आबकारी अधिनियम, 1915 (म.प्र.) – धाराएं 47–क एवं 47–घ
गौवंश वध प्रतिषेध अधिनियम, 2004 (म.प्र.) – धाराएं 4, 5, 6, 6–क, 6–ख एवं 11(5)
भारत का संविधान – अनुच्छेद 19(1)(छ) एवं 300
वाहन की जब्ती – कलेक्टर की शक्ति – गौवंश वध प्रतिषेध अधिनियम और आबकारी अधिनियम के संबंधित विभिन्न प्रावधानों पर विचार किया गया –

अभिनिर्धारित, आबकारी अधिनियम, 1915 की धारा 47—क असंवैधानिक है — रिफरेन्स उत्तरित किया गया एवं निर्देश जारी किए गए।

Ramlal Jhariya v. State of M.P. and ors.

Judgment dated 21.04.2025 passed by the High Court of Madhya Pradesh in Writ Petition No. 11356 of 2024, reported in 2025 (2) MPLJ 409 (FB)

Relevant extracts from the judgment:

As per the provisions of the Cow Progeny Act, confiscation can take place in case of violation of Section 4, which prohibits slaughter of Cow Progeny. Section 5 prohibits possession and transport of beef and Section 6 prohibits transport of Cow Progeny for slaughter. Section 6-A prohibits export of Cow Progeny and grant of permit. Section 6-B prohibits transport of Cow Progeny through the State of Madhya Pradesh and provides for grant of transit permit.

In the aforesaid six provisions for violation of which confiscation can take place, no defence is carved out in the confiscation proceedings that the vehicle was used without the knowledge or connivance of the owner of vehicle. The only whisper to be found is in Section 6, which relates to the person transporting cow progeny or causing it to be transported himself or by his agent servant etc. for the purpose of slaughter or with the knowledge and it will be or likely to be slaughter.

No defence seems to be carved out in all the aforesaid provisions of sections 4, 5, 6, 6-A and 6-B that the owner of vehicle can raise a defence that the vehicle was used without his knowledge. In fact, Sections 4, 5, 6, 6-A and 6-B are the criminal provisions and they would not apply to owner of the vehicle, but would apply only where the owner is the transporter also. However, no further defence has been carved out in section 11(5), which relates to confiscation of vehicle of the owner being able to raise a defence in confiscation proceedings that the vehicle was used for the offence under the act without his knowledge or connivance. Therefore, so far as the rights given to the owners of vehicles are concerned, it appears that the provisions are not different from the provisions of Excise Act discussed above. Only a whisper of knowledge is found in Section 6, which is very ambiguous. The relevant fact is use of the vehicle in a particular manner, and the knowledge of the transporter, without any reference to knowledge of the owner is irrelevant because confiscation hits the owner, and not the transporter nor the supplier.

Very importantly, no power is given to Trial Court under Cow Progeny Act to pass order for confiscation and the only power is given to District Magistrate/Collector. In this view of the matter, it would have been appropriate that

a proper procedure for enquiry had been laid down before the District Magistrate/Collector, and the lack of knowledge and connivance of owner/his agent had been engrafted in the said Act or Rules, so that the law would have ensured that the owner stood a proper chance to plead, represent and defend his case. However, the question of constitutionality of provisions of Cow Progeny Act relating to confiscation is neither referred before us, nor prayed in the petition in which reference has been made.

The issue relating to Cow Progeny Act has been dealt with by the Hon'ble Supreme Court in the case of ***Abdul Vahab*** (supra) wherein the Supreme Court reversed the confiscation as the accused had been acquitted in criminal trial. It was held that the order of acquittal was passed as evidence was missing to connect the accused with the charges. The confiscation of the truck of appellant therein when he stood acquitted in the criminal prosecution, was held amounting to arbitrary deprivation of his property and violates the right guaranteed to each person under Article 300-A. It was held not only arbitrary but also inconsistent with the legal requirements. The Hon'ble Supreme Court has held that confiscation despite acquittal by criminal court cannot be allowed to stand. The fact of acquittal was held to be a relevant factor in the matter of confiscation of vehicle.

As already discussed above, no defence of lack of knowledge and connivance of the owner has been made available to the owner, nor has any procedure for confiscation been laid down. Therefore, it is held that though the proceedings for confiscation can be initiated and proceeded parallel to criminal trial, but no confiscation order can be passed before conclusion of criminal trial and the Collector/District Magistrate would be empowered to confiscate the vehicle only if conviction is recorded in criminal trial and involvement of vehicle and knowledge/connivance of the owner is proved in the criminal trial. We are also fortified in our conclusion by a recent order of the Hon'ble Supreme Court in SLP (Crl.) No. 1910-1911/2024 ***(Mohammad vs. State of Rajasthan)*** wherein the Supreme Court held that confiscation under Section 6-A of The Rajasthan Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration of Export) Act 1995 will not be given effect to during pendency of criminal trial.

So far as the question of maintainability of writ petition is concerned, the position is not at all in dispute in terms of the settled position of law by various judgments of the Supreme Court, some of those being in the case of ***Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771*** and ***Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1,*** that once the order is without jurisdiction, the High Court can interfere in the said order in exercise of writ jurisdiction even on

availability of alternative remedy of appeal/revision and also that alternative remedy being only self imposed restriction and not absolute bar to exercise of writ jurisdiction, where the order is passed by an authority having no authority to pass the order, then the High Court can always entertain writ petition. Therefore, it is to be held that writ petition is maintainable once an order is passed by the Collector/District Magistrate confiscating the vehicles by exercising powers under the provisions of M.P. Excise Act, 1915 and before conclusion of trial under Cow Progeny Act.

Therefore, the questions referred to us in the matter of jurisdiction to pass confiscation order during pendency of criminal proceedings under M.P. Excise Act, 1915 and Cow Progeny Act are answered in the following manner:

(i) Section 47-A of M.P. Excise Act conferring authority on the Collector to pass order for confiscation is declared ultravires being disproportionately violative of Articles 19(1)(g) and 300-A of the Constitution of India. Therefore, question of confiscation by the Collector during pendency of criminal trial no longer survives in the matter, as order for confiscation can now be passed only by the Criminal Court trying the offence in terms of sections 46 and 47 thereof. As a necessary consequence thereto, Section 47-D would become inoperative in all cases where confiscation orders have not been passed as yet, having rendered superfluous.

(ii) For cases under Cow Progeny Act, the Collector/District Magistrate shall be competent to initiate proceedings for confiscation during pendency of criminal trial, but no confiscation order can be passed before conclusion of criminal trial and the Collector/District Magistrate would be empowered to confiscate the vehicle only if conviction is recorded in criminal trial and involvement of vehicle and knowledge/connivance of the owner is proved in the criminal trial.

(iii) Writ petition is maintainable once an order is passed by the Collector/District Magistrate confiscating the vehicles by exercising powers under the provisions of M.P. Excise Act, 1915 and in case of Cow Progeny Act, if it is passed before conclusion of trial, because it will be without jurisdiction.

As we have held Section 47-A of the M.P. Excise Act to be ultra-vires of Constitution of India, and a number of cases must have been decided by now since the provision has been in existence, therefore, to avoid any chaos and needless heavy burden on State machinery and exchequer, we direct that this order would be applicable only prospectively in the following manner:

a. for those pending cases where confiscation order has not yet been passed by the Collector till date of this order, this order will be applicable,
b. for the concluded cases where confiscation order has already been passed prior to date of this order, this order would apply only if an appeal/revision/petition under Section 482 CrPC or u/s 528 BNSS/writ petition or challenge in any manner is pending against confiscation order as on date of this order.
c. where either (a) the confiscation order or (b) order in appeal has already been passed prior to date of this order, the benefit of this order will be applicable only if statutory limitation for challenging the same has not expired on date of this order and if (c) order in Revision has been passed less than three months prior to date of this order, then also, benefit of this order will apply while making challenge before the High Court in Writ petition/Section 482 CrPC or Section 528 BNSS.
d. where the confiscation order has already been passed and it has not been challenged, or if challenged, the challenge has failed and not pending as on today and in case of confiscation order or appellate order, limitation to challenge the same has expired, or in case of Revisional order, same has been passed more than three months prior to date of this order and not put to challenge till today, confiscations in those cases will stand closed and shall not be re-opened in any manner for any purpose whatsoever for taking benefit of this order.

We having given our conclusions, W.P. No.6542/2025 is disposed of, while the reamaining matters be placed before the appropriate Bench for adjudication of the case.

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210. GUARDIANS AND WARDS ACT, 1890 – Section 25
HINDU MINORITY AND GUARDIANSHIP ACT, 1956 – Sections 6 and 13
Custody of minor child – Paramount consideration – Welfare of child – Natural guardian – *Ex parte* order of Family Court – Held, in custody matters, the paramount consideration is the welfare and best interests of the child, not the legal rights of parents under statute – Moral, emotional and educational welfare of the child must be prioritized over parental claims – Father, being a natural guardian u/s 6 of the Hindu Minority and Guardianship Act, has a legitimate claim to custody if the evidence

shows he can provide better financial stability, family support and a conducive environment for the child's development.

संरक्षक एवं प्रतिपाल्य अधिनियम, 1890 – धारा 25
हिन्दू अप्राप्तवयता और संरक्षकता अधिनियम, 1956 – धाराएं 6 एवं 13
अवयस्क बच्चे की अभिरक्षा – सर्वोपरि विचार – बच्चे का कल्याण – प्राकृतिक अभिभावक – पारिवारिक न्यायालय का एकपक्षीय आदेश – अभिनिर्धारित, अभिरक्षा के मामलों में सर्वोपरि विचार बच्चे का कल्याण और सर्वोत्तम हित होता है, न कि अधिनियम के अंतर्गत माता–पिता के वैधानिक अधिकार – बच्चे के नैतिक, भावनात्मक और शैक्षणिक कल्याण को माता–पिता के दावों से ऊपर रखा जाना चाहिए – पिता, जो हिंदू अल्पसंख्यक और संरक्षक अधिनियम की धारा 6 के अंतर्गत प्राकृतिक अभिभावक है, को अभिरक्षा का वैध दावा प्राप्त है यदि साक्ष्य यह दर्शाते हैं कि वह बच्चे के विकास के लिए बेहतर वित्तीय स्थिरता, पारिवारिक सहयोग और अनुकूल वातावरण प्रदान कर सकता है।

Vandana Pal v. Dharmendra Pal

Order dated 27.02.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 3180 of 2024, reported in 2025 (2) MPLJ 476

Relevant extracts from the order:

From evidence of respondent as well as documents available on record, it appears that respondent is the father as well as natural guardian of minor child. He has sufficient source of income as compared to appellant and the welfare of minor child appears to be best in the custody of respondent for better education and bright future.

Accordingly, this Court does not find any error or illegality in passing the impugned ex parte order passed by the Family Court in favour of respondent. The order dated 23.02.2024 passed by Additional Judge to the Court of Principal Judge, Family Court, Gwalior in RCSHM No. 29 of 2021 is hereby affirmed.

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211. HINDU MARRIAGE ACT, 1955 – Section 12

Rejection of plaint – Suit filed by wife under section 12 of the Act was withdrawn without seeking liberty to file a fresh suit – On same facts, a new suit was filed seeking decree of divorce – Pleadings in both the cases were same – Respondent is precluded from instituting any fresh/subsequent suit in respect of same subject matter or such part of the claim.

हिन्दू विवाह अधिनियम, 1955 – धारा 12

वाद का नामंजूर होना – पत्नी द्वारा अधिनियम की धारा 12 के अंतर्गत प्रस्तुत वाद को बिना नवीन वाद दायर करने की अनुमति लिए वापस ले लिया गया – उन्हीं तथ्यों के आधार पर विवाह विच्छेद की आज्ञप्ति हेतु नवीन वाद दायर किया गया – दोनों प्रकरणों में अभिवचन समान थीं – प्रतिवादी को उसी विषयवस्तु या दावे के किसी भाग के संबंध में कोई नया/पुनः वाद दायर करने से रोका गया है।

Abhishek Sharma v. Aparna Tomar

Judgment dated 17.05.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 2152 of 2024, reported in 2025 (3) MPLJ 495

Relevant extracts from the judgment:

On perusal of documents available on record, it was found that according to pleadings of respondent, since she never lived with appellant, therefore, no cruelty or desertion on the part of appellant is made out.

In the considered opinion of this Court, it was found that the pleadings of respondent in both suits are on the same set of facts. According to the provisions of order XXIII Rule 1(3) and (4) of CPC, respondent had sought withdrawal of her earlier suit without any relief and filed a fresh suit on the same set of facts, therefore, she is precluded from instituting any fresh/ subsequent suit in respect of the same subject-matter or such part of the claim.

Therefore, considering the aforesaid provisions of order XXIII Rule 1(3) and (4) of CPC and going through the law laid down in the aforecited cases, in view of this Court, the Family Court has committed an error in rejecting the application filed by appellant under order 7 Rule 11 r/w/s 151 of CPC holding that the subsequent suit filed by respondent is maintainable in the eyes of law.

Resultantly, the instant first appeal deserves to be and is hereby allowed. The impugned order dated 08.04.2024 passed by Additional Judge to the Court of Principal Judge, Family Court, Gwalior in Case No.378 A/2022 (HM Act) is set aside. Application filed by appellant under order 7 Rule 11 r/w/s 151 of CPC deserves to be and is hereby allowed. The subsequent suit filed by respondent under Section 13(1) of HM Act stands dismissed, as the same is barred by law as per provisions of order XXIII Rule 1(3) and (4) of Civil Procedure Code.

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

Divorce – Mental cruelty – Indecent online chats – Behaviour causing humiliation and mental agony – Appreciation of evidence – Where a wife indulges in vulgar and indecent whatsapp conversations with other men after marriage, despite the husband's objections, such conduct amounts to mental cruelty within the meaning of section 13(1)(ia) of the Hindu Marriage Act – Husband produced proof of indecent chats and a written admission from the wife's father acknowledging her conduct, which remained uncontroverted as the father, a senior advocate, did not enter the witness box to deny his statement – Held, while spouses have freedom to communicate with friends of the opposite gender, such interaction must remain decent and dignified – Persistent indecent chats, even if not amounting to physical infidelity, destroy marital trust and cause deep mental pain – Such behaviour was sufficient to grant divorce on the ground of mental cruelty.

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

विवाह विच्छेद – मानसिक क्रूरता – अशोभनीय ऑनलाइन बातचीत – अपमान और मानसिक पीड़ा पहुँचाने वाला व्यवहार – साक्ष्यों का मूल्यांकन – जब पत्नी विवाह के उपरांत, पति की आपत्तियों के बाद भी अन्य पुरुषों के साथ अश्लील और अशोभनीय व्हाट्सएप वार्तालाप में लिप्त रहती है, तो ऐसा आचरण हिन्दू विवाह अधिनियम की धारा 13(1)(ia) के अंतर्गत मानसिक क्रूरता की श्रेणी में आता है – पति ने अश्लील चैट्स के प्रमाण और पत्नी के पिता द्वारा उसके आचरण को स्वीकार करने वाली एक लिखित स्वीकारोक्ति प्रस्तुत की, जिसे पत्नी के पिता, जो एक वरिष्ठ अधिवक्ता हैं, ने साक्ष्य के लिए उपस्थित न होकर अस्वीकार नहीं किया – अभिनिर्धारित, यद्यपि पति–पत्नी को विपरीत लिंग के मित्रों से संवाद करने की स्वतंत्रता है, फिर भी ऐसा संवाद शालीन और गरिमापूर्ण होना चाहिए – निरंतर अश्लील वार्तालाप, भले ही वह शारीरिक विश्वासघात की श्रेणी में न आए पर वह वैवाहिक विश्वास को नष्ट कर देती है और गहरी मानसिक पीड़ा पहुँचाती है – ऐसा आचरण मानसिक क्रूरता के आधार पर विवाह विच्छेद के लिए पर्याप्त है।

Smt. Radha v. Sudhanshu

Order dated 05.03.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in First Appeal No. 1605 of 2023, reported in 2025(2) MPLJ 367

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213. HINDU MARRIAGE ACT, 1955 – Section 26
GUARDIANS AND WARDS ACT, 1890 – Section 11
CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11

Custody of children – Divorce decree on consent – Custody of child handed over to mother – Whether father barred from filing subsequent petition for custody? Held, even after a decree of divorce, the Family Court is competent under section 26 of the Act, 1955 to pass fresh orders relating to custody, maintenance or education of the child if welfare so requires – Contention that custody was already settled in 2017 divorce decree and that Family Court had no jurisdiction under Guardian and Wards Act was not allowed.

हिन्दू विवाह अधिनियम, 1955 – धारा 26
संरक्षक और प्रतिपाल्य अधिनियम, 1890 – धारा 11
सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

बच्चों की अभिरक्षा – सहमति से पारित विवाह विच्छेद की आज्ञप्ति – बच्चे की अभिरक्षा माँ को सौंपी गई – क्या पिता बाद में अभिरक्षा के लिए याचिका दायर करने से वंचित है? अभिनिर्धारित, विवाह विच्छेद की आज्ञप्ति के बाद भी, अधिनियम, 1955 की धारा 26 के अंतर्गत यदि बच्चे के हित में आवश्यक हो तो अभिरक्षा, भरण–पोषण या शिक्षा से संबंधित नए आदेश पारित करने के लिए सक्षम है – यह तर्क कि अभिरक्षा पहले ही 2017 की विवाह विच्छेद आज्ञप्ति में तय हो चुकी थी और कुटुम्ब न्यायालय को संरक्षक और प्रतिपाल्य अधिनियम के अंतर्गत अधिकार नहीं है, स्वीकार नहीं किया गया।

Namita and ors. v. Ravi Tank

Order dated 07.03.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 1046 of 2024, reported in 2025(3) MPLJ 543

Relevant extracts from the order:

Nevertheless, there is a divorce decree between both the parties has been passed on consent and custody of petitioner No. 2 was handed over to petitioner No. 1. However, in view of that grounds in changed circumstances, the respondent

cannot be debarred to file a petition for custody of his child. As per aforesaid provision, even after the decree of divorce, the learned Trial Court may pass the order upon the application of parties with respect to the custody, maintenance and education of child.

In view of above deliberation and settled preposition of law, the impugned order passed by learned Family Court relying upon the Section 26 of Hindu Marriage Act is infallible in the eyes of law. The said objections cannot be raised under the provisions of order 7 Rule 11 of CPC. Hence, the order of learned Family Court does not warrant any interference.

Before parting, it is clarified that the petitioner has every right to raise all objections regarding guardianship of the child under the appropriate provisions of law before the learned Family Court in her respective pleadings, evidence and arguments and the learned Family Court is also at liberty to decide it in accordance with law without being influenced by the order of this Court.

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214. HINDU SUCCESSION ACT, 1956 – Sections 6, 10 and 15

(i) Succession and devolution of ancestral property – Rights of daughter and widow – Female Hindu's property – Effect of death of female coparcener – Property originally belonging to *Basodilal* devolved on his widow *Kallo Bai* and their three children u/s 10 – On the deaths of *Kallo Bai* was issueless and *Ghuro Bai* was unmarried, their shares devolved equally on surviving heirs that is their daughter and son- *Champa Bai* and *Ganpat* u/s 15 – Both became entitled to equal half shares – Sale deed of 600 sq.ft. executed by *Ganpat* in favour of *Champa Bai* did not amount to relinquishment of her rights in remaining ancestral property.

(ii) Plea of adverse possession rejected as possession between co-owners not hostile – Amendment of section 6 (w.e.f. 9-9-2005) held inapplicable as preliminary decree passed prior thereto – Held, trial court rightly determined ½ share for plaintiff – Appellate court erred in reducing it to ⅓ – Decree of trial court restored and direction issued for drawing final decree accordingly.

हिन्दू उत्तराधिकार अधिनियम, 1956 – धाराएं 6, 10 एवं 15

(i) उत्तराधिकार और पैतृक संपत्ति का हस्तांतरण – पुत्री और विधवा के अधिकार – हिन्दू महिला की संपत्ति – महिला सहदायिकी की मृत्यु का

प्रभाव – मूल रूप से बसोदीलाल की संपत्ति उनकी विधवा कल्लो बाई और उनके तीन बच्चों को धारा 10 के अंतर्गत हस्तांतरित हुई – कल्लो बाई निःसंतान थी और घुरो बाई अविवाहित थी उनकी मृत्यु पर, उनकी हिस्सेदारी जीवित उत्तराधिकारी पुत्री एवं पुत्र–चंपा बाई और गणपत को धारा 15 के अंतर्गत समान रूप से हस्तांतरित हुई – दोनों समान आधे–आधे हिस्से के हकदार बने – गणपत द्वारा चंपा बाई के पक्ष में 600 वर्गफुट की विक्रय विलेख निष्पादित करना शेष पैतृक संपत्ति में उसके अधिकारों को त्यागने के रूप में नहीं माना जा सकता।

(ii) प्रतिकूल कब्जे का तर्क अस्वीकार किया गया क्योंकि सह–स्वामियों के मध्य कब्जा प्रतिकूल नहीं माना गया – धारा 6 में संशोधन (प्रभावी दिनांक 09.09.2005) को अनुपयुक्त माना गया क्योंकि प्रारंभिक आज्ञप्ति इससे पूर्व पारित की गई थी – अभिनिर्धारित, विचारण न्यायालय ने वादी के लिए हिस्सा सही रूप से निर्धारित किया – अपीलीय न्यायालय द्वारा इसे ⅓ तक घटाना त्रुटिपूर्ण था – विचारण न्यायालय की आज्ञप्ति बहाल की गई और अंतिम आज्ञप्ति तैयार करने हेतु निर्देश जारी किया गया।

Chandra Bai and ors. v. Champa Bai and anr.

Judgment dated 20.05.2025 passed by the High Court of Madhya Pradesh in Second Appeal No 928 of 2005, reported in AIR 2025 MP 118

Relevant extracts from the judgment:

The property after the death of Basodilal got divided into four equal shares which goes to Kallo Bai, the second wife of Basodilal and Ghuro Bai, Champa Bai and Ganpat Lal as per Section 10 of the Hindu Succession Act, 1956.

Although, Ghuro Bai died unmarried and share of Ghuro Bai devolved as per Section 15 of the Act, 1956 and the share of Kallo Bai was also devolved as per Section 15 and that share was devolved and went to Champa Bai and Ganpat equally. Thus, the suit property finally came to Champa Bai and Ganpat with equal share i.e. ½ and ½

So far as the claim with regard to settlement deed Ex.D/23 is concerned, the Court has rightly observed that it has not been properly proved and cannot be relied upon. As far as the share of Kallo Bai given to the defendant-Ganpat is concerned, since no cogent evidence was produced, therefore, the Courts have rightly rejected this plea. The plea of adverse possession did not available to the defendant for the reason that he was possessing the property as a joint owner and claiming himself to

be the sole owner of the property, as such question of hostile possession does not arise. Under such circumstances, the findings of Courts below do not call for any interference as rightly recorded after proper appreciation of facts and law.

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215. INDIAN PENAL CODE, 1860 – Section 84
BHARATIYA NYAYA SANHITA, 2023 – Section 22
CONSTITUTION OF INDIA – Article 21

Insanity – Defence u/s 84 IPC – Burden of proof – Right to fair defence under Article 21 – Accused convicted u/s 302, 352 and 201 IPC for assaulting and killing one person with an iron pipe – Evidence of several prosecution witnesses consistently showing that accused suffered from recurring attacks of madness and was mentally unstable both before and after the incident – Prosecution failed to seek medical examination of accused at relevant time despite such evidence – Held, law recognizes that no act done by a person of unsound mind amounts to an offence and right to defend oneself is part of the guarantee under Article 21 – Standard of proof required for insanity is only that of creating reasonable doubt – Once such doubt arises from prosecution evidence itself then benefit must go to accused – Conviction and sentence set aside – Accused acquitted.

भारतीय दण्ड संहिता, 1860 – धारा 84
भारतीय न्याय संहिता, 2023 – धारा 22
भारत का संविधान – अनुच्छेद 21

चित्त–विकृति – धारा 84 आईपीसी के अंतर्गत प्रतिरक्षा – प्रमाण का भार – अनुच्छेद 21 के अंतर्गत निष्पक्ष बचाव का अधिकार – अभियुक्त पर एक व्यक्ति को लोहे की पाइप से हमला कर हत्या करने के आरोप में संहिता की धारा 302, 352 और 201 के अंतर्गत दोषी ठहराया गया – अभियोजन पक्ष के कई गवाहों की गवाही से यह प्रमाणित हुआ कि अभियुक्त को लगातार पागलपन के दौरे पड़ते थे और वह घटना से पहले और बाद में मानसिक रूप से अस्थिर था – ऐसी साक्ष्य के बावजूद अभियोजन पक्ष ने अभियुक्त की उस समय चिकित्सीय जांच नहीं करवाई – अभिनिर्धारित, विधि यह प्रावधानित करता है कि विक्षिप्त व्यक्ति द्वारा किया गया कोई भी कार्य अपराध नहीं होता, और स्वयं का बचाव करना अनुच्छेद 21 के अंतर्गत प्रदत्त अधिकार का हिस्सा है – चित्त–विकृति के लिए आवश्यक प्रमाण का स्तर केवल उचित संदेह उत्पन्न करने का होता है – एक बार जब ऐसा संदेह अभियोजन पक्ष की गवाही से ही उत्पन्न हो जाए

तो लाभ अभियुक्त को दिया जाना चाहिए – दोषसिद्धि और सजा अपास्त की गई – अभियुक्त को दोषमुक्त किया गया।

Dashrath Patra v. State of Chhattisgarh

Judgment dated 08.05.2025 passed by the Supreme Court in Criminal Appeal No. 821 of 2025, reported in AIR 2025 SC 3291

Relevant extracts from the judgment:

PW1 is not an eye-witness. In the cross-examination, he stated that the appellant was getting attacks of madness. He further stated that the people in the village also knew that the mental condition of the appellant was not good and he keeps on having attacks of madness. PW-2 is an eye-witness. In the cross-examination, he also accepted that the mental condition of the appellant was not good and people of the village knew about this. He also added that due to the mental condition, the appellant used to abuse and fight with the villagers. PW-3 also accepted in the cross-examination that the appellant was mentally unstable and the villagers were aware about it. He also admitted that due to mental instability, the appellant kept on abusing and beating people in the village. PW-4 is not an eyewitness. He pleaded ignorance about the correctness of the suggestion whether the appellant is mentally unstable. PW-5 in his cross-examination deposed that mental condition of the appellant was not good. Even PW-6 in the cross-examination stated that mental condition of the appellant was not good. PW-10 also deposed about unstable mental condition of the appellant. He also accepted that due to mental instability, the appellant kept on abusing and beating all the people in the village. We may note here that the prosecution did not seek permission of the Court to record re-examination of these witnesses who have clearly deposed in the cross-examination about the unstable mental condition of the appellant. The depositions show that this was his condition before the occurrence and after the occurrence.

We are surprised to note that after the evidence was recorded, the prosecution did not move the Trial Court seeking permission to medically examine the appellant. The law lays down that no act done by a lunatic is an offence. The reason is that a lunatic is not in a position to defend himself. Right to defend a charge for an offence is a fundamental right guaranteed under Article 21 of the Constitution of India.

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216. INDIAN PENAL CODE, 1860 – Sections 96 to 106, 300, 302 and 304 BHARATIYA NYAYA SANHITA, 2023 – Sections 34 to 44, 101 and 105 Right of private defence – Exception 2 & 4 to Section 300 – Scope and limitations – Exercise of excessive force – Appellant stabbed neighbour

during altercation over fencing between adjoining agricultural lands – Accused exceeded all reasonable bounds by inflicting repeated knife blows even after victim fell – Absence of good faith and existence of premeditation inferred from fact that accused arrived armed with knife – Held, right commences when reasonable apprehension of danger arises and continues so long as such apprehension exists and it does not extend to inflicting more harm than necessary – Plea of right of private defence and protection of property rejected – No imminent danger to person or property established – Conviction u/s 302 IPC justified.

भारतीय दण्ड संहिता, 1860 – धाराएं 96 से 106, 300, 302 एवं 304

भारतीय न्याय संहिता, 2023 – धाराएं 34 से 44, 101 एवं 105

निजी रक्षा का अधिकार – धारा 300 की अपवाद 2 और 4 – विस्तार और सीमाएं – अत्यधिक बल का प्रयोग – अपीलकर्ता ने समीपवर्ती कृषि भूमि की बाड़बंदी को लेकर हुए विवाद में पड़ोसी को चाकू मार दिया – अभियुक्त ने पीड़ित के गिर जाने के बाद भी लगातार चाकू से वार कर सभी उचित सीमाओं का अतिक्रमण किया – अभियुक्त के चाकू से लैस होकर घटनास्थल पर आने से सद्भाव की अनुपस्थिति और पूर्वनियोजन का संकेत मिला – अभिनिर्धारित, निजी रक्षा का अधिकार तब प्रारंभ होता है जब खतरे की उचित आशंका उत्पन्न होती है और तब तक जारी रहता है जब तक वह आशंका बनी रहती है, लेकिन यह आवश्यकता से अधिक नुकसान पहुँचाने तक विस्तारित नहीं होता – निजी रक्षा और संपत्ति की रक्षा की याचना अस्वीकार की गई – व्यक्ति या संपत्ति को कोई तात्कालिक खतरा प्रमाणित नहीं हुआ – धारा 302 आईपीसी के अंतर्गत दोषसिद्धि उचित ठहराई गई।

Ratheeshkumar @ Babu v. State of Kerala and anr.

Judgment dated 09.01.2025 passed by the Supreme Court in Criminal Appeal No. 1049 of 2018, reported in 2025 CriLJ 3745

Relevant extracts from the judgment:

The first important question is whether the appellant-convict at the relevant time was having a reasonable apprehension of death or grievous hurt or danger to his property at the hands of the deceased, and was justified in causing fatal injuries to the deceased in his right of private defence; and the second question would be that if the appellant was justified in causing injuries to the deceased in his right of private defence, whether he had caused more harm than it was necessary.

The Court should take an overall view of the case and if a right of self-defence is made out from the evidence on record, that right should not be construed narrowly because the right of selfdefence is a very valuable right and it has a social purpose.

As regards the first question, in the given circumstances, it is difficult to discern any reasonable apprehension of imminent danger on the part of the accused. The law is well settled in this regard. The impending danger must be present, real or apparent. According to the testimony of PW-1, an altercation occurred between the deceased and the appellant's father, leading to a 'push and pull'. Following this, the appellant's father called for the appellant. Upon arriving at the scene, bearing a knife, the appellant found his father already holding the deceased by the neck. These facts do not provide any basis to suggest that the appellant had a reasonable apprehension of imminent danger to justify causing the death of the deceased. Moreover, the defense argument claiming protection of property appears unfounded in this context, as the facts do not support any imminent threat to the appellant's property.

What was the appellant-convict trying to protect? Was he trying to protect the life of his father or his own life? Was he trying to protect his property? To a very specific question put by us to the learned counsel appearing for the appellant-convict in this regard the reply was that the appellant-convict was trying to protect his property. We tried to understand from the learned counsel as to what was that imminent threat to his property that the appellantconvict had to go to the extent of using knife and stabbing the deceased to death. The oral evidence on record indicates that the deceased wanted to put up a fence on the West side of his farm. The compound of the deceased and that of the accused convict are adjacent to each other. It is not the case of the appellant-convict that the deceased trespassed into his own land and tried to put up a fence. If that was the case, then the appellant-convict should have led evidence in that direction. He should have put specific questions in this regard to the prosecution witnesses more particularly the eyewitnesses who were present at the spot. The appellant-convict has failed to clarify as why he himself and his father vehemently opposed putting up a fence by the deceased. This aspect has not been explained by the appellant-convict even in his further statement recorded under Section 313 of the CrPC. If that be so, then why such hue and cry was raised on the issue of fence.

The existence of good faith is a must before the accused claims benefit of this exception. While acting in good faith, if the accused has exceeded the right of self-

defence and caused death of a person without pre-meditation and further he had no intention to causing more harm than was necessary for the purpose of the defence although in fact more harm was caused, yet the benefit of Exception 2 to Section 300 may be available if the accused was not the aggressor.

The presence of good faith as given in sec 52 IPC refers to actions done in the absence of due care and attention. In this instance, inflicting a murderous assault with a deadly weapon upon the unarmed deceased and subsequently continuing to beat him, even when the deceased fell to the ground, provides a clear indication that the accused had not acted in good faith and had the intention of causing more harm than was necessary.

Another essential for invoking Exception 2 is the lack of premeditation. Such pre-meditation may be established by direct or circumstantial evidence, such as previous threats, expression of ill feelings, acts of preparation to kill, etc. It is clear from the facts, that the accused was already bearing a knife when he arrived on the scene after his father called him.

The burden of proving self-defence is always on the accused but it is not as onerous as the one which lies with the prosecution. Such burden can be discharged by probablising the defence. The accused may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross examination of prosecution witness or by adducing defence evidence.

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217. INDIAN PENAL CODE, 1860 – Sections 201, 302, 363 and 376(2)(i)
BHARATIYA NYAYA SANHITA, 2023 – Sections 238, 137(2), 64 and 103
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 4 and 8

Rape and murder of minor girl – Conviction based solely on circumstantial evidence – Standard of proof – Prosecution relied on three links – (i) last seen together, (ii) extra-judicial confession, and (iii) FSL report comparing soil from accused's shoes with that of crime scene – Witnesses' statements recorded belatedly, their conduct was unnatural and credibility doubtful – No eye-witness or consistent testimony – DNA and FSL reports inconclusive – Medical and forensic findings failed to connect accused with crime – Held, chain of circumstances incomplete – Conviction was set aside and accused was found entitled to benefit of doubt.

भारतीय दण्ड सहिता, 1860 – धाराएं 201, 302, 363 एवं 376(2)(i)
भारतीय न्याय संहिता, 2023 – धाराएं 238, 137(2), 64 एवं 103
लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 4 एवं 8
नाबालिग बालिका के साथ बलात्कार और हत्या – केवल परिस्थितिजन्य साक्ष्य के आधार पर दोषसिद्धि – प्रमाण का मानक – अभियोजन पक्ष ने तीन कड़ियों पर भरोसा किया – (i) अंतिम बार साथ देखा जाना, (ii) अतिरिक्त न्यायिक स्वीकारोक्ति, और (iii) अभियुक्त के जूतों की मिट्टी की एफएसएल रिपोर्ट की अपराध स्थल की मिट्टी से तुलना – साक्षियों के कथन विलंब से दर्ज किए गए, उनका व्यवहार अस्वाभाविक और विश्वसनीयता संदिग्ध थी – कोई चक्षुदर्शी साक्षी या सुसंगत साक्ष्य नहीं – डीएनए और एफएसएल रिपोर्ट निर्णायक नहीं – चिकित्सीय और फॉरेंसिक निष्कर्ष अभियुक्त को अपराध से संयोजित करने में विफल – अभिनिर्धारित, परिस्थितियों की श्रृंखला अपूर्ण – दोषसिद्धि अपास्त की गई और अभियुक्त को संदेह का लाभ प्राप्त करने का अधिकारी माना गया।

Ramkirat Munilal Goud v. State of Maharashtra & etc.
Judgment dated 07.05.2025 passed by the Supreme Court of India in Criminal Appeal No. 1954 of 2022, reported in AIR 2025 SC 3186 (Three Judge Bench)

Relevant extracts from the judgment:

The only so-called incriminating scientific report (Exh. 105) against the accused appellant was pertaining to the comparison of the soil/mud on the sole of the pair of shoes recovered at the instance of the accused appellant and the specimen soil recovered from the pond where the dead body of the child victim was found. The said report was exhibited as Ext. 105 and indicates that the soil sample collected from the pair of shoes tallied with the soil sample that was recovered from the pond in respects of hue, physio-chemical characteristics and spectro-chemical composition.

First of all, we may observe that there is no evidence to show that the aforesaid observations made by the expert in Ext. 105 are admissible *ipso afacto* under Section 293 of the CrPC which is equivalent to Section 329 of the Bharatiya Nagarik Suraksha Sanhita, 2023. It may be noted that the expert who prepared the report was not examined by the prosecution.

Furthermore, the findings in this report are absolutely vague and inconclusive. If at all, the prosecution desired to prove without any exception that the soil found on the shoes of the accused appellant was unexceptionally from the location from where the dead body of the child victim was recovered, then the Investigating

Officer (PW-18) should have collected soil samples from the other places frequented by the accused appellant. Then only the possibility of the soil not being from any other place visited by the accused appellant could have been excluded.

In any event, even if it is held that the soil/mud found on the shoes of the accused appellant tallied with the soil found in the pond, that would be just an indication of the fact that the accused appellant may have visited the area surrounding the pond at some point of time. This, by itself, would not incriminate the accused appellant in any manner.

Resultantly, we conclude:—

(i) that the evidence of the witnesses of last seen circumstance is vacillating, shaky and tainted with wholesale improvements, and hence, unworthy of credence.

(ii) the conduct of the witnesses of the last seen circumstance in failing to timely step forward to make a disclosure to the Investigating Officer (PW-16) that they had seen the accused appellant and the deceased child victim together on the date of the incident in spite of the fact that the police officers were regularly visiting Unnati Woods area, right from late hours of 30th September, 2013 onwards, clearly indicates that these witnesses are untrustworthy and were created by the investigation agency for ulterior motive;

(iii) There was a clear reference to the witnesses of last seen circumstance, namely the complainant, i.e., Manoj Bhaskar Sadavarte [(PW-1), father of the deceased child], Dipendrakumar Dhirendranath Shukla (PW-9), Pradipkumar Ganesh Rawat (PW-14) and Sanjay Ganesh Rawat (PW-15) in the spot *panchnama* (Exh. 34) which was prepared by Vikas Sarjerao Lokre (PW-16, i.e., Investigating Officer) on 1st October, 2013, at around 7.30 A.M. In spite thereof, the 1st Investigating Officer (PW-16) made no effort whatsoever to record the statements of these witnesses at the earliest available opportunity. Rather, the said Investigating Officer did not record the statements of these witnesses at all, and the witnesses were examined for the first time on 3rd October, 2013 by the 2nd Investigating Officer, i.e., Shri Mandar Vasant Dharmadhikari (PW-18). This omission is vital and indicative of gross negligence on the part of the Investigation Officers.

(iv) The evidence of extra-judicial confession as deposed by Anil Mahatam Singh (PW-17) is also unacceptable because the said witness too did not

step forward to inform the police regarding the fact of the so called extra-judicial confession made by the accused appellant before him, in spite of being aware that the police was searching for the child.

(v) That the FSL report (Ext. 105) regarding the similarity of soil samples is also inconsequential for the reasons mentioned *supra*.

(vi) The reports pertaining to the comparison of the samples taken from the other watchmen never saw the light of the day because prosecution chose not to place the same on record. Hence, it is clearly a case where the prosecution has withheld important evidence thereby, compelling the Court to draw adverse inference against the prosecution.

Thus, we are compelled to hold that flawed and tainted investigation has eventually led to the failure of the prosecution case involving the gruesome rape and murder of a child at the tender age of 3 years and 9 months only. Despite there being hardly any reliable evidence on the record of the case, the accused appellant was convicted and sentenced by the Courts below and has suffered incarceration for almost 12 years of which 6 years were under the Damocles sword of death penalty. The findings recorded in the impugned judgments holding the accused guilty of charges framed against him, are based on conjectures and surmises and hence, both the judgments and the order of sentence are unsustainable on the face of record.

As an upshot of the above discussion, the impugned judgment dated 25th November, 2021 passed by the High Court and judgment of conviction dated 5th March, 2019, and the order of sentence dated 8th March, 2019, passed by the trial Court, do not stand to scrutiny and are hereby quashed and set aside.

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218. INDIAN PENAL CODE, 1860 – Sections 201, 302, 379 and 411
BHARATIYA NYAYA SANHITA, 2023 – Sections 103(1), 238, 303(2) and 317(2)
EVIDENCE ACT, 1872 – Sections 102 and 114
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 105 and 119
Dishonestly receiving stolen property – Illegality – Trial Court and High Court acquitted the accused u/s 379 and 201 IPC but convicted him u/s 411 IPC for possession of ₹ 25,000 allegedly stolen from the deceased – Held, such conviction is unsustainable – Prosecution failed to establish the foundational facts that the deceased carried a specific sum or that the recovered cash had any identifying features linking it to stolen property

– High Court erred in reversing the burden of proof on the accused to explain possession of money, contrary to Section 102 of the Evidence Act – Presumption u/s 114(a) can arise only after theft and possession of stolen goods are proved – Once the accused is acquitted of theft, there could be no conviction for receiving stolen property – Conviction u/s 411 IPC cannot survive without proof that the property was "stolen" – Appeal allowed – Accused acquitted.

भारतीय दण्ड संहिता, 1860 – धाराएं 201, 302, 379 एवं 411
भारतीय न्याय संहिता, 2023 – धाराएं 103(1), 238, 303(2) एवं 317(2)
साक्ष्य अधिनियम, 1872 – धाराएं 102 एवं 114
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 105 एवं 119
चोरी की संपत्ति को बेईमानी से प्राप्त करना – अवैधता – विचारण न्यायालय और उच्च न्यायालय ने अभियुक्त को आईपीसी की धारा 379 और 201 के अंतर्गत दोषमुक्त कर दिया लेकिन उसे धारा 411 आईपीसी के अंतर्गत मृतक से कथित रूप से चोरी किए गए ₹ 25,000 के कब्जे के लिए दोषी ठहराया – अभिनिर्धारित, ऐसी दोषसिद्धि स्थिरता योग्य नहीं है – अभियोजन पक्ष यह स्थापित करने में विफल रहा कि मृतक के पास कोई निश्चित राशि थी या बरामद नकदी में कोई पहचान योग्य विशेषता थी जो उसे चोरी की संपत्ति से जोड़ती हो – उच्च न्यायालय ने आरोपी पर पैसे के कब्जे की व्याख्या करने का भार डालकर साक्ष्य अधिनियम की धारा 102 के विपरीत कार्य किया – धारा 114(क) के अंतर्गत अनुमान तभी लगाया जा सकता है जब चोरी और चोरी की वस्तुओं का कब्जा सिद्ध हो – एक बार आरोपी को चोरी से दोषमुक्त कर दिया गया, तो चोरी की संपत्ति प्राप्त करने के लिए दोषसिद्धि नहीं हो सकती – धारा 411 आईपीसी के अंतर्गत दोषसिद्धि तब तक यथावत नहीं रह सकती जब तक यह सिद्ध न हो कि संपत्ति "चोरी की" थी – अपील स्वीकार की गई – अभियुक्त दोषमुक्त।

Sd. Shabuddin v. State of Telangana

Judgment dated 19.08.2025 passed by the Supreme Court in Criminal Appeal No. 3605 of 2025, reported in 2025 CriLJ 3920

Relevant extracts from the judgment:

In a criminal prosecution, the initial burden is always on the prosecution to discharge, whereby the allegations raised by it against the accused person are preliminarily satisfied. If the prosecution is unable to do so, by virtue of Section

102 of Evidence Act, the criminal trial initiated against the accused deserves to be dismissed without asking the accused to lead any evidence from the side of defence.

In our view, to base a conviction under Section 411 IPC solely on the ground that both the accused were unable to account for being in possession of such huge amount of cash is both incorrect and untenable. Therefore, the approach adopted by the High Court in upholding the order of conviction of Trial Court for inability of the accused to account for the cash so recovered from their possession is alien to the criminal jurisprudence of our legal system.

Thus, to establish culpability under Section 411 IPC, it must be proved that the accused had dishonestly received or retained the stolen property and in doing so, he either had knowledge or reason to believe that the same is a stolen property. The natural corollary being if the courts upon trial reach a conclusion that the property in question is not a stolen property, therefore, the accused cannot be charged for the offence punishable under Section 411 IPC especially when the whole case of the prosecution relates to the events forming part of the same transaction.

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219. INDIAN PENAL CODE, 1860 – Sections 299, 300, 302 and 307 BHARATIYA NYAYA SANHITA, 2023 – Sections 100, 101, 303(1) and 109 Theory of Causation – Septicemia as a supervening cause – Distinction between "Murder" and "Attempt to Murder" – Appellant and others assaulted the deceased by throwing him off the terrace and beating him, leading to spinal cord injury, paraplegia and eventual death after nine months due to septicemia and pneumonia – High Court altered the conviction from Section 302 IPC to section 307 IPC, holding that the death was not directly due to the assault but to lack of treatment – Supreme Court reversed the judgment – Death due to septicemia and organ failure nine months after injury was a direct and foreseeable consequence of the original spinal injury – Once the chain of events from injury to death remains unbroken, the offence falls u/s 302 IPC even if death occurs after a delay – Explanation 2 to section 299 IPC makes it clear that if the injury sets in motion a process leading to death, negligence or delayed treatment cannot absolve the assailant – Delay or intervening medical complications do not dilute culpability – Law relating to theory of causation discussed – Guiding principles laid down.

भारतीय दण्ड संहिता, 1860 – धाराएं 299, 300, 302 एवं 307
भारतीय न्याय संहिता, 2023 – धाराएं 100, 101, 303(1) एवं 109
थ्योरी ऑफ कॉसेसन – सेप्टीसीमिया एक परवर्ती कारण के रूप में – हत्या और हत्या के प्रयास में अंतर – अपीलकर्ता और अन्य ने मृतक को छत से फेंककर और पीटकर हमला किया, जिससे रीढ़ की हड्डी में चोट, पक्षाघात हुआ और नौ महीने बाद सेप्टीसीमिया और निमोनिया के कारण मृत्यु हो गई – उच्च न्यायालय ने यह मानते हुए कि मृत्यु सीधे हमले के कारण नहीं बल्कि उपचार की कमी के कारण हुई, दोषसिद्धि को आईपीसी की धारा 302 से बदलकर धारा 307 कर दिया – सुप्रीम कोर्ट ने इस निर्णय को पलट दिया – रीढ़ की हड्डी की मूल चोट के कारण नौ महीने बाद सेप्टीसीमिया और अंग विफलता से हुई मृत्यु एक प्रत्यक्ष और पूर्वानुमेय परिणाम थी – एक बार जब चोट से मृत्यु तक की घटनाओं की श्रृंखला अविच्छिन्न रहती है, तो अपराध आईपीसी की धारा 302 के अंतर्गत आता है, भले ही मृत्यु में देरी हो – आईपीसी की धारा 299 की व्याख्या 2 यह स्पष्ट करती है कि यदि चोट मृत्यु की ओर ले जाने वाली प्रक्रिया को प्रारंभ करती है, तो लापरवाही या उपचार में विलंब हमलावर को दोष से मुक्त नहीं कर सकती – देरी या बीच में आई चिकित्सीय जटिलताएं दोष को कम नहीं करतीं – कारण सिद्धांत से संबंधित कानून पर चर्चा की गई – मार्गदर्शक सिद्धांत निर्धारित किए गए।

Maniklal Sahu v. State of Chhattisgarh

Judgment dated 12.09.2025 passed by the Supreme Court in Criminal Appeal No. 5578 of 2024, reported in 2025 CriLJ 4043

Relevant extracts from the judgment:

In the present case, as per the oral testimony of the three doctors referred to above, the cause of death of deceased Rekhchand was cardiorespiratory failure. The injuries suffered by him at the time of assault lead to septic shock with bilateral pneumonia, post traumatic spinal cord injury with paraplegia and infected bedsore hepatic dysfunction. The injuries suffered by the deceased were sufficient in the ordinary course of nature to cause death and would come under clause "*Thirdly*" of section 300 of the IPC. The deceased ultimately died having not recovered from the injuries. The presence of the supervening cause in the circumstances will not, in our view, alter the culpability. In the case in hand, there had been no such considerable change of circumstances as to snap the chain of causation. It would have been quite a different matter if the original injuries had healed meanwhile or ceased to be dangerous to life and the fatal complications had set in unexpectedly.

If that would have been so, the appellant herein would then at any rate be entitled to the benefit of doubt as to the cause of death.

We are taken by surprise as to on what basis the High Court has recorded a finding that the deceased succumbed to the injuries suffered by him due to lack of proper treatment. There is absolutely no evidence in this regard. Not a single suggestion in this regard was put by the defence counsel in the cross-examination of the doctors. Even otherwise this aspect is wholly irrelevant in view of *Explanation* 2 to section 299 IPC. In other words, according to the High Court, since, the deceased died after about nine months from the date of the incident due to lack of proper treatment the case is not one of murder. This finding in our opinion is erroneous. On one hand, the High Court believes that the cause of death was due to injuries suffered by the deceased, and on the other hand, takes the view that as he died after nine months due to lack of proper treatment the offence would fall within section 307 of the IPC.

We may highlight few broad principles that the courts must keep in mind.

a. If it is proved that the injury was fatal and the intention was to cause death, though the death occurred after several days of septicaemia or other complications having supervened, yet it is undoubtedly a murder as it falls within the *first* limb of section 300 of the IPC.
b. If it is proved that the injuries by themselves were sufficient to cause death in the ordinary course of nature, and if it is established that those injuries were the intended injuries, though the death might have occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the *third* limb of section 300 of the IPC and the accused is therefore liable to be punished under section 302 of the IPC.
c. If it is proved that the injuries were imminently dangerous to life, though the death had occurred after septicaemia or other complications had supervened, yet the act of the accused would squarely fall under the *fourth* limb of Section 300 of the IPC, provided, the other requirements like knowledge on the part of the accused, etc. are satisfied and so the accused would be liable to be punished under Section 302 of the IPC. Here also, the primary cause of the death is the injuries and septicaemia.

d. In judging whether the injuries inflicted were sufficient in the ordinary course of nature to cause death, the possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant.
e. If the supervening causes are attributable to the injuries caused, then the person inflicting the injuries is liable for causing death, even if death was not the direct result of the injuries.
f. Broadly speaking, the courts would have to undertake the exercise to distinguish between two types of cases; *first*, where the intervening cause of death, like peritonitis, is only a remote and a rather improbable consequence of the injury; then it can be said that the injury is one which may, in particular circumstances, result in death, but which may not in ordinary course of nature be likely to lead to it. *Secondly*, where the complication which is the intervening cause of death is itself a practically inevitable sequence to the injury. In that event, the probability is very high indeed, amounting to practical certainty i.e., death is a result in due course of natural events. A deep abdominal thrust with a knife followed by injury to the internal organs is practically certain to result in acute peritonitis causing death. It is clearly a case of murder under Section 302 and not merely of culpable homicide.
g. Even when the medical evidence does not say that any one of the injuries on the body of the deceased was sufficient to cause death in the ordinary course of nature, yet it is open to the Court to look into the nature of the injuries found on the body of the deceased and infer from them that the assailants intended to cause death of the deceased. If none of the injuries alone were sufficient in the ordinary course of nature to cause the death of the deceased, cumulatively, they may be sufficient in the ordinary course of nature to cause his death.
h. What the courts must see is whether the injuries were sufficient in the ordinary course of nature to cause death, or to cause such bodily injuries as the accused knew to be likely to cause death although death was ultimately due to supervention of some other cause. An intervening cause or complication is by itself not of such significance. What is significant is whether death was only a remote possibility, or is one which would have occurred in due course.

i. To sum it up, where death is delayed due to later complications or developments, the courts should consider the nature of the injury, complications or the attending circumstances. If the complications or developments are the natural, or probable, or necessary consequence of the injury, and if it is reasonably contemplated as its result, the injury could be said to have caused death. If on the other hand, the chain of consequences is broken, or if there is unexpected complication causing new mischief, the relation of cause and effect is not established, or the causal connection is too remote then the injury cannot be said to have caused death. If the original injury itself is of a fatal nature, it makes no difference that death is actually caused by a complication naturally flowing from the injury and not the injury itself, since causal connection is proximate.

In view of the aforesaid, all that we can say is that the High Court committed a serious error in bringing the case within the ambit of attempt to commit murder punishable under section 307 of the IPC on the ground that the victim survived for almost nine months from the date of the incident, and died on account of pneumonia and other complications during the course of treatment and not due to the injuries suffered at the time of assault. We do not agree with the view expressed by the High Court in the Impugned Judgment and order.

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220. INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)
EVIDENCE ACT, 1872 – Section 106
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 109

(i) Murder – Circumstantial Evidence – Chain of Circumstances – Burden of Proof – Appellant found inside his locked house with blood-stained axe, while wife and four minor daughters lay dead – Defence plea that unknown miscreants committed murders and FIR was ante-timed rejected – Circumstantial evidence complete and unbroken and proved guilt beyond reasonable doubt – Recovery of weapons corroborated by medical evidence – Burden under Section 106 Evidence Act not discharged by appellant – Conviction u/s 302 IPC upheld.

(ii) Criminal trial – Appreciation of evidence – Minor contradictions – Witness credibility – FIR delay – Held, minor inconsistencies in testimony of witnesses immaterial – FIR lodged within reasonable time considering distance to police station (14–15 km) – Ocular and medical evidence consistent – No prejudice caused to defence – Allegation of ante-timing unsustainable.

(iii) Sentencing – Death penalty – "Rarest of Rare" doctrine – Commutation to life imprisonment – Held, though appellant murdered wife and four daughters brutally, absence of criminal antecedents, possibility of reformation, and satisfactory jail conduct treated as mitigating factors – Death sentence commuted to imprisonment for remainder of natural life – Life imprisonment till end of natural lifespan ordered.

भारतीय दण्ड संहिता, 1860 – धारा 302
भारतीय न्याय संहिता, 2023 – धारा 103(1)
साक्ष्य अधिनियम, 1872 – धारा 106
भारतीय साक्ष्य अधिनियम, 2023 – धारा 109

(i) हत्या – परिस्थितिजन्य साक्ष्य – परिस्थितियों की श्रृंखला – प्रमाण का भार – अपीलकर्ता अपने बंद मकान के अंदर खून से सनी कुल्हाड़ी के साथ पाया गया, जबकि उसकी पत्नी और चार नाबालिग बेटियाँ मृत अवस्था में पड़ी थीं – बचाव पक्ष की यह दलील कि अज्ञात अपराधियों ने हत्या की और एफआईआर पूर्व–समयांकित थी, अस्वीकार कर दी गई – परिस्थितिजन्य साक्ष्य पूर्ण और अबाध थे और दोष संदेह से परे प्रमाणित हुआ – हथियारों की बरामदगी चिकित्सीय साक्ष्य से पुष्ट हुई – साक्ष्य अधिनियम की धारा 106 के अंतर्गत जो प्रमाण का भार अपीलकर्ता पर था, वह वहन नहीं किया गया – भारतीय दंड संहिता की धारा 302 के अंतर्गत दोषसिद्धि यथावत रखी गई।

(ii) आपराधिक विचारण – साक्ष्य का मूल्यांकन – साधारण विरोधाभास – साक्ष्य की विश्वसनीयता – एफआईआर में विलंब – अभिनिर्धारित, साक्षियों की साक्ष्य में असाधारण असंगतियाँ महत्वहीन हैं – पुलिस स्टेशन की दूरी (14–15 किमी) को देखते हुए एफआईआर उचित समय में दर्ज की गई – नेत्रसाक्ष्य और चिकित्सीय साक्ष्य सुसंगत थे – बचाव पक्ष को कोई पूर्वग्रह नहीं हुआ – एफआईआर के पूर्व–समयांकन का आरोप अस्थिर पाया गया।

(iii) दण्ड निर्धारण – मृत्युदण्ड – "दुर्लभ से दुर्लभतम" सिद्धांत – आजीवन कारावास में परिवर्तन – अभिनिर्धारित, यद्यपि अपीलकर्ता ने अपनी पत्नी और चार बेटियों की निर्मम हत्या की, फिर भी आपराधिक पृष्ठभूमि का अभाव, सुधार की संभावना और संतोषजनक जेल आचरण को शमनकारी कारकों के रूप में माना गया – मृत्युदण्ड को आजीवन कारावास में परिवर्तित किया गया – शेष प्राकृतिक जीवनकाल तक कारावास की सजा सुनाई गई।

Deen Dayal Tiwari v. State of Uttar Pradesh

Judgment dated 16.01.2025 passed by the Supreme Court in Criminal Appeal No. 2220 of 2022, reported in 2025 CriLJ 3901

Relevant extracts from the judgment:

Guided by the facts, we must scrutinize not only the nature of the offence but also the totality of the offender's circumstances. In the instant case, while the offence is undoubtedly brutal, certain mitigating factors, especially the Appellant's lack of criminal antecedents and his reported conduct in prison, tilt the scales in favour of commutation. There is no material demonstrating that he would remain a perpetual threat to society or that he is beyond reform. Indeed, the Probation Officer's input and the Superintendent of District Jail's report show a potentially reformable individual. Further, this Court has consistently recognized that the imposition of capital punishment is an exception and not the rule. Even where multiple murders have been committed, if there is evidence or at least a reasonable possibility of reform, a lesser sentence must be preferred.

Weighing the totality of circumstances and having regard to the legal principles discussed above, we are of the view that while the crime is heinous and deserves the highest degree of condemnation, it does not meet the threshold of "the rarest of rare" so as to irrevocably foreclose the option of life imprisonment.

This Court, while exercising its appellate jurisdiction under Article 136 of the Constitution of India, possesses the authority to scrutinize not only the conviction of an accused but also the appropriateness of the sentence imposed. As articulated in the principles laid down in ***Swamy Shraddananda v. State of Karnataka, (2008) 13 SCC 767*** the power to impose or modify a sentence within the prescribed framework of the Penal Code is exclusively vested in the High Court and this Court. The alternate punishment for offences punishable by death, such as imprisonment for a specific term exceeding 14 years or until the natural life of the

convict, remains within the judicial conscience of this Court and the High Court. This ensures that the gravity of the offence, the mitigating and aggravating circumstances, and the possibility of reformation are thoroughly assessed before irrevocable sentences such as capital punishment are affirmed. Therefore, the commutation of a death sentence to imprisonment for the remainder of the convict's natural life, as an alternative to death, is well within the judicial prerogative of this Court and adheres to the constitutional mandate of ensuring justice. The Constitution Bench of this court in ***Union of India v. V. Sriharan, (2016) 7 SCC 1*** have propounded upon these principles. The relevant paras from the same have been reproduced hereunder:

> "In fact, while saying so we must also point out that such exercise of power in the imposition of death penalty or life imprisonment by the Sessions Judge will get the scrutiny by the Division Bench of the High Court mandatorily when the penalty is death and invariably even in respect of life imprisonment gets scrutinised by the Division Bench by virtue of the appeal remedy provided in the Criminal Procedure Code. Therefore, our conclusion as stated above can be reinforced by stating that the punishment part of such specified offences are always examined at least once after the Sessions Court's verdict by the High Court and that too by a Division Bench consisting of two Hon'ble Judges.
>
> That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime

committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.

Viewed in that respect, we state that the ratio laid down in ***Swamy Shraddananda (2)*** **(**supra) that a special category of sentence; instead of death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in ***Sangeet v. State of Haryana, (2013) 2 SCC 452*** that the deprival of remission power of the appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same."

In the result, while confirming the conviction of the Appellant for the offence punishable under Section 302 IPC, we consider it appropriate to commute the death sentence to one of life imprisonment till his last breath.

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221. INDIAN PENAL CODE, 1860 – Section 304B
BHARATIYA NYAYA SANHITA, 2023 – Section 80
EVIDENCE ACT, 1872 – Section 113-B
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 118

(i) Deceased-wife died within one year and four months of marriage at her matrimonial home due to ante-mortem head injury – Evidence established repeated demands for Rs. 5 lakhs by husband and his relatives to secure his employment – Panchayat was also convened for resolving dispute – Deceased telephoned brother

before death expressing fear for life – Death held unnatural and not accidental – Prosecution proved that deceased was subjected to cruelty and harassment for dowry soon before death – Presumption u/s 113-B rightly invoked – Accused failed to rebut presumption – Conviction u/s 304-B Indian Penal Code upheld.

(ii) Presumption as to dowry death – Nature of burden – When arises? Where prosecution proves that (i) woman died otherwise than under normal circumstances, (ii) within seven years of marriage and (iii) she was subjected to cruelty or harassment for or in connection with any demand for dowry soon before her death – Presumption of dowry death arises – Burden shifts to accused to disprove nexus between harassment and death – Mere denial or inconsistent defence insufficient – Accused failed to discharge burden.

भारतीय दण्ड संहिता, 1860 – धारा 304ख

भारतीय न्याय संहिता, 2023 – धारा 80

साक्ष्य अधिनियम, 1872 – धारा 113–ख

भारतीय साक्ष्य अधिनियम, 2023 – धारा 118

(i) मृत पत्नी की मृत्यु विवाह के एक वर्ष चार महीने के भीतर ससुराल में सिर की पूर्व मृत्यु कालिक चोट के कारण हुई – साक्ष्य से सिद्ध हुआ कि पति और उसके रिश्तेदारों द्वारा उसकी नौकरी सुनिश्चित करने के लिए ₹ 5 लाख की निरंतर मांग की गई – विवाद सुलझाने के लिए पंचायत भी बुलाई गई – मृतिका ने मृत्यु से पूर्व अपने भाई को फोन कर जान का भय व्यक्त किया – मृत्यु को अस्वाभाविक माना गया न कि आकस्मिक – अभियोजन पक्ष ने प्रमाणित किया कि मृतिका को मृत्यु से ठीक पहले दहेज के लिए क्रूरता और उत्पीड़न का सामना करना पड़ा – धारा 113–ख की उपधारणा को उचित रूप से उपधारित किया गया – अभियुक्त उपधारणा को खंडित करने में असफल रहा – भारतीय दंड संहिता की धारा 304–ख के अंतर्गत दोषसिद्धि यथावत रखी गई।

(ii) दहेज मृत्यु के संबंध में अनुमान – भार की प्रकृति – कब उत्पन्न होती है? जब अभियोजन पक्ष सिद्ध करता है कि (i) महिला की मृत्यु सामान्य परिस्थितियों के अलावा अन्य परिस्थितियों में हुई, (ii) विवाह

के सात वर्षों के भीतर हुई, और (iii) उसे मृत्यु से ठीक पहले दहेज की मांग के संबंध में क्रूरता या उत्पीड़न का सामना करना पड़ा – तब दहेज मृत्यु की उपधारणा उत्पन्न होती है – अभियुक्त पर यह भार आ जाता है कि वह उत्पीड़न और मृत्यु के मध्य संबंध को खंडित करे – मात्र इनकार या असंगत बचाव पर्याप्त नहीं – अभियुक्त यह भार उन्मोचित करने में असफल रहा।

Virender Pal @ Vipin v. State of Haryana

Judgment dated 15.05.2025 passed by the Supreme Court in Criminal Appeal No. 342 of 2015, reported in AIR 2025 SC 3206 (Three Judge Bench)

Relevant extracts from the judgment:

Upon going through the post-mortem report, it is clear that the death of Punita was caused by ante-mortem injuries caused by mechanical violence and hence, her death was definitely otherwise than under natural circumstances within the meaning of Section 304-B IPC.

The deceased was married to the accused appellant on 28th February, 2008. She received injuries associated with violence and died on 1st June, 2009 while she was at her matrimonial home. Thus, the period between the marriage and her death by severe traumatic injuries is just a year and four months. There are consistent evidence from the testimonies of the material prosecution witnesses, i.e., Balraj Singh (PW-1) father of the deceased, Parmod Kumar (PW-2) brother of the deceased, and Satender Kumar (PW-3) another brother of the deceased, that deceased-Punita was continuously being harassed by the accused-appellant and his relatives on account of the demand of dowry. At one point of time, a sum of Rs. 50,000/- was also given to the accused-appellant and Sukhbir Singh, who had come to the house of the complainant, Balraj Singh (PW-1) and demanded a sum of Rs. 5 lakhs for taking deceased-Punita back to the matrimonial home. This amount was being demanded so that the accused-appellant could secure employment. The accused-appellant brought deceased-Punita to the matrimonial home after receiving an amount of Rs.50,000/- but little time thereafter the maltreatment of deceased-Punita resumed for the remaining amount. No significant cross-examination was conducted from Balraj Singh (PW-1) on this important aspect of his testimony.

Furthermore, Satender Kumar (PW-3), made a categorical statement that on the date of the incident, deceased-Punita called him over telephone, and she was in despair and was crying. She conveyed that the accused-appellant had beaten her earlier night and she is apprehending that she might be killed. She made a fervent plea to be saved from the clutches of the accused persons. This version of Satender

Kumar (PW-3) could not be shaken in cross examination. Hence, there is sufficient evidence on the record to show that deceased-Punita was continuously harassed even before her death in her matrimonial home on account of demand of dowry and money.

The fact regarding holding of a Panchayat is corroborated by the defence witnesses as well. Of course, the version of the defence witnesses is that the Panchayat was held to discuss the medical issues being faced by the deceased-Punita. The only medical issue which deceased-Punita was facing as per the defence was some knee problem. We feel that deceased-Punita being a young woman of less than 30 years could not have been so perturbed by the knee issue that the resolution would require a Panchayat meeting. Thus, this flimsy defence taken by the accused-appellant is not tenable and the version of the prosecution witnesses that the panchayat was held to discuss the issues of demand of dowry and the maltreatment being meted out to the deceased is the only acceptable theory.

Furthermore, whatever the gravity of the knee issues may have been, that by itself could not have instigated deceased-Punita to end her life because admittedly she was being provided treatment, and her pain had subsidised as per the evidence of the defence witness, Dr. Sandeep Grover (DW-7).

At the cost of repetition, it may be noted that the demand of money was being made so that the accused-appellant could secure a job. The deceased called her brother Satender Kumar (PW-3) on the date of incident at 07:45 am and complained that she was being maltreated/beaten by her matrimonial family members including the accused-appellant and expressed a grave danger to her life. Hence, there is ample evidence on record establishing that deceased Punita was being treated with cruelty in her matrimonial home owing to the demand of dowry soon before her death.

Consequently, all the ingredients required to prove the offence punishable under Section 304-B of the IPC against the accused-appellant are made out from the evidence available on record.

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222. INDIAN PENAL CODE, 1860 – Sections 304B and 498A
BHARATIYA NYAYA SANHITA, 2023 – Sections 80 and 85
EVIDENCE ACT, 1872 – Section 113B
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 118
Dowry Death – Ingredients – Proof – In the present case, prosecution failed to establish proximate and live link between alleged demand of ₹45,000 and death of deceased – Evidence of mother found inconsistent,

uncorroborated and unreliable – Other relatives were hearsay witnesses – No complaint or allegation at the time of inquest or funeral – Delay of five days in lodging written complaint unexplained – Where solitary witness is a close relative with inconsistencies then, corroboration is necessary – Court must assess credibility applying the test of "wholly reliable", "wholly unreliable", or "neither wholly reliable nor wholly unreliable" – Testimony of mother not of sterling quality – Possibility of afterthought and consultation cannot be ruled out – Conviction under Sections 304B and 498A unsustainable – Accused entitled to acquittal.

भारतीय दण्ड संहिता, 1860 – धाराएं 304ख एवं 498क

भारतीय न्याय संहिता, 2023 – धाराएं 80 एवं 85

साक्ष्य अधिनियम, 1872 – धारा 113ख

भारतीय साक्ष्य अधिनियम, 2023 – धारा 118

दहेज मृत्यु – आवश्यक तत्व – प्रमाण – वर्तमान मामले में अभियोजन ₹ 45,000 की कथित मांग और मृतका की मृत्यु के बीच निकट और जीवंत संबंध स्थापित करने में असफल रहा – माँ की गवाही असंगत, अप्रमाणित और अविश्वसनीय पाई गई – अन्य रिश्तेदार केवल सुनी–सुनाई बातों के गवाह थे – पंचनामा या अंतिम संस्कार के समय कोई शिकायत या आरोप नहीं लगाया गया – लिखित शिकायत दर्ज करने में पाँच दिन की विलंब का कोई स्पष्टीकरण नहीं दिया गया – जब एकमात्र गवाह कोई करीबी रिश्तेदार हो और उसकी गवाही में असंगतता हो, तो पुष्टि आवश्यक होती है – न्यायालय को "पूर्णतः विश्वसनीय", "पूर्णतः अविश्वसनीय" या "न तो पूर्णतः विश्वसनीय न ही पूर्णतः अविश्वसनीय" की कसौटी पर विश्वसनीयता का मूल्यांकन करना चाहिए – माँ की गवाही उत्कृष्ट गुणवत्ता की नहीं थी – पश्चात्वर्ती प्रक्रम में सोच–विचार और परामर्श की संभावना से इनकार नहीं किया जा सकता – धारा 304ख और 498क के अंतर्गत दोषसिद्धि टिकाऊ नहीं – अभियुक्त दोषमुक्त होने का पात्र है।

Sultan Khan and anr. v. State of Madhya Pradesh

Judgment dated 03.04.2025 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 67 of 2000, reported in 2025 CriLJ 3754

Relevant extracts from the judgment:

The dismay, pain and agony of Gafuran Bi for loss of her young daughter can be inferred. Initially, she did not make any complaint immediately on death of her

daughter, but after five days, instead of lodging of FIR, she submitted a written complaint (Ex.D-2), prepared by a lawyer, with the SDO(P) Badnagar that too after the statements during inquest. In para 29, Gafuran Bi (PW-9) stated that she demanded return of money from the accused after death of her daughter but they declined. In view of these circumstances, the inconsistency in evidence of Gafuran Bi assumes significance.

There are material inconsistencies in the evidence of Gafuran Bi (PW-9) with reference to her earlier statements and the written report (Ex.P-2), regarding the amount paid and demanded, the time of payment of the money and the visit of her daughter Sehraj Bi complaining about harassment for money by the accused. The trial Court dismissed the defence contentions, citing human memory's fragility and Gafuran Bi's status as a rustic villager. The reasons assigned by the trial Court are not acceptable and appropriate since Gafuran Bi had made specific statement with regard to payment of Rs. 25,000/- in month of Ashadh in written complaint (Ex.D-2). Later, all the relatives of Sehraj Bi including Gafuran Bi have deposed that Rs. 20,000/- were paid in month of Ashadh, remaining amount of Rs. 25,000/- was to be paid after harvesting soyabean crops. Gafuran Bi (PW-9) deposed that her daughter had visited her for first time after six months of marriage, whereas, the month of Ashadh fell after three months of her marriage.

The investigation officer Raghuveer Singh (PW-13) stated that he conducted Panchnama (Ex.P-3) in presence of Panch witness of the dead body of Sehraj Bi. During inquest proceeding, he recorded statements of Mohd. Hussain, Sultan Khan, Bizan, Niyaz Bi, Anwar Khan, Mahboob Khan and Ajij Khan. On 24.10.1997, Gafuran Bi submitted an application (Ex.D-2). He recorded statement of Gafuran Bi, Lata Bai, Amit, Hasina Bai and Munni and thereafter registered FIR (Ex. P-9). Constable Manohar (PW-2) stated that parents of the deceased and brother Hussain were present at the time of Panchanama and postmortem. Chandra Kumar (PW-3) and Ahmad (PW-4) deposed that parents and brother of deceased Sehraj Bi were present at the time of her final rites.

In view of discussion, the sole testimony of Gafuran Bi is not fully reliable and trustworthy, therefore, corroboration in material particulars was needed. The appreciation of evidence on record manifests that Hamid (PW-10), Mohd. Hussain (PW-11) and Bashir (PW-12) are hearsay witness. Other witness and circumstances do not corroborate testimony of Gafuran Bi. Learned trial Court committed an error in relying on uncorroborated testimony of Gafuran Bi to conclude that Sultan Khan and Niyaz Bi had harassed Sehraj Bi for money. Prosecution had failed to establish the foundational facts that Sehraj Bi was subjected to harassment and cruelty by

Sultan Khan and Niyaz Bi for or in relation to demand of dowry soon before her death. Consequently, learned trial Court committed error in convicting the accused Sultan Khan and Niyaz Bi for offences punishable under Section 304 B and 498 A of IPC.

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223. INDIAN PENAL CODE, 1860 – Sections 307, 363, 366-A and 376
BHARATIYA NYAYA SANHITA, 2023 – Sections 109, 137(2), 96 and 64
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 5(g), 5(j)(iii)(m) and 5(r) r/w/s 6
CRIMINAL PROCEDURE CODE, 1973 – Sections 293 and 391
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 329 and 432

DNA Evidence – Non-examination of experts – Appellants were sentenced to death for gang rape and attempted murder of a minor – Conviction was based solely on a DNA report proved through a police officer, without examining the scientific experts who conducted the profiling – Mere exhibiting of a DNA report under Section 293 CrPC is insufficient without testing its methodology, chain of custody and expert testimony – Failure to examine DNA experts vitiates the trial – Expeditious trials cannot come at the cost of fairness – *De novo* trial ordered. (*Anokhilal v. State of M.P., AIR 2020 SC 232* relied upon)

भारतीय दण्ड संहिता, 1860 – धाराएं 307, 363, 366–क एवं 376

भारतीय न्याय संहिता, 2023 – धाराएं 109, 137(2), 96 एवं 64

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 5(छ), 5(ञ)(iii) (ड) एवं 5(द) सहपठित 6

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 293 एवं 391

भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 329 एवं 432

डीएनए साक्ष्य – विशेषज्ञों की परीक्षा नहीं – अपीलकर्ताओं को एक नाबालिग के साथ सामूहिक बलात्कार और हत्या के प्रयास के लिए मृत्युदंड दिया गया – दोषसिद्धि मात्र एक पुलिस अधिकारी द्वारा प्रमाणित किए गए डीएनए रिपोर्ट पर आधारित थी, जबकि डीएनए प्रोफाइलिंग करने वाले वैज्ञानिक विशेषज्ञों की परीक्षा नहीं की गई – धारा 293 दं.प्र.स. के अंतर्गत डीएनए रिपोर्ट को मात्र प्रदर्शित करना पर्याप्त नहीं है जब तक उसकी कार्यप्रणाली, अभिरक्षा की श्रृंखला और

विशेषज्ञ साक्ष्य की जांच न की जाए – डीएनए विशेषज्ञों की परीक्षा में विफलता से मुकदमा प्रभावित होता है – शीघ्र न्याय प्रक्रिया निष्पक्षता की कीमत पर नहीं हो सकती – पुनः विचारण का आदेश दिया गया। (*अनोखीलाल विरूद्ध मध्य प्रदेश राज्य एआईआर, 2020 एस सी 232* आवलंवित।)

Irfan @ Bhayu Mevati v. State of Madhya Pradesh

Judgment dated 16.01.2025 passed by the Supreme Court in Criminal Appeal No. 1667 of 2021, reported in 2025 CriLJ 3944 (Three Judge Bench)

Relevant extracts from the judgment:

It is an admitted position that the DNA profiling report (Exhibit157) was formally exhibited by the Superintendent of Police (PW-31) in his evidence. None of the scientific experts involved in the process of conducting the DNA profiling examination and issuing the report have been examined by the prosecution.

The DNA profiling report is a document on which the entire fulcrum of the prosecution case is based. The defence has claimed grave prejudice on account of non-examination of these scientific witnesses and the non-production of the experts in evidence, thereby creating a grave doubt on the probative value of the report.

The aspect concerning evidentiary value of DNA report has been explained by this Court in Rahul v. State of Delhi, Ministry of Home Affairs18, wherein it was held as under: -

> "The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the DNA profiling dated 18.4. 2012 (Ext. P-23/1) giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the appellant-accused. The Court finds substance in the said submissions made by the Amicus Curiae. The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.
>
> It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its

> contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14.2.2012 and 16.2.2012; and they were sent to CFSL for examination on 27.2.2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion."

The instant case involves capital punishment and thus, providing a fair opportunity to the accused to defend himself is absolutely imperative and non-negotiable. The trial in the case at hand was concluded without providing appropriate opportunity of defending to the accused and within and within a period of less than two months from the date of registration of the case, which is reflective of undue haste. The failure of the trial Court to ensure the deposition of the scientific experts while relying upon the DNA report, has definitely led to the failure of justice thereby, vitiating the trial.

In the wake of the above discussion, we allow the application filed by the appellants. The case is remanded to the trial Court who shall summon the scientific experts associated with the preparation and issuance of the DNA report with the entire supporting material. These scientific experts shall be summoned and examined as Court witnesses with a proper opportunity of examination to the prosecution and the defence in that order. In case the accused are not represented by a counsel of their choice, a defence counsel having substantial experience in terms of the guidelines laid down by this Court in Anokhilal(supra) (extracted in Para 26 of this judgment) shall be appointed to defend the accused and in the de novo trial.

Pursuant to the testimony of the scientific experts being recorded, the accused shall be again questioned under Section 313 CrPC in context to the fresh evidence. They shall be provided a fair opportunity of leading defence evidence.

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224. INDIAN PENAL CODE, 1860 – Section 498A
BHARATIYA NYAYA SANHITA, 2023 – Section 80
CRIMINAL PROCEDURE CODE, 1973 – Sections 468 and 473
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 514 and 519

(i) Cruelty by husband and relatives – Complaint of cruelty and dowry harassment filed after three years – Sessions Court discharged accused holding complaint was time-barred and possibility of false implication – High Court set aside the discharge and found the findings as perverse – Considering long passage of time and divorce between parties trial was held unjustified – FIR and charge-sheet quashed – Complaint filed within three years held within limitation – Allegations against relatives found vague and omnibus and no *prima facie* case was made out – Appeal allowed.

(ii) Limitation – Limitation is to be computed from date of filing of complaint and not from date of cognizance – Law clarified.

भारतीय दण्ड संहिता, 1860 – धारा 498–क

भारतीय न्याय संहिता, 2023 – धारा 80

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 468 एवं 473

भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 514 एवं 519

(i) पति और रिश्तेदारों द्वारा क्रूरता – क्रूरता और दहेज उत्पीड़न की शिकायत तीन वर्ष बाद दर्ज की गई – सत्र न्यायालय ने परिवाद को समयबद्ध मानते हुए और मिथ्या फंसाए जाने की संभावना को देखते हुए अभियुक्तगण को उन्मोचित किया – उच्च न्यायालय ने उन्मोचन को अपास्त करते हुए पाया कि निष्कर्ष विकृत थे – पक्षकारों के मध्य लंबा समय व्यतीत हो जाने और विवाह विच्छेद को दृष्टिगत हुए मुकदमा अनुचित माना गया – एफआईआर और अभियोग पत्र अपास्त किये गये – तीन वर्षों के भीतर पंजीबद्ध शिकायत को समयसीमा के भीतर माना गया – रिश्तेदारों के विरूद्ध आरोप अस्पष्ट और सामान्य प्रकृति के होने से प्रथम दृष्टया कोई प्रकरण नहीं बनना पाया गया – अपील स्वीकार की गई।

(ii) परिसीमा – परिसीमा की गणना शिकायत संस्थित करने की तिथि से की जाएगी, न कि संज्ञान लेने की तिथि से – विधि स्पष्ट की गई।

Ghanshyam Soni v. State (Govt. of NCT of Delhi) Judgment dated 04.06.2025 passed by the Supreme Court in Criminal Appeal No. 2894 of 2025, reported in AIR 2025 SC 3236

Relevant extracts from the judgment:

A perusal of the FIR shows that the allegations made by the complainant are that in the year 1999, the Appellant inflicted mental and physical cruelty upon her for bringing insufficient dowry. The Complainant refers to few instances of such atrocities, however the allegations are generic, and rather ambiguous. The allegations against the family members, who have been unfortunately roped in, is that they used to instigate the Appellant husband to harass the Complainant wife, and taunted the Complainant for not bringing enough dowry; however, there is no specific incident of harassment or any evidence to that effect. Similarly, the allegations against the five out of six sisters that they used to insult the Complainant and demanded dowry articles from her, and upon failure beat her up, but there is not even a cursory mention of the incident. An allegation has also been made against a tailor named Bhagwat that he being a friend of the Appellant instigated him against the Complainant, and was allegedly instrumental in blowing his greed. Such allegations are merely accusatory and contentious in nature, and do not elaborate a concrete picture of what may have transpired. For this reason alone, and that the evidence on record is clearly inconsistent with the accusations, the version of the Complainant seems implausible and unreliable.

As regards the Appellant, the purportedly specific allegations levelled against him are also obscure in nature. Even if the allegations and the case of the prosecution is taken at its face value, apart from the bald allegations without any specifics of time, date or place, there is no incriminating material found by the prosecution or rather produced by the complainant to substantiate the ingredients of "cruelty" under section 498A IPC.

In addition, we are also of the considered view that the Complaint dated. 03.07.2002 filed by the Complainant was not time barred and was filed within the ascribed period of three years from the date of the commission of the offence. In arguendo, even if the assertion of the Appellants is considered to be true that the allegations pertain to the year 1999, and there is no material change from the first Complaint dated 08.09.1999 and the final Complaint dated 03.07.2002, it cannot be construed that the same was not within the time frame of limitation simply because cognizance was taken by the Magistrate two years later vide Order dated 27.04.2002.

It is a settled position of law that for the computation of the limitation period under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. ***Sarah Mathew v. Institute Cardio Vascular Diseases by Its Director***

Dr. K.M. Cherian and ors., (2014)2 SCC 62 The dicta laid down in the case of ***Bharat Damodar Kale v. State of Andhra Pradesh, (2003)8 SCC 559*** makes it unequivocally clear that the Magistrate is well within his powers to take cognizance of a complaint filed within a period of three years from the date of the commission of offence as mandated under section 468 CrPC.

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225. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Sections 7A, 15 and 16

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

Plea of juvenility – Stage at which can be raised – Determination of age –Appellant raised plea of juvenility for first time before Supreme Court – Claimed date of birth 14.09.1972, offence dated 17.11.1988 – Age on date of offence was 16 years 2 months – Court directed inquiry – Inquiry confirmed date of birth from school records – Held**, plea of juvenility maintainable at any stage which includes post-conviction – Benefit of 2000 Act and 2007 Rules cannot be denied merely because trial was concluded prior to its enactment – Accused was aged below 18 years on date of offence and is entitled to protection of juvenile justice law – Conviction maintained but sentence set aside – Matter referred to Juvenile Justice Board for appropriate order.**

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 – धाराएं 7क, 15 एवं 16

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

किशोरावस्था का अभिवाक् – किस स्तर पर उठाया जा सकता है – आयु का निर्धारण – अपीलकर्ता ने पहली बार उच्चतम न्यायालय के समक्ष किशोरावस्था का अभिवाक् लिया – जन्मतिथि दिनांक 14.09.1972 बताई गई, जबकि अपराध की तिथि 17.11.1988 थी – अपराध की तिथि पर आयु 16 वर्ष 2 माह थी – न्यायालय ने जांच का निर्देश दिया – जांच में विद्यालय अभिलेखों से जन्मतिथि की पुष्टि हुई – अभिनिर्धारित, किशोरावस्था की दलील किसी भी चरण पर उठाई जा सकती है, जिसमें दोषसिद्धि का स्तर भी सम्मिलित है – केवल इस आधार पर कि प्रकरण अधिनियम, 2000 और नियम, 2007 के लागू होने से पहले समाप्त हुआ था, इनका लाभ नकारा नहीं जा सकता – अभियुक्त अपराध की तिथि पर 18 वर्ष से कम आयु का था और किशोर न्याय कानून के संरक्षण का पात्र है –

दोषसिद्धि यथावत रखी गई लेकिन सजा अपास्त की गई – प्रकरण उपयुक्त आदेश हेतु किशोर न्याय बोर्ड को भेजा गया।

Sua v. State of Rajasthan
Judgment dated 23.07.2025 passed by the Supreme Court in Criminal Appeal No. 2695 of 2025, reported in AIR 2025 SC 3383

Relevant extracts from the judgment:

The procedure has been duly followed as provided for under the 2000 Act and the 2007 Rules. On the basis of the statements of the witnesses and the documents produced including the admission record in Class-I of the Government Higher Secondary School, Baharu, dated 16.05.1980, as well as other school records where his date of birth is reflected as 14.09.1972 which has been accepted to be correct. The findings with regard to his age at the time of commission of the offence has been returned as 16 years 2 months and 3 days on the date of the commission of the crime, i.e., 17.11.1988, with the date of birth of the Appellant being 14.09.1972. The Appellant was therefore a juvenile on the date of commission of the crime.

As regards the opposition by the State with regard to the plea having been taken for the first time before this Court that the Appellant being a juvenile being not permissible, the same needs to be merely mentioned to be rejected in light of the authoritative judgments passed by this Court starting from ***Hari Ram v. State of Rajasthan (2009) 13 SCC 211*** followed by ***Dharambir v. State (NCT of Delhi) and anr,. AIR 2010 SC 1801*** where it has been categorically held that the plea of juvenility can be raised before any court and has to be recognized at any stage, even after disposal of the case. It has further been held that such a claim is required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, i.e., the 2007 Rules, even if the juvenile has ceased to be so on or before the date of commencement of the 2000 Act, as in the present case. The relevant factor, therefore, is that the accused, to be a juvenile, should have not completed 18 years of age on the date of commission of the offense, which entitles him to the benefit of the 2000 Act.

In the light of the above, the provisions as contained in the 2000 Act would apply. Consequently, the sentence as imposed by the Trial Court and upheld by the High Court will have to be set aside, as the same cannot sustain. We order accordingly.

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226. MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007 – Section 23

Transfer of property by senior citizen – Gift deed executed by mother in favour of son – Condition in gift deed and contemporaneous document that son shall maintain parents – Failure to do so – Provisions of the Act, 2007 must receive a liberal and purposive interpretation to advance its objective of protecting the rights and welfare of the elderly – When a property is transferred subject to the condition of maintenance and such condition is breached, the transfer is deemed to have been made by fraud, coercion or undue influence and can be declared void at the option of the transferor – Tribunal's power u/s 23 extends to ordering restoration of possession to ensure effective relief – Impugned judgment was set aside and the gift deed quashed – Possession of the disputed property directed to be restored to the appellant.

माता–पिता एवं वरिष्ठ नागरिक भरण–पोषण एवं कल्याण अधिनियम, 2007 – धारा 23

वरिष्ठ नागरिक द्वारा संपत्ति का हस्तांतरण – माँ द्वारा पुत्र के पक्ष में दानपत्र निष्पादित किया गया – दानपत्र और समकालीन दस्तावेज में यह शर्त थी कि पुत्र माता–पिता का भरण–पोषण करेगा – इस शर्त का पालन न करने पर – भरण–पोषण और कल्याण अधिनियम, 2007 के प्रावधानों की उदार और उद्देश्यपरक व्याख्या की जानी चाहिए जिससे बुजुर्गों के अधिकारों और कल्याण की रक्षा की जा सके – जब संपत्ति का हस्तांतरण भरण–पोषण की शर्त पर किया गया हो और उस शर्त का उल्लंघन हो, तो ऐसा हस्तांतरण धोखाधड़ी, दबाव या अनुचित प्रभाव के अधीन किया किया जाना माना जाएगा और हस्तांतरणकर्ता की इच्छा पर उसे शून्य घोषित किया जा सकता है – धारा 23 के अंतर्गत अधिकरण प्रभावी राहत सुनिश्चित करने हेतु कब्जा पुनः बहाल करने का आदेश दे सकता है – विवादित निर्णय को अपास्त किया गया और दानपत्र को निरस्त किया गया – आधिपत्य अपीलकर्ता को वापस देने का निर्देश दिया गया।

Urmila Dixit v. Sunil Sharan Dixit and ors.

Judgment dated 02.01.2025 passed by the Supreme Court in Civil Appeal No. 10927of 2024, reported in 2025 (2) MPLJ 253 (SC)

Relevant extracts from the judgment:

In ***Sudesh Chhikara v. Ramti Devi and anr., 2022 MPLJ Online (SC) 131, 2022 SCC Online SC 1684,*** this Court refused to grant the benefit of section 23 in the absence of an averment that the transfer in question was subject to a condition for maintenance of the parents. It was observed:

> "When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal."

Furthermore, in ***Sudesh Chhikara v. Ramti Devi and anr., 2022 MPLJ Online (SC) 131*** for attracting the application of section 23(1), the following essentials were expounded:

(a) The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and

(b) The transferee refuses or fails to provide such amenities and physical needs to the transferor.

Adverting to the facts at hand, we find that there are two documents on record. One, a promissory note dated 07.09.2019 which records that the promisor (respondent) shall serve the appellant and her husband till the end of their life, and in the absence of him fulfilling such obligation, the subsequent deed can be taken back by the appellant. Second, the Gift Deed dated 7.9.2019 also records a similar condition, i.e. the donee maintains the donor, and the former makes all necessary provisions for the peaceful life of the appellant-donor. Both these documents were signed simultaneously.

The appellant has submitted before us that such an undertaking stands grossly unfulfilled, and in her petition under section 23, it has been averred that there is a breakdown of peaceful relations inter se the parties. In such a situation, the two conditions mentioned in Sudesh (supra) must be appropriately interpreted to further the beneficial nature of the legislation and not strictly which would render otiose the intent of the legislature. Therefore, the Single Judge of the High Court and the tribunals below had rightly held the Gift Deed to be cancelled since the conditions for the well-being of the senior citizens were not complied with. We are unable to

agree with the view taken by the Division Bench, because it takes a strict view of a beneficial legislation.

Another observation of the High Court that must be clarified, is section 23 being a standalone provision of the Act. In our considered view, the relief available to senior citizens under section 23 is intrinsically linked with the statement of objects and reasons of the Act, that elderly citizens of our country, in some cases, are not being looked after. It is directly in furtherance of the objectives of the Act and empowers senior citizens to secure their rights promptly when they transfer a property subject to the condition of being maintained by the transferee.

In view of the above, the impugned judgment and order with the particulars as described in paragraph one of this judgment, is set aside. Consequently, the Gift Deed dated 07.09.2019 is quashed. In the attending facts and circumstances of this case, the Appeal is allowed. Possession of the premises shall be restored to the appellant by 28.02.2025.

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227. MEDICAL TERMINATION OF PREGNANCY ACT, 1971 – Section 3

Termination of pregnancy – Survivors of sexual assault – Necessity of permission from court – Guidelines issued.

गर्भ का चिकित्स्कीय समापन अधिनिम, 1971 – धारा 3

गर्भ की समाप्ति – यौन उत्पीड़न की पीड़िताएं – न्यायालय से अनुमति की आवश्यकता – दिशा–निर्देश जारी किए गए।

In Reference (Suo Motu) v. State of M.P. and ors.

Order dated 20.02.2025 passed by the High Court of Madhya Pradesh in Writ Petition No. 5184 of 2025, reported in 2025 (2) MPLJ 356 (DB)

Relevant extracts from the order:

Taking note of the orders passed by the Indore Bench and the Principal Seat, Jabalpur in the aforesaid petitions, we are inclined to lay down the following procedures covering both the situations viz. when the pregnancy is upto 24 weeks and where the pregnancy is more than 24 weeks in order to streamline the procedure to ensure timely legal and medical help to such victims:-

(a) SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is upto 24 Weeks:- Whenever a case of rape is registered at any police station, the following procedure shall be adopted:-

(i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is not more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO;

(ii) The learned Judge of the District Court, preferably Special Judge/POCSO, regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously examine the case of the victim for termination of pregnancy in the light of the statutory mandates as engrafted in Section 3(2)(a) or Section 3(2)(b) of the Medical Termination of Pregnancy Act 1971 & The Medical Termination of Pregnancy Rules, 2003 framed thereunder;

(iii) The concerned medical officer/Board is expected to examine the case so referred expeditiously and accordingly terminate the pregnancy, if the same is permissible in consonance with the aforesaid statutory provisions of Medical Termination of Pregnancy Act 1971 and rules framed thereunder, in a time bound manner preferably within three days from the date of making such referral after obtaining consent of victim or guardian as required by Section 3(4) of the MPT Act;

(iv) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention, medical facilities and other specialist doctors, if required, will be made available to the victim;

(v) The post operative care, upto the extent required, will be extended to the victim;

(vi) The doctors will ensure that a sample from the fetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case.

It is, however, clarified that the concerned medical officer/Board rendering such emergency medical care to rape survivor, is enjoined not to demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care in the same manner as the said necessity is obviated in the case of child rape survivor under the statutory mandates of Rule 6(3) of Protection of Children from Sexual Offences Rules, 2020.

(b) SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is exceeding 24 Weeks:

Whenever a case of rape is registered at any police station, the following procedure shall be adopted:-

(i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO;

(ii) The learned Judge of the District Court preferably Special Judge/POCSO), regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously submit its report, if the pregnancy of the victim can be terminated;

(iii) The District Court, preferably Special Judge/POCSO, after obtaining the said medical report, under intimation to the victim and her parents, directly refer such case and report to the nearest Registry of the High Court;

(iv) The Registry of High Court, in turn, shall register such reference as a Writ Petition under Article 226 of the Constitution, *Suo Motu*, and list the matter immediately before the concerned Bench having the roster, so that appropriate orders regarding termination of pregnancy can be passed by the High Court without any undue delay;

(v) If directed by the High Court that termination of pregnancy is required then, the procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the termination of her pregnancy and also other factors;

(vi) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to the victim;

(vii) The post operative care, upto the extent required, will be extended to the victim;

(viii) The doctors will ensure that a sample from the fetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case.

Needless to mention here that nothing in the aforesaid SOPs shall be construed as to abridge or limit the power of the concerned medical officer/Board to terminate the pregnancy in the cases where the termination of pregnancy of woman is necessitated in accordance with the provisions of the Section 3(2B) and Section 5(1) or other applicable provisions of the Medical Termination of Pregnancy Act, 1971.

It is also directed that any forensic evidence/foetus collected in the course of termination of pregnancy must be preserved for DNA profiling or other investigative purposes in the same manner as provided under Rule 6(6) of the Protection of Children from Sexual Offences Rules, 2020.

It is further directed that the privacy of the victim be maintained strictly in view of statutory provisions of Section 5A of the Medical Termination of Pregnancy Act, 1971.

In view of above, all the concerned are directed to ensure strict compliance of the aforesaid guidelines in letter and spirit, failing which shall amount to contemptuous act on the part of the erring officer and the contempt proceeding shall be initiated against the erring officer under the Contempt of Courts Act, 1971.

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228. MOTOR VEHICLES ACT, 1988 – Sections 140, 166 and 168

Compensation – Dependency – Married daughter and aged mother as claimants – Death of woman in a road accident caused by rash and negligent driving of State Roadways bus – Claimants were her married daughter and aged mother – Tribunal awarded ₹ 15,97,000 with 6% interest holding both as dependents – High Court erred in denying compensation to Appellant No.2 (mother) – While a married daughter may be a "legal representative," she cannot claim loss of dependency unless proven to be financially dependent on deceased – Duty of a child to maintain aged parent is reciprocal to the parent's duty to maintain a minor child – Dependency of a mother on daughter cannot be presumed ceased merely because the latter was married – Possibility of future dependency must also be considered – Appellant No.1 (married daughter) entitled only to ₹ 50,000 under no-fault liability as per Section 140, in view of lack of dependency.

मोटरयान अधिनियम, 1988 – धाराएं 140, 166 एवं 168

प्रतिकर – आश्रितता – विवाहित पुत्री और वृद्ध माता द्वारा दावा – राज्य परिवहन की बस की लापरवाह और उपेक्षापूर्ण संचालन से महिला की सड़क दुर्घटना में मृत्यु – दावा करने वाले उसकी विवाहित पुत्री और वृद्ध माता थे – न्यायाधिकरण ने दोनों को आश्रित मानते हुए ₹ 15,97,000 तथा 6% ब्याज का पुरस्कार दिया – उच्च न्यायालय ने अपीलकर्ता संख्या 2 (माता) को मुआवजा देने से इनकार कर त्रुटि की – जबकि विवाहित पुत्री "वैधानिक प्रतिनिधि" हो सकती है, वह आश्रितता की हानि का दावा तब तक नहीं कर सकती जब तक यह प्रमाणित न हो कि वह मृतक पर आर्थिक रूप से आश्रित थी – वृद्ध माता–पिता का भरण–पोषण करने का दायित्व संतान के लिए उसी प्रकार है जैसे माता–पिता का नाबालिग संतान के प्रति – केवल पुत्री के विवाहित होने से माता की आश्रितता समाप्त मान लेना उचित नहीं – भविष्य में आश्रितता की संभावना पर भी विचार किया जाना चाहिए – चूंकि आश्रितता सिद्ध नहीं हुई, अतः अपीलकर्ता क्रमांक 1 (विवाहित पुत्री) केवल ₹ 50,000 की राशि के लिए धारा 140 के अंतर्गत दोषरहित उत्तरदायित्व के आधार पर पात्र मानी गई।

Deep Shikha and anr. v. National Insurance Company Ltd. and ors.

Judgment dated 13.05.2025 passed by the Supreme Court in Civil Appeal No. 6641 of 2025, reported in AIR 2025 SC 2929

Relevant extracts from the judgment:

The Appellants claim that they were entirely dependent on the deceased. The deceased was married but her husband had left her soon after the birth of Appellant No. 1 (her daughter), after which Appellant No. 2 (her mother) was living with the deceased daughter.

Once a daughter is married, logical presumption is that she now has rights on her matrimonial household and is also financially supported by her husband or his family, unless proven otherwise. It is more than likely that her dependence on her natal family, including her mother has now ceased. Sections 166 and 168 of the Motor Vehicles Act, 1988 focus on the financial relationship between the deceased and the Claimant. A married daughter may be considered a legal representative, as per ***Manjuri Bera and anr. v. Oriental Insurance Co. Ltd. and anr., (AIR 2007 SC 1474)*** but she will not be eligible for loss of dependency compensation unless it is proven by the daughter that she was financially dependent

on the deceased. Thus, it is clear from the record that Appellant No. 1 has failed to prove that she was being financially supported by her mother post marriage and hence cannot be said to be a dependent of her mother, the deceased.

Therefore, it is our opinion the High Court correctly relied on ***Manjuri Bera*** (supra) while holding that Appellant No. 1, as the legal representative of the deceased, will only be entitled to compensation envisaged in Section 140 of the Motor Vehicle Act, 1988 as liability under the same does not cease to exist in the absence of dependency.

However, the High Court erred in setting aside the Tribunal's award as it relates to Appellant No. 2, the mother of the deceased. Appellant No. 2 was aged about 70 years of age at the time of the accident resulting in the death of her daughter, the deceased, and was solely dependent on the deceased as she lived with her and had no independent income, there is no evidence on record to rebut the same.

The obligation of a child to maintain their parent in old age is as much of a duty as the obligation of a parent to maintain their child during minority. The deceased, being the only provider, would be assumed to be fulfilling this obligation, further reinforcing Appellant No. 2's status as a dependent. Therefore, the untimely demise of the deceased may create difficulties for Appellant No. 2 going forward, resulting in hardship. Even if it is assumed that Appellant No. 2 was not dependent on the deceased at the time of the accident, the possibility of future dependency cannot be disregarded.

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***229. MOTOR VEHICLES ACT, 1988 – Sections 147, 163-A and 166**

Comprehensive insurance policy – Personal accident cover to owner-cum-driver – Liability of insurer – Extent and proof – Limited liability – Burden of proof – Effect of absence of pleadings – Deceased, brother of owner, died when car tyre bursted – dependents claimed compensation under comprehensive insurance policy containing personal accident cover. Tribunal awarded ₹ 25.82 lakhs – High Court reduced liability of insurer to ₹ 2 lakhs relying on Indian Motor Tariff (IMT) guidelines – Held, IMT guidelines only regulate insurers and are binding inter se but do not automatically limit insured's coverage unless the policy specifically incorporates such limitation – Restoration of Tribunal's full award of ₹ 25.82 lakhs with 8% interest directed.

मोटरयान अधिनियम, 1988 – धाराएं 147, 163–क एंव 166
व्यापक बीमा पॉलिसी – मालिक–सह–चालक के लिए व्यक्तिगत दुर्घटना कवर – बीमाकर्ता की देयता – सीमा और प्रमाण – सीमित देयता – प्रमाण का भार – याचिका में विवरण न होने का प्रभाव – मृतक, जो वाहन मालिक का भाई था, की मृत्यु कार का टायर फटने से हुई – आश्रितों ने व्यक्तिगत दुर्घटना कवर वाली व्यापक बीमा पॉलिसी के अंतर्गत मुआवजे का दावा किया – न्यायाधिकरण ने ₹ 25.82 लाख का मुआवजा प्रदान किया – उच्च न्यायालय ने बीमाकर्ता की देयता को ₹ 2 लाख तक घटा दिया, भारतीय मोटर टैरिफ (IMT) दिशानिर्देशों पर आधारित – अभिनिर्धारित IMT दिशानिर्देश केवल बीमाकर्ताओं को नियंत्रित करते हैं और उनके बीच बाध्यकारी होते हैं, लेकिन बीमित व्यक्ति की कवरेज को स्वतः सीमित नहीं करते जब तक कि पॉलिसी में स्पष्ट रूप से ऐसी सीमा सम्मिलित न हो – न्यायाधिकरण द्वारा दिए गए ₹ 25.82 लाख के पूर्ण पुरस्कार को 8% वार्षिक ब्याज सहित बहाल करने का निर्देश दिया गया।

Manjusha and ors. v. United India Assurance Co. Ltd. and anr. Judgment dated 25.07.2025 passed by the Supreme Court in Civil Appeal No. 9848 of 2025, reported in AIR 2025 SC 3446

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230. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168
Motor accident compensation – Assessment of disability and loss of earning capacity – Appellant a CRPF Sub-Inspector, sustained grievous injuries and was discharged from service due to 78% permanent disability – Tribunal arbitrarily reduced disability to 50% without basis – High Court further erred in deducting pension from salary and ignoring future prospects – Held, pension and retirement benefits being statutory entitlements cannot be treated as pecuniary advantage for deduction from the salary of the victim – Disability to be taken as 78% as assessed by Tribunal-appointed Commissioner – Compensation enhanced to ₹ 67,36,084 with 7% interest p.a. – Appeal allowed – High Court judgment modified. *(National Insurance Company v. Pranay Sethi (2017) 16 SCC 680* relied upon)
मोटरयान अधिनियम, 1988 – धाराएं 166 एवं 168
मोटर दुर्घटना मुआवजा – विकलांगता और आय क्षमता की हानि का मूल्यांकन – अपीलकर्ता एक सीआरपीएफ उप–निरीक्षक थे, जिन्हें गंभीर चोटें आईं और 78% स्थायी विकलांगता के कारण सेवा से मुक्त कर दिया गया – अधिकरण ने

बिना किसी आधार के विकलांगता को मनमाने ढंग से 50% कर दिया – उच्च न्यायालय ने वेतन से पेंशन की कटौती कर दी और भविष्य की संभावनाओं की अनदेखी की – अभिनिर्धारित, पेंशन और सेवानिवृत्ति लाभ जो कि वैधानिक अधिकार हैं, उन्हें पीड़ित के वेतन से कटौती योग्य मौद्रिक लाभ नहीं माना जा सकता – विकलांगता को अधिकरण द्वारा नियुक्त आयुक्त द्वारा आंकी गई 78% के रूप में लिया जाएगा – मुआवजा ₹ 67,36,084 तक बढ़ाया गया, जिस पर 7% वार्षिक ब्याज देय था – अपील स्वीकार की गई – उच्च न्यायालय का निर्णय संशोधित किया गया। (*नेशनल इंश्योरेंस कंपनी विरूद्ध प्रणय सेठी (2017) 16 एससीसी 680* अवलंबित)

Hanumantharaju B. (Dead) by LR v. M. Akram Pasha and anr. Judgment dated 13.05.2025 passed by the Supreme Court in Civil Appeal No. 6844 of 2025, reported in AIR 2025 SC 3283

Relevant extracts from the judgment:

Coming to the issue of disability, it may be apposite to recollect that while the Medical Board had assessed the disability at 61.94%, the Commissioner appointed by the Tribunal had assessed it to be 77.72% which was rounded off to 78%. It is significant to note that while considering the evidence of the Commissioner (CW1), the Tribunal had noted that the Commissioner was cross-examined by the Counsel for the Insurance Company and the Tribunal proceeded to observe that nothing worth had been elicited to disbelieve or discredit his evidence. Thus, the Tribunal could not have doubted the correctness of the assessment made by the Commissioner and could have accepted the same, yet for a strange reason that there was no material evidence to show that the original appellant was rendered completely incapacitated or that he was doing any job after his discharge from the services, the Tribunal reduced the disability to 50% holding that it would meet the ends of justice.

In spite of the credibility of the subsequent medical opinion given by the Commissioner as regards the physical disability of the original appellant not being challenged by the Insurance Company, nor being doubted by the Tribunal itself, we see no reason as to why the Tribunal did not accept the same to the effect that the disability was 78%. What we have also noted is that the High Court has treated the physical disability of the original appellant at 61.94%, which was the initial assessment made by the Medical Board, by ignoring the assessment by the Tribunal appointed Commissioner, correctness of which was not doubted even by the Tribunal. No reason has been assigned by the High Court why it chose to accept the assessment of 61.94% disability made by the Medical Board over the

subsequent assessment of 78% disability by the Commissioner. It may be also noted that the subsequent assessment was made during the pendency of the proceeding before the Tribunal and the concerned Doctor/Commissioner who had treated the original appellant made the assessment and had testified before the Tribunal and cross examined by the Insurance Company and his evidence had remained unshaken.

Under the circumstances, we are of the view that it would be just and proper to accept 78% disability in the present case as assessed by the Tribunal appointed Commissioner.

As far as the multiplier is concerned, since there is no dispute about the age of the original appellant at the time of the accident, i.e., 43 years, we are also of the view that the appropriate multiplier would be 14 as had been applied by the Tribunal and the High Court.

We, thus, find merit in the submissions made by the appellants for enhancement of the compensation amount.

In order to redetermine the quantum of compensation, the monthly income of the deceased original appellant has to be ascertained by not deducting the pension from the monthly income, consequently, it is fixed at Rs. 36,231/- which is the salary.

Further, since the High Court had failed to award appropriate amount towards future prospects, and as the original appellant lost his promotional opportunities because of the accident and as he was 43 years, we deem it appropriate to add 30% of his annual income to the income.

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231. MOTOR VEHICLES ACT, 1988 – Section 173

Appeal against award – Quantum of compensation – Enhancement sought by claimants – Four appeals arose from a common accident involving collision between a Maruti Swift car and a stationary tractor–trolley without hazard lights – Two deceased persons were occupants of the car – Claimants sought enhancement of compensation while insurer challenged finding of equal negligence – Licence of driver of Swift Car was cancelled because of his acts as mentioned under Section 19 of the Motor Vehicles Act – Since it was admitted by driver of Swift Car that his first licence was cancelled therefore, the burden was on him to show that under what circumstances his first licence was cancelled – Findings of contributory negligence and liability apportionment sustained.

मोटरयान अधिनियम, 1988 – धारा 173

पंचाट के विरुद्ध अपील – प्रतिकर की मात्रा – दावाकर्ताओं द्वारा प्रतिकर में वृद्धि की मांग – चार अपीलें एक सामान्य दुर्घटना से उत्पन्न हुईं जिसमें एक मारुति स्विफ्ट कार और बिना चेतावनी संकेतों वाले खड़े ट्रैक्टर–ट्रॉली के बीच टक्कर हुई – कार में सवार दो व्यक्तियों की मृत्यु हो गई – दावाकर्ताओं ने प्रतिकर में वृद्धि की मांग की जबकि बीमाकर्ता ने समान लापरवाही के निष्कर्ष को चुनौती दी – स्विफ्ट कार चालक का लाइसेंस मोटर वाहन अधिनियम की धारा 19 के अंतर्गत उल्लिखित कृत्यों के कारण अपास्त कर दिया गया था – चूंकि स्विफ्ट कार चालक ने स्वीकार किया कि उसका पहला लाइसेंस अपास्त किया गया था, इसलिए यह उसका दायित्व था कि वह यह स्पष्ट करे कि किन परिस्थितियों में उसका पहला लाइसेंस अपास्त हुआ था – सह–लापरवाही और देयता के विभाजन के निष्कर्ष को यथावत रखा गया।

Nidhi Dixit and ors. v. Ashish Kumar Dubey and ors.

Order dated 25.02.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 942 of 2017, reported in 2025(3) MPLJ 696

Relevant extracts from the order:

From the cross-examination of this witness, it is clear that his first licence was cancelled. Section 19 of the Motor Vehicles Act deals with conditions where the licence may be revoked. Section 20 deals with situations in which licence holder can be declared disqualified. Section 21 deal with suspension of driving licence. Thus, it is clear that the licence of driver of Swift Car was cancelled because of his acts as mentioned under Section 19 of the Motor Vehicles Act. Since it was admitted by driver of Swift Car that his first licence was cancelled, therefore, the burden was on him to show that under what circumstances his first licence was cancelled. Since that burden has not been discharged, therefore, this Court has no other option but to rely on the reasons for which licence can be revoked.

Under these circumstances, on earlier occasion driver of Swift Car must have been found to be negligent, careless or habitual addict of any narcotic drug or psychotropic substance or had used the vehicle in commission of a cognizable offence or his previous conduct as driver of motor vehicle was likely to be attended with danger to public life etc.

In view of the admission made by Shivaji Rao Dixit (DW-4) that width of road was 50-60 feet and the place upto 50-60 feet from the car was visible, it is clear that Claims Tribunal did not commit any mistake by holding that Shivaji Rao

Dixit was also equally negligent in causing accident which resulted in death of T.N. Dixit and Gajendra Dixit.

Under these circumstances, this Court is of considered opinion that Claims Tribunal did not commit any mistake by holding that driver of both the vehicles i.e. Tractor-trolley which was stationary and driver of Swift Car were equally negligent.

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232. NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 8(c), 20(b)(ii)(c) and 52-A
EVIDENCE ACT, 1872 – Section 65B
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 63
CRIMINAL PROCEDURE CODE, 1973 – Sections 291 and 293
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 326 and 329

(i) Admissibility of video evidence and scope of re-trial – Video evidence – Re-trial was ordered in an NDPS case on the ground that the raid video was not played while examining witnesses – Trial court had recorded that video was played infront of all accuseds and prosecution – No legal requirement that a video must be transcribed or replayed during every witness's examination – Once a Section 65B(4) certificate exists, a CD becomes admissible evidence like a document – No requirement that in each NDPS case Chemical Examiner is to be examined – Re-trial cannot be ordered only to understand the video – Section 391 CrPC can be invoked to take additional evidence rather than ordering a re-trial.

(ii) Illegal possession of contraband – Effect of non-production of contraband – Explained.

स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 — धाराएं 8(ग), 20(ख)(ii)(ग) एवं 52—क
साक्ष्य अधिनियम, 1872 — धारा 65ख
भारतीय साक्ष्य अधिनियम, 2023 — धारा 63
दण्ड प्रक्रिया संहिता, 1973 — धाराएं 291 एवं 293
भारतीय नागरिक सुरक्षा संहिता, 2023 — धाराएं 326 एवं 329

(i) वीडियो साक्ष्य की स्वीकार्यता और पुनः परीक्षण की सीमा — वीडियो साक्ष्य — एनडीपीएस मामले में पुनः परीक्षण का आदेश इस आधार पर दिया

गया कि छापे का वीडियो गवाहों की जिरह के दौरान नहीं चलाया गया – विचारण न्यायालय ने दर्ज किया था कि वीडियो सभी आरोपियों और अभियोजन पक्ष के सामने चलाया गया था – कोई कानूनी आवश्यकता नहीं है कि हर गवाह की जिरह के दौरान वीडियो को ट्रांसक्राइब या पुनः चलाया जाए – एक बार जब धारा 65ख(4) का प्रमाणपत्र मौजूद हो, तो सीडी एक दस्तावेज की तरह स्वीकार्य साक्ष्य बन जाती है – प्रत्येक एनडीपीएस मामले में रासायनिक परीक्षक की गवाही आवश्यक नहीं है – मात्र वीडियो को समझने के लिए पुनः परीक्षण का आदेश नहीं दिया जा सकता – अतिरिक्त साक्ष्य लेने के लिए धारा 391 सीआरपीसी का सहारा लिया जा सकता है बजाय पुनः परीक्षण के।

(ii) मादक पदार्थों का अवैध कब्जा – मादक पदार्थों के प्रस्तुत न किए जाने का प्रभाव – स्पष्ट किया गया।

Kailas v. State of Maharashtra

Judgment dated 15.09.2025 passed by the Supreme Court in Criminal Appeal No. 4041 of 2025, reported in 2025 CriLJ 4151

Relevant extracts from the judgment:

In our view, mere non-production of the seized contraband during trial may not be fatal if there is reliable evidence in respect of its seizure, drawing of samples therefrom, and FSL report relating to the sample drawn from the seized material. However, to ensure that no adverse inference is drawn against the prosecution for non-production of the seized contraband, documents prepared in terms of the provisions of Section 52-A, inter alia, evidencing preparation of inventory of seized contraband and drawing of samples therefrom, would have to be brought on record. Likewise, evidence should be there that the sample drawn from the inventory was sent to FSL in a sealed container/envelop, as per guidelines, and that the seal was found intact at the end of FSL. This is to obviate any doubt regarding sample being tampered in transit. Similarly, FSL's report along with the sample tested by it is to be placed on record so that there remains no doubt regarding the sample tested.

From above, prima facie, there existed material to indicate that the seized contraband was sent in a sealed condition for preparation of inventory. Thereafter, inventory was prepared, samples were drawn and sealed; and the samples were sent to FSL in a sealed condition, which found the seal intact. The High Court, however, observed that the representative sample was not opened before the Court at the time of recording of statement of the concerned witness. Be that as it may, this was not a ground to direct for a retrial when the appellate court has power to take additional evidence under Section 391 of CrPC, which, inter alia, can be exercised to exhibit

a document or material already on the record of the Court. And if those defects are fatal to the prosecution, the appellate court is free to take its decision as may be warranted in the facts of the case. But, in any event, it cannot be a ground to direct a re-trial.

We are therefore of the view that even for reasons (c) and (d) (supra), direction for a re-trial cannot be countenanced. We shall now consider as to what would be the appropriate relief to the appellant, that is, should he be acquitted or the appeals be restored for a fresh consideration by the High Court in accordance with law.

In our view, a direction for restoration of appeals before the High Court for a fresh decision would be more appropriate, reasons being: (a) neither the High Court nor the Trial Court has enlisted the entire evidence available on record therefore it is difficult for us to take a decision with precision as to whether the prosecution has been successful in bringing home the charge against the accused; (b) the High Court's judgment does not address the entire evidence on record, rather it is swayed by an erroneous view that the video-record was the best evidence available which was not converted into legally admissible evidence; and (c) the parties would lose the right of appeal if we take a decision on the merits more so when the High Court has not taken a final call on merits. In our view, therefore, ends of justice would be served if the appeal(s) are restored on the file of the High Court for a fresh decision in accordance with law.

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233. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138
CRIMINAL PROCEDURE CODE, 1973 – Section 200
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 220
Amendment of complaint – Power of Magistrate to allow amendment after cognizance – Scope and limits – Whether complaint can be amended post-cognizance? Held Yes, if no prejudice is caused and amendment does not change nature of complaint – Appellant filed complaint u/s 138 of the Act alleging dishonour of cheques issued by respondents for payment of goods described as "Desi Ghee (milk products)" – Later sought amendment to correct description to "milk" on ground of typographical error – Trial Court allowed amendment holding it curable and non-prejudicial since complainant was yet to be cross-examined – High Court set aside order holding amendment changed nature of complaint and related it to GST liability – Order of trial court was restored.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138
दण्ड प्रक्रिया संहिता, 1973 – धारा 200
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 220
परिवाद में संशोधन – संज्ञान के बाद मजिस्ट्रेट द्वारा संशोधन की अनुमति देने की शक्ति – विस्तार और सीमाएं – क्या परिवाद संज्ञान के बाद संशोधित की जा सकती है? अभिनिर्धारित हाँ, यदि इससे कोई पूर्वग्रह नहीं उत्पन्न होता और परिवाद की प्रकृति नहीं बदलती – अपीलकर्ता ने धारा 138 के अंतर्गत शिकायत दर्ज की जिसमें प्रतिवादियों द्वारा "देशी घी (दूध उत्पाद)" के भुगतान हेतु जारी चैक के अनादरण का आरोप लगाया गया – बाद में टंकण त्रुटि के आधार पर "दूध" के रूप में विवरण सुधारने हेतु संशोधन का अनुरोध किया – विचारण न्यायालय ने यह मानते हुए संशोधन की अनुमति दी कि यह सुधार योग्य है और परिवादकर्ता की प्रतिपरीक्षा शेष है, अतः यह पूर्वग्रहकारी नहीं है – उच्च न्यायालय ने यह कहते हुए आदेश अपास्त कर दिया कि संशोधन से शिकायत की प्रकृति बदल गई और यह जीएसटी देयता से संबंधित हो गया – विचारण न्यायालय का आदेश पुनः स्थापित किया गया।

Bansal Milk Chilling Centre v. Rana Milk Food Pvt. Ltd. and anr.

Judgment dated 25.07.2025 passed by the Supreme Court in Criminal Appeal No 3178 of 2025, reported in AIR 2025 SC 3450

Relevant extracts from the judgment:

It will be noticed that when a charge is altered, if there is no prejudice to the accused, the trial can be proceeded with. Further, if it is likely to prejudice, the Court may either direct a new trial or adjourn the trial to such period. Section 217 of the CrPC grants liberty to the prosecutor and the accused to recall witnesses when charges are altered under the conditions prescribed therein. The test of 'prejudice to the accused' is the cardinal factor that needs to be borne in mind.

We have carefully perused the complaint and the application for amendment. The amendment was moved at a stage when after summons being issued to the respondents, the chief examination of the complainant had concluded and when cross-examination was awaited. The amendment made is also only with regard to the products supplied. According to the complainant, while what was supplied was "milk", by an inadvertent error "Desi Ghee (milk products)" was mentioned. The error which occurred in the legal notice was carried in the complaint also.

On the facts of the present case and considering the stage of the trial, we find that absolutely no prejudice would be caused to the accused/respondents. The

actual facts will have to be thrashed out at the trial. As to what impact the amendment will have on the existence of debt or other liability is for the Trial Court to decide based on the evidence. It was a curable irregularity which the Trial Court rightly addressed by allowing the amendment. It could not be said that by allowing the amendment at a stage when the evidence of the complainant was incomplete, failure of justice would occasion.

The High Court completely misdirected itself in delving into the aspects of leviability of GST which would be the concern of the appropriate authorities under the relevant statute. It could also not be said that the amendment altered the nature and character of the complaint.

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

Vicarious liability of Directors – Requirement of averments in complaint – Sufficiency of pleadings – Complaint need not reproduce *verbatim* the statutory language of Section 141 NI Act – It is sufficient if the *substance* of the averments shows that the accused was "in charge of and responsible to the company for the conduct of its business" – Complaint stated that the accused that is Director (Respondent No.2) was responsible for day-to-day affairs, management and working of the company, participated in negotiations with the bank, was authorized to execute loan and security documents, etc. – Such averments sufficiently satisfy the requirements of Section 141(1).

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 141

निदेशकों की प्रत्यक्ष दायित्वता – परिवाद में अभिकथनों की आवश्यकता – अभिकथनों की पर्याप्तता – परिवाद में अधिनियम की धारा 141 की वैधानिक भाषा को शब्दशः दोहराना आवश्यक नहीं – यदि कथनों का सार यह दर्शाता है कि अभियुक्त "कंपनी के व्यापार के संचालन के लिए प्रभारी और उत्तरदायी" था, तो यह पर्याप्त है – परिवाद में अभिकथित था कि अभियुक्त जो कि निदेशक (प्रतिवादी कमांक 2) है, कंपनी के दैनिक कार्यों, प्रबंधन और संचालन के लिए उत्तरदायी था, बैंक के साथ वार्ताओं में भाग लिया, ऋण और सुरक्षा दस्तावेजों आदि को निष्पादित करने के लिए अधिकृत था – ऐसे कथन धारा 141(1) की आवश्यकताओं को पर्याप्त रूप से पूर्ण करते हैं।

HDFC Bank Ltd. v. State of Maharashtra and anr.

Judgment dated 22.05.2025 passed by the Supreme Court in Criminal Appeal No. 2843 of 2025, reported in AIR 2025 SC 2707

Relevant extracts from the judgment:

It will be seen that the averment made in the complaint, in the present case, clearly uses the phrase "responsible for its day-to-day affairs, management and working of accused No. 1-company", which going by the dictionary meaning set out hereinabove in substance is the same as "in charge of and was responsible to the company for the conduct of the business of the company".

Read in the background of the other averments, the above averment clearly fulfils the requirement of section 141. The contention of the learned counsel for respondent No. 2, however, is that actual words mentioned in section 141 in the same form be employed in the complaint, for the complaint to be sustained. Learned counsel placed strong reliance on ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, *(2005) 8 SCC 89.***

Applying the said legal position to the facts of the present case, it is found that the averments in the complaint set out hereinabove against respondent No. 2 Mrs. Ranjana Sharma fulfil the requirement of section 141(1) of the Negotiable Instruments Act, and this is not a case where trial against her can be aborted by quashment of proceedings. The High Court was completely unjustified in quashing the proceedings against her.

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235. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 142(2)(a) Dishonour of cheque – Territorial jurisdiction to file complaint – Branch of bank where payee maintains account – Determination – Appellant advanced loan to respondent's husband, respondent issued four cheques towards repayment – Cheques drawn on Kotak Mahindra Bank, Opera House Branch, Mumbai – Appellant maintained account at Kotak Mahindra Bank, Bendurwell Branch, Mangalore – Cheques deposited at Mumbai Branch for credit to Mangalore account – Cheque dishonoured for insufficient funds – Appellant filed complaints u/s 138 Negotiable Instruments Act before JMFC, Mangalore – Magistrate returned complaints holding lack of territorial jurisdiction as drawee bank was in Mumbai – Held, appellant's account stood with Bendurwell Branch, Mangalore, complaints were rightly instituted before the Mangalore Court.

परक्राम्य लिखित अधिनियम, 1881 – धाराएं 138 एवं 142(2)(क)

चैक का अनादरण – शिकायत दर्ज करने के लिए क्षेत्रीय अधिकारिता – वह बैंक शाखा जहाँ प्राप्तकर्ता का खाता है – निर्धारण – अपीलकर्ता ने प्रतिवादी के पति को ऋण दिया था, जिसके प्रत्युत्तर में प्रतिवादी ने अदायगी हेतु चार

चैक जारी किए – चैक कोटक महिंद्रा बैंक, ओपेरा हाउस शाखा, मुंबई पर आहरित किए गए – अपीलकर्ता का खाता कोटक महिंद्रा बैंक, बेंदूरवेल शाखा, मैंगलोर में था – चैक मुंबई शाखा में मैंगलोर खाते में जमा करने हेतु प्रस्तुत किए गए – अपर्याप्त धनराशि के कारण चैक अनादृत हुए – अपीलकर्ता ने धारा 138 परक्राम्य लिखत अधिनियम के अंतर्गत प्रथम श्रेणी न्यायिक मजिस्ट्रेट, मैंगलोर के समक्ष शिकायतें प्रस्तुत की – मजिस्ट्रेट ने यह कहते हुए शिकायतें वापस कर दी कि चूंकि आहरण बैंक मुंबई में है, इसलिए क्षेत्रीय अधिकारिता नहीं है – अभिनिर्धारित, जब अपीलकर्ता का खाता बेंदूरवेल शाखा, मैंगलोर में स्थित था, तो शिकायतें मैंगलोर न्यायालय में विधिपूर्वक दायर की गई थीं।

Prakash Chimanlal Sheth v. Jagruti Keyur Rajpopat

Judgment dated 25.07.2025 passed by the Supreme Court in Criminal Appeal No. 3194 of 2025, reported in AIR 2025 SC 3456

Relevant extracts from the judgment:

As regards territorial jurisdiction for instituting a complaint in relation to dishonor of a cheque, Section 142(2)(a) of the Negotiable Instruments Act makes it clear that an offence under Section 138 thereof should be inquired into and tried only by a Court within whose local jurisdiction, if the cheque is delivered for collection through an account, the branch of the bank where the payee maintains the account is situated. This provision, as it stands after its amendment in 2015, was considered in ***Bridgestone India Private Limited v. Inderpal Singh*** and this Court affirmed that Section 142(2)(a) of the Negotiable Instruments Act vests jurisdiction apropos an offence under Section 138 thereof in the Court where the cheque is delivered for collection, that is, through an account in the Branch of the Bank where the payee maintains that account.

Therefore, once it is established that, at the time of presentation of the cheques in question, the appellant maintained his account with the Kotak Mahindra Bank at its Bendurwell, Mangalore Branch, he was fully justified in filing his complaint cases before the jurisdictional Court at Mangalore. The understanding to the contrary of the learned Magistrate at Mangalore was erroneous and completely opposed to the clear mandate of Section 142(2)(a) of the Negotiable Instruments Act. The High Court proceeded to confirm the erroneous order passed by the learned Magistrate under the wrong impression that the appellant maintained his bank account at the Opera House Branch of the Kotak Mahindra Bank at Mumbai.

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236. PREVENTION OF CORRUPTION ACT, 1988 – Sections 2(c)(i), 7 and 13(1)(d) r/w/s 13(2)

Public servant – Licensed stamp vendor – Demand and acceptance of illegal gratification – Trap case – Whether a licensed stamp vendor falls within the ambit of "public servant" – Held, this licensed stamp vendor was remunerated by the Government by way of discount or commission under the Delhi Province Stamp Rules, 1934, for performing a public duty of ensuring availability of stamp papers – Hence, covered u/s 2(c)(i) of the Prevention of Corruption Act – Allegation of demanding ₹ 2 excess over face value of stamp paper not proved beyond reasonable doubt – Evidence of demand inconsistent and recovery alone was insufficient to convict – Presumption u/s 20 not attracted – Conviction set aside.

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 2(ग)(i), 7 एवं 13(1)(घ) सहपठित धारा 13(2)

लोक सेवक – लाइसेंसधारी स्टाम्प विक्रेता – अवैध लाभ की मांग और स्वीकृति – जाल बिछाने का मामला – क्या एक लाइसेंसधारी स्टाम्प विक्रेता "लोक सेवक" की परिभाषा में आता है – अभिनिर्धारित, यह लाइसेंसधारी स्टाम्प विक्रेता दिल्ली प्रांत स्टाम्प नियम, 1934 के अंतर्गत स्टाम्प पत्रों की उपलब्धता सुनिश्चित करने के सार्वजनिक कर्तव्य के निर्वहन हेतु सरकार द्वारा छूट या कमीशन के रूप में पारिश्रमिक प्राप्त करता है – अतः भ्रष्टाचार निवारण अधिनियम की धारा 2(ब)(i) के अंतर्गत आता है – स्टाम्प पेपर के अंकित मूल्य से ₹ 2 अधिक मांगने का आरोप संदेह से परे सिद्ध नहीं हुआ – मांग की साक्ष्य असंगत थी और मात्र जब्ती होना स्वमेव दोषसिद्धि के लिए अपर्याप्त थी – धारा 20 के अंतर्गत उपधारणा लागू नहीं होती – दोषसिद्धि अपास्त।

Aman Bhatia v. State (GNCT of Delhi)

Judgment dated 02.05.2025 passed by the Supreme Court in Criminal Appeal No. 2613 of 2014, reported in AIR 2025 SC 3153

Relevant extracts from the judgment:

The heart of the definition of "public servant" under Section 2(c)(i) of the PC Act lies in the expressions "remunerated by the Government" and "for the performance of any public duty", and not in the mode of remuneration, such as "fees or commission". The 'commission' referred in "remunerated by the Government by fees or commission for the performance of public duty" is not analogous to the 'commission' in Section 194H of the 1961 Act. The terms "fees"

and "commission" are merely indicative of the mode of remuneration and not determinative of the position held by a person. Their presence or absence does not alter the core question as to whether a person is remunerated by the Government for the performance of any public duty, which remains the central consideration under Section 2(c)(i) of the PC Act.

The interpretation of a definition should not only avoid being repugnant to the context but it should also be interpreted to achieve the purpose which is sought to be served by the statute. A construction which would defeat or may likely defeat the purpose of the Act has to be ignored and not accepted. A definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act.

The definition of "public servant" under Section 2(c)(i) can be said to have three parts, as they are disjunctive : first, a person who is in the service of the Government; secondly, a person who is in the pay of the Government; thirdly, a person who is remunerated by fees or commission for the performance of any public duty. The expression "remunerated" in the third part has to be read in context and in line with the expressions in the first and the second part i.e., "in the service" and "in the pay". The three key expressions, "in the service", "in the pay" and "remunerated" by the Government belong to the same genus and have the same flavour. In the first two parts, a person is rendering his services for the Government which implicitly means discharging a public duty. Whereas, in the third part, even though a person is not rendering his services for the Government but is being remunerated for discharging a public duty. In this context, the terms "fees or commission" must be construed so as to give full effect to the definition and the other provisions of the statute.

Further, the term "commission" as used and understood in the context of Section 194H of the 1961 Act is not *stricto sensu* similar to its usage in Section 2(c)(i) of the PC Act. When a person is in service of the Government, as is contemplated under the first part of Section 2(c)(i), he is said to be in a master-servant relationship where the employer employs the person on the basis of salary. Whereas, in the second part, a person may not be a regular employee but is receiving salary from his master. A five-Judge Bench of this Court in ***M. Karunanidhi v. Union of India, (1979) 3 SCC 431,*** although in the context of Section 21, Twelfth, of the IPC, has interpreted the word 'pay' as implying that a person is getting salary, compensation, wages or any amount of money yet a relationship of master-servant need not exist in all cases.

Further, as the master-servant or principal-agent relationship has already been envisaged under the first part, the legislature could not have intended to address it again under the third part. The structure of the definition reduces the emphasis on the strictness of the relationship between the Government and the public servant, while placing greater focus on the performance of a public duty. It is important to note that, the first two parts imply that the individual is rendering services directly for the Government. Whereas, the last part suggests that even where the services are not rendered 'for' the Government, the Government may nevertheless remunerate the person for performing a public duty.

Where the wording of a statutory provision indicates that the legislature has consciously attributed varying degrees of significance to different interpretative elements such as the nature of the relationship or the duty performed, the courts are obliged to adhere to that legislative determination and interpret the provision in a manner that reflects the intended statutory scheme. While interpreting a statute, it is essential not only to consider the words used but also to examine the Statement of Objects and Reasons, as it provides the background against which the legislation was enacted. The legislature introduced a comprehensive definition of "public servant" with the intent to punish and curb the menace of corruption. In such circumstances, it would be improper to construe the definition in a manner that limits its scope, thereby defeating the very essence and purpose of the statute.

In light of the aforesaid discussion, we have reached the following conclusion:

(i) The legislature has used a comprehensive definition of "public servant" to achieve the purpose of punishing and curbing the growing menace of corruption. Keeping this intention of the legislature in mind, we are of the view that the definition of "public servant" as defined under the PC Act should be given a purposive and wide interpretation so as to advance the object underlying the statute.

(ii) It is the nature of duty being discharged by a person which assumes paramount importance when determining whether such a person falls within the ambit of the definition of public servant as defined under the PC Act.

(iii) Stamp vendors across the country, by virtue of performing an important public duty and receiving remuneration from the Government for the discharge of such duty, are undoubtedly public servants within the ambit of Section 2(c)(i) of the PC Act.

(iv) In the case at hand, the appellant was eligible for receiving discount on the purchase of stamp papers owing to the license that he was holding. Further, the discount is traceable to and is governed by the 1934 Rules framed by the State Government. Thus, the appellant, without a doubt, could be said to be "remunerated by the government" for the purposes of Section 2(c)(i) of the PC Act.

(v) Further, the prosecution has failed in establishing the allegation of demand for illegal gratification and acceptance thereof beyond reasonable doubt. Therefore, the conviction of the appellant for the offences under Section 7 and 13(1)(d) read with Section 13(2) of the PC Act cannot be sustained and is, thus, liable to be set aside.

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237. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 4 and 6
CRIMINAL PROCEDURE CODE, 1973 – Sections 215, 223 and 464
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 238, 246 and 510
INDIAN PENAL CODE, 1860 – Section 376
BHARATIYA NYAYA SANHITA, 2023 – Section 63

(i) Rape – Evidence – Appreciation – Minor Variations – Victim's statements before police, magistrate and trial were consistent on material facts. – Her testimony, corroborated by medical and documentary evidence, sufficient for conviction – Age of victim (12–13 years) proved by school certificate, parental testimony and medical record. – Pregnancy and abortion duly established through medical documents and legal correspondence – Failure to conduct DNA test not fatal where identification of accused was certain and unchallenged – Held, slight inconsistencies in testimony natural and not fatal

(ii) Misjoinder of Charges – Defective Charge – Held, minor irregularities in the framing of charges or joint trial do not ipso facto vitiate proceedings unless they cause "failure of justice" – Defective charge as to date of offence did not mislead accused – Time frame of offence was well-known throughout the trial – Trial court cautioned to remain vigilant in framing of charge.

(iii) Joint trial – Though irregular in the case it did not cause any prejudice or miscarriage of justice – High Court erred in setting aside conviction solely on procedural grounds without proof of actual prejudice – Procedure cannot override the cause of justice.

(iv) Principle of "Beyond Reasonable Doubt" – Clarified – Reasonable doubt must be real, serious and based on reason; it cannot be stretched to trivial inconsistencies to acquit the guilty. – Acquittal of actual offenders on hyper-technical grounds undermines justice and public confidence.

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

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 215, 223 एवं 464

भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 238, 246 एवं 510

भारतीय दण्ड संहिता, 1860 – धारा 376

भारतीय न्याय संहिता, 2023 – धारा 63

(i) बलात्कार – साक्ष्य – मूल्यांकन – सामान्य भिन्नताएँ – पीड़िता के पुलिस, मजिस्ट्रेट और न्यायालय के समक्ष दिए गए कथन महत्वपूर्ण तथ्यों पर सुसंगत थे – उसकी साक्ष्य, चिकित्सीय और दस्तावेजी साक्ष्यों द्वारा पुष्ट, दोषसिद्धि के लिए पर्याप्त थी – पीड़िता की आयु (12–13 वर्ष) स्कूल प्रमाणपत्र, माता–पिता की गवाही और चिकित्सीय अभिलेखों से प्रमाणित हुई – गर्भावस्था और गर्भपात चिकित्सीय दस्तावेजों और विधिक पत्राचार से प्रमाणित – डीएनए परीक्षण न किया जाना घातक नहीं, जब आरोपी की पहचान निश्चित और निर्विवाद हो – अभिनिर्धारित, साक्ष्य में साधारण असंगतियाँ स्वाभाविक हैं और दोषसिद्धि को प्रभावित नहीं करतीं।

(ii) अभियुक्त का गलत संयोजन – दोषपूर्ण आरोप – अभिनिर्धारित, आरोप तय करने या संयुक्त विचारण में मामूली त्रुटियाँ स्वयं में कार्यवाही को अमान्य नहीं बनाती जब तक कि वे "न्याय की विफलता" का कारण न बने – अपराध की तिथि संबंधी दोषपूर्ण आरोप ने आरोपी को भ्रमित नहीं किया – अपराध की समयावधि पूरे मुकदमे में ज्ञात थी – विचारण न्यायालय को आरोप तय करते समय सतर्क रहने की चेतावनी दी गई।

(iii) संयुक्त विचारण – यद्यपि इस मामले में यह प्रक्रिया त्रुटिपूर्ण थी, फिर भी इससे किसी प्रकार की पूर्वग्रहता या न्याय का हनन नहीं हुआ – उच्च न्यायालय ने केवल प्रक्रियात्मक आधार पर दोषसिद्धि को अपास्त कर

दिया, जबकि वास्तविक पूर्वग्रह का कोई प्रमाण नहीं था – प्रक्रिया न्याय के उद्देश्य पर प्रभावी नहीं हो सकती।

(iv) "संदेह से परे" सिद्धांत – स्पष्टीकरण – संदेह वास्तविक, गंभीर और तर्कसंगत होना चाहिए दोषियों को दोषमुक्त करने के लिए इसे तुच्छ असंगतियों तक नहीं फैलाया जा सकता – अत्यधिक तकनीकी आधारों पर वास्तविक अपराधियों को दोषमुक्त करना न्याय और जन विश्वास को कमजोर करता है।

Sushil Kumar Tiwari v. Hare Ram Sah and ors.

Judgment dated 01.09.2025 passed by the Supreme Court in Criminal Appeal No. 3813 of 2025, reported in 2025 CriLJ 3873

Relevant extracts from the judgment:

It cannot be denied that there are slight variations in the age of the victim at the relevant point of time, as discernible from the oral and documentary evidence. However, we do not find ourselves in agreement with the High Court that the age was not proved during trial. The oral testimonies of PW-3, PW-5 and PW- 6 are consistent inter-se as well as with the Transfer Certificate issued by the government school. The age of the victim appears to be within the range of 12-13 years at the relevant point of time. The medical report records the age as 15 years. However, we cannot lose sight of the fact that the age of the victim was not challenged during cross-examination of any of the witnesses mentioned above. Their testimonies, on the point of age, have largely remained unrebutted, thereby meaning that the Respondent No. 1 and 2 had no claim that she was not a minor at the relevant point. We do not mean to say in cases involving POCSO Act or Juvenile Justice (Care & Protection) Act, 2015, the determination of age is not required. Most certainly, the determination of minority is essential to extend the protection of these legislations, however, as long as the age conclusively appears to be under 18 years, the special protections carved out in favour of children cannot be diluted by insisting upon a rigid determination of the age, that too when it was not even questioned at the right time. In the present case, even if it is believed that the age of the victim was not determined to the hilt, the Trial Court had concluded that the victim was aged between 12 to 15 years at the relevant point of time and thus, was a minor. Thus, it could not be stated that the Trial Court had not determined the minority of the victim. It was done and, in our opinion, rightly so, on the basis of the unrebutted oral and documentary evidence.

Interestingly, the Respondent Nos. 1 and 2 neither claimed that the victim was not a minor at any point of time nor led any evidence to that effect. We find

that the High Court has erred in raising a doubt where none existed, even inter-se the parties to the case. We are also of the opinion that once the minority of the victim was beyond doubt, the special protection of POCSO Act ought not to have been diluted by raising a fictious doubt regarding the precise age of the victim. For, the Courts must remain alive to the socio-economic circumstances of the victims, especially those who are based in remoter regions of the country. In rural regions, discrepancies in the educational and identification documents are not unknown and, in such circumstances, the Courts must be sensitive to the ground realities of the society, so as to ensure that the intent of the law is not suppressed and protections created by the legislature reach the intended persons in their right spirit.

A perusal of the charge framed by the Trial Court in this matter reveals that the charge stated to the Respondent No. 1 and 2 pertained to the commission of offences "on or about the 2nd day of July 2016". It is an admitted position that the date of offence was a few days after the festival of Holi and 3-4 months prior to the date of discovery of the offence i.e. 01.07.2016. In fact, 2nd July, 2016 was the date of registration of FIR and the same has been put to the Respondent No. 1 and 2 as the date of commission of the offences. We have no doubt in observing that the charge stated to the Respondent No. 1 and 2 was not free from defects. Even if the exact date of commission of the offence was not known, the charge ought to have stated that the offences was committed before 2nd July, 2016 and a few days after the festival of Holi, so as to correctly state the time frame. The Trial Court clearly fell in error in not doing so. However, the consequence of error or defect in charge is to be determined in a nuanced manner. Section 464 CrPC is of instructive value in this regard and it provides that no finding, sentence or order of any Court shall be deemed invalid merely on account of any error, omission or irregularity in the framing of charge, unless the same has occasioned any failure of justice.

Nevertheless, we consider it a fit matter to call upon the Trial Courts to be vigilant and cautious in framing of charges. The prosecutors representing the State are also duty bound to render suitable assistance during the trial and to remain vigilant in identifying the errors in statement of charges. For, timely intervention is always better in a trial and the criminal procedure provides ample provisions for rectifying the mistakes in framing of charges during the trial itself. The identification of such mistakes at appellate stages, which could have easily been spotted and corrected during the trial, does not only affect the finality of cases but also affects the credibility of the criminal justice system as a whole. The Trial Court does the job of raising the building from the scratch, brick by brick. In the performance of this onerous task, some mistakes are quite natural. While finding

defects in the building, the Appellate Court must carefully weigh the mistakes and analyze their consequence on the outcome of the trial. We may suffice to observe that not every mistake is fatal.

Section 223 lays down various conditions wherein different persons who have committed different offences could be charged and tried jointly. Amongst other things, it provides that the persons alleged of committing different offences, but as a part of the same transaction, could be charged and tried jointly. It is contended that the offences alleged upon the Respondent No. 1 and 2 pertained to two completely independent acts and thus, they could not be considered to have formed part of the same transaction. It has also been contended that there was no allegation qua commission of any offence jointly by the Respondent No. 1 and 2. It is stated that the incidents took place at different points of time and there was no unity between them. The High Court has accepted this factual position. The statement of the victim reveals that allegations pertain to two specific instances of rape along with a general allegation that for 2-3 months, the Respondent No. 1 and 2 continued to rape her. However, we cannot lose sight of the fact that there is no direct allegation that the offences were committed together by the Respondent Nos. 1 and 2 and on a plain view of the matter, it is not a case wherein the principles of common intention under Section 34 of IPC or conspiracy would be attracted. The only question is whether the offences committed by the Respondent No. 1 and 2 formed part of the same transaction, so as to attract clause (d) of Section 223 CrPC, which permits joint trial of persons accused of different offences committed in the course of the same transaction.

In criminal law, the question whether certain acts and omissions form part of the same transaction often troubles the Courts. There is no definition of "same transaction" in the Code and more often than not, this determination is contingent upon the peculiar facts and circumstances of the case. To make it judicially determinable, we have often applied the three tests of "unity of purpose and design", "proximity of time or place" and "continuity of action". Reference may be drawn to the decision of this Court in ***State of Andhra Pradesh v. Cheemalapati Ganeswara Rao and anr., AIR 1963 SC 1850*** Let us have a look at some admitted facts. The victim and the Respondent No. 1 and 2 were residing in the same village, the house of respondent No. 2- Manish Tiwari was situated one house away from that of the victim, respondent No. 2-Manish had taken the victim's father to hospital a few days prior to the incident, respondent No. 1- Hare Ram Sah was running a coaching center adjacent to his house and in the same vicinity, and both the respondents threatened the victim of similar consequences if she dared to disclose

their acts to anyone. Evidently, the nature of acts committed by the Respondent No. 1 and 2 herein and subsequent intimidation to keep the victim silent were of a similar design. Further, there was a certain proximity of time and place as the incidents were committed within a continuous time-frame and at different places in the same village. However, it is also admitted that they never committed the acts together and always acted separately. Therefore, there is no direct evidence of commission of offences in the same transaction, however, an inference may be drawn. Be that as it may, we need not render a finding on this aspect and we are not inclined to disturb the factual finding of the High Court. For, even if the conclusion of the High Court, that the joint trial was conducted in violation of Section 223 CrPC, is accepted, the Respondent No. 1 and 2 would still have to further show that the joint trial had caused prejudice to them and had occasioned a failure of justice. Mere irregular conduct of a joint or separate trial does not vitiate the trial as a whole and the proof of failure of justice is sine qua non for holding the trial as invalid.

On a reading of the provision as well as the exposition reproduced above, it is discernible that when a ground of nonjoinder or misjoinder of charges/trial is taken before an Appellate Court, the test to be applied is whether such non-joinder or misjoinder has resulted into a failure or miscarriage of justice and has prejudiced the accused. It is not enough for the Appellate Court to merely hold that the Trial Court ought to have tried certain persons jointly or separately in the facts and circumstances of the case. That is where the High Court has clearly fell in error in the present case.

It could be seen that the sole basis of the High Court's reasoning in arriving at a finding of prejudice in the impugned decision is that a joint trial was not permissible. The finding is unsustainable and in fact, there is no finding of actual prejudice or failure of justice as a result of the joint trial, as necessitated by law. As noted above, the High Court ought to have analyzed the facts of the case to return a finding of actual prejudice. Mere noncompliance of the procedure contemplated under Section 223 does not ipso facto render the trial as invalid, and the same cannot form the basis of returning a finding of prejudice and failure of justice. The said conclusion must emanate from the facts of the case, after a thorough examination of the facts and evidence on record. It is not a case wherein the joint trial precluded the Respondent No. 1 and 2 from presenting a valid defence. It is also not a case wherein separate evidence of the prosecution witnesses could have made any difference to the end result. There is no explanation as to how separate trials could have made any difference to the outcome of the case, except causing harassment to the victim by compelling her to face her offenders twice in the witness box for

explaining the same version. Thus, we are of the considered view that the joint trial of the Respondent No. 1 and 2 did not cause any prejudice to them and no case for failure of justice, on account of the said irregularity, appears to be made out.

Before closing, we deem it fit to observe that noticeably, the principle of beyond reasonable doubt has been misunderstood to mean any and every doubt in the case of the prosecution. Often, we come across cases wherein loose acquittals are recorded on the basis of minor inconsistencies, contradictions and deficiencies, by elevating them to the standard of reasonable doubts. A reasonable doubt is one that renders the version of the prosecution as improbable, and leads the Court to believe in the existence and probability of an alternate version of the facts. It is a serious doubt which must be backed by reason. The underlying foundation of the principle of beyond reasonable doubt is that no innocent should face punishment for a crime that he has not done. But a flipside of the same, of which we are conscious, is that at times, owing to a mis-application of this principle, actual culprits manage to find their way out of the clutches of law. Such misapplication of this principle, resulting into culprits walking free by taking benefit of doubt, is equally dangerous for the society. Every instance of acquittal of an actual culprit revolt against the sense of security of the society and acts as a blot on the criminal justice system. Therefore, not only should no innocent face punishment for something that he has not done, but equally, no culprit should manage an acquittal on the basis of unreasonable doubts and misapplication of procedure.

In the present case, a fairly consistent and creditworthy case of the prosecution has been discarded on what could only be termed as misapplication of procedure. It takes us back to the first principle that procedure is not supposed to control justice.

In view of the foregoing discussion, we are of the considered view that the impugned judgment is liable to be set aside being unsustainable. The view taken by the Trial Court was correct and we find no infirmity in the same. The judgment of the Trial Court stands restored, both on conviction and sentence.

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238. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Section 6
CONSTITUTION OF INDIA – Article 21
Punishment for aggravated penetrative sexual assault – Retrospective application of enhanced penalty – Impermissibility under Article 20(1) of the Constitution – Appellant convicted under Section 376AB IPC and

Section 6 POCSO Act for rape of 5-year-old girl – Offence committed on 20.05.2019 – Trial Court imposed sentence of imprisonment for remainder of natural life relying on amended Section 6 which came into force later on 16.08.2019 – Held, such retrospective application violates Article 20(1) of the Constitution – No person can be subjected to a penalty greater than what was prescribed under the law in force at the time of commission of offence.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धारा 6

भारत का संविधान – अनुच्छेद 21

गुरूत्तर प्रवेषन लैंगिक हमले की सजा – दंड की वृद्धि का पूर्वप्रभावी अनुप्रयोग – संविधान के अनुच्छेद 20(1) के अंतर्गत अस्वीकृत – अपीलकर्ता को धारा 376कख आईपीसी और पॉक्सो अधिनियम की धारा 6 के अंतर्गत 5 वर्षीय बालिका के बलात्कार के लिए दोषी ठहराया गया – अपराध दिनांक 20.05.2019 को किया गया – विचारण न्यायालय ने संशोधित धारा 6 जो बाद में 16.08.2019 को प्रभाव में आई, के आधार पर प्राकृतिक जीवनकाल तक कारावास की सजा सुनाई – अभिनिर्धारित, इस प्रकार का पूर्वप्रभावी अनुप्रयोग संविधान के अनुच्छेद 20(1) का उल्लंघन करता है – किसी व्यक्ति को तत्समय प्रभावी विधि में प्रावधानित दंड से अधिक दंड नहीं दिया जा सकता जब अपराध किया गया हो।

Satauram Mandavi v. State of Chhattisgarh and anr.

Judgment dated 25.07.2025 passed by the Supreme Court of India in Criminal Appeal No. 3179 of 2025, reported in AIR 2025 SC 3439

Relevant extracts from the judgment:

The Constitutional bar against retrospective imposition of a harsher penalty under Article 20(1) is clear and absolute. The Trial Court, in applying the enhanced sentence introduced by the 2019 Amendment to Section 6 of the POCSO Act, has effectively subjected the appellant to a punishment greater than that which was permissible under the law in force at the time of commission of the offence which is clearly violative of the bar contained in Article 20(1) of the Constitution of India.

The sentence of "imprisonment for life meaning remainder of natural file," as per the amended provision, did not exist in the statutory framework on 20.05.2019, the date of the incident. Under the unamended Section 6, the maximum punishment permissible was imprisonment for life in its conventional sense and not imprisonment till the remainder of natural life.

Accordingly, while we uphold the conviction of the appellant under Section 6 of the POCSO Act, we modify the sentence to that of rigorous imprisonment for life, as understood under the unamended statute, and set aside the sentence of imprisonment for the remainder of the natural life. The fine of □10,000/- is maintained.

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239. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 15A (3)

Victim's right to notice and hearing at bail stage – Effect of non-compliance – Bail granted without hearing victim – High Court granted bail to respondent-accused – A**ccused was allegedly involving drugging, torturing and sending women inmates for sexual exploitation – High Court allowed bail appeal u/s 14A(2) of SC/ST Act by a cryptic order without reasons and without hearing victim – Held, Section 15A(3) mandates notice and right of hearing to victim before considering bail in SC/ST offences – Omission vitiates order – Bail granted in violation of statutory safeguard liable to be quashed.**

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 15क (3)

पीड़ित को जमानत के चरण पर सूचना और सुनवाई का अधिकार – अनुपालन न होने का प्रभाव – पीड़ित को सुने बिना जमानत दी गई – उच्च न्यायालय ने प्रत्यर्थी–अभियुक्त को जमानत दी – अभियुक्त पर महिलाओं को नशा देकर, प्रताड़ित कर और यौन शोषण हेतु भेजने का आरोप – उच्च न्यायालय ने धारा 14क(2) एससी/एसटी अधिनियम के अंतर्गत जमानत अपील को बिना कारण बताए और पीड़ित को सुने बिना संक्षिप्त आदेश से स्वीकार किया – अभिनिर्धारित, धारा 15क(3) के अंतर्गत एससी/एसटी अपराधों में जमानत पर विचार करते समय पीड़ित को सूचना देना और सुनवाई का अधिकार देना अनिवार्य है – इस प्रावधान की अनदेखी से आदेश अमान्य हो जाता है – वैधानिक सुरक्षा का उल्लंघन कर दी गई जमानत अपास्त करने योग्य है।

Victim X v. State of Bihar and anr.

Judgment dated 21.07.2025 passed by the Supreme Court in Criminal Appeal No. 3090 of 2025, reported in AIR 2025 SC 3421

Relevant extracts from the judgment:

Not only are the allegations attributed to respondent No. 2-accused are grave and reprehensible in nature, in addition thereto, the fact remains that releasing respondent No. 2 on bail is bound to have an adverse effect on trial because there would be an imminent possibility of the witnesses being threatened.

Recently, this Court in the case of ***Shabeen Ahmad v. The State of Uttar Pradesh and anr., (2025)4 SCC 172*** while placing reliance upon the case of ***Ajwar v. Waseem, (2024)10 SCC 768*** cancelled the bail granted to the accused in a dowry death case observing as follows:

> "A superficial application of bail parameters not only undermines the gravity of the offence itself but also risks weakening public faith in the judiciary's resolve to combat the menace of dowry deaths. It is this very perception of justice, both within and outside the courtroom, that courts must safeguard, lest we risk normalizing a crime that continues to claim numerous innocent lives. These observations regarding grant of bail in grievous crimes were thoroughly dealt with by this Court in ***Ajwar v. Waseem*** (supra) in the following paras:
>
> > "While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer : ***Chaman Lal v. State of U.P., (2004) 7 SCC 525; Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528; Masroor v. State of U.P., (2009) 14 SCC 286; Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496; Neeru Yadav v. State of U.P., (2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129*** and ***Mahipal v. Rajesh Kumar, (2020) 2 SCC 118.***
>
> It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of

bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In ***P v. State of M.P., (2022) 15 SCC 211*** decided by a three-Judge Bench of this Court authored by one of us (Hima Kohli, J.) has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1)CrPC in the following words :

> "As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial ***Dolat Ram v. State of Haryana, (1995) 1 SCC 349.*** To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

Considerations for setting aside bail orders

> "The considerations that weigh with the appellate court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner.
>
> We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal

the factors that have been considered by the Court for granting relief to the accused."

It is trite that bail once granted should not be cancelled ordinarily, but where the facts are so grave that they shake the conscience of the Court and where the release of the accused on bail would have an adverse impact on the society, the Courts are not powerless and are expected to exercise jurisdiction conferred by law to cancel such bail Crl. Appeal @SLP (Crl.) No (s). 4335 of 2024 orders so as to subserve the ends of justice. The present one is precisely a case of such nature.

We may note that the impugned order could have been quashed on the solitary ground of non-compliance of Section 15A(3) of the SC/ST Act which mandates that notice to a victim is essential before a prayer for bail is being considered, in a case where the offence/s under the SC/ST Act have been applied.

On going through the memo of appeal filed by the respondent-accused in the High Court, we find that the appellant-victim was not impleaded as a party respondent therein and hence, did not have the benefit of right of hearing as warranted by Section 15A(3) of the SC/ST Act.

Furthermore, keeping in view the principles laid down by this Court in Shabeen Ahmad (supra), we are of the firm opinion that the present case is an exceptional one, wherein the grant of bail by the High Court to respondent No.2-accused by a cryptic order dated 18th January, 2024 has resulted into travesty of justice. Grant of bail to the person accused of such grave offences without assigning reasons shakes the conscience of the Court and would have an adverse impact on the society. Furthermore, the release of the accused on bail would adversely impact the trial as there would be high chances of the material witnesses being threatened and influenced. Our conclusions are fortified by the fact that respondent No.2-accused has been reinstated to the position of Superintendent of another protection home which speaks volumes about her clout and influence with the administration.

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240. SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Sections 13(2), 13(4), 14 and 17

TRANSFER OF PROPERTY ACT, 1881 – Section 60

Right of redemption – Extinguishment – Effect of acceptance of surplus auction proceeds – Petitioner borrowed ₹12 lakhs, mortgaged her residential property and defaulted – Bank sold property in auction for ₹30.62 lakhs and remitted surplus of ₹9.63 lakhs to petitioner which she

accepted and encashed – Earlier challenges before DRT, DRAT and High Court dismissed – Petitioner again sought redemption – Held, right of redemption u/s 60 TPA and unamended section 13(8) SARFAESI Act is extinguished once mortgagor accepts surplus sale proceeds – Acceptance amounts to waiver of equity of redemption – Subsequent writ barred by principles of res judicata and finality – Auction sale attained conclusiveness – Property cannot be re-claimed after voluntary acceptance of proceeds.

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 – धाराएं 13(2), 13(4), 14 एवं 17
सम्पत्ती अंतरण अधिनियम, 1881 – धारा 60
मोचन का अधिकार – समाप्ति – नीलामी की अतिरिक्त राशि स्वीकार करने का प्रभाव – याचिकाकर्ता ने ₹12 लाख का ऋण लिया, अपने आवासीय संपत्ति को गिरवी रखा और चूक गई – बैंक ने संपत्ति को ₹30.62 लाख में नीलाम किया और ₹9.63 लाख की अतिरिक्त राशि याचिकाकर्ता को भेजी जिसे उसने स्वीकार कर नकद कर लिया – पूर्व में डीआरटी, डीआरएटी और उच्च न्यायालय में दी गई चुनौतियाँ अपास्त की गईं – याचिकाकर्ता ने पुनः मोचन का दावा किया – अभिनिर्धारित, धारा 60 संपत्ति अंतरण अधिनियम और संशोधन से पूर्व की धारा 13(8) अधिनियम के अंतर्गत मोचन का अधिकार उस समय समाप्त हो जाता है जब गिरवीदाता नीलामी की अतिरिक्त राशि स्वीकार कर लेता है – स्वीकार करना रिडेम्पशन के अधिकार को त्यागने के बराबर है – बाद की रिट याचिका पुनर्विचार और अंतिमता के सिद्धांतों के तहत बाधित है – नीलामी बिक्री निर्णायक हो चुकी है – अतिरिक्त राशि स्वेच्छा से स्वीकार करने के बाद संपत्ति को पुनः प्राप्त नहीं किया जा सकता।

Smt. Swati Patel v. Bank of India and ors.

Judgment dated 09.04.2025 passed by the High Court of Madhya Pradesh in Writ Petition No. 2829 of 2024, reported in AIR 2025 MP 125 (DB)

Relevant extracts from the judgment:

The sole question involved in the present petition requires to be answered is "whether the petitioner has any right to seek redemption of the mortgaged property even after receipt of the excess auction amount?"

(i) Section 60 of the Transfer of Property Act provides a right to the mortgagor to redeem the mortgage at any time after the principal money has become due

by making payment or tender the same at proper time and place of the mortgage money, provided that right conferred by this Section has not been extinguished by act of the parties or by decree of the Court. The right to redeem may be extinguished by an act of the parties or by a decree of the Court. The mortgagor's right of redemption is to be exercised by the payment or tender to the mortgagee at the proper time and at the proper place of the mortgage money and when it is extinguished by the act of the parties, the act must take the shape and observe the formalities which the law prescribes. The expression 'act of parties' refers to some transactions subsequent to the mortgage and standing apart from mortgage transaction. If a mortgagee exercises his right to auction the mortgaged property and after receipt of the auction money and adjusting the total due amount pay the balance surplus money to the mortgagor and the mortgagor accepts the same, said act of the parties extinguishes the right of the mortgagor to redeem the mortgage.

(ii) Even in the judgment relied upon by the petitioner delivered by the Supreme Court in the matter of ***Narandas Karsondas v. S.A. Kamtam and anr., AIR 1977 SC 774*** the Supreme Court has held that the right of redemption is available to the mortgagor unless it has been extinguished by the act of the parties. Meaning thereby; right of the redemption is not absolute and the same can be extinguished by the act of the parties. The power to auction the property should not be exercised by the mortgagee until and unless notice is issued in writing requiring the payment of principal money has been served on the mortgagor. In the case at hand, the respondent/Bank i.e. mortgagee issued a notice under Section 13 (2) of the SARFAESI Act on 06.11.2009 calling upon the petitioner to pay the due amount with interest within a period of 60 days and thereafter issued another notice under Section 13 (4) of the Act on 01.02.2010. In this way, the petitioner was put to knowledge that in case of failure to make the payment, the property will be auctioned. The sale has already been held valid by the DRT and the order passed by the DRT has already been upheld by DRAT and by the Coordinate Bench of this Court and the excess sale amount have been paid to the petitioner. Under these circumstances petitioner has extinguished her right to redeem the mortgage.

(iii) The Apex Court in the matter of ***Mathew Vargese v. M. Amritha Kumar and ors., AIR 2015 SC 50*** found no inconsistency between the unamended Section 13(8) of the SARFAESI Act and general right of redemption under Section

60 of the Transfer of Property Act, 1882 and held that the right of the borrower to redeem the secured assets was available to sale and transfer of some secured assets until and unless by the act of the parties, the same has been extinguished. Similar view was taken by the Apex Court in the matter of ***Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. and ors. AIR 2023 SC 4568*** and it is held that it is equally well settled that the rights credited for the benefit of the borrower under the SARFAESI Act can be waived by expressed act of the parties or by implied conduct of the parties. The relevant paragraphs read as under:

> "We are of the view that the failure on the part of the borrower in tendering the entire dues including the charges, interest, costs, etc. before the publication of the auction-notice as required by Section 13(8) of the SARFAESI Act, would also sufficiently constitute extinguishment of right of redemption of mortgage by the act of parties as per the proviso to Section 60 of the 1882 Act. Furthermore, in the case on hand, there was no claim for right of redemption by the borrower either before the publication of the auction-notice or even thereafter. The borrowers entered into the fray only after coming to know of the confirmation of auction. Be that as it may, once Section 13(8) stage was over and auction stood concluded, it could be said that there was an intentional relinquishment of his right of redemption under Section 13(8), whereby the Bank declared the appellant as the successful auction-purchaser having offered the highest bid in accordance with the terms of the auction-notice.
>
> The SARFAESI Act is a special law containing an overriding clause in comparison to any other law in force. Section 60 of the 1882 Act, is a general law visà-vis the amended Section 13(8) of the SARFAESI Act which is special law. The right of redemption is clearly restricted till the date of publication of the sale notice under the SARFAESI Act, whereas the said right continues under Section 60 of the 1882 Act till the execution of conveyance of the mortgaged property. The legislative history has been covered in the preceding paragraphs of this judgment and how Parliament desired to have express departure from the general provision of Section 60 of the 1882 Act. The SARFAESI Act is a special law of recovery with a paradigm shift that permits expeditious recovery for the banks and the financial institutions without intervention of courts. Similarly, Section 13(8) of the SARFAESI Act is a departure from the general

right of redemption under the general law i.e. the 1882 Act. Further, the legislature has in the Objects and Reasons while passing the amending Act specifically stated "to facilitate expeditious disposal of recovery applications, it has been decided to amend the said Acts…". Thus, while interpreting Section 13(8) vis-à-vis Section 60 of the 1882 Act, an interpretation which furthers the said Objects and Reasons should be preferred and adopted. If the general law is allowed to govern in the manner as sought to be argued by the borrowers, it will defeat the very object and purpose as well as the clear language of the amended Section 13(8).

In ***Mathew Varghese*** (supra) this Court had interpreted the unamended Section 13(8) of the SARFAESI Act and Section 60 of the 1882 Act respectively. However, thereafter the legislature amended Section 13(8) of the SARFAESI Act. Thus, on this score, the decision in ***Mathew Varghese*** (supra) could be said to have been partially legislatively overruled as the substratum of the verdict stands altered/amended.

Even otherwise, we should not lose sight of the fact that in ***Mathew Varghese*** (supra) the Court held in regard to the right of redemption that both the SARFAESI Act and the 1882 Act are complementary to each other and equally applicable. It had held this because, the words "before the date fixed for transfer" in the unamended Section 13(8), amongst other things also means and connotes the date of conveyance of the secured asset by a registered instrument (which is the ordinary process of extinguishment of right of redemption under the 1882 Act). Since, this Court observed that the stipulation or expression "date fixed for transfer" could also mean the date of conveyance/transfer of such secured asset and being so, is not much different from the ordinary process of redemption under the 1882 Act, it could not be said that there was any material inconsistency between the SARFAESI Act and the 1882 Act, and thus it found no reason or hesitation to hold that the 1882 Act is inapplicable and thus made an endeavour of harmonising the two.

It appears that while considering the right of redemption of mortgage under the unamended Section 13(8), this Court in ***Mathew Varghese*** (supra) only went so far to say that in the absence of any material inconsistency between the SARFAESI Act and the 1882 Act, there was no good reason to hold that the 1882 Act would not

be applicable and as such, held that general right of redemption of mortgage contained in Section 60 of the 1882 Act would apply even in respect of the SARFAESI Act."

(iv) In the instant case, the coordinate Division Bench in W.P.No.239/2013 has categorically recorded the findings that borrower has accepted the surplus amount of sale consideration after adjusting the loan amount and thus it amounts to waiver. Said judgment was challenged by the petitioner before the Supreme Court and liberty was granted by the Supreme Court to file a review petition on the plea that some fictitious person has encashed the cheque, which review was filed by the petitioner but the same was withdrawn without any liberty on 01.07.2022. Now the findings recorded by the Coordinate Bench in earlier round of litigation in W.P.No.239/2013 has attained finality and therefore, the petitioner has extinguished her right of redemption by the act of accepting the surplus amount and is now precluded from claiming the right of redemption. Even otherwise petitioner cannot be permitted to approach the Court again and again on the same set of facts. When the action of the Bank taken under the provisions of the SARFAESI Act was held appropriate and the auction sale and issuance of sale certificate have already been upheld, no relief for redemption of mortgage can be granted.

(v) In the present matter, by the order passed by the Coordinate Bench in W.P.No.239/2013, the alleged right of the petitioner for redemption of mortgage has been closed. If the petitioner is permitted to claim the right of redemption at this stage, that will amount to review of the order passed in W.P.No.239/2013 whereas the review has already been withdrawn by the petitioner on 01.07.2022.

In the above conspectus, we do not find any merit in the petition. The petitioner is not entitled for the relief sought by her in the instant petition. The alleged right of redemption of mortgage has already been extinguished by the act of the parties and the order of the coordinate Bench passed in W.P.No.239 of the 2013 has attained finality. Petitioner is not entitled to claim right of redemption of mortgage after accepting the surplus of auction money. The question involved in the present matter is answered accordingly.

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241. SPECIFIC RELIEF ACT, 1963 – Section 10

Co-sharer's right to sell undivided share – Specific performance – Agreement to sell in respect of unpartitioned land is not void merely because it mentions specific boundaries – Co-sharer is competent to alienate his undivided share – Purchaser would step into the vendor's shoes, acquiring the right to seek partition and obtain the specific portion after partition – Agreement can be enforced to the extent of the vendor's share, provided the purchaser is willing to accept such share instead of insisting on a particular portion of land.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 10

सह–स्वामी का अविभाजित हिस्से को विक्रय करने का अधिकार – विशिष्ट अनुपालन – अविभाजित भूमि के संबंध में विक्रय अनुबंध केवल इस कारण से शून्य नहीं होता कि उसमें विशिष्ट सीमाओं का उल्लेख है – सह–स्वामी अपने अविभाजित हिस्से को हस्तांतरित करने में सक्षम होता है – क्रेता विक्रेता के स्थान पर आकर विभाजन की मांग करने और विभाजन के बाद विशिष्ट भाग प्राप्त करने का अधिकार प्राप्त करता है – अनुबंध को विक्रेता के हिस्से की सीमा तक लागू किया जा सकता है, परन्तु केवल तभी जब क्रेता भूमि के किसी विशेष भाग मांगने की अपेक्षा ऐसे हिस्से को स्वीकार करने के लिए तैयार हो।

Sher Singh v. Ramkishan Rathore and ors.

Judgment dated 06.01.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 1794 of 2024, reported in 2025(2) MPLJ 344

Relevant extracts from the judgment:

A co-sharer can alienate his share in unpartitioned land but cannot alienate any specific piece of land. Whenever a co-sharer alienates his share in undivided land then purchaser would step into the shoes of vendor and would get right to initiate proceedings for partition and the purchaser would get the specific piece of land after the unpartitioned land is partitioned in accordance with law. Therefore, it cannot be said that if co-sharer has executed an agreement by specifically mentioning the boundaries, then the intending purchaser would not get any right at all. In case the intending purchaser insists that he would take only that piece of land which was mentioned in the agreement to sell, then he can be non-suited, but if he agrees for the share of vendor then he cannot be denied the fruits of agreement to sell because the sale deed would be executed only to the extent of share of vendor

without mentioning the specific boundaries and the purchaser would step into the shoes of vendor and would get a right to seek partition of land and only after the order of partition is passed, the purchaser would get a specific piece of land. So far as the judgments relied upon by the appellant to show that the suit was not maintainable are concerned, it was fairly conceded by counsel for appellant that in none of the aforesaid judgments the concept of alienation of share of co-sharer has been taken note of.

In the present case, defendant No.1 had assured that he would get the land partitioned. Although in his written statement he has claimed that even sale deed in respect of unpartitioned land could have been executed, but the said stand is not completely right. Only the extent of share of vendor in unpartitioned land can be alienated and not any specific piece of land. In the present case, admittedly, defendant No.1 did not take any action for partition of land and demarcation. Thus, it is not a case that although proceedings were initiated by him for partition but the same could not come to an end within the time fixed in the agreement. Thus, it is clear that intention of appellant was to defraud the plaintiff right from very inception of contract.

Be that whatever it may be. One thing is clear that defence taken by defendant No.1 that since suit was not filed by 30.10.2019, therefore, agreement had come to an end is not correct. In fact, the correct legal position is that the cause of action arose immediately after 30.10.2019 as defendant No.1 had failed to execute the sale deed.

So far as the contention of counsel for appellant that since notice was given to defendant No.1 after nine months of expiry of time fixed in the agreement is concerned, it cannot be said as a hard and fast rule that whenever there is a delay in sending notice, then it would reflect that plaintiff is not ready and willing to execute his part of contract. Plaintiff has specifically mentioned in the plaint that whenever defendant No.1 was requested to execute the sale deed then he always avoided the same and as a result he spent six months and thereafter further six months, in all, twelve months to get the land partitioned. When plaintiff was expecting that defendant would execute the sale deed by getting land partitioned, then it was not expected that he would immediately file the suit after expiry of time fixed in the agreement. Mere delay in sending the notice cannot be said to be sufficient to hold that plaintiff was not ready and willing to perform his part of contract. No argument with regard to willingness and readiness of plaintiff in respect of non-availability of funds was raised by counsel for appellant. Thus, it is clear that plaintiff was ready

with his funds and merely because he was waiting for defendant No.1 to get the land partitioned, that by itself would not be sufficient to hold that he was not ready and willing to perform his part of contract. Furthermore, this Court in exercise of power under Section 100 of CPC cannot interfere with the findings of fact until and unless they are shown to be perverse. No perversity could be pointed out by counsel for appellant.

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242. SPECIFIC RELIEF ACT, 1963 – Sections 34 and 38
SUCCESSION ACT, 1925 – Section 63
Will – Execution and validity – Proof of Will – Burden of Proof – Dispute among legal heirs over agricultural lands measuring 18 acres 6 guntas – Plaintiff claimed exclusive ownership of 6 acres 16 guntas under registered Will dated 24.7.1974 and oral family settlement – Defendant denied the Will and claimed property as joint family estate – Defendant admitted signatures of testator (father) on Will – Effect of admission of signature by contesting heir – Burden shifted to defendant to prove suspicious circumstances or improper execution – Will conferring substantial share on defendant itself demonstrated fairness and absence of malice – Trial Court decreed the suit, holding Will to be genuine and plaintiff as absolute owner – High Court modified decree holding plaintiff entitled to 1/4th share and defendant to 3/4th share – Held, registered Will was duly proved and Trial Court was justified in decreeing suit.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 34 एवं 38
उत्तराधिकार अधिनियम, 1925 – धारा 63

वसीयत – निष्पादन और वैधता – वसीयत का प्रमाण – प्रमाण का भार – 18 एकड़ 6 गुंटा कृषि भूमि को लेकर विधिक उत्तराधिकारियों के मध्य विवाद – वादी ने दिनांक 24.07.1974 की पंजीकृत वसीयत और मौखिक पारिवारिक समझौते के आधार पर 6 एकड़ 16 गुंटा भूमि पर एकल स्वामित्व का दावा किया – प्रतिवादी ने वसीयत से इनकार किया और संपत्ति को संयुक्त पारिवारिक संपत्ति बताया – प्रतिवादी ने वसीयत पर वसीयकर्ता (पिता) के हस्ताक्षर स्वीकार किए – प्रतिवादी द्वारा हस्ताक्षर स्वीकार करने का प्रभाव – संदेहास्पद परिस्थितियों या अनुचित निष्पादन को प्रमाणित करने का भार प्रतिवादी पर

स्थानांतरित हो जाता है – वसीयत में प्रतिवादी को पर्याप्त हिस्सा दिए जाने से निष्पक्षता और दुर्भावना की अनुपस्थिति परिलक्षित करती है – विचारण न्यायालय ने वसीयत को वास्तविक मानते हुए वादी के पक्ष में वाद का निर्णय दिया – उच्च न्यायालय ने निर्णय में संशोधन कर वादी को 1/4 हिस्सा और प्रतिवादी को 3/4 हिस्सा देने का आदेश दिया – अभिनिर्धारित, पंजीकृत वसीयत विधिवत प्रमाणित हुई और विचारण न्यायालय द्वारा वाद का निर्णय देना उचित माना गया।

Metapalli Lasum Bai (Since Dead) and ors. v. Metapalli Muthaih (D) by LRs.

Judgment dated 21.07.2025 passed by the Supreme Court in Civil Appeal No. 5921 of 2015, reported in AIR 2025 SC 3413

Relevant extracts from the judgment:

The Will is a registered document. The defendant-Muthaiah in his evidence, admitted the signatures as appearing on the said Will (Ext.-A1) to be that of his father, i.e., M. Rajanna. The Will distributed the properties in defined proportions between the plaintiff-Lasum Bai, defendant-Muthaiah and Rajamma (widowed daughter of M. Rajanna). There is ample material on record to establish that M. Rajanna anticipated that the relations between plaintiff-Lasum Bai and defendant-Muthaiah were not congenial and that is why, in order to avoid future conflicts, he divided his properties by way of a family settlement and bequeathed a share thereof to plaintiff-Lasum Bai, while leaving the major share to his son i.e., the defendant-Muthaiah. The distribution of the properties, as per the family settlement (regarding which oral evidence was led), and the registered Will is almost in the same proportions. The Will, is a registered document and thus there is a presumption regarding genuineness thereof. The trial Court accepted the execution of the Will based on the evidence led before it. As the Will is a registered document, the burden would lie on the party who disputed its existence thereof, who would be defendant-Muthaiah in this case, to establish that it was not executed in the manner as alleged or that there were suspicious circumstances which made the same doubtful. However, the defendant-Muthaiah in his evidence, admitted the signatures as appearing on the registered Will to be those of his father, M. Rajanna. He also admitted the fact that the plaintiff-Lasum Bai was in possession of 6 acres and 16 guntas of land, which fell into her share as per the Will. In this background, the trial

Court was right in holding that M. Rajanna made a fair distribution of his tangible assets amongst his legal heirs by executing the Will dated 24th July, 1974 and so also the oral family settlement. We are of the view that the evidence available on record fortifies the existence and persuasive nature of the oral family settlement which is countenanced by the factum of the possession of the suit schedule properties including the disputed property, which was admittedly with the plaintiff-Lasum Bai and subsequently the purchaser i.e., Janardhan Reddy.

The genuineness of the Will is also beyond doubt because it not only confers the right and title over a part of the land owned by the Testator, M. Rajanna to the plaintiff-Lasum Bai, but it also grants a lion's share of the property to the defendant-Muthaiah. Had it been the intention of M. Rajanna to deprive the defendant-Muthaiah of the land or if the Will had been manipulated, then the defendant-Muthaiah could have been left out completely from gaining any benefits under the Will.

In wake of the discussion made hereinabove, we are of the firm view that the trial Court was fully justified in decreeing the suit for declaration and permanent injunction filed by the plaintiff-Lasum Bai and granting her absolute rights over the suit schedule properties including the disputed property admeasuring 4 acres and 16 guntas which was sold to Janardhan Reddy *vide* registered sale deed dated 22nd November, 1994. The view taken by the trial Court being based on *apropos* appreciation of the evidence and the prevailing legal principles is unassailable in facts as well as in law.

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PART – II A

GUIDELINES ISSUED BY HON'BLE SUPREME COURT TO BE FOLLOWED IN NI ACT

The Hon'ble Supreme Court in ***Sanjabij Tari v. Kishore S. Borcar & anr., 2025 INSC 1158,*** has issued directions to further expeditious disposal of cases under Section 138 of the Negotiable Instruments Act, 1881. The guidelines are as under:

Keeping in view the massive backlog of cheque bouncing cases and the fact that service of summons on the accused in a complaint filed under Section 138 of the NI Act continues to be one of the main reasons for the delay in disposal of the complaints as well as the fact that punishment under the NI Act is not a means of seeking retribution but is more a means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment, this Court issues the following directions:—

A. In all cases filed under Section 138 of the NI Act, service of summons shall not be confined through prescribed usual modes but shall also be issued *dasti* i.e. summons shall be served upon the accused by the complainant in addition. This direction is necessary as a large number of Section 138 cases under the NI Act are filed in the metropolitan cities by financial institutions, by virtue of Section 142(2) of the NI Act, against accused who may not be necessarily residing within the territorial jurisdiction of the Court where the complaint has been filed. The Trial Courts shall further resort to service of summons by electronic means in terms of the applicable Notifications/Rules, if any, framed under sub-Sections 1 and 2 of Section 64 and under Clause (i) of Section 530 and other provisions of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023') like Delhi BNSS (Service of Summons and Warrants) Rules, 2025. For this purpose, the complainant shall, at the time of filing the complaint, provide the requisite particulars including e-mail address, mobile number and/or WhatsApp number/messaging application details of the accused, duly supported by an affidavit verifying that the said particulars pertain to the accused/respondent.

B. The complainant shall file an affidavit of service before the Court. In the event such affidavit is found to be false, the Court shall be at liberty to take appropriate action against the complainant in accordance with law.

C. In order to facilitate expeditious settlement of cases under Section 138 of the NI Act, the Principal District and Sessions Judge of each District Court shall create and operationalize dedicated online payment facilities through secure QR codes or UPI links. The summons shall expressly mention that the Respondent/Accused has the option to make payment of the cheque amount at the initial stage itself, directly through the said online link. The complainant shall also be informed of such payment and upon confirmation of receipt, appropriate orders regarding release of such money and compounding/closure of proceedings under Section 147 of the NI Act and/or Section 255 of Cr.P.C./278 BNSS, 2023 may be passed by the Court in accordance with law. This measure shall promote settlement at the threshold stage and/or ensure speedy disposal of cases.

D. Each and every complaint under Section 138 of the NI Act shall contain a synopsis in the following format which shall be filed immediately after the index (at the top of the file) i.e. prior to the formal complaint:—

Complaint under Section 138 of the Negotiable Instruments Act, 1881

I. Particulars of the Parties

(i) Complainant: _____

(ii) Accused: _____ (In case where the accused is a company or a firm then Registered Address, Name of the Managing Director/Partner, Name of the signatory, Name of the persons vicariously liable)

II. Cheque Details

(i) Cheque No. _____
(ii) Date: _____
(iii) Amount: _____
(iv) Drawn on Bank/Branch: _____
(v) Account No.: _____

III. Dishonour

(i) Date of Presentation: _____
(ii) Date of Return/Dishonour Memo: _____
(iii) Branch where cheque was dishonoured:_____

(iv) Reason for Dishonour: _____

IV. Statutory Notice

(i) Date of Notice: _____
(ii) Mode of Service: _____
(iii) Date of Dispatch & Tracking No.: _____
(iv) Proof of Delivery & date of delivery: _____
(v) Whether served:_____
(vi) If Not, reasons thereof:_____
(vii) Reply to the Legal Demand Notice, if any_____

V. Cause of Action

(i) Date of accrual: _____
(ii) Jurisdiction invoked under Section 142(2): _____
(iii) Whether any other complaint under section 138 NI Act is pending between the same parties, If Yes, in which court and the date and year of the institution.

VI. Relief Sought

(i) Summoning of accused and trial under Section 138 NI Act_____
(ii) Whether Award of Interim compensation under Section 143A of NI Act sought _____

VII. Filed through: Complainant/Authorized Representative

E. Recently, the High Court of Karnataka in ***Ashok v. Fayaz Aahmad, 2025 SCC OnLine Kar 490*** has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e. at the pre-cognizance stage.

F. Since the object of Section 143 of the NI Act is quick disposal of the complaints under Section 138 by following the procedure prescribed for summary trial under the Code, this Court reiterates the direction of this Court in In Re: Expeditious Trial of cases under Section 138 of NI Act

(supra) that the Trial Courts shall record cogent and sufficient reasons before converting a summary trial to summons trial. To facilitate this process, this Court clarifies that in view of the judgment of the Delhi High Court in ***Rajesh Agarwal v. State, 2010 SCC OnLine Del 2511***, the Trial Court shall be at liberty (at the initial post cognizance stage) to ask questions, it deems appropriate, under Section 251 Cr.P.C./Section 274 BNSS, 2023 including the following questions:—

(i) Do you admit that the cheque belongs to your account? Yes/No

(ii) Do you admit that the signature on the cheque is yours? Yes/No

(iii) Did you issue/deliver this cheque to the complainant? Yes/No

(iv) Do you admit that you owed liability to the complainant at the time of issuance? Yes/No

(v) If you deny liability, state clearly the defence:

  (a) Security cheque only;

  (b) Loan repaid already;

  (c) Cheque altered/misused;

  (d) Other (specify).

(vi) Do you wish to compound the case at this stage? Yes/No

G. The Court shall record the responses to the questions in the order-sheet in the presence of the accused and his/her counsel and thereafter determine whether the case is fit to be tried summarily under Chapter XXI of the Cr.P.C./Chapter XXII of the BNSS, 2023.

H. Wherever, the Trial Court deems it appropriate, it shall use its power to order payment of interim deposit as early as possible under Section 143A of the NI Act.

I. Since physical courtrooms create a conducive environment for direct and informal interactions encouraging early resolution, the High Courts shall ensure that after service of summons, the matters are placed before the physical Courts. Exemptions from personal appearances should be granted only when facts so warrant. It is clarified that prior to the service of summons the matters may be listed before the digital Courts.

J. Wherever cases under Section 138 of the NI Act are permitted to be heard and disposed of by evening courts, the High Courts should ensure that pecuniary limit of the cheque amount is realistic. For instance, in Delhi, the

jurisdiction of the evening courts to hear and decide cases of cheque amount is not exceeding Rs. 25,000/-. In the opinion of this Court, the said limit is too low. The High Courts should forthwith issue practice directions and set up realistic pecuniary benchmarks for evening Courts.

K. Each District and Sessions Judge in Delhi, Mumbai and Calcutta shall maintain a dedicated dashboard reflecting the pendency and progress of cases under Section 138 of the NI Act. The dashboard shall include, inter alia, details regarding total pendency, monthly disposal rates, percentage of cases settled/compounded, average number of adjournments per case and the stage-wise breakup of pending matters. The District and Sessions Judges in aforesaid jurisdictions shall conduct monthly reviews of the functioning of Magistrates handling NI Act matters. A consolidated quarterly report shall be forwarded to the High Court.

L. The Chief Justices of Delhi, Bombay and Calcutta are requested to form Committee on the Administrative side to monitor pendency and to ensure expeditious disposal of Section 138 of the NI Act cases. These Committees should meet at least once a month and explore the option of appointing experienced Magistrates to deal with Section 138 of the NI Act cases as well as promoting mediation, holding of Lok Adalats and other alternative dispute resolution mechanisms in Section 138 NI Act cases.

Since a very large number of cheque bouncing cases are still pending and interest rates have fallen in the last few years, this Court is of the view that it is time to 'revisit and tweak the guidelines'.(As issued by the Hon'ble Supreme Court in ***Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663***). Accordingly, the aforesaid guidelines of compounding are modified as under:-

(a) If the accused pays the cheque amount before recording of his evidence (namely defence evidence), then the Trial Court may allow compounding of the offence without imposing any cost or penalty on the accused.

(b) If the accused makes the payment of the cheque amount post the recording of his evidence but prior to the pronouncement of judgment by the Trial Court, the Magistrate may allow compounding of the offence on payment of additional 5% of the cheque amount with the Legal Services Authority or such other Authority as the Court deems fit.

(c) Similarly, if the payment of cheque amount is made before the Sessions Court or a High Court in Revision or Appeal, such Court may compound the offence on the condition that the accused pays 7.5% of the cheque amount by way of costs.

(d) Finally, if the cheque amount is tendered before this Court, the figure would increase to 10% of the cheque amount.

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GUIDELINES ISSUED BY HON'BLE SUPREME COURT REGARDING DAY-TO-DAY HEARING IN SENSITIVE CASES

The Hon'ble Supreme Court in ***CBI v. Mir Usman @ Ara, 2025 INSC 1155***, has issued directions that in sensitive cases day-to-day hearing should be done. The guidelines issued are as follows:-

The Chief Justices of the High Courts may direct their administrative side to issue a circular to the respective district judiciaries stating as under:

1. The proceedings in every inquiry or trial shall be held expeditiously.
2. When the stage of examination of witnesses starts such examination shall be continued from day-to-day until all the witnesses in the attendance have been examined except for special reasons to be recorded in writing.
3. When the witnesses are in attendance before the Court no adjournment or postponement shall be granted without examining them, except for special reasons to be recorded in writing.
4. The Court should not grant the adjournment to suit the convenience of the advocate concerned except on very exceptional grounds like bereavement in the family and similar exceptional reasons duly supported by memo. Be it noted that the said inconvenience of an advocate is not a "Special Reason" for the purpose of bypassing the immunity of Section 309 of the Cr.P.C.
5. In case of non-cooperation of accused or his counsel, the following shall be kept in mind:

a. In case of non-cooperation of the counsel, the Court shall satisfy itself whether the noncooperation is in active collusion with the accused to delay the trial. If it is so satisfied for reasons to be recorded in writing, it may, if the accused is on bail, put the accused on notice to show cause why the bail cannot be cancelled.

b. In cases where the accused is not in collusion with lawyer and it is the lawyer who is not cooperating with the trial, the Court may for reasons to be recorded, appoint an *amicus curiae* for the accused and fix a date for proceeding with cross-examination/trial.

c. The Court may also in appropriate cases impose cost on the accused commensurate with the loss suffered by the witness including the expenses to attend the court.

d. In case when the accused is absent and the witness is present for examination, in that case the Court can cancel the bail of accused if he is on bail. (Unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witness present even in his absence, provided the accused gives an undertaking in writing that, he would not dispute, his identity as a particular accused in the case.)

6. The Presiding Officer of each Court may evolve the system for framing a schedule of constructive working days for examination of witnesses in each case, well in advance, after ascertaining the convenience of counsel on both sides.

7. The summons or process could be handed over to the Public Prosecutor in-charge of the case to cause them to be served on the witnesses, as per schedule fixed by the Court.

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

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

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