JOTI JOURNAL

(BI-MONTHLY)

OCTOBER 2016

MADHYA PRADESH STATE JUDICIAL ACADEMY
HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

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FROM EDITOR'S DESK

Sanjeev Kalgaonkar
Director Incharge

Respected Judges,

At the very outset, I extend season's greetings. May the festivities fill you with joy and happiness.

In this issue of JOTI Journal, we would be going through emerging trends of law and some important principles reiterated by the Supreme Court. In the case of ***Vimal Kishor Shah*** the Apex Court dealt with jurisdiction of Civil Court with regard to dispute relating to affairs and management of trust and dispute arising ***inter se*** trustees, beneficiaries in relation to their appointment, powers, duties, obligations, removal, etc. It was held that the remedy under Arbitration Act in such dispute is impliedly barred and the Civil Court shall have jurisdiction to decide these disputes.

In the case of ***M.P. State Civil Supplies Corporation Ltd,*** the High Court of Madhya Pradesh held that setting aside of award on the ground that appellant has no authority to deduct amount without getting the dispute adjudicated, is beyond jurisdiction of the trial Court. While dealing with objections preferred under section 34 of the Act, the High Court reiterated the conditions for setting aside an award.

The Apex Court citing the saying of Gita "Awake! Arise! Oh Partha" guided the trial Courts to control the virus of seeking adjournment in case of ***Gayathri v. M. Girish.*** In case of ***Rini Johar (Dr.)*** the Supreme Court reiterated the norms of arrest.

In case of ***Surinderjit Singh Mand,*** it was held that where cognizance is taken under section 319 of Cr.P.C. sanction either under section 197 of the Code or under the concerned special enactment is a mandatory pre-requisite.

In case of ***Sampelly Satyanarayana Rao,*** the Apex Court dealing with an offence u/s 138 of N.I. Act, held that dishonour of a post-dated cheque given for repayment of loan installment which is also described as "security" in the loan agreement would be covered by section 138 of the Act. In case of

K.S. Joseph relating to same offence, it was held that taking cognizance upon a time barred complaint without issuing notice to proposed accused to condone the delay is impermissible. ***M/s. Umesh Goel*** is the case wherein it was held that the arbitral proceeding is "civil court proceeding" for the purpose of applicability of section 69 (3) of the Partnership Act. The Readers are requested to go through complete judgments in these cases although relevant extracts of the judgments are reproduced for their reference.

We are publishing various guidelines/directions issued by the Apex Court on different subjects in this and following issues.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016, The Madhya Pradesh Vexatious Litigation (Prevention) Act, 2015 and The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 are being published in Part IV for reference of the readers.

The Academy, in the months of September and October, has conducted Workshop for District Judges and a workshop on Cyber Laws and Electronic Evidence for the Judges of District Judiciary. Apart that, the Academy has also conducted Second Phase Induction Course for the newly appointed Civil Judges Class II from 2015 batch and Foundation Course for the District Judges Entry Level directly appointed from the Bar.

The inputs and valuable suggestions of participants enriched the Academy in pursuit of educational excellence.

Again wish you all a very happy and spirited festive season.

With sincere regards.

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TRANSFER OF HON'BLE SHRI JUSTICE ALOK ARADHE TO JAMMU & KASHMIR HIGH COURT

Hon'ble Shri Justice Alok Aradhe, who occupied the august office of the Judge of the High Court of Madhya Pradesh for more than six and half years, has been transferred to the High Court of Jammu & Kashmir as Judge.

His Lordship was born on 13.04.1964 at Raipur. After obtaining the degrees of B.Sc. and LL.B., enrolled as an Advocate of M.P. State Bar Council on 12.07.1988 and started practice under the able-guidance of Shri N.S. Kale, Senior Advocate. Rendered services as a Government Advocate from September, 1997 to 1998. His Lordship has vast experience in Civil, Constitutional, Company Law and Arbitration matters. Was counsel for various corporate Companies i.e. M/s Century Textiles & Industries Ltd., Prism Cement, Jay Pee Cement, Diamond Cement, Sasan Power Ltd., Essar Ltd., Grasim, B.L.A. Power Ltd., Indian Oil Corporation, M.P. Human Rights Commission, Maharishi Mahesh Yogi Vedic University, Engineering Projects India Ltd., SAIL for the High Court.

His Lordship revised 5th Edition of Principles of Administrative Law by M.P. Jain and S.N. Jain with Hon'ble Shri Justice G.P. Singh, Former Chief Justice of M.P. High Court. Designated as Senior Advocate by High Court of M.P. w.e.f. 22.04.2007.

His Lordship was appointed as Additional Judge of High Court of M.P. on 22.12.2009 and as Permanent Judge on 05-02-2011.

His Lordship was nominated as a Member of Academic Council of National Law University, Bhopal.

His Lordship took over as Administrative Judge of Bench Gwalior on 28.06.2016. During His Lordship's tenure in the High Court of Madhya Pradesh, rendered valuable services as Judge and His Lordship has been member of various administrative Committees of the High Court.

His Lordship was accorded farewell ovation on 14th September, 2016 at Gwalior Bench of High Court of M.P., Gwalior.

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

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APPOINTMENT OFADDITIONAL JUDGES IN THE HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Rajeev Kumar Dubey, Hon'ble Smt. Justice Anjuli Palo, Hon'ble Shri Justice Virendra Singh, Hon'ble Shri Justice Sunil Kumar Awasthi, Hon'ble Shri Justice Vijay Kumar Shukla, Hon'ble Shri Justice Gurpal Singh Ahluwalia and Hon'ble Shri Justice Subodh Abhyankar have been administered oath of office by Hon'ble the Acting Chief Justice Shri Rajendra Menon, High Court of Madhya Pradesh on 13th October, 2016 as Additional Judges of High Court of Madhya Pradesh in a Swearing-in-Ceremony held in the Conference Hall of South Block of High Court of M.P., Jabalpur.

Hon'ble Shri Justice Rajeev Kumar Dubey was appointed as Additional Judge of the High Court of Madhya Pradesh. Was born on 11.10.1960. After obtaining degrees of B.Sc. and L.L.B., joined M.P. State Judicial Services as Civil Judge Class-II on 07.11.1985. Was promoted to Higher Judicial Services on 30.05.1997. Granted Selection Grade Scale w.e.f. 01.08.2003 and thereafter, Super Time Scale w.e.f. 19.10.2012.

Worked in different capacities at Bhind, Ujjain, Agar, Neemuch, Dewas, Rewa, Biaora, Guna, Chattarpur; Jhabua, Jabalpur, Bhopal.

Was District & Sessions Judge, Bhopal at the time of elevation.

Took oath as Additional Judge, High Court of Madhya Pradesh on 13.10.2016.

Hon’ble Smt. Justice Anjuli Palo was appointed as Additional Judge of the High Court of Madhya Pradesh. Was born on 19.05.1961. After obtaining degrees of B.Sc. and LL.B. , joined M.P. State Judicial Services as Civil Judge Class-II on 05.11.1985 at Jabalpur. Was promoted to Higher Judicial Service on 09.06.1997. Granted Selection Grade Scale w.e.f. 01.10.2003 and thereafter, Super Time Scale w.e.f. 01.01.2013.

Worked in different capacities at Jabalpur, Jagdalpur (now Chhattisgarh) Durg (now Chhattisgarh), Satna, Chattarpur, Barwani, Chhindwara, Bhopal, Guna. Served as District & Sessions Judge Dindori and Shivpuri.

Was District & Sessions Judge, Damoh from 01.10.2015 till elevation.

Took oath as Additional Judge, High Court of Madhya Pradesh on 13.10.2016.

Hon'ble Shri Justice Virendra Singh was appointed as Additional Judge of the High Court of Madhya Pradesh. Was born on 15.04.1961. After obtaining degrees of B.Sc. and LL.B., joined M.P. State Judicial Services as Civil Judge Class-II on 28.10.1985. Was promoted to Higher Judicial Service on 31.05.1997. Granted Selection Grade Scale w.e.f. 01.07.2004 and thereafter, Super Time Scale w.e.f. 15.01.2013.

Worked in different capacities at Bhind, Datia, Seodha, Gohad, Gwalior, Lahar, Shajapur, Morena, Katni, Shahdol, Ujjain, Rewa, New Delhi, Jabalpur.

Was Principal Secretary, Law & Legislative Affairs Department, Bhopal at the time of elevation.

Took oath as Additional Judge, High Court of Madhya Pradesh on 13.10.2016.

Hon'ble Shri Justice Sunil Kumar Awasthi was appointed as Additional Judge of the High Court of Madhya Pradesh. Born on 04.06.1959 at Jashpur Nagar, District Raigarh, Chhattisgarh. After obtaining B.Com. from Jabalpur University in the year 1979 and LL.B. degree from Sagar University in the year 1982 with third position in the University, joined M.P. State Judicial Services on 15.10.1985 as Civil Judge Class-II and promoted to Higher Judicial Services on 09.06.1997. Granted Selection Grade Scale on 16.09.2004 and thereafter, Super Time Scale on 15.01.2013.

Worked in different capacities at Jabalpur, Mandla, Kavardha, Khandwa, Itarsi, Betul, Barwaha, Narsinghpur, Indore, Rewa, Dhar. Also served as President, Consumer Forum, Gwalior. Served as District & Sessions Judge, Bhind.

Was District Judge (Vig.), High Court of M.P., Jabalpur at the time of elevation.

Took oath as Additional Judge, High Court of Madhya Pradesh on 13.10.2016.

Hon'ble Shri Justice Vijay Kumar Shukla was appointed as Additional Judge of the High Court of Madhya Pradesh. Was born on 28.06.1964. After obtaining B.A., LL.B. degrees, was enrolled as an Advocate on 27.03.1987 on the rolls of State Bar Council of M.P. Was practicing actively before the Principal Seat, Jabalpur in Constitutional, Service, Civil and Criminal jurisdiction for the last 27 years.

Took oath as Additional Judge, High Court of Madhya Pradesh on 13.10.2016.

Hon’ble Shri Justice Gurpal Singh Ahluwalia, was appointed as Additional Judge of the High Court of Madhya Pradesh. Was born on 20.02.1966. After obraining B.A. and LL.M. degrees, was enrolled as an Advocate on 04.07.1988 on the rolls of State Bar Council of M.P. was Practicing in the High Court of Madhya Pradesh for the last 27 years and 7 months. Appeared before Hon’ble Supreme Court, High Court of Madhya Pradesh, Jabalpur, High Court of Mumbai, High Court of Gujarat, High Court of Punjab and Haryana, High Court of Chhattisgarh, erstwhile State Administrative Tribunal, Jabalpur, Central Admtnistrative Tribunal, Jabalpur, Debts Recovery Appellate Tribunal, Allahabad, Debts Recovery Tribunal, Jabalpur.

Was elected as Executive Member in the Madhya Pradesh High Court Bar Association, Jabalpur for the period 1994-1995. Worked as State Panel Lawyer from December 1994 till February, 1996. Also worked as Deputy Government Advocate from March 1996 till February 1997. Was Government Advocate from March 1999 till June 2003. Was Deputy Advocate General from June 2003 to February 2004. Was Standing Counsel for Lokayukt Organization, S.P.E. from 2006 till July 2009. Was Special Public Prosecutor for CID Nagpur in the year 1997 for representing State of Maharashtra before Hon’ble High Court. Has worked as Chief Editor ILR in the High Court of Madhya Pradesh at Jabalpur.

Took oath as Additional Judge, High Court of Madhya Pradesh on 13.10.2016.

Hon'ble Shri Justice Subodh Abhyankar was appointed as Additional Judge of the High Court of Madhya Pradesh. Was born on 03.01.1969. His father late Shri V.N. Abhyankar was an Advocate at Bhopal and father-in-law Hon'ble Shri Justice (Retd.) V.S.Kokje was the Judge of this High Court till the year 1994 and thereafter, was transferred to Rajasthan High Court and retired in the year 2001.

Obtained B.Sc. (Maths) degree from Benazir College, Bhopal and LL.B. degree from Gujarati Law College, Indore in the year 1996 and also obtained Post Graduate Degree in Business Management. Was enrolled as an Advocate

in the month of January, 1997 on the rolls of State Bar Council of M.P. and joined the office of Late Shri J.P. Gupta, Senior Advocate of Gwalior. Practiced in the High Court of Madhya Pradesh at Indore Bench for the last 19 years. Also appeared before District Court, Indore, Consumer Forum, Indore and Consumer Commission, Bhopal on Civil, Criminal, Constitutional, Taxation-Central Excise and Customs, Service matters and also appeared in PILs.

Took oath as Additional Judge, High Court of Madhya Pradesh on 13.10.2016.

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

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HON'BLE SHRI JUSTICE MAHENDRA KUMAR MUDGAL DEMITS OFFICE

Hon'ble Shri Justice Mahendra Kumar Mudgal demitted office on His Lordship's attaining superannuation. Born on 28.08.1954 at Gohadi, Tahsil Gohad, District Bhind. Completed primary education in village Gohadi. After Obtaining LL.B. degree from Jiwaji University, Gwalior, started practice in the year 1976. Joined Judicial Services as Civil Judge Class II on 16.11.1981. Was promoted as Additional District Judge in the year 1997. Was granted Selection Grade w.e.f. 04.06.1999 and Super Time Scale w.e.f. 10.10.2007.

Worked in different capacities as Special Judge SC/ST (P.A.) Act and NDPS Act at Chhatarpur and Sheopur, respectively and as District & Sessions Judge Indore from May 2010 to March 2012. Also worked as Deputy Secretary, Law & Legislative Affairs Department, Bhopal in the year 1999 and as Additional Secretary in the year 2001. Also worked as Principal Registrar (Exam & Training) at High Court of M.P., Jabalpur in the year 2008 and continued upto May 2010 and as Principal Registrar (Inspection & Vigilance) at High Court of M.P., Jabalpur from 15.03.2012 till elevation. Took oath as Additional Judge, High Court of Madhya Pradesh on 01.04.2013 and as Permanent Judge on 06.09.2014.

We on behalf of JOTI Journal wish His Lordship a healthy, happy and prosperous life.

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PART - I

COGNIZANCE UNDER SECTIONS 190 AND 193 CR.P.C. – AN ANALYSIS OF PRESENT SCENARIO

Sanjeev Kalgaonkar
Director In-charge, MPSJA

INTRODUCTION

Cognizance by Magistrate as well as cognizance by Court of Session in a case relating to offence triable by Court of Session is one of the most important stage of the case. Due to development of law relating to this subject in recent past, it is necessary to have a relook at the present scenario. It would be appropriate to refer to some of the relevant provisions:

Section 190 – Cognizance of offences by Magistrates. –

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take ***cognizance of any offence*** –

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

Section 193 – Cognizance of offences by Courts of Session. –

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take ***cognizance of any offence*** as a ***Court of original jurisdiction*** unless ***case has been committed*** to it by a Magistrate under this Code."

Section 209 – Commitment of case to Court of Session when offence is triable exclusively by it.-

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

(a) ***commit the case to the Court of Session;***

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

Section 190 empowers any Magistrate of the First Class and any Magistrate of the Second Class which are specially empowered to take cognizance of "any offence" under three circumstances mentioned therein. Likewise, Section 193 of the Code empowers Court of Session to take "cognizance of offences" and provides that the Court of Session shall not take cognizance of any offence as the Court of original jurisdiction ***unless*** the case has been committed to it by the Magistrate. However, once the case is committed to it by the Magistrate, the Court of Session is empowered to take cognizance acting "as a Court of original jurisdiction".

On the one hand, Section 190 of the Code empowers the Magistrate to "take cognizance of any offence" which gives an impression that such Magistrate can take cognizance even of an offence which is triable by the Court of Session. On the other hand, when the case is committed to the Court of Session by the Magistrate, Section 193 of the Code stipulates that Court of Session shall take cognizance "as a Court of original jurisdiction" which shows that the cognizance is taken by the Court of Session as a Court of original jurisdiction. Thus, there are two stages of cognizance in a case of an offence triable by the Court of Session.

In view of the aforesaid provisions, the first question that arises is as to ***whether Magistrate has any discretion while taking cognizance of an offence which is triable by the Court of Session or he is to simply commit the case to the Court of Session, as it is the Court of Session which is competent to try such cases?***

A bare reading of Section 190 of the Code which uses the expression "any offence" amply shows that no restriction is imposed on the Magistrate that Magistrate can take cognizance only for the offence triable by Magistrate Court and not in respect of offence triable by a Court of Session. Thus, the Magistrate has the power to take cognizance of an offence which is triable by the Court of Session.

Discussing the scope and powers of the committal Court, in ***Ajay Kumar Parmar v. State of Rajasthan, AIR 2013 SC 633,*** the Supreme Court held that when the offence is exclusively triable by the Sessions Court, the Magistrate must commit the case to the Sessions Court and cannot refuse to take cognizance of the offence and acquit the accused on the basis of material produced before it. Relevant paras are reproduced for reference-

"14. In ***Sanjay Gandhi v. Union of India, (1978) 2 SCC 39,*** this Court while dealing with the competence of the Magistrate to discharge an accused, in a case like the instant one at hand, held:

> "3.... it is not open to the committal court to launch on a process of satisfying itself that a ***prima facie*** case has been made out on the merits. The jurisdiction once vested in him under the earlier Code but has been eliminated now under the present Code. Therefore, to hold that he can go into the merits even for a ***prima facie*** satisfaction is to frustrate Parliament's purpose in remoulding Section 207-A (old Code) into its present non-discretionary shape. Expedition was intended by this change and this will be defeated successfully if interpretatively we hold that a dress rehearsal of a trial before the Magistrate is in order. In our view, the narrow inspection hole through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Session. ***Assuming the facts to be correct as stated in the police report, ...the Magistrate has simply to commit for trial before the Court of Session. If, by error, a wrong section of the Penal Code is quoted, he may look into that aspect. ... If made-up facts unsupported by any material are reported by the police and a sessions offence is made to appear, it is perfectly open to the Sessions Court under Section 227 Cr.P.C. to discharge the accused.*** This provision takes care of the alleged grievance of the accused." (emphasis added)

Thus, it is evident from the aforesaid judgment that when an offence is cognizable by the Sessions Court, the Magistrate cannot probe into the matter and discharge the accused. It is not permissible for him to do so, even after considering the evidence on record, as he has no jurisdiction to probe or look into the matter at all. His concern should be to see what provisions of the penal statute have been mentioned and in case an offence triable by the Sessions Court has been mentioned, he must commit the case to the Sessions Court and do nothing else.

> The scheme of the Code, particularly, the provisions of Sections 207 to 209 Cr.P.C., mandate the Magistrate to commit the case to the Court of Session, when the charge-sheet is filed. A conjoint reading of these provisions makes it crystal clear that the committal of a case exclusively triable by the Court of Session, in a case instituted by the police is mandatory. ***The scheme***

of the Code simply provides that the Magistrate can determine, whether the facts stated in the report make out an offence triable exclusively, by the Court of Session. Once he reaches the conclusion that the facts alleged in the report, make out an offence triable exclusively by the Court of Session, he must commit the case to the Sessions Court."

However, with regard to power of Magistrate to take cognizance of offence under section 209 of Cr.P.C., it was further held that:

"The Magistrate, in exercise of its power under Section 190 CrPC, can refuse to take cognizance if the material on record warrants so. The Magistrate must, in such a case, be satisfied that the complaint, case diary, statements of the witnesses recorded under Sections 161 and 164 CrPC, if any, do not make out any offence. At this stage, ***the Magistrate performs a judicial function.*** However, he cannot appreciate the evidence on record and reach a conclusion as to which evidence is acceptable, or can be relied upon. Thus, at this stage appreciation of evidence is impermissible. The Magistrate is not competent to weigh the evidence and the balance of probability in the case."

The Constitution Bench of the Apex court in case of ***Hardeep Singh v. State of Punjab, AIR 2014 SC 1400*** observed:

"Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1), Cr.P.C. can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Section 207/208, Cr.P.C., committal etc., which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind.

At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance of Sections 207 and 208, Cr.P.C., and committing the matter if it is exclusively triable by Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209, Cr.P.C. is forbidden, by express provision of Section 319, Cr.P.C., to apply his mind to the merits of the

case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session."

Recently, in case of ***Balveer Singh v. State of Rajasthan, AIR 2016 SC 2266,*** it was held that:

> "... even if the case is triable by the Court of Session, the function of the Magistrate is not to act merely as a post office and commit the case to the Court of Session, but he is also empowered to ***take cognizance,*** issue process and summon the accused and ***thereafter commit the case*** to the Court of Session."

The dictum of law laid down in this regard by the Constitution Bench of the Supreme Court in case of ***Dharam Pal and ors. v. State of Haryana, AIR 2013 SC 3018*** is as under:

> "In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3), Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column No. 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.
>
> If the Magistrate was satisfied that a ***prima facie*** case had been made out to go to trial despite the final report submitted by the police, in such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Session Court."

CONCLUSION:

The present scenario of law may, thus, be summarized as under:

(i) Taking of cognizance by the Magistrate and committal of case to the Court of Session are two distinct functions.

(ii) The Magistrate may take cognizance of any offence. The expression "any offence" includes the offence triable exclusively by a Court of Session.

(iii) At the stage of taking of cognizance u/s 190 Cr.P.C., the Magistrate performs a judicial function.

(iv) The Magistrate in exercise of its power u/s 190 Cr.P.C. can refuse to take cognizance of "any offence" if the material on record warrants so.

(v) The Magistrate may disagree with final report submitted u/s 173 Cr.P.C. and may take cognizance of any offence on the basis of material on record.

(vi) The Magistrate, at the stage of cognizance u/s 190 Cr.P.C. cannot appreciate the evidence on record and reach a conclusion as to which evidence is acceptable and can be relied upon. The Magistrate is not competent to weigh the evidence and probabilities in the case.

(vii) At the stage of committal of case to the Court of Session, the Magistrate has to assume the facts as stated in police statement to be correct.

(viii) If on the basis of material produced, an offence triable exclusively by the Court of Session is made out, the Magistrate must commit the case to the Court of Session. At this stage, the Magistrate cannot refuse to take cognizance of offence and acquit the accused on the basis of material produced before it.

(ix) At the time of committal of case under section 209 Cr.P.C. although the Magistrate performs administrative work still he does not act merely as a Post-Office but has a very limited scope to verify whether sections stated in Police Report are correct and make out an offence triable exclusively by the Court of Session on the basis of material without appreciating the evidence on merits.

Now second question arises as to what is meant by taking of cognizance "as a Court of original jurisdiction" occurring in Section 193 of the Code?

To put it in other words, when the Magistrate has taken cognizance and thereafter committed the case to the Court of Session, whether the Court of Session is not empowered to take cognizance of an offence again under Section 193 of the Code or it still has power to take cognizance of an offence acting as Court of original jurisdiction?

In case of ***Joginder Singh v. State of Punjab, AIR 1979 SC 339*** it was observed that:

> "It will be noticed that both under Section 193 and S.209 the commitment is of 'the case' and not of 'the accused' whereas under the equivalent provision of the old Code ***viz.*** S. 193 (1) and Section 207A, it was 'the accused' who was committed and not 'the case'. It is true that there cannot be a committal of the case without there being an accused person before the Court, but this only means that before a case in respect of an offence is committed there must, be some accused suspected to be involved in the crime before the Court but once the case in respect of the offence ***qua*** those accused who are before the Court is committed then the cognizance of the offence can be said to have been taken properly by the Sessions Court and the bar of S. 193 would be out of the way and summoning of additional persons who appear to be involved in the crime from the evidence led during the trial and directing them to stand their trial along with those who had already been committed must be regarded as incidental to such cognizance and a part of the normal process that follows it; otherwise the conferral of the power under Section 319 (1) upon the Sessions Court would be rendered nugatory. Further S. 319 (4) (b) enacts a deeming provision in that behalf dispensing with the formal committal order against the newly added accused. Under that provision it is provided that where the Court proceeds against any person under sub-section (1) then the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced; in other words, such person must be deemed to be an accused at the time of commitment because it is at that point of time the Sessions Court in law takes cognizance of the offence."

In case of ***Dharam Pal*** (supra), it was held that:

> "Section 193 speaks of cognizance of offences by the Court of Session. The key words in the section are that 'no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code'. The provision of Section 193 entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been

committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. .....

> ***Cognizance of an offence can only be taken once.*** In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceeding to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. ..... . ***Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the Sessions Judge."***

In the process of coming to the aforesaid conclusions, the Constitution Bench in case of ***Dharam Pal*** accepted with approval the view expressed in ***Kishun Singh v. State of Bihar*** reported in ***1993 AIR SCW 771*** that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the person not named as offenders but whose complicity in the case would be evident from the materials available on record. It specifically held that upon committal under Section 209 of the Code, the Sessions Judge may summon those persons shown in Column 2 of the police report to stand trial along with those already named therein. It was held that:

> ".....The provisions of Section 209 of the Code will, therefore, have to be understood as the Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session."

In ***Balveer Singh*** *(supra)* the question for consideration before the Apex Court was whether the Court of Sessions was empowered to take cognizance of offence under Sections 304-B and 498-A of IPC, when similar application to this effect was rejected by the JMFC while committing the case to Sessions Court, taking cognizance of offence only under Section 306 IPC and specifically refusing to take cognizance of offence under Sections 304-B and 498-A IPC. The Apex Court proceeded to lay down that-

> "Keeping in view the aforesaid legal position, we may now discuss the circumstances under which the cognizance was taken by the Session Judge. Here is a case where the Police report which was submitted to the Magistrate, the IO had

not included the appellants as accused persons. The complainant had filed application before the learned Magistrate with prayer to take cognizance against the appellants as well. This application was duly considered and rejected by the learned Magistrate. The situation in this case is, thus, not where the investigation report/chargesheet filed under Section 173(8) of the Code implicated the appellants and appellants contended that they are wrongly implicated. On the contrary, the Police itself had mentioned in its final report that case against the appellants had not been made out. This was objected to by the complainant who wanted the Magistrate to summon these appellants as well and for this purpose the application was filed by the complainant under Section 190 of the Code. The appellants had replied to the said application and after hearing the arguments, the application was rejected by the Magistrate. This shows that order of the Magistrate was passed with due application of mind whereby he refused to take cognizance of the alleged offence against the appellants and confined it only to the son of the appellants. This order was not challenged. Normally, in such a case, it cannot be said that the Magistrate had played ***'passive role'*** while committing the case to the Court of Sessions. He had, thus, taken cognizance after due application of mind and playing an ***'active role'*** in the process. The position would have been different if the Magistrate had simply forwarded the application of the complainant to the Court of Sessions while committing the case. In this scenario, we are of the opinion that it would be a case where Magistrate had taken the cognizance of the offence. Notwithstanding the same, the Sessions Court on the similar application made by the complainant before it, took cognizance thereupon. Normally, such a course of action would not be permissible."

The Apex Court further held that the order of the Magistrate refusing to take or taking cognizance is a revisable order. The power of revision can be exercised by the Court of Session itself, either ***suo motu*** or on the revision petition filed by the aggrieved party. Therefore it can be inferred that in facts and circumstance of the case, the Court of Session can pass an order relating to the cognizance after due process in its revisionary jurisdiction but cannot take cognizance again of the offence which was ***specifically*** refused by the Magistrate.

CONCLUSION:

The present scenario of law may, thus, be summarized as under:

(i) The Court of Session cannot take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by the Magistrate. Once the case is committed to the Court of Session, it can take cognizance as Court of original jurisdiction of the same offence.

(ii) Cognizance of an offence can be taken only once. Part cognizance taken by the Magistrate and part cognizance taken by Court of Session is not permissible.

(iii) Generally while committing the case to the Court of Session, Magistrate plays a passive role in taking of cognizance of offence. Therefore, the Sessions Judge may take cognizance of the offence u/s 193 Cr.P.C. against those persons who are not accused and shown in Col. 2 of the police report to stand trial alongwith those already named as accused in final report.

(iv) Where the Magistrate has refused to take cognizance of any offence after due application of mind and playing an active role in the process, the Sessions Judge cannot take cognizance of the same offence on the basis of same material u/s 193 Cr.P.C.

(v) In view of the law laid down by the Constitution Bench in the case ***Hardeep Singh*** (supra), the Court of Session may, at the stage of trial, take cognizance against such person under Section 319, against whom the Magistrate has ***specifically*** refused to take cognizance under Section 190 Cr.P.C.

Whether the Magistrate has played an active role or passive role in taking of cognizance and committal of case shall be determined on the facts and circumstances of each case. One of the test can be whether at the time of order of taking the cognizance or refusing to take cognizance on the basis of any application or facts of the Police Report or ***suo motu***, the Magistrate has specifically discussed (***otherwise than the normal course***) as to the role or act of accused constituting the offence as the reason of taking or refusing to take cognizance.

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PART-II

NOTES ON IMPORTANT JUDGMENTS

246. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 7, 11, 9 and 2(b), (h)
INTERPRETATION OF STATUTES:
CIVIL PROCEDURE CODE, 1908 – Section 9
TRUSTS ACT, 1882 – Section 34

(i) A reading of sections 2 (b) and 7 of the Act in juxtaposition goes to show that in order to constitute a valid, binding and enforceable arbitration agreement, the requirements contained in Section 7 have to be satisfied strictly – These requirements, apart from others, are (a) there has to be an agreement (b) it has to be in writing (c) parties must sign such agreement or in other words, the agreement must bear the signatures of the parties concerned and (d) such agreement must contain an arbitration clause – In other words, aforementioned four conditions are *sine qua non* for constituting a valid and enforceable arbitration agreement – Failure to satisfy any of the four conditions would render the arbitration agreement invalid and unenforceable and, in consequence, would result in dismissal of the application filed under section 11 of the Act at its threshold.

(ii) Ouster of jurisdiction of Civil Court – Clause in agreement providing for reference of disputes to arbitration – Ouster of jurisdiction of Courts cannot be inferred readily – Such clause requires strict rule of interpretation to find out whether it provides an ouster of jurisdiction and if so, to which Court/Tribunal/Authority, as the case may be.

(iii) Jurisdiction of Civil Court with regard to dispute relating to affairs and management of trust and disputes arising *inter se* trustees, beneficiaries in relation to their appointment, powers, duties, obligations, removal, etc. – Such disputes arising under Trusts Act are to be decided under the Trusts Act conferring jurisdiction on Civil Court – The remedy under Arbitration Act is impliedly barred.

Vimal Kishor Shah and ors. v. Jayesh Dinesh Shah and ors.
Judgment dated 17.08.2016 passed by the Supreme Court in Civil Appeal No. 8164 of 2016, reported in AIR 2016 SC 3889

Relevant extracts from the Judgment:

So far as legal remedies available to the author of the Trust/settlor, Trustees and the beneficiaries for ventilating their several grievances in respect of their

rights duties, removal and obligations under the Trust Deed and the Trust Act are concerned, they are specifically provided in Sections 7, 11, 34, 36, 41, 45, 46, 49, 53, 71, 72, 73 and 74 of the Trust Act. These 43 Page 44 sections, in specific terms, confer jurisdiction on Civil Court and provides that an aggrieved person may approach the principal Civil Court of Original Jurisdiction for adjudication of his grievances. This clearly shows the intention of the legislature that the legislature intended to confer jurisdiction only on Civil Court for deciding the disputes arising under the Trust Act.

The Constitution Bench of this Court in a leading case of ***Dhulabhai etc. v. State of Madhya Pradesh & anr., AIR 1969 SC 78*** examined the question as to how the exclusion of jurisdiction of Civil Court in the context of express or implied bar created in any special law should be decided. Their Lordships examined the question in the context of Section 9 of the Code of Civil Procedure, 1908 and the bar created in special law.

Justice Hidayatullah, the learned Chief Justice speaking for the Bench laid down 7 conditions for determining the question of bar for prosecuting the remedies in the Civil Court or judicial Tribunals/authorities constituted under any special law. Though the issue examined in ***Dhulabhai's case*** (supra) pertained to bar created in special law vis-a-vis filing of the civil suit by an aggrieved party, yet the decision, in our view, lays down the general principle as to how the courts should decide the issue of express or/and implied bar in the context of the remedies available in law.

So far as the question involved in the case at hand is concerned, it is governed by condition No. 2 of ***Dhulabhai's case*** (supra) which reads as under:

> "(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies 45 Page 46 provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
>
> Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not."

When we examine the Scheme of the Trust Act in the light of the principle laid down in condition No. 2, we find no difficulty in concluding that though the Trust Act do not provide any express bar in relation to applicability of other Acts

for deciding the disputes arising under the Trust Act yet, in our considered view, there exists an implied bar of exclusion of applicability of the Arbitration Act for deciding the disputes relating to Trust, trustees and beneficiaries through private arbitration. In other words, when the Trust Act exhaustively deals with the Trust, Trustees and beneficiaries and provides for adequate and sufficient remedies to all aggrieved persons by giving them a right to approach the Civil Court of principal original jurisdiction for redressal of their disputes arising out of Trust Deed and the Trust Act then, in our opinion, any such dispute pertaining to affairs of the Trust including the dispute inter se Trustee and beneficiary in relation to their right, duties, obligations, removal etc. cannot decided by the arbitrator by taking recourse to the provisions of the Act. Such disputes have to be decided by the Civil Court as specified under the Trust Act.

The principle of interpretation that where a specific remedy is given, it thereby deprives the person who insists upon a remedy of any other form of 47 Page 48 remedy than that given by the statute, is one which is very familiar, and which runs through the law, was adopted by this Court in the case of ***The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke & ors., AIR 1975 SC 2238*** while examining the question of bar in filing Civil suit in the context of remedies provided under the Industrial Disputes Act (See G.P. Singh, Principles of Statutory Interpretation, 12th Edition, Pages 763-764). We apply this principle here because, as held above, the Trust Act creates an obligation and further specifies the rights and duties of the settlor, Trustees and the beneficiaries apart from several conditions specified in the Trust Deed and further provides a specific remedy for its enforcement by filing applications in Civil Court. It is for this reason, we are of the view that since sufficient and adequate remedy is provided under the 48 Page 49 Trust Act for deciding the disputes in relation to Trust Deed, Trustees and beneficiaries, the remedy provided under the Arbitration Act for deciding such disputes is barred by implication.

We, accordingly, hold that the disputes relating to Trust, trustees and beneficiaries arising out of the Trust Deed and the Trust Act are not capable of being decided by the arbitrator despite existence of arbitration agreement to that effect between the parties. A fortiori – we hold that the application filed by the respondents under Section 11 of the Act is not maintainable on the ground that firstly, it is not based on an "arbitration agreement" within the meaning of Sections 2 (b) and 2 (h) read with Section 7 of the Act and secondly, assuming that there exists an arbitration agreement (clause 20 of the Trust Deed) yet the disputes specified therein are not capable of being referred to private arbitration for their adjudication on merits.

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247. ARBITRATION AND CONCILIATION ACT, 1996 – Section 9

Injunction – Restraining encashment of bank guarantee – Arbitration proceedings in relation to other contract was pending – Sum claimed by the respondent was in the nature of damages related to other

contract which is yet to be adjudicated in arbitration proceedings pending in respect thereof – Sum claimed by respondent in relation to contract for which bank guarantee had been furnished – However, sum claimed is neither a sum due in *praesenti* nor a sum payable – The bank guarantee in question being in the nature of performance guarantee furnished for execution work of earlier contract which having been completed to satisfaction of respondents, they had no right to encash bank guarantee – Injunction granted.

M/s. Gangotri Enterprises Ltd. v. Union of India and others

Judgment dated 05.05.2016 passed by the Supreme Court in Civil Appeal No. 4814 of 2016, reported in 2016 AIR SCW 2199

Relevant extracts from the Judgment:

The facts of the case of ***Union of India v. Raman Iron Foundary, AIR 1974 SC 1265*** were that the respondent (Raman Iron Foundry) entered into a contract with the Union of India (DGS&D)-the appellant for supply of certain quantity of "Foam compound". The contract, apart 17 Page 18 from several other conditions, contained two clauses, namely, Clauses 18 and 24. Clause 24 provided that in the event of any dispute arising between the parties in connection with the contract, the same shall be decided by means of Arbitration. Clause 18 with which we are concerned provided for "recovery of sums due" which reads as under :

> "***18. Recovery of sums due*** — whenever any claim for the payment of a sum of money arises out of or under the contract against the contractor, the purchaser shall be entitled to recover such sum by appropriating in whole or in part, the security, if any, deposited by the contractor, and for the purpose aforesaid, shall be entitled to sell and/or realise securities forming the whole or part of any such security deposit. In the event of the security being insufficient, the balance and if no security has been taken from the contractor, the entire sum recoverable shall be recovered by appropriating any sum then due or which at any time thereafter may become due to the contractor under the contract or any other contract with the purchaser or the Government or any person contracting through the Secretary, if such sum even be not sufficient to cover the full amount recoverable, the contractor shall on demand pay to the purchaser the balance remaining due."

The questions, which fell for consideration before this Court, were - first, what is the true interpretation of Clause 18; second what is the meaning of the words "sum due" and "may become due" under the contract or any other contract with the purchaser occurring in Clause 18; third, whether Clause 18 empowered the Union

of India to make recovery of amount claimed by it by way of damages (liquidated or unliquidated) for breach of contract pending arbitration proceedings from the contractor and lastly, whether in such case, contractor is entitled to claim injunction against the Union of India from making recovery of such sum.

Justice Bhagwati (as His Lordship then was) speaking for the Bench examined the issue in great detail in the light of law laid down by English and Indian Courts. The learned Judge in his distinctive style of writing after examining the entire case law on the subject held that an expression "sum due" occurring in Clause 18 would mean a sum for which there is an existing obligation to pay in praesenti or in other words which is presently payable and due and, therefore, recovery of only such sums can be made subject matter of Clause 18 which is presently payable and due. It was held that a claim, which is neither due and nor payable, cannot be made subject matter of Clause 18. It was further held that Clause 18 does not create a lien on other sums due to the contractor or give to the purchaser a right to retain such sums until his claim against the contractor is satisfied. It was also held that a claim for damages for breach of contract is not a claim for a sum presently due and payable and the purchaser is not entitled in exercise of the right conferred upon it under Clause 18 to recover the amount of such claim by appropriating other sums due to contractor.

Their Lordships approved the view taken by Chagla C.J. in the case of ***Iron and Hardware (India) Co. vs. Firm Shamlal and Bros., AIR 1954 Bom.423*** by observing in para 11 as under.

> "11. …The same view has also been taken consistently by different High Courts in India. We may mention only a few of the decisions, namely, ***Jabed Sheikh v. Taher Mallik, AIR 1941 Cal 639, S. Milkha Singh v. N.K. Gopala Krishna Mudaliar, AIR 1956 Punj 174 and Iron and Hardware (India) Co. v. Firm Shamlal*** and ***Bros., AIR 1954 Bom 423.*** Chagla, C.J. in the last mentioned case, stated the law in these terms: (at pp. 425-26)
>
> In my opinion it would not be true to say that a person who commits a breach of the contract incurs any pecuniary liability, nor would it be true to say that the other party to the contract who complains of the breach has any amount due to him from the other party.
>
> As already stated, the only right which he has is the right to go to a Court of law and recover damages. Now, damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore,

no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The Court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination there is no liability at all upon the defendant.

This statement in our view represents the correct legal position and has our full concurrence. A claim for damages for breach of contract is, therefore, not a claim for a sum presently due and payable and the purchaser is not entitled, in exercise of the right conferred upon it under clause 18, to recover the amount of such claim by appropriating other sums due to the contractor. On this view, it is not necessary for us to consider the other contention raised on behalf of the respondent, namely, that on a proper construction of clause 18, the purchaser is entitled to exercise the right conferred under that clause only where the claim for payment of a sum of money is either admitted by the contractor, or in case of dispute, adjudicated upon by a court or other adjudicatory authority. We must, therefore, hold that the appellant had no right or authority under clause 18 to appropriate the amounts of other pending bills of the respondent in or towards satisfaction of its claim for damages against the respondent and the learned Judge was justified in issuing an interim injunction restraining the appellant from doing so.

12. We accordingly dismiss the appeals. The appellant in each appeal will pay the costs of the respondent all throughout."

In our considered opinion, the case at hand being somewhat identical to this case has to be decided keeping in view the law laid down by this Court in the case of ***Union of India (DGS&D)*** (supra).

Coming now to the facts of the case at hand, we find that wordings of Clause 62 of the contract in question with which we are concerned is identical tothat of Clause 18 of ***Union of India (DGS&D)***(supra). Clause 62 of GCC provides for determination of contract owing to default of contractor.The relevant portion of Clause 62 reads as under:

"The amounts thus to be forfeited or recovered may be deducted from any moneys then due or which at any time thereafter may become due to the Contractor by the Railway under this or any other contract or otherwise."

On perusal of the record of the case, we find that firstly, arbitration proceedings in relation to the contract dated 22.08.2005 are still pending. Secondly, the sum claimed by the respondents from the appellant does not relate to the contract for which the Bank Guarantee had been furnished but it relates to another contract dated 22.08.2005 for which no bank guarantee had been furnished. Thirdly, the sum claimed by the respondents from the appellant is in the nature of damages, which is not yet adjudicated upon in arbitration proceedings. Fourthly, the sum claimed is neither a sum due in praesenti nor a sum payable. In other words, the sum claimed by the respondents is neither an admitted sum and nor a sum which stood adjudicated by any Court of law in any judicial proceedings but it is a disputed sum and lastly, the Bank Guarantee in question being in the nature of a performance guarantee furnished for execution work of contract dated 14.07.2006 (Anand Vihar works) and the work having been completed to the satisfaction of the respondents, they had no right to encash the Bank Guarantee.

We have, therefore, no hesitation in holding that both the courts below erred in dismissing the appellant's application for grant of injunction. We are indeed constrained to observe that both the courts committed jurisdictional error when they failed to take note of the law laid down by this Court in ***Union of India (DGS&D)*** (supra) which governed the controversy and instead placed reliance on ***Himadri Chemicals Industries Ltd. vs. Coal Tar Refining Company, AIR 2007 SC 2798*** and ***U.P. State Sugar Corporation vs. Sumac International Ltd., (1997) 1 SCC 568,*** which laid down general principle relating to Bank Guarantee.

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248. ARBITRATION AND CONCILIATION ACT, 1996 – Section 34

Setting aside of award – An award can be set aside on three conditions; (a) if it is contrary to fundamental policy, (b) if it is against interest of India, justice or morality or (c) if it is patently illegal and arbitrary.

The Additional District Judge set aside the award only on the ground that appellant has no authority to deduct amount without getting the dispute adjudicated – This finding being contrary to Clause 9.4 of the agreement, the Trial Court exceeded its jurisdiction while dealing with objections preferred under section 34 of the Act.

M.P. State Civil Supplies Corporation Ltd. v. M/s K.D. Transport

Judgment dated 28.07.2015 passed by the High Court of M.P. in Arbitration Appeal No. 3 of 2012, reported in ILR (2016) MP 556

Relevant extracts from the Judgment:

The Supreme Court in ***McDermott International Inc. v. Burn Standard Co. Ltd, (2006) 11 SCC 181*** while taking note of the decision rendered by it in ***Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644*** wherein it was held that an arbitral award can be set aside if it is contrary to fundamental policy of

Indian law; the interests of India; or justice or morality, held that public policy is a matter dependent upon the nature of transaction and the nature of statute. However, subsequently, in the case of ***ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705,*** the Supreme Court added another ground for exercise of courts' jurisdiction for setting aside the award i.e. if it is patently arbitrary. In ***Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd., (2006) 11 SCC 245*** it was held by the Supreme Court that if an award suffers from patent illegality, which goes to the root of the matter, the court can interfere with the award passed by the arbitrator. In a recent decision, in the case of ***Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49,*** the Supreme Court after taking note of various previous judgments rendered by it with regard to scope of interference with the arbitral award held that none of the grounds contained in Section 34 (2) (a) of the Act deals with the merits of the decision rendered by an arbitrator. It is only when the award is in conflict with the public policy of India as prescribed in Section 34 (2) (b) (ii) of the Act that the merits of an arbitral award are to be looked into under certain specified circumstances. It was further held that the Court would interfere with an award passed by an arbitrator if it is in violation of statute, interest of India, justice or morality, patent illegality, contravention of the Act or terms of the contract. It was also held that the court hearing an appeal does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus, an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

However, the trial Court in a perfunctory manner and in violation of the well settled legal position with regard to scope of section 34 of the Act as has been delineated by the Supreme Court in catena of decisions, has set-aside the awards passed by the Arbitrator holding that the appellant had no authority to deduct the amount in question from the bills of the respondent without adjudication of the dispute. While recording the aforesaid finding, the Additional District Judge, Bhopal has not taken into account the clause-9.4 of the agreement which confers authority on the appellant to make alternative arrangement in case of default by the transportation at its risk & consequences the same can be recovered and in ignorance of the same in a cavalier manner set-aside the awards passed by the Arbitrator.

The damages may be of two types, namely, liquidated damages and unliquidated damages. Liquidated damages means an amount contractually stipulated as a reasonable estimation of actual damage to be recovered by one party if the other party breaches. The expression 'unliquidated damages' means the amount of damages not specified or determined or ascertained, the amount of damages which are to be determined by a court rather than specified by a contract. [See: Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition] Thus, it is apparent that in order to ascertain liquidated damages no adjudication is

required whereas in order to ascertain unliquidated damages, adjudication is required. Therefore, the decisions relied by the respondent are of no assistance to it in the fact situation of the case as the same deals with cases of unliquidated damages which require adjudication. In the instant case under clause 9.4 of the agreement the appellant has authority to recover liquidated damages.

Thus, the Additional District Judge while passing the impugned judgments exceeded its jurisdiction while dealing with the objections preferred under Section 34 of the Act. The judgments passed by the trial Court suffer from jurisdictional infirmity as well as error apparent on the face of the record.

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249. CIVIL PROCEDURE CODE, 1908 – Section 9

Inherent lack of jurisdiction and erroneous decision within jurisdiction, distinction between – Explained.

Defect of jurisdiction strikes at the very root of the matter – Order, judgment or decree passed without jurisdiction is a nullity and can be established to be invalid even in collateral proceedings – However, if order or judgment is erroneous, though within jurisdiction, it is to be challenged in accordance with law before the appropriate forum.

Citibank N.A. London Branch v. Plethico Pharmaceuticals Ltd.

Order dated 15.09.2015 passed by the High Court of M.P. in Company Petition No. 35 of 2013, reported in 2016 (3) MPLJ 205

Relevant extracts from the Order:

It is the settled position in law that since the defect of jurisdiction strikes at the very root of the matter, therefore, a notification, order or even a judgment or decree issued or passed without jurisdiction is a nullity, which can be established to be invalid even in collateral proceedings. Even the general rule that the executing court cannot go behind the decree, has the exception that a decree suffering from the defect of lack of inherent jurisdiction of the Court passing it, can be set up as invalid in the execution proceedings. However there is a distinction between the inherent lack of jurisdiction and erroneous decision within jurisdiction. For an order passed by an authority or the court without jurisdiction, the defence of nullity can be set up by the party aggrieved even in collateral proceedings but if the order is erroneous or illegal though within jurisdiction, then that is required to be challenged in accordance with law before the appropriate forum. [See: ***Kiran Singh and others v. Chaman Paswan and others, AIR 1954 SC 340, State of Kerela v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil (Dead) and others, (1996) 1 SCC 435, Balvant N. Viswamitra and others v. Yadav Sadashiv Mule (Dead) through LRS and others, (2004) 8 SCC 706*** and ***Apple Finance Ltd. v. Mantri Housing and Constructions Ltd., 2002(2) Mh.L.J. 911***].

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250. CIVIL PROCEDURE CODE, 1908 – Section 11

***Res judicata* – Erroneous determination of pure question of law in previous judgment will not operate as *res judicata* in the subsequent proceeding for different property, though between same parties – The Court has power to determine an issue of law correctly in subsequent suit.**

Satyendra Kumar and others v. Raj Nath Dubey and others

Judgment dated 06.05.2016 passed by the Supreme Court in Civil Appeal No. 4083 of 2016, reported in 2016 AIR SCW 2231

Extracts from the Judgment:

The distinction drawn by the High Court in the impugned judgment that an erroneous determination of a pure question of law in a previous judgment will not operate as res judicata in the subsequent proceeding for different property, though between the same parties, is clearly in accord with Section 11 of the CPC. Strictly speaking, when the cause of action as well as the subject matter i.e, the property in issue in the subsequent suit are entirely different, res judicata is not attracted and the competent Court is therefore not debarred from trying the subsequent suit which may arise between the same parties in respect of other properties and upon a different cause of action. In such a situation, since the Court is not debarred, all issues including those of facts remain open for adjudication by the competent Court and the principle which is attracted against the party which has lost on an important issue of fact in the earlier suit is the principle of estoppel, more particularly "issue estoppel" which flows from principles of evidence such as from Sections 115, 116 and 117 of the Indian Evidence Act, 1872 and from principles of equity. As a principle of evidence, estoppel is treated to be an admission or in the eyes of law something equivalent to an admission of such quality and nature that the maker is not allowed to contradict it. In other words it works as an impediment or bar to a right of action due to affected person's conduct or action. "Estoppel by judgment" finds reference in the case of ***Ahsan Hussain Abdul Ali Bohari, Proprietor Abidi Shop v. Maina W/o Nathu Telanga, AIR 1938 Nag 129.*** It is taken as a bar which precludes the parties after final judgment to reagitate and relitigate the same cause of action or ground of defence or any fact determined by the judgment. If the determination was by a Court of competent jurisdiction, the bar will remain operative even if the judgment is perceived to be erroneous. If the parties fail to get rid of an erroneous judgment, they as well as persons claiming through them must remain bound by it.

However, as explained and held by this Court in the case of ***Mathura Prasad Sarjoo Jaiswal v. Dossibai N.B. Jeejeebhoy, AIR 1971 SC 2355,*** where the decision is on a pure question of law then a Court cannot be precluded from deciding such question of law differently. Such bar cannot be invoked either on principle of equity or estoppel. No equitable principle or estoppel can impede powers of the Court to determine an issue of law correctly in a subsequent suit which relates to another property founded upon a different cause of action though

parties may be same. As explained earlier, in such a situation the principle of res judicata is, strictly speaking, not applicable at all. So far as principle of estoppel is concerned, it operates against the party and not the Court and hence nothing comes in the way of a competent court in such a situation to decide a pure question of law differently if it is so warranted. The issues of facts once finally determined will however, stare at the parties and bind them on account of earlier judgments or for any other good reason where equitable principles of estoppel are attracted.

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251. CIVIL PROCEDURE CODE, 1908 – Section 35-B

The effect and impact of section 35-B (1) & (2) – The payment of cost is a condition precedent to further prosecution of defence by the defendant – If defendant does not ultimately pay the cost and his right of further prosecution is taken away for non-payment of cost, yet the court while passing the judgment and decree will ensure that the said amount is included in the decree.

Kamlesh (Smt.) & ors. v. Smt. Urmila Devi

Order dated 25.11.2014 passed by the High Court of M.P. in Writ Petition No. 6541 of 2014, reported in ILR (2016) MP 730

Relevant extracts from the Order:

A careful reading of Section 35-B shows that it in no uncertain terms makes it clear in sub-section 1(b) that payment of cost on the next date shall be a condition precedent to the further proceedings of (a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs, (b) the defence by the defendant where the defendant was ordered to pay such costs. No doubt sub-section (2) provides that if cost ordered to be paid under sub-section (1) is not paid, it be included in the costs awarded in the decree passed in the suit. This is trite that a statute must be interpreted in a manner so that every part of statute is given full meaning and effect. This is also settled that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. (See ***Nelson Motis v. Union of India, AIR 1992 SC 1981***). Section 35-B(1)(b) makes it clear that payment of cost is a 'condition precedent'. It is to be given full meaning otherwise the words "shall be a condition precedent" will become redundant or become dead letters. Section 35-B (1)(b), in my view, ensures that if cost is not paid, the right of plaintiff or defendant for further prosecution of suit/defence, as the case may be, will be taken away. Whereas, sub-section (2) ensures that if ultimately cost is not paid, it shall be included in the decree. Thus, the provision has two limbs: (1) sub-section (1) ensures that plaintiff/respondent, as the case may be, cannot prosecute their case unless cost is paid, whereas, sub-section (2) ensures that at the end, the cost is provided to the other side.

A plain reading of S.35-B makes it clear that payment of cost is a condition precedent to the further prosecution of defence by the defendant. If defendant does not ultimately pay the cost and his right of further prosecution is taken away because of non-payment of said cost, yet the Court while passing the judgment and decree will ensure that said amount is included in the decree. The effect and impact of Section 35-B (1) (b) and sub-section (2) are different and the same are applicable in different stages

The Apex Court in ***Salem Advocate Bar Association, T.N. v. Union of India, (2005) 6 SCC 344*** opined that as per Section 35 if an order is passed, requiring the other party to pay costs, the other party shall be required to reimburse the said costs to the other side on the date next following the date of such order, which shall be a condition precedent to the further prosecution of the suit of the defence. Hence, order impugned is passed in accordance with law.

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252. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 14 (3)
EVIDENCE ACT, 1872 – Sections 35, 63, 65 and 76
RIGHT TO INFORMATION ACT, 2005 – Section 2 (j)
Proof of public and private documents given under section 76 of the Evidence Act or under the provisions of Right to Information Act, manner of.
Certified copies of public document whether given under section 76 of the Evidence Act or under the provisions of Right to Information Act can only be admitted in evidence without examining the author of the document and without comparing them with the original – However, for rest of the documents, which are not public documents, the original documents should be called before the Court and the person, in whose possession such documents are kept, should be called for evidence.
Antar Singh Darbar v. Kailash Vijayvargiya and others
Order dated 02.02.2016 passed by the High Court of M.P. in Election Petition No. 15 of 2014, reported in 2016 (3) MPLJ 170

Relevant extracts from the Order:

The Co-ordinate Bench of this court in case of ***Narayan Singh v. Kallaram @ Kalluram Kushwaha & others, 2015 (II) MPWN 31*** referred to Section 65 Clause-(e) & (f) of Indian Evidence At and held that if copies are obtained under Right to Information Act then such copies are admissible.

It is apparent that section 35 of the Evidence Act, 1872 provides the relevancy of facts as a part of Chapter-2 of the Indian Evidence Act. However, it does not say that every document whether it is a public document or a private document can be admissible in evidence, if copy of this document is given under the provisions of any Act or any other law in force in India under Clause-(f) of section 65 of Indian Evidence Act.

It may be seen that in clause-(f) of section 65 of Indian Evidence Act, the copies should be given to the petitioner to be given in evidence before any court. The Banker's Books Evidence Act, 1891 comes under this category. This clause does not provide that any other document copy of which is not given under any Act or law in force in India which are not provided to the petitioner for giving it an evidence.

'Right to information' as defined in the Right to Information Act, 2005 means the right to information accessible under this Act which is held by or under the control of any public authority and includes. [section 2 (j)].

Thus, purpose of Right to Information Act is to provide information which are kept in form of document or otherwise by any public authority. This provision does not override the provisions of Evidence Act.

Taking these provisions of Indian Evidence Act into consideration, it is apparent that certified copies whether given under section 76 of Indian Evidence Act or under the provisions of Right to Information Act can only be admitted in evidence without examining the author of the documents and without comparing them with the original. For rest of the documents which are not public document, the original should be called before the court and the persons in whose possession such documents are kept, should be called for evidence. So far as the principles laid down in case of ***Narayan Singh*** (supra), the question before the Co-ordinate Bench of this court was whether a copy obtained under Right to Information Act should be admitted for evidence. In that case, document was a public document. It was a map of the house and building construction permission from the Nagar Nigam. This document falls under the category of the public document, and therefore, the principles laid down in case of ***Narayan Singh*** (supra) cannot be applied on all the documents in derogation of provisions of Indian Evidence Act.

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253. CIVIL PROCEDURE CODE, 1908 – Order 17 Rule 1

Adjournment – Virus of seeking adjournment has to be controlled.

Gayathri v. M. Girish

Judgment dated 27.07.2016 passed by the Supreme Court in Special Leave Petition (C) No. Nil of 2016, reported in AIR 2016 SC 3559

Relevant extracts from the Judgment:

In the case at hand, as we have stated hereinbefore, the examination-in-chief continued for long and the matter was adjourned seven times. The defendant sought adjournment after adjournment for cross-examination on some pretext or the other which are really not entertainable in law. But the trial Court eventually granted permission subject to payment of costs. Regardless of the allowance extended, the defendant stood embedded on his adamantine platform and prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever and on any circumstance. The non-concern of the defendant-

petitioner shown towards the proceedings of the Court is absolutely manifest. The disregard shown to the plaintiff's age is also visible from the marathon of interlocutory applications filed. A counsel appearing for a litigant has to have institutional responsibility. The Code of Civil Procedure so command. Applications are not to be filed on the grounds which we have referred to hereinabove and that too in such a brazen and obtrusive manner. It is wholly reprehensible. The law does not countenance it and, if we permit ourselves to say so, the professional ethics decries such practice. It is because such acts are against the majesty of law.

In the case at hand, it can indubitably be stated that the defendant-petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita "Awake! Arise! Oh Partha" is apt here to be stated for guidance of trial courts.

In view of the aforesaid analysis, we decline to entertain the special leave petition and dismiss it with costs which is assessed at 11 Rs.50,000/- (Rupees fifty thousand only). The costs shall be paid to the State Legal Services Authority, Karnataka. The said amount shall be deposited before the trial Court within eight weeks hence, which shall do the needful to transfer it to the State Legal Services Authority. If the amount is not deposited, the right of defence to examine its witnesses shall stand foreclosed.

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***254. CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1966 (M.P.) – Rule 14**

Departmental Enquiry – Misconduct – Petitioner, a Class IV employee, posted as Process Server was called upon to do work of Waterman – He refused to do so – Removal from service after Departmental Enquiry was held to be proper as it is a case of insubordination and disregarding the instructions given by the superiors.

Rajkumar Vishwakarma v. State of M.P. & ors.

Order dated 31.07.2015 passed by the High Court of M.P. in W.P. No. 8266 of 2004, reported in ILR (2016) MP 115 (DB)

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255. CONTRACT ACT, 1872 – Section 56

Frustration of contract – Section 56 of the Act, applicability of – Explained.

Delhi Development Authority v. Kenneth Builders & Developers Ltd. and others

Judgment dated 29.06.2016 passed by the Supreme Court in Civil Appeal No. 5370 of 2016, reported in 2016 AIR SCW 3026

Relevant extracts from the Judgment:

The principal question that arises for our decision is whether the development agreement between the DDA and the developer Kenneth Builders was frustrated within the meaning of Section 56 of the Indian Contract Act, 1872 due to some intervening circumstances not contemplated by either party. Our answer to the question is in the affirmative.

Be that as it may, it appears to us that Kenneth Builders did take all necessary steps to commence the construction activity on the project land but due to the impasse created by the governmental agencies, it could not proceed in the development activity. We agree with learned counsel for Kenneth Builders that under these circumstances, the provisions of Section 56 of the Indian Contract Act, 1872 (the Contract Act) would be attracted to the facts of the case. Section 56 of the Contract Act reads as follows:

> "***56. Agreement to do impossible act*** - An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful - A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.
>
> ***Compensation for loss through non-performance of act known to be impossible or unlawful*** - Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."

The interpretation of Section 56 of the Contract Act came up for consideration in ***Satyabrata Ghose v. Mugneeram Bangur & Co., (1954) SCR 310*** It was held by this Court that the word "impossible" used in Section 56 of the Contract Act has not been used in the sense of physical or literal impossibility. It ought to be interpreted as impracticable and useless from the point of view of the object and purpose that the parties had in view when they entered into the contract. This impracticability or uselessness could arise due to some intervening or supervening circumstance which the parties had not contemplated. However, if the intervening circumstance was contemplated by the parties, then the contract would stand despite the occurrence of such circumstance. In such an event, "there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens." This is what this Court had to say:

"The first paragraph of the section lays down the law in the same way as in England. It speaks of something which is impossible inherently or by its very nature, and no one can obviously be directed to perform such an act. The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment. This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promissor finds it impossible to do the act which he promised to do.

Although various theories have been propounded by the Judges and jurists in England regarding the juridical basis of the doctrine of frustration, yet the essential idea upon which the doctrine is based is that of impossibility of performance of the contract; in fact impossibility and frustration are often used as interchangeable expressions. The changed circumstances, it is said, make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility. The parties shall be excused, as Lord Loreburn says [***Tamplin Steam Ship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd., (1916) 2 AC 397, 403***]

> "If substantially the whole contract becomes impossible of performance or in other words impracticable by some cause for which neither was responsible."
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> xxx xxx xxx
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> It must be pointed out here that if the parties do contemplate the possibility of an intervening circumstance which might affect the performance of the contract, but expressly stipulate that the contract would stand despite such circumstance, there can be no case of frustration because the basis of the contract being to demand performance despite the happening of a particular event, it cannot disappear when that event happens. As Lord Atkinson said in ***Matthey v. Curling, (1922) 2 AC 180 at 234***

"a person who expressly contracts absolutely to do a thing not naturally impossible is not excused for non-performance because of being prevented by the act of God or the King's enemies ... or vis major".

This being the legal position, a contention in the extreme form that the doctrine of frustration as recognised in English law does not come at all within the purview of Section 56 of the Indian Contract Act cannot be accepted."

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***256. CONTRACT ACT, 1872 – Section 70**

CIVIL PROCEDURE CODE, 1908 – Sections 96 and 100

(i) Contract – Variation, novation and rectification, permissibility of – Law explained.

Payment for extra work done due to change in nature of work, claim of.

Facts of the case:

Clause contained in agreement provided that applicant/contractor would not be authorized to do any extra work or make any alteration without previous consent in writing of the respondent company – There was no revised agreement between the parties as to extra work – Admittedly, extra work got done by appellant/contractor due to change in nature of work and accepted by promisee employer (respondent/Company) – Appellant/Contractor was to carry work of construction of compound wall alongwith boundary line of respondent/Company's building – Appellant/Contractor carried out required extra work of dewatering, removing loose soil due to unexpected seepage of water from nearby river and falling of embankment in the trench and to dig earth until hard soil bed is reached – He had to stop work due to non-providing of new design for changed nature of work – Trial Court partially allowed suit holding that appellant/Contractor had to do extra work incurring additional expenditure – Reversing the decree of Trial Court, High Court held that appellant/Contractor cannot make a claim for higher payment on the premise that he had executed some extra work over and above stipulated quantity of work and that written contract governs terms between party and any variation ought to be as per the terms of the contract – Held, both the parties were unaware of soil strength at the time of entrustment of work – Defendant neither denied unexpected seepage of water, caving in of soil, widening and deepening of the trench and requirement of extra work nor execution of extra work by appellant Contractor – Architect

engaged by respondent Company stated that he visited work site for preparing design for masonry wall indicating that he was engaged to prepare design suitable to soil strength only because of change in nature of the work – It was admitted that appellant Contractor was orally asked to stop the work due to delay in obtaining designs – Further held, since evidence abundantly show changed nature of work involved and extra work to be done was also admitted, parties cannot be expected to go for a revised agreement particularly where the said work was required to be completed within specific time frame – Parties cannot be expected to go for a second round of negotiation and reframe terms and conditions of work – Holding that High Court erred in reversing decree, decree of Trial Court restored with modifications in rate of interest awarded by the Trial Court.

(ii) Interference with findings of Trial Court in appeal, permissibility of – Unless finding recorded by Trial Court is erroneous or evidence on record is ignored by the Trial Court, appellate Court cannot interfere with the findings of the Trial Court.

Venkatesh Construction Company v. Karnataka Vidyuth Karkhane Limited (KAVIKA)

Judgment dated 20.01.2016 passed by the Supreme Court in Civil Appeal No. 461 of 2016, reported in (2016) 4 SCC 119 (3 Judge Bench)

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257. CRIMINAL PROCEDURE CODE, 1973 – Sections 41, 41A, 41B and 41C
INDIAN PENAL CODE, 1860 – Sections 34 and 420
INFORMATION TECHNOLOGY ACT, 2000 – Section 66D

(i) Arrest, legality of – Arrest made in contravention of procedure prescribed under sections 41(A) to 41(C) CrPC and in violation of norms fixed by the Apex Court is illegal.

In the case at hand, arrest of a lady doctor and a lawyer in contravention of procedure prescribed under sections 41(A) to 41(C) CrPC and in violation of norms fixed by the Apex Court in *D.K. Basu v. State of W.B., (1997) 1 SCC 416, Joginder Kumar v. State of U.P., (1994) 4 SCC 260, Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, State of M.P. v. Shyam Sunder Trivedi, (1995) 4 SCC 262* and *Arnesh Kumar v. State of Bihar & another, (2014) 8 SCC 273* in a criminal case relating to an offence under section 420 IPC wherein no ingredient of the said offence was remotely attracted and there appeared a maladroit effort to give criminal colour to purely a dispute of a civil nature, such arrest was termed as illegal – Quashing the proceedings, the Apex Court directed the State to pay a sum of Rs.5 lakh each as compensation to the petitioners.

(ii) Cognizance of offence, when can be taken? In a case, wherein a criminal colour is given to a dispute which is purely of a civil nature and in which no ingredient of the alleged offence is attracted, no cognizance can be taken.

Rini Johar (Dr.) and another v. State of M.P. and others

Judgment dated 03.06.2016 passed by the Supreme Court in Writ Petition (Criminal) No. 30 of 2015, reported in 2016 (2) JLJ 320 (SC)

Relevant extracts from the Judgment:

We have referred to the enquiry report and the legal position prevalent in the field. On a studied scrutiny of the report, it is quite vivid that the arrest of the petitioners was not made by following the procedure of arrest. Section 41-A Cr.P.C. as has been interpreted by this Court has not been followed. The report clearly shows there have been number of violations in the arrest, and seizure. Circumstances in no case justify the manner in which the petitioners were treated.

In such a situation, we are inclined to think that the dignity of the petitioners, a doctor and a practicing Advocate has been seriously jeopardized. Dignity, as has been held in ***Charu Khurana v. Union of India, (2015) 1 SCC 192*** is the quintessential quality of a personality, for it is a highly cherished value. It is also clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity. When the individual liberty is curtailed in an unlawful manner, the victim is likely to feel more anguished, agonized, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instill faith of the collective in the system. It does not require wisdom of a seer to visualize that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the sanguinity of liberty. The investigating agency, as it seems, has put its sense of accountability to law on the ventilator. The two ladies have been arrested without following the procedure and put in the compartment of a train without being produced before the local Magistrate from Pune to Bhopal. One need not be Argus – eyed to perceive the same. Its visibility is as clear as the cloudless noon day. It would not be erroneous to say that the enthusiastic investigating agency had totally forgotten the golden words of Benjamin Disraeli:

> "I repeat .... that all power is a trust – that we are accountable for its exercise – that, from the people and for the people, all springs and all must exist."

We are compelled to say so as liberty which is basically the splendor of beauty of life and bliss of growth, cannot be allowed to be frozen in such a contrived winter. That would tantamount to comatosing of liberty which is the strongest pillar of democracy.

Having held thus, we shall proceed to the facet of grant of compensation. The officers of the State had played with the liberty of the petitioners and, in a way, experimented with it. Law does not countenance such kind of experiments as that causes trauma and pain. In ***Mehmood Nayyar Azam v. State of Chhattisgarh, (2012) 8 SCC 1*** while dealing with the harassment in custody, deliberating on the concept of harassment, the Court stated thus:-

> "22. At this juncture, it becomes absolutely necessary to appreciate what is meant by the term "harassment".
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> In P. Ramanatha Aiyar's Law Lexicon, 2nd Edn., the term "harass" has been defined thus:
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> "***Harass.***—'Injure' and 'injury' are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word 'harass', excluding the latter from being comprehended within the word 'injure' or 'injury'. The synonyms of 'harass' are: to weary, tire, perplex, distress tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit." The term "harassment" in its connotative expanse includes torment and vexation. The term "torture" also engulfs the concept of torment. The word "torture" in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment."

In the said case, emphasizing on dignity, it has been observed:-

> ".....The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon
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> "the laws of a nation form the most instructive portion of its history". The Constitution as the organic law of the land has unfolded itself in a manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector...."

In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in the case of ***D.K. Basu v. State of W.B., (1997) 1 SCC 416,*** there are also flagrant violation of

mandate of law enshrined under Section 41 and Section 41-A of CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in ***Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, Sube Singh v. State of Haryana, (2006) 3 SCC 178*** and ***Hardeep Singh v. State of M.P., (2012) 1 SCC 748,*** comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs.5,00,000/- (rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised.

The controversy does not end here. The learned Amicus Curiae would urge that it was a case for discharge but the trial court failed to appreciate the factual matrix in proper perspective. As the matter remained pending in this court for some time, and we had dealt with other aspects, we thought it apt to hear the learned counsel for the aspect of continuance of the criminal prosecution. We have narrated the facts at the beginning. The learned Magistrate by order dated 19.02.2015 has found existence of prima facie case for the offences punishable under Section 420 IPC and Section 66-A(b) of I.T. Act, 2000 read with Section 34 IPC. It is submitted by learned Amicus Curiae that Section 66-A of the I.T. Act, 2000 is not applicable. The submission need not detain us any further, for Section 66-A of the I.T. Act, 2000 has been struck down in its entirety being violative of Article 19(1)(a) and not saved under Article 19(2) in ***Shreya Singhal v. Union of India, (2015) 5 SCC 1***. The only offence, therefore, that remains is Section 420 IPC. The learned Magistrate has recorded a finding that there has been no impersonation. However, he has opined that there are some materials to show that the petitioners had intention to cheat. On a perusal of the FIR, it is clear to us that the dispute is purely of a civil nature, but a maladroit effort has been made to give it a criminal colour. In ***Devendra v. State of U.P., (2009) 7 SCC 495*** it has been held thus:-

> ".. it is now well settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing".

In the present case, it can be stated with certitude that no ingredient of Section 420 IPC is remotely attracted. Even if it is a wrong, the complainant has

to take recourse to civil action. The case in hand does not fall in the categories where cognizance of the offence can be taken by the court and the accused can be asked to face trial. In our considered opinion, the entire case projects a civil dispute and nothing else. Therefore, invoking the principle laid down in ***State of Haryana and ors. v. Ch. Bhajan Lal and ors., AIR 1992 SC 604*** we quash the proceedings initiated at the instance of the 8th respondent and set aside the order negativing the prayer for discharge of the accused persons. The prosecution initiated against the petitioners stands quashed.

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***258. CRIMINAL PROCEDURE CODE, 1973 – Section 125**

***Ad interim* maintenance – *Prima facie* evidence of relationship of husband and wife was in question – Held, ration card and education certificate will prevail over voter ID card as *prima facie* evidence for constitution of *ad interim* maintenance.**

Shyama (Smt.) v. Laxmi Narayan

Order dated 23.01.2014 passed by the High Court of M.P. in Criminal Revision No. 702 of 2012, reported in ILR (2016) MP 562

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***259. CRIMINAL PROCEDURE CODE, 1973 – Sections 154, 156, 174 and 177**

INDIAN PENAL CODE, 1860 – Section 304-B and 498-A

(i) Information received in enquiry under section 174 which was limited to the extent of natural or unnatural death – Cannot be categorized as information disclosing cognizable offence and does not amount to FIR under section 154 Cr.P.C.

(ii) Territorial jurisdiction – Suicide committed by deceased wife at Ambala – Case closed by Ambala police after fulfilling the requirement of section 174 holding that there was no foul play in the incident – There was no evidence of it being a continuing offence – Hence, alleged offence cannot be said to have been committed wholly or partly within local jurisdiction of Magistrate's Court at Durg – Court has no jurisdiction to try the case

Manoj Kumar Sharma and ors. v. State of Chhattisgarh and anr.

Judgment dated 23.08.2016 passed by the Supreme Court in Criminal Appeal No. 775 of 2013, reported in AIR 2016 SC 3930

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***260. CRIMINAL PROCEDURE CODE, 1973 – Section 157**

The expression "forthwith" mentioned therein does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate – Where delay in forwarding of information about the crime to the Magistrate has not caused any prejudice to the accused, it has no effect – *Pala Singh v. State of Punjab, (1972) 2 SCC 640* and *Bhajan Singh @Harbhajan Singh & ors. v. State of Haryana, (2011) 7 SCC 421*.

Narendra Singh & ors. v. State of Madhya Pradesh
Judgment dated 29.09.2015 passed by the Supreme Court in Criminal Appeal No. 2110 of 2009, reported in 2015 (IV) MPJR (SC) 241

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261. CRIMINAL PROCEDURE CODE, 1973 – Sections 161, 173 (2), 173 (8), 190 and 482
INDIAN PENAL CODE, 1860 – Section 147, 148, 307 r/w/s 149, 323 and 325

(i) Order of Magistrate which has attained finality – Review, permissibility of – Magistrate cannot review its own order when it has attained finality.

Facts of the case:

Magistrate took cognizance against the accused persons of the offences under sections 147, 148, 323, 325, 307 and 302 r/w/s 149 of IPC – In revision, order of the Magistrate, whereby he took cognizance, was upheld – Order of the Revisionary Court was challenged before the High Court under section 482 CrPC and the same was withdrawn later with liberty that objections may be raised by the accused persons at proper stage – Accused persons filed a fresh application to re-agitate the order of the Magistrate before his Court – Held, liberty given by the High Court was misunderstood and accused persons may raise objections at time of defence evidence before trial court – Since order passed by Magistrate had attained finality, he cannot review his own order – Further held, filing of such applications before the Trial Court amounts to contempt of order of the High Court.

(ii) Chargesheet, connotation of – Though there is no specific definition of the word 'chargesheet', but final report filed u/s 173 (2) CrPC against accused is known as chargesheet.

(iii) Non-filing of chargesheet within a particular period, effect of – If investigation cannot be completed within a particular period after arrest of accused and no police report is filed, then arrested accused is entitled to get bail – However, after completing the investigation, the chargesheet, must be filed – Provisions of section 173 (8) of the Code confers residuary power on the I.O. that after filing of chargesheet, if extra material is found, then additional report (i.e. supplementary chargesheet) u/s 173 (8) of the Code can be filed.

(iv) Right of re-investigation after filing of chargesheet, availability of – Neither the I.O. can reserve any right of re-investigation on his own nor the Magistrate is competent to give such permission.

Hargovind Bhargava and another v. State of M.P. and another

Order dated 12.04.2016 passed by the High Court of M.P. in Misc. Criminal Case No. 9024 of 2015, reported in 2016 (2) JLJ 245

Relevant extracts from the Order:

In the present matter, many questions of law are involved in the case. It is apparent from the order dated 01.11.2013 that cognizance was taken by the Court of JMFC, Dabra against the applicants. The revision No.55/2014 was filed against that order which was dismissed vide order dated 25.02.2014 and a petition under Section 482 of Cr.P.C. which was registered as M.Cr.C.No.2089/2014 was also dismissed on 12. 09.2014 being withdrawn with the liberty that such objections can be raised by the applicants at the proper stage and hence by the order dated 12.09.2014, the order dated 01.11.2013 has attained finality and it could not be challenged further before the committal Court by filing the application. The learned counsel of the applicants has submitted that fresh applications were moved before the Magisterial Court on 22.09.2014 and 27.09.2014 on the various grounds because liberty was granted by the Single Bench of this Court while passing the order dated 12.09.2014.

It appears that the liberty as granted in the order dated 12.09.2014 was misunderstood. When the petition under Section 482 of Cr.P.C. was dismissed being withdrawn which was filed against the order dated 01.11.2013 then entire controversy relating to the order dated 01.11.2013 came to an end. No Court can give liberty to agitate the points afresh before the lowest Court all over again which are already settled by the Court. Also the power under Section 482 of Cr.P.C. vested in the High Court cannot be delegated by the grant of liberty. The applicants were not entitled to raise the objections against the order dated 01.11.2013 by filing fresh applications because that order was challenged in a revision petition which was dismissed. That order of revisionary court was again challenged in a petition under Section 482 of Cr.P.C. and that petition was withdrawn which indicates that petition was to be dismissed after hearing the parties and no flaw was found in the order dated 01.11.2013, therefore, it was withdrawn, hence the liberty cannot be granted to re-agitate all the points against the order dated 01.11.2013 passed by the Magisterial Court before the same lowest Court. It should be clear in the mind of litigants as well as judges and magistrates that liberty can be granted within the permissible limit of provisions of various laws that are in force for the time being. Liberty cannot be given to agitate the same points before the trial Court which are already considered and decided by the superior Court.

The liberty which was granted vide order dated 12.09.2014 was only granted to the effect that the applicants would be free to prove their alibi before the trial Court at the time of defence evidence and therefore, it was clearly mentioned that the applicants may raise all the objections at appropriate stage before the trial Court and the Magisterial Court was not the trial Court, therefore, no such liberty was granted so that the applicants could file a fresh application to re-

agitate the objections against the order dated 01.11.2013 which has already attained the finality. Under these circumstances, the applications filed by the applicants against the order dated 01.11.2013 were not maintainable in the light of order dated 12.09.2014 passed by this Court and the order dated 01-11-2013 has attained finality, the application filed by the applicants were filed without jurisdiction and those could not be entertained and therefore, if both the Courts below have dismissed the applications against the order dated 01.11.2013 then the present matter of the applicants should be dismissed without hearing it on merits. Filing of those applications before the trial Court amounts to contempt of the order dated 12.09.2014 which cannot be permitted to be done by any Court and therefore, the petition filed by the applicants is liable to be dismissed without hearing.

It is pertinent to note that no power under Section 482 of Cr.P.C. is available to the Courts below. In this connection para 15 of the judgment passed by the Apex Court in case of ***Mithabhai Pashabhai Patel v. State of Gujarat, (2009) 6 SCC 332*** may be perused which is as under:

> "The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482of the Code of Criminal Procedure or otherwise."

It is also be made clear that power under Section 482 of Cr.P.C. cannot be delegated by the High Court to its subordinate Court. Hence, the Magistrate while considering the applications dated 22.09.2014 and 27.09-2014 could not review its own order dated 01.11.2013 when the order dated 01.11.2013 has already attained finality. Both such applications were not maintainable and the Courts below would have dismissed the same being not maintainable.

In this connection, the provisions of Sections 167 of Cr.P.C. may be referred which are crystal clear and which relate to limitation that if investigation is not completed within a particular period after arrest of the accused and no police report is filed according to the provisions of Section 173(1) and 173(2) of Cr.P.C. then the arrested accused shall get bail due to that non filing of charge-sheet. Though there is no specific definition of word "charge-sheet" but the final police report filed under Section 173 (2) of Cr.P.C., against the accused is known as a charge-sheet. The provisions of Section 173(2) of Cr.P.C. clearly indicates that after completing the investigation, the charge-sheet should be filed and the provisions of Section 173(8) of Cr.P.C. gives residuary power to the investigating officer that after filing of the charge-sheet if any extra material is found in the case then the additional report under Section 173(8) of Cr.P.C. can be filed which is generally known as "supplementary charge-sheet".

Investigation would be complete if the investigation officer would be in a position to opine that crime was found committed and hence charge sheet is filed with the final conclusion of the investigation officer. A clear distinction needs

to be drawn amongst power under Section 173(8) of Cr.P.C. for further investigation, which would not result in subsequent reinvestigation. An investigation officer cannot be allowed to reinvestigate his own conclusions. As held by the Apex Court in cases of ***Mithabhai Pashabhai Patel*** (supra), ***Vinay Tyagi v. Irshad Ali alias Deepak and others, (2013) 5 SCC 762, Ramchandran v. R. Udhayakumar, (2008) 5 SCC 413 and K. Chandrasekhar v. State of Kerala and others, (1998) 5 SCC 223*** that under the power of Section 173(8) of Cr.P.C. only further investigation can be done by the investigation officer though the investigation agency is changed, but re-investigation or "de novo" investigation cannot be done. Hence when chargesheet is filed, the investigation officer has no right to reserve the investigation for few accused under Section 173(8) of Cr.P.C. because he is not permitted under that provision to reopen the case or reinvestigate the matter.

The learned counsel for the State has submitted that in the present case such right of reinvestigation was reserved with the permission of the Magistrate at the time of filing of the chargesheet. Such contention cannot be accepted. The investigation officer cannot reserve any right of reinvestigation either on his own or the magistrate is competent to give such permission. In case of ***Ramchandran*** (supra) it is held by the Apex Court that police has a right of further investigation under Section 173(8) of Cr.P.C., but does not have any right of fresh investigation or reinvestigation. In case of ***Vinay Tyagi*** (supra), ***Mithabhai*** (supra) and ***Ramchandran*** (supra) it is made clear by the Supreme Court that permission to reinvestigate the matter falls under the domain of superior courts and that too in exceptional cases. Such superior courts can exercise their power under Article 32 or 226 of Constitution of India to change the investigation agency and there also reinvestigation is not considered lawful and the superior court would not ordinarily issue such a direction. Hence, the Magistrate neither can accept a part charge-sheet after a partial investigation nor can permit any police officer to reinvestigate the matter for few accused persons. Hence, at the time of filing of the chargesheet investigation should be complete of the entire case. Neither any investigation officer can reserve any part investigation (reinvestigation) for any accused at the time of filing of the charge-sheet under Section 173(8) of Cr.P.C. nor the Magistrate can give such permission by accepting the part charge-sheet, when investigation of the case is incomplete.

As discussed above the provisions of Section 173(8) of Cr.P.C. does not give any right to the investigating officer to keep the investigation pending against few accused persons. It is for him to complete the investigation of the case within a period prescribed under S.167 of Cr.P.C. and if he wants to ensure as to whether any offence is made out against any person or not then such conclusion should be obtained prior to filing of charge-sheet against any of the accused persons. After due investigation, it is a right of the police to declare some of the accused persons as absconding or at the time of filing of charge-sheet he may file the report under Section 169 of Cr.P.C. against some of the accused persons with the opinion that no offence is made out against them but

the police has no right to reserve the investigation against few accused persons under the residuary provisions of Section 173(8) of Cr.P.C. either to give advantage to a particular accused person or otherwise. If such procedure is not followed then the Magistrate can refuse to take cognizance of the case because the investigation is incomplete and arrested person can be released on bail under Section 167(2) of Cr.P.C.

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***262. CRIMINAL PROCEDURE CODE, 1973 – Section 167 (2)**

Application for compulsive bail was filed one day prior to completion of 60th day – Application not decided on the same day but three days thereafter the application was rejected as premature by considering situation as it stood on the date of application – Held, once the application filed by the petitioner remained undecided till 63rd day, right has already accrued in favour of the accused to seek compulsive bail u/s 167 (2) of Cr.P.C. immediately after expiry of 60 days – The trial Court erred in rejecting the application as premature – Right of bail having accrued on 60th day, cannot be denied.

Note: Readers are requested to kindly go through the judgment of the Supreme Court in the case of *Uday Mohan Acharya v. State of Maharashtra, (2001) 5 SCC 453*.

Rajiv Katiyar v. Central Bureau of Investigation, Bhilai Branch, District Durg, Chhattisgarh

Order dated 13.01.2016 passed by the High Court of Chhattisgarh in Criminal Revision No. 1053 of 2015, reported in 2016 CriLJ 2328

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263. CRIMINAL PROCEDURE CODE, 1973 – Sections 193 and 397

(i) Magistrate dismissed application and refused to take cognizance of offence u/s 304-B and 498-A IPC and took cognizance of offence only u/s 306 IPC – No revision petition/appeal was preferred against order refusing to take cognizance by the Magistrate u/s 304 and 498-A IPC – Thus, the order attained finality – The Sessions Court on another application by complainant, took cognizance of offence under sections 304-B and 498-A IPC – The course adopted by the Sessions Court is not permissible.

(ii) Order of Magistrate refusing to take cognizance is revisable by Sessions Court – The Sessions Court could have taken cognizance in exercise of revisional jurisdiction.

Balveer Singh and another v. State of Rajasthan and another

Judgment dated 10.05.2016 passed by the Supreme Court in Criminal Appeal No. 253 of 2016, reported in 2016 AIR SCW 2266

Relevant extracts from the Judgment:

Facts of the case:

The appellants in this appeal are the parents of one Abhimanyu Singh who was married to Renu on 24.02.2014. Renu was found dead on 27.11.2014 i.e. within ten months of the wedding. Cause of death was Asphyxia due to hanging. An FIR was lodged by respondent No. 2 herein (Father of deceased) alleging that Renu was done to death by her husband Abhimanyu Singh as well as his parents (appellants herein) for not satiating the dowry demands of the accused persons. FIR has been registered under Sections 304-B and 498-A of the Indian Penal Code. The appellants claimed that it was a case of suicide by hanging committed by Renu. Matter was investigated which resulted into the filing of chargesheet against Abhimanyu only, that too for committing the offence under Section 306 IPC, namely, abetting the suicide committed by Renu. As per the Police investigation there was no dowry demands and no offence under Sections 498-A and 304-B of IPC was made out. Instead it was a case of suicide and at the most Abhimanyu could be charged of abetting the suicide committed by Renu. For that reason, no challan was filed against the appellants herein. On the filing of the aforesaid chargesheet by the Police on 24.02.2015, respondent No. 2 filed an application before the learned Judicial Magistrate, First Class, (JMFC) for taking cognizance against the appellants and Abhimanyu under Sections 304-B and 498-A IPC. This application was dismissed by the learned Magistrate vide order dated 11.03.2015. Thereupon, the learned Magistrate committed the case before the Sessions Court as the offence under Section 306 IPC is triable by the Sessions Court. Before the Sessions Court, respondent No. 2 preferred similar application once again. Here, respondent No. 2 succeeded in his attempt inasmuch as vide order dated 08.10.2015, the learned Sessions Court took cognizance for offences punishable under Sections 304-B and 498-A IPC and, in the alternative, Section 306 IPC, against the appellants and their son. He, thus, directed issuance of bailable warrant against the appellants.

Aggrieved by the said order, appellants along with their son Abhimanyu approached the High Court. High Court vide its order dated 04.11.2015 remanded the matter back to the Sessions Court with a direction to hear the parties and pass further orders in the light of judgment of this Court in ***Dharam Pal & ors. v. State of Haryana and anr., AIR 2013 SC 3018***. The Sessions Court accorded fresh hearing and thereafter passed order dated 08.12.2015 thereby allowing the application once again to the extent of taking cognizance under Sections 304-B and 498-A IPC and, in the alternative, Section 306 IPC against the appellants as well as their son. The appellants challenged this order by filing revision petition before the High Court which has been dismissed by the High Court on 18.12.2015. This order is impugned in the present proceedings.

We may record at the outset that the sole ground on which the order was challenged before the High Court, as well as before us, is that when the Magistrate had dismissed the application of the complainant vide order dated 11.03.2015

and refused to take cognizance under Sections 304-B and 498-A IPC and this order had attained finality as no revision petition/criminal miscellaneous appeal was preferred either by the complainant or by the Public Prosecutor, second application with the same relief was not maintainable before the Sessions Court. It was emphatically argued that it amounted to second time cognizance by the Court of Sessions which was impermissible in law. It was argued that under Section 190 of the Code of Criminal Procedure, 1973 (for short, the 'Code'), cognizance of the offence can be taken only once.

Thus, the question that falls for consideration before us is as to whether the Court of Sessions was empowered to take cognizance of offence under Sections 304-B and 498-A of IPC, when similar application to this effect was rejected by the JMFC while committing the case to Sessions Court, taking cognizance of offence only under Section 306 IPC and specifically refusing to take cognizance of offence under Sections 304-B and 498-A IPC.

Held:

Keeping in view the aforesaid legal position, we may now discuss the circumstances under which the cognizance was taken by the Session Judge. Here is a case where the Police report which was submitted to the Magistrate, the IO had not included the appellants as accused persons. The complainant had filed application before the learned Magistrate with prayer to take cognizance against the appellants as well. This application was duly considered and rejected by the learned Magistrate. The situation in this case is, thus, not where the investigation report/chargesheet filed under Section 173(8) of the Code implicated the appellants and appellants contended that they are wrongly implicated. On the contrary, the Police itself had mentioned in its final report that case against the appellants had not been made out. This was objected to by the complainant who wanted the Magistrate to summon these appellants as well and for this purpose the application was filed by the complainant under Section 190 of the Code. The appellants had replied to the said application and after hearing the arguments, the application was rejected by the Magistrate. This shows that order of the Magistrate was passed with due application of mind whereby he refused to take cognizance of the alleged offence against the appellants and confined it only to the son of the appellants. This order was not challenged. Normally, in such a case, it cannot be said that the Magistrate had played 'passive role' while committing the case to the Court of Sessions. He had, thus, taken cognizance after due application of mind and playing an "active role" in the process. The position would have been different if the Magistrate had simply forwarded the application of the complainant to the Court of Sessions while committing the case. In this scenario, we are of the opinion that it would be a case where Magistrate had taken the cognizance of the offence. Notwithstanding the same, the Sessions Court on the similar application made by the complainant before it, took cognizance thereupon. Normally, such a course of action would not be permissible.

The next question is as to whether this Court exercise its powers under Article 136 of the Constitution to interdict such an order. We find that the order of the Magistrate refusing to take cognizance against the appellants is revisable. This power of revision can be exercised by the superior Court, which in this case, will be the Court of Sessions itself, either on the revision petition that can be filed by the aggrieved party or even suo motu by the revisional Court itself. The Court of Sessions was, thus, not powerless to pass an order in his revisionary jurisdiction. Things would have been different had he passed the impugned order taking cognizance of the offence against the appellants, without affording any opportunity to them, since with the order that was passed by the learned Magistrate a valuable right had accrued in favour of these appellants. However, in the instant case, we find that a proper opportunity was given to the appellants herein who had filed reply to the application of the complainant and the Sessions Court had also heard their arguments. For this reason, we are not inclined to interfere with the impugned order and dismiss this appeal.

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264. CRIMINAL PROCEDURE CODE, 1973 – Section 197

Illegal detention – Offence allegedly committed by Police Officer – Sanction for prosecution, necessity of – Under section 197 of the Code and/or sanction mandated under a special statute (as postulated under section 19 of the Prevention of Corruption Act) would be a necessary pre-requisite, before a Court of competent jurisdiction for taking cognizance of an offence (whether under the IPC or under the concerned special statutory enactment) – The procedure for obtaining sanction would be governed by the provision of the Code and/or as mandated under the special enactment – Further held, where cognizance is taken under section 319 of the Code, sanction either under section 197 of the Code or under the concerned special enactment, is a mandatory pre-requisite.

Surinderjit Singh Mand & anr. v. State of Punjab & anr.

Judgment dated 05.07.2016 passed by the Supreme Court in Criminal Appeal No. 565 of 2016, reported in 2016 (3) Crimes 126 (SC)

Relevant extracts from the Judgment:

The law declared by this Court emerging from the judgments referred to hereinabove, leaves no room for any doubt, that under Section 197 of the 'Code' and/or sanction mandated under a special statute (as postulated under Section 19 of the Prevention of Corruption Act) would be a necessary pre-requisite, before a Court of competent jurisdiction, takes cognizance of an offence (whether under the Indian Penal Code, or under the concerned special statutory enactment). The procedure for obtaining sanction would be governed by the provisions of the 'Code' and/or as mandated under the special enactment. The words engaged in Section 197 of the 'Code' are, "...no court shall take cognizance of such offence except with previous sanction...". Likewise sub-section (1) of

Section 19 of the Prevention of Corruption Act provides, "No Court shall take cognizance.. except with the previous sanction...". The mandate is clear and unambiguous, that a Court "shall not" take cognizance without sanction. The same needs no further elaboration. Therefore, a Court just cannot take cognizance, without sanction by the appropriate authority. Thus viewed, we find no merit in the second contention advanced at the hands of learned counsel for the respondents, that where cognizance is taken under Section 319 of the 'Code', sanction either under Section 197of the 'Code' (or under the concerned special enactment) is not a mandatory pre-requisite.

According to learned counsel representing respondent no. 2, the position concluded above, would give the impression, that the determination rendered by a Court under Section 319 of the 'Code', is subservient to the decision of the competent authority under Section 197. No, not at all. The grant of sanction under Section 197, can be assailed by the accused by taking recourse to judicial review. Likewise, the order declining sanction, can similarly be assailed by the complainant or the prosecution.

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***265. CRIMINAL PROCEDURE CODE, 1973 – Section 197**

Stage of framing of charge – Sanction for prosecution, necessity of –

Prosecution case of fake encounter or death caused by torture – Defence of the accused is that the deceased was involved in terrorist activities and the incident had taken place in discharge of his official duty – Held, in case, version of the prosecution is found to be correct, there is no requirement of sanction – However, it would be open to the accused to adduce the evidence in defence and to submit such materials on record indicating that the incident has taken place in discharge of their official duties – Further held, the Trial Court has *prima facie* to proceed on the basis of prosecution version and can re-decide the question afresh from the evidence adduced by the prosecution or by the accused or in any other manner, it comes to the notice of the Court that there was a reasonable nexus of the incident with the discharge of official duty, the Court shall re-examine the question of sanction.

Devinder Singh and others v. State of Punjab through CBI

Judgment dated 25.04.2016 passed by the Supreme Court in Criminal Appeal No. 190 of 2003, reported in 2016 CriLJ 2658 (SC)

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***266. CRIMINAL PROCEDURE CODE, 1973 – Section 197**

INDIAN PENAL CODE, 1860 – Section 409

(i) Offence of criminal breach of trust under section 409 IPC – Sanction for prosecution of public servant, necessity of – Sanction is necessary if the offence has been committed by

the public servant either in his official capacity or under colour of the office held by him – Since breach of trust is not connected with official duty, therefore, sanction is not necessary.

(ii) The term 'removable from office', connotation of – The words 'removable from office' occurring in section 197 CrPC signify removal from the office he is holding – The authority mentioned in the section is the authority under which the Officer is serving and competent to terminate his services – Further held, if the accused is under the service and pay of the local authority, the appointment to an office for exercising function under a particular statute will not alter his status as an employee of the local authority.

Punjab State Warehousing Corp. v. Bhushan Chander and another

Judgment dated 29.06.2016 passed by the Supreme Court in Criminal Appeal No. 159 of 2016, reported in 2016 AIR SCW 3014

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***267. CRIMINAL PROCEDURE CODE, 1973 – Sections 204 and 438**

Whether the investigating agency has authority to issue a prior notice for appearance to prosecute accused person while filing a charge-sheet before the Trial Court? Held, No – Further held, if such a notice is issued to an accused person and he does not appear before the Trial Court on the date when the chargesheet is filed, the Trial Court cannot issue a non-bailable warrant for securing his presence unless it goes through the procedure for issuing process under section 204 CrPC.

In those exceptional circumstances/cases in which it appears to a Trial Court that a person so required shall not respond to such summons, the Trial Court may also issue warrants bailable or non-bailable in addition to such summons under section 204 CrPC after recording reasons therefor.

Rajendra Kori v. State of Madhya Pradesh

Judgment dated 20.10.2016 passed by the High Court of M.P. in Miscellaneous Criminal Case No. 17501 of 2016 [Unreported case]

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268. CRIMINAL PROCEDURE CODE, 1973 – Section 256

Non-appearance of complainant – Powers are discretionary to be exercised judiciously, fairly and for advancement of criminal justice and not for its impairment – Circumstances for exercise of power explained.

Rajendra Kumar Jain v. Shriram Agrawal

Order dated 16.09.2015 passed by the High Court of M.P. in M.Cr.C. No. 12470 of 2009, reported in ILR (2016) MP 296

Relevant extracts from the Order:

Upon the plain reading of the language of the Section, it is manifest that the power under Section 256 of the Code is discretionary in nature. Therefore, it cannot be stated as a rule of thumb that in each and every case where a complainant is absent, the complaint is necessarily dismissed and accused be acquitted mechanically. Hence, the requirement of this Section is that the Magistrate ought to exercise his discretion judiciously and fairly for the advancement of cause of administration of criminal justice and not for impairing it. Now, the question arises as to how the Magistrate should exercise his discretion. No doubt, this discretion depends upon the facts and circumstances of a given case and in this regard no arithmetical formula can be laid down. In a given case, by and large, if the complainant or his counsel or both appear regularly on the date of hearings and, if they are interested in early disposal of the case, then the case ought not to be dismissed for singular default of appearance on the part of the complainant and his counsel or both. In such a situation the case should be adjourned for further date giving the reason thereof in brief. To ascertain these facts, proceedings of previous date of hearings may come in handy. If in a particular case, the Magistrate decides to dismiss the complaint on account of non-appearance of the complainant and his counsel, then he should, in brief, mention the reasons as to why he has no option but to dismiss the complaint. On the touch stone of the aforesaid criteria, this Court will examine whether the learned Trial Judge was justified in dismissing the applicant's complaint. By perusal of the order-sheet dated 25.03.06, the date of dismissal of the complaint, this Court finds that the learned Trial Judge had dismissed the complaint on account of non-appearance of the complainant and his counsel without taking into account whether the complainant and his counsel were regular in attending the case before and whether they are interested in the prosecution of it. Hence, the order of dismissal of the complaint is bad in law and the applicant has to suffer the miscarriage of justice. It is worth mentioning here that this Court has already held in case of ***Vijay Singh v. Surendra Singh, ILR (2010) MP 2346*** that for single default in appearance either of the complainant or his counsel or both, the Magistrate should not dismiss the complaint on the other hand, he should adjourn the case for further hearing.

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***269. CRIMINAL PROCEDURE CODE, 1973 – Section 311**

Recall of witness on the ground of illness of counsel of accused because of which he was not able to put questions with regard to weapon mentioned in FIR and those referred to in evidence of witnesses – Held, merely because accused persons are in prison and change of counsel by defence and their failure to put certain

questions to witness, is no ground to recall witness – Concept of fair trial cannot be limitlessly stretched.

State of Haryana v. Ram Mehar and others, Etc. Etc.

Judgment dated 24.08.2016 passed by the Supreme Court in Criminal Appeal No. 805 of 2016, reported in AIR 2016 SC 3942

Relevant extracts from the Judgment:

The grounds urged before the trial court fundamentally pertain to illness of the counsel who was engaged on behalf of the defence and his inability to put questions with regard to weapons mentioned in the FIR and the weapons that are referred to in the evidence of the witnesses. That apart, it has been urged that certain suggestions could not be given. The marrow of the grounds relates to the illness of the counsel.

Recalling of witnesses as envisaged under the section 311 on the grounds that accused persons are in custody, the prosecution was allowed to recall some of its witnesses earlier, the counsel was ill and magnanimity commands fairness should be shown, we are inclined to think, are not acceptable in the obtaining factual matrix. Recall of some witnesses by the prosecution at one point of time, can never be ground to entertain a petition by the defence though no acceptable ground is made out. It is not an arithmetical distribution. This kind of reasoning can be dangerous. In the case at hand, the prosecution had examined all the witnesses. The statements of all the accused persons, that is 148 in number, had been recorded under Section 313 CrPC. The defence had examined 15 witnesses. The foundation for recall, as is evincible from the applications filed, does not even remotely make out a case that such recalling is necessary for just decision of the case or to arrive at the truth. The singular ground which prominently comes to surface is that the earlier counsel who was engaged by the defence had not put some questions and failed to put some questions and give certain suggestions. It has come on record that number of lawyers were engaged by the defence. The accused persons had engaged counsel of their choice. In such a situation recalling of witnesses indubitably cannot form the foundation. If it is accepted as a ground, there would be possibility of a retrial. There may be an occasion when such a ground may weigh with the court, but definitely the instant case does not arouse the judicial conscience within the established norms of Section 311 CrPC for exercise of such jurisdiction. The High Court has failed to appreciate that the witnesses have been sought to be recalled for further cross-examination to elicit certain facts for establishing certain discrepancies; and also to be given certain suggestions. This kind of plea in a case of this nature and at this stage could not have been allowed to be entertained.

The exercise of power under Section 311 CrPC can be sought to be invoked either by the prosecution or by the accused persons or by the Court itself. The High Court has been moved by the ground that the accused persons are in the custody and the concept of speedy trial is not nullified and no prejudice is caused, and, therefore, the principle of magnanimity should apply. Suffice it to say, a criminal

trial does not singularly centres around the accused. In it there is involvement of the prosecution, the victim and the victim represents the collective. The cry of the collective may not be uttered in decibels which is physically audible in the court premises, but the Court has to remain sensitive to such silent cries and the agonies, for the society seeks justice. Therefore, a balance has to be struck.

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270. CRIMINAL PROCEDURE CODE, 1973 – Section 362

PREVENTION OF CORRUPTION ACT, 1988 – Section 19

Section 362 of the Code, applicability of – Order of Criminal Court – Review, when may amount to? Section 362 of the Code is attracted only in those cases where the Court has signed its judgment or when it has passed final order disposing of a case – Deferring taking of cognizance for obtaining sanction for prosecution and thereafter, taking of cognizance after considering the submission by investigating agency that no sanction is required, does not amount to review of its own order.

State through CBI/ACB, Hyderabad A.P. v. Dharmana Prasad Rao

Judgment dated 26.04.2016 passed by the Supreme Court in Criminal Appeal No. 398 of 2016, reported in 2016 (3) Crimes 72 (SC)

Relevant extracts from the Judgment:

The High Court has addressed itself the first issue and finding substance in the contention of the respondent allowed the revision and set aside the order of the Trial Court on the ground that it amounted to review.

After hearing the counsel for the parties, we are of the view that the High Court has erred in taking the aforesaid view. Section 362 of the Code is the material provision, which reads as under:

> "362. Court not to alter judgment:- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

The aforesaid provision debars the Court from altering or reviewing the judgment only in those cases when it has signed its judgment or when it has passed final order disposing of a case. In the instant case, as mentioned above, the Trial Court on the earlier occasion had simply deferred taking cognizance under the impression that the sanction under Section 19 of the PC Act is required. There was no final order passed disposing of the case inasmuch as had the sanction been brought, (cognizance would have been taken in any case), the Trial Court is authorised to take cognizance which is not disputed by the learned counsel for the respondent as well. The question whether a sanction is required or not would be a different matter. We may point out here that the Trial Court was not oblivious of the aforesaid aspect while taking cognizance of offences

under the PC Act against the respondent and others. It specifically recorded that it does not amount to reviewing its own decision. Vide order dated 13.09.2012 passed by the Trial Court earlier, it had merely asked the Investigation Officer to file sanction orders against A4 to A8 and deferred the order of cognizance against them. There was no decision much less conclusive decision taken by the Court. The Trial Court rightly pointed out that it was only in the nature of reminding the duty of the Investigation Officer to meet certain requirements for taking cognizance of offence under the PC Act. However, when the Investigation Officer brought to its notice, on the subsequent date, that no such sanction was required, the Trial Court finding it to be correct position in law took cognizance. By this, the Trial Court was not reviewing any order. According to us order dated 13.09.2012 could not be construed as final order, more so, when there was no final determination of the issue regarding requirement of sanction for prosecution against the respondent herein.

The aforesaid view of the High Court is, therefore, clearly erroneous and the impugned order is hereby set aside. Further as the High Court has not gone into the other issue viz. whether there was a necessity of having prior sanction under Section 19 of the PC Act or not, we, thus, remand the case back to the High Court to consider the case afresh.

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271. CRIMINAL TRIAL:

CRIMINAL PROCEDURE CODE, 1973 – Sections 394 and 482

CRIMINAL LAW AMENDMENT ORDINANCE, 1944 – Clauses 3 and 13

(i) Criminal trial – Death of the accused, effect of – A prosecution cannot continue against a dead person – A *fortiori* a criminal court cannot continue proceedings against a dead person and find him guilty – In such a case, the accused does not exist and cannot be convicted.

(ii) Attachment of property of accused found guilty after death, permissibility of – Such conviction being null and void, attachment of property as provided by the Ordinance of 1944, is impermissible.

U. Subhadramma and others v. State of A.P. and another

Judgment dated 04.07.2016 passed by the Supreme Court in Criminal Appeal No. 1596 of 2011, reported in 2016 AIR SCW 3095

Relevant extracts from the Judgment:

As far as the circumstances of this case are concerned, we find that there has been a gross mis-carriage of justice at several steps. In the first place, the finding of the trial court that Ramachandraiah was alone responsible for the offences is completely vitiated as null and void since Ramachandraiah had admittedly died on the date this finding was rendered. It is too well settled that a prosecution cannot continue against a dead person. A fortiori a criminal court

cannot continue proceedings against a dead person and find him guilty. Such proceedings and the findings are contrary to the very foundation of criminal jurisprudence. In such a case the accused does not exist and cannot be convicted. Consequently, the learned District Judge committed a gross error of law in acting upon such a finding and treating Ramachandraiah as guilty of such offences while making the order of attachment and while confirming the said order of attachment of properties.

In such circumstance, the courts below erred in recording the finding that Appellant No.1 had committed the offence as alleged by the prosecution. Further, finding recorded by the learned Single Judge of the High Court that Appellant No.1 alone had committed the offence and nor Appellant No.2, must be taken to have misappropriated the said amount is perverse.

> "A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged ..... In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worthy and the animus of witness (State of ***Punjab v. Jagbir Singh, Baljit Singh and Karan Singh, AIR 1973 SC 2407***)."

The facts involved herein did not warrant presumption of commission of offence by Appellant No.1 and thus the findings recorded by the courts below are not tenable.

In fact, we find that the learned District Judge could not have proceeded with the attachment proceedings at all since the attachment proceedings were initiated by the State against Ramachandraiah under clause 3 of the Criminal Law Amendment Ordinance, 1944, who was actually dead. Clause 3 contemplates that such an application must be made to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, in respect of property which the State Government believes the said person to have procured by means of the offences. It is incomprehensible, therefore, that such an application could have been made in regard to a dead person who obviously cannot be said to be ordinarily resident or carrying on business anywhere. There is no legal provision which enables continuance of prosecution upon death of the accused. We must record that the proceedings and the decisions of the courts below are disturbing, to say the least. In the first place, though the accused had died, the trial court proceeded with the trial and recorded a conviction two years after his death. Then, this null and void conviction was used as a basis for making an attachment of his properties before the Sessions Court. Astonishingly, all applications succeeded, the attachment was made absolute and over and above all, the High Court upheld the attachment.

The orders of the Criminal Court vis-a-vis Ramachandraiah are illegal and liable to be set aside. We also find that the impugned judgment in appeal is unsustainable and is liable to be set aside. The orders of the Courts below are accordingly set aside. The appeal succeeds.

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272. CRIMINAL TRIAL:

EVIDENCE ACT, 1872 – Section 9

INDIAN PENAL CODE, 1860 – Section 392

SERVICE LAW:

(i) Identification of accused in Court and T.I. parade, evidentiary value of.

Facts of the case:

Accused persons committed robbery in bank while the Bank Manager and cashier were working and settling the accounts – Bank officials, immediately after the incident, lodged a complaint before police station concerned stating descriptive particulars of the accused persons namely their age, height, colour complexion etc. – They identified the accused persons before the Court martial and in the test identification parade – The Tribunal disbelieved their evidence on the ground that they could not have seen the faces of the culprits at the time of commission of offence since they covered their faces with masks, helmets with visors – Held, the Tribunal erred in disbelieving the evidence regarding identification as the incident though lasted for a brief period, yet during the incident, the accused persons were talking to each other lifting their visors and since bank officials were working, it may be presumed that there was ample light and they were able to see the accused persons and it is obvious that extraordinary situation in which the incident occurred must have left an indelible impression in their minds about the identity of the culprits.

(ii) Evidence as to finger prints, appreciation of – Negatives of the photographs of fingerprints not produced – Photographer also not examined – Keeping in view other convincing evidence adduced, held, not fatal for prosecution.

(iii) Incriminating circumstances – Non-explanation by accused, effect of – After the commission of robbery, huge amount deposited by accused in his bank account – He didn't explain the source of such huge amount – Held, it is a strong incriminating circumstance in absence of explanation on the part of the accused.

(iv) Disciplinary proceedings – Acquittal in criminal case, effect of – Acquittal by criminal Court would not debar an employer from taking disciplinary action – Further held, acquittal in a criminal

case does not entitle a person to automatic reinstatement – Only if the employee had been honourably acquitted, could he make a claim for reinstatement.

Ajay Kumar Singh v. The Flag Officer Commanding-in-Chief & ors.

Judgment dated 13.07.2016 passed by the Supreme Court in Criminal Appeal No. 325 of 2012, reported in 2016 (3) Crimes 140 (SC)

Relevant extracts from the Judgment:

PW-14 (Manager) and PW-18 (Cashier) have clearly spoken about the occurrence that on the date of incident on 04.06.1998, three persons entered into the bank and threatened PW-14 and PW-18 by showing gun and committed robbery in the bank. Before the Court Martial, PW-14 and PW-18 have identified the three appellants as the culprits who committed robbery in the bank. PW-14 and PW-18 have also spoken about the identification parade held in the prison and that they have identified the appellants in the test identification parade.

The tribunal disbelieved the evidence of PW-14 and PW-18 and their identification of the appellants on the ground that they could not have seen the faces of the culprits at the time of commission of offence, since even according to the prosecution, the appellants were covering their faces with masks and helmets with visors and they lifted the visors only while conversing with the bank personnel and tribunal held that there was no possibility of PW-14 (Manager) and PW-18 (Cashier) seeing the faces of the accused. The tribunal further relied upon the representation made by the appellants to the Metropolitan Magistrate that they had been photographed by the police to enable the eye-witnesses (PWs 14 and 18) to identify them in the test identification parade and on those findings, the tribunal disbelieved the evidence of PW-14 and PW-18 insofar as the identification of the appellants.

The tribunal, in our view, was not right in disbelieving the evidence of PW-14 (Manager) and PW-18 (Cashier) as to the identification of the appellants as the culprits who committed robbery in the bank. The occurrence was at 7.20 p.m. on 04.06.1998. At the time of occurrence, the bank personnel including PW-14 and PW-18 were working and settling the accounts and were about to close the bank. Since the bank personnel were still at work in the bank, it is reasonable to assume that there was enough light to do so inside the bank. The appellants who entered the bank initially asked PW-14 to open the bank account. Before however PW-14 could refuse, the appellants took out a revolver and other weapons. From the evidence of PW-14 and PW-18, it is clear that the incident lasted for a brief period during which the appellants were talking to each other. As per the evidence of PW-14 and PW-18, while the culprits were so conversing lifting their visors, they were able to see the culprits. It is obvious that the extraordinary situation, in which the incidence occurred must have left an indelible impression in the mind of the witnesses about the identity of the culprits. Be it noted that immediately after the incident, PW-14 (Manager) lodged the complaint before Malkapuram Police Station wherein he gave the descriptive

particulars of the three culprits namely their age, height, colour complexion etc. and also given the details of the weapons. As noted earlier, identity of the appellants by PW-14 and PW-18 in the court is also corroborated by identification of the appellants by PW- 14 and PW-18 in the test identification parade. In that view, the tribunal was not right in disbelieving the evidence of PW-14 (Manager) and PW-18 (Cashier). It is also pertinent to note that PW-14 and PW-18 had no reason to falsely implicate the appellants which aspect was not kept in view by the tribunal. To that extent, we differ from the findings of the tribunal and accepting the evidence of PW-14 and PW-18 and maintain the conviction of appellants-AK Singh and UK Singh.

Contention of respondents is that evidence of PW-15-Fingerprint Expert incriminates the appellants AK Singh and UK Singh. However, in proving this incriminating evidence, there seems to be lapses on the part of the prosecution. As noticed earlier, police constable Tirumal Kumar- photographer of MFSL Unit had taken the photographs of the preserved chance fingerprints. To prove the chance fingerprints lifted from the entrance glass doors of the bank, the prosecution should have proved the photographs by examining constable-Trimul Kumar and should have produced the negatives of the photographs of the chance fingerprints. This lapse in the prosecution, in our view, cannot result in acquittal of the appellants. The evidence adduced by the prosecution must be scrutinized independently of such lapses either in the investigation or by the prosecution or otherwise, the result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution. Evidence of PW-14 (Manager) and PW-18 (Cashier) identifying the appellants and their evidence as to identity of the appellants in the test identification parade ought not to have been disbelieved by the tribunal. In exercise of power under Section 30 of the Armed Forces Tribunal Act, this Court normally does not re-appreciate the evidence and slow to interfere with the findings of the tribunal unless there is substantial question of public importance. But when it is found that appreciation of evidence in a given case is vitiated by serious error, this Court can re-appreciate the evidence and interfere with the findings. In our view, the tribunal was not right in disbelieving the evidence of PW-14 (Manager) and PW-18 (Cashier) in identifying the appellants AK Singh, UK Singh and DK Singh as culprits and their identity in test identification parade and their conviction is to be affirmed on the evidence of PW-14 and PW-18, if not on the evidence of fingerprint expert and the appeals are liable to be dismissed.

In so far as appellant-UK Singh, prosecution has adduced evidence to show that after the incident, he has deposited huge amount in his bank account. PW-29-Gopal Priyadarshi, Assistant, Central Bank of India stated that appellant-UK Singh is having account No.8206 in Central Bank of India, Azamgarh Branch, Uttar Pradesh and that he had deposited Rs.81,600/- on 11.06.1998. Ex. P76 is the certificate issued by the Central Bank, Azamgarh dated 07.10.1998 as per which the last balance in the account of UK Singh is Rs.1,32,670/- including an

interest of Rs.570/-. PW-29 deposed that as per Ex.C-11, pay in slip, the denomination of the cash of Rs.81,600/- deposited by the accused was, one bundle of Rs.500/- (Rs.500x100=50,000/-), 316 notes of Rs.100/- (Rs.100x316= 31,600/-) total Rs.81,600/-. Appellant-UK Singh has not explained the source of such huge amount deposited in the bank on 11.06.1998 which is a strong incriminating circumstance against the appellant.

It is fairly well settled that acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. [vide ***Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and Ors., (2005) 7 SCC 764 and T.N.C.S. Corpn. Ltd. and Ors. v. K. Meerabai, (2006) 2 SCC 255***]

Acquittal in a criminal case does not entitle a person to automatic reinstatement. In ***Union of India and Anr. v. Bihari Lal Sidhana, (1997) 4 SCC 385,*** it was held as under:-

> "5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

Only if the employee had been honourably acquitted, could he make a claim for reinstatement.

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***273. DAKAITI AUR VYAPHARAN PRABHAVIT KSHETRA ADHINIYAM, 1981 (M.P.) – Sections 11 and 13**

CRIMINAL PROCEDURE CODE, 1973 – Sections 320 and 482

INDIAN PENAL CODE, 1860 – Section 392

Compounding of non-compoundable offences, permissibility of – Offence under the Special Act of snatching vehicle in dacoity in "Dakaiti aur Vyapharan Prabhavit Kshetra" disturbs the peace and tranquility of the public – Cannot be compounded under the provisions of the Code of 1973. [*Narinder Singh v. State of Punjab, (2014) 6 SCC 466* relied on]

Ashish @ Bittu Sharma v. State of M.P. & ors.

Order dated 07.10.2015 passed by the High Court of M.P. in Misc. Criminal Case No. 9166 of 2013, reported in 2016 (I) MPJR 122

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274. ELECTRICITY ACT, 2003 – Section 151

Cognizance of offence – When a Magistrate takes cognizance on the police report, it would not mean that no further option is available and the private complaint cannot be filed.

M.P. Madhya Kshetra Vidyut Vitran Company Ltd. v. Ramswaroop Kushwah & anr.

Order dated 08.01.2015 passed by the High Court in M.Cr.C. No. 1603 of 2009, reported in ILR (2016) MP 913

Relevant extracts from the Order:

From the bare perusal of Section 135(1)(1-A) of the Act 2003, it is clear that requirement to lodge police report of an offence of theft of electricity only when disconnection of supply of electricity is made only after detection of theft but petitioner/complainant does not debar to file a private complaint in the Court.

At this stage, it is pertinent to mention here that the Court below did not consider the mandatory provision of Section 151 of the Act 2003 which clearly provides that cognizance of an offence punishable under this Act 2003 shall be taken upon a complaint in writing made by Appropriate Government or the Appropriate Commission or any of their officer authorised by them in this regard or Chief Electrical Inspector or Electrical Inspector or an authorised officer of licensee or the generating company, as the case may be.

By virtue of first proviso of amended Section 151, parallel powers has also been given to the police authorities to lodge a report of offence under Section 173 of Cr.P.C. By the amended provision, such power has been given to the police because the offence under Section 135 to 140 and 150 of the Act 2003

have been made cognizable and non-bailable, as per the amended provision under Section 151-B of the Act 2003. And also the power to investigate the offence punishable under this Act has been given to the police by amended proviso of Section 151-A.

It is also clear from the bare perusal of Rule 12 sub-clause (4) of the Act that even if any matter has already been investigated by the police even then powers to file the private complaint is not curtail and complainant has a right to file a private complaint as provided under Section 151 of the Act 2003 which otherwise were not affected by declaring the offences under Section 135 to 140 of the Act 2003 as cognizable and non-bailable under Section 151-B of the Act to lay down that private complaint cannot be entertained or cognizance cannot be taken by the Court.

Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance on the police report that would not mean that no other option is available and the private complaint cannot be lodged. It also enables certain persons/parties, as mentioned in Section 151, to become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act which are also to be governed by the Code of Criminal Procedure.

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275. EVIDENCE ACT, 1872 – Sections 3, 5 and 64

CIVIL PROCEDURE CODE, 1908 – Order 13 and Rules 3 & 4

REGISTRATION ACT, 1908 – Sections 17 and 18

Question as to admissibility of document – Stage for consideration thereof – Such a question is to be considered by the Court at the time of hearing of the trial and not prior to that.

K. Mallesh v. K. Narender and others

Judgment dated 15.10.2015 passed by the Supreme Court in Civil Appeal No. 6841 of 2008, reported in 2016 (3) MPLJ 67 (SC)

Relevant extracts from the judgment:

In our opinion the High Court should not have interfered at the stage when the trial was still in progress. Therefore, we set aside the impugned order passed by the High Court without going into the merits of the case. We say that the admissibility, reliability and registrability of the documents shall be considered independently only at the time of hearing of the trial and not prior thereto. All questions with regard to the aforesaid issues shall remain open.

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***276. EVIDENCE ACT, 1872 – Sections 3, 106, 114 and 45**

INDIAN PENAL CODE, 1860 – Section 300

(i) The appellant/accused along with two others came to the house of the deceased in search of his son and when he was not found they abducted deceased – Daughters of deceased raised alarm but none intervened – Mere non-intervention by persons in locality is not a ground to discredit the prosecution case – Deceased was in custody of appellants till his dead body was recovered – No explanation was offered by appellants as to how they dealt with deceased during that period – Abduction of deceased from his house is proved, so presumption can be drawn that appellant has murdered the deceased.

(ii) Appreciation of medical evidence – Doctor conducting the post-mortem opined that cause of death is asphyxia – The doctor in his evidence stated that the bronchial tube of the deceased was broken – Having regard to the decomposed state of the dead body, at the time when post-mortem was conducted, the absence of visible injury on the body *per se* does not militate against the otherwise unambiguous medical opinion that death was due to asphyxia – Breaking of bronchial tube is understandably a finding in endorsement of the above cause of death – Absence of visible injuries on the dead body, therefore as such, does not cast any doubt about the homicidal death of the deceased.

Chaman and another v. State of Uttarakhand

Judgment dated 19.04.2016 passed by the Supreme Court in Criminal Appeal No. 365 of 2013, reported in 2016 CriLJ 2330 (SC)

Relevant extracts from the Judgment:

Significantly, the proved abduction of the deceased from his house by the appellants is per se a criminal offence and carries with it a much higher degree of sinister culpability compared to any phenomenon of "last seen together", simpliciter. Further the deceased being in the custody of the appellants after his abduction on 12.6.1996, it was within their special knowledge as to how he had been dealt with by them thereafter before his dead body was found in a decomposed state in a nearby jungle. No explanation is forthcoming in any form in this regard from the appellants.

This Court in ***State of W. B. v. Mir Mohammad Omar and others, AIR 2000 SC 2988*** in a somewhat similar fact situation, where the deceased was abducted by the accused persons and thereafter his mangled body was found, held that the pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilised doctrine as if it admits of no process of intelligent reasoning. It was enunciated that the doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule qua the purport of presumption of fact as a rule in the law of evidence. It was observed thus:

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

Adverting to the facts, this Court ruled that as the prosecution had succeeded in establishing that the deceased had been abducted by the accused, they alone knew what happened to him until he was with them and if he was found murdered in a short time, after the abduction, the permitted reasoning process would enable the court to draw the presumption that the accused had murdered him. It was held that such inference can be disrupted, if the accused would tell the Court what else had happened to the deceased at least until he was in their custody.

Referring to Section 106 of the Evidence Act, it was propounded that the said section was not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but would apply to cases where prosecution had succeeded in proving facts from which a reasonable inference could be drawn regarding the existence of certain other facts, unless the accused, by virtue of his special knowledge regarding such facts, succeed to offer any explanation, to drive the court to draw a different inference.

The following observations by this Court in the context of above legal provision in ***Shambhu Nath Mehra v. State of Ajmer, AIR 1956 SC 404*** was adverted to with approval.

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

Judged by the above touchstone of reasonableness of doubt in evaluating the facts and circumstances of the present case, we are clear in our mind that the complicity of the appellants in the offences with which they have been charged, has been convincingly proved as required in law.

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277. EVIDENCE ACT, 1872 – Section 32

(i) Multiple dying declarations, evidentiary value of – Each dying declaration has to be weighed on its own merit, independently of the contents of the other – It need not necessarily be in question-answer form.

First two dying declarations were similar in content and in tune with other evidence while the third was quite different – It was stated therein that cause of fire being chimney in the house and that deceased was sleeping – Other available evidence also disproving such dying declarations – Held, third dying declaration rightly rejected by the Courts below.

(ii) Dying declaration, reliability of – If wholly reliable, conviction can solely be based on dying declaration.

[*Bhupen v. State of Madhya Pradesh, (2002) 2 SCC 556, Bholaprasad v. State of Maharashtra, (1998) 9 SCC 353, State of Punjab v. Parveen Kumar, (2005) 9 SCC 769, Sudhakar v. State of Madhya Pradesh, (2012) 7 SCC 569, Lakhan v. State of M.P., (2010) 8 SCC 514, Nallam Veera Stayanandam v. Public Prosecutor, (2004) 10 SCC 769, Ranjit Singh and others v. State of Punjab, (2006) 13 SCC 130* and *Prem Kumar Gulati v. State of Haryana and another, (2014) 14 SCC 646* relied on.]

Raju Devade v. State of Maharashtra

Judgment dated 29.06.2016 passed by the Supreme Court in Criminal Appeal No. 1012 of 2008, reported in 2016 (3) Crimes 158 (SC)

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***278. EVIDENCE ACT, 1872 – Section 33**

CIVIL PROCEDURE CODE, 1908 – Order 18 Rule 17

(i) Whether the statement recorded by the police authorities during investigation is covered u/s 33 of the Act? Held, for making such a statement admissible in subsequent proceedings, following three conditions must be fulfilled:

(a) that the earlier proceeding was between the same parties;

(b) that the adverse party in the first proceeding had the right and opportunity to cross-examine; and

(c) that the question in issue in both proceedings were substantially the same.

In absence of any of these three pre-requisites, Section 33 would not be attracted.

The proposed accused/accused has no right of cross-examination of a witness whose statements were recorded u/s 161 Cr.P.C. – Thus, the said statement cannot be treated as an evidence under section 33 of the Act.

(ii) Whether the plaintiff can be recalled and permitted to be cross-examined on the basis of the complaint made to police authorities and the documents relating thereto? Held; the statement made to police authorities cannot be treated as an evidence u/s 33 of the Evidence Act – Resultantly, Section 158 is not applicable and section 145 of the Evidence Act is also of no help to the petitioner – Therefore, the very purpose put forth for seeking recall of witness is not supported by Sections 33, 145 and 158 of the Evidence Act.

Parmanand Gupta v. Smt. Bhagwati Devi & ors.

Order dated 11.12.2014 passed by the High Court in Writ Petition No. 6457 of 2011, reported in ILR (2016) MP 752

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***279. FAMILY COURTS ACT, 1984 – Section 7 (1) (b)**

Suit for negative declaration that respondent was not legally married wife of the appellant – Whether within the jurisdiction of Family Court? Held, under section 7 (1) Explanation (b), a suit or a proceeding for declaration as to the validity of both marriage and matrimonial status of a person is within exclusive jurisdiction of the Family Court, since under section 8, all those jurisdictions covered under section 7 are excluded from the purview of jurisdiction of the Civil Court – It makes no difference as to whether it is affirmative relief or a negative relief.

Balram Yadav v. Fulmaniya Yadav

Judgment dated 27.04.2016 passed by the Supreme Court in Civil Appeal No. 4500 of 2016, reported in 2016 (2) ANJ (SC) 36

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***280. HINDU MARRIAGE ACT, 1955 – Sections 13 (1) (1-A) and (1-B)**

Cruelty and desertion – Respondent wife left her matrimonial home and did not join her husband for more than two years without any reasonable excuse – It is total repudiation of the obligation of marriage – Further, she has lodged FIR against appellant and his family members u/s 498-A of IPC after 17 years of marriage – Held, respondent guilty of desertion and cruelty – Decree of divorce passed.

Satish Kumar Jain v. Smt. Usha Jain

Judgment dated 13.08.2014 passed by the High Court of M.P. in First Appeal No. 431 of 2006, reported in ILR (2016) MP 199 (DB)

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281. INDIAN PENAL CODE, 1860 – Sections 120B and 420

CRIMINAL PROCEDURE CODE, 1973 – Section 482

CIVIL PROCEDURE CODE, 1908 – Order 30 Rules 1 and 10

(i) Criminal culpable offence, inheritance of – Criminal culpable offence shall not be inherited by their heirs – Once the accused is dead, the charge against him stands dismissed as abated – Heirs of deceased accused cannot be arrayed as an accused in criminal proceedings.

(ii) Distinction between 'partnership firm' and 'proprietary concern' – Proprietary concern, legal entity of – It is not a juristic person for prosecution – Though a partnership is not a juristic person but Order 30 Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm – On the other hand, a proprietary concern is only a businessman in which the proprietor of the business carries on the business – A suit by or against a proprietary concern is by or against the proprietor of the business and in the event of death of the proprietor, it is the legal representatives of the proprietary concern, who alone can sue or be sued in respect of the dealings of the proprietary business.

M/s Lakshmi Metal Works and another v. State and another

Order dated 04.02.2016 passed by the Madras High Court in Criminal O.P. No. 19324 of 2015, reported in 2016 CriLJ 2730 (Madras)

Relevant extracts from the Order:

It is well settled law that a criminal culpable offence shall not be inherited by their heirs. Once the accused died, the charge against the accused has been dismissed as abates. So the first respondent in his counter has stated that the Lakshmi Metal Works has been inherited by his son and so they are necessary accused, does not merit acceptance. The investigating agency without knowing the basic thing and without applying its mind had filed the charge sheet against A4, who is only the legal heir of the deceased A1. So the proceedings against A4 is liable to be quashed.

In respect of A3 is concerned, A3 is a proprietary concern. A proprietary concern does not have a separate legal entity apart from its proprietor since the proprietary concern and the proprietor are one and the same person. Thus, proprietary concern is not an independent, legal and juristic entity having legal recognition in the eye of law and it can neither initiate proceedings nor proceedings be initiated against it. In the instant case, A1 has borrowed money and a complaint has been preferred against A1 for failing to repay the money. Since A1 died, A3 shall not be impleaded as accused and so, the proceeding against A3 is liable to be quashed. In the decision relied by the learned counsel for the petitioner in ***Raghu Lakshminarayanan v. Fine Tubes, (2007) 5 SCC 103,*** it has been stated as follows :

The distinction between partnership firm and a proprietary concern is well known. It is evident from Order 30 Rule 1 and Order 30 Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in ***Ashok Transport Agency v. Awadhesh Kumar, (1998) 5 SCC 567*** wherein this Court stated the law in the following terms:

> A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Partnership Act, 1932. Though a partnership is not a juristic person but Order 30 Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietary concern, who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order 30 which make applicable the provisions of Order 30 to a proprietary concern enable the proprietor of a proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order 30 have no application to such a suit as by virtue or Order 30 Rule 10, the other provisions of Order 30 are applicable to suit against the proprietor or proprietary business 'in so far as the nature of such case permits.' This means that only those provisions of Order 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case.

A Constitution Bench of this Court in ***S.M.S. Parmaceuticals Ltd. v. Neeta Bhalla, AIR 2005 SC 3512*** (3-Judge Bench) furthermore categorically stated that the complaint petition must contain the requisite averments to bring about a case within the purview of Section 141 of the Act so as to make some persons other than the company vicariously liable therefor. It is a proprietary concern. On the date of borrowal, it was stated that he borrowed for business purpose. But the cheque has been issued as an individual capacity. In such circumstances, I am of the view that the third petitioner is also not an accused because it is not a juristic person for prosecution.

Considering the same, I am of the view that the first respondent has committed an error in including A3 and A4 in this case and filed a final report. Hence, this petition is allowed and the charge sheet laid against the A3 and A4 is hereby quashed. Consequently, the connected miscellaneous petition is closed.

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***282. INDIAN PENAL CODE, 1860 – Section 292 (2) (a)**

EVIDENCE ACT, 1872 – Section 45A

CINEMATOGRAPH ACT, 1952 – Section 7 (a) (i) (ii)

Sale of obscene material – Offence under section 7 (a) (i) (ii) of the Act of 1952, proof of – It is the primary responsibility of the prosecution to prove the possession of the shop – When accused is in possession of the room, the connected aspect such as physical control and custody is to be proved – The degree of physical control exercised by the accused is very relevant and knowledge of the person claiming such possessory right over the thing has to be proved.

While considering the offence under section 292 (2) (a) of I.P.C., the prosecution has to prove that the accused sold, distributed and publicly exhibited the obscene material – It is also to be proved that the seized articles are obscene articles – There must be direct evidence with regard to the possession or sale of obscene books or articles – There is no presumption with regard to possession, mere fact that some books were seized from a particular shop by a Police Officer would not suffice.

Konnadan Abdul Gafoor v. State of Kerala

Order dated 15.12.2015 passed by the Kerala High Court in Criminal Revision Petition No. 3780 of 2006, reported in 2016 CriLJ 2647 (Kerala)

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283. INDIAN PENAL CODE, 1860 – Sections 293, 350, 354, 375 and 376

(i) Rape – Occurrence took place prior to amendment of section 375 of the Code – Rape on child aged five years – As per pre-amended section, rape could not be said to be committed until penile penetration by accused into vagina of victim is proved – No evidence to show such act on the part of the accused – Therefore, accused cannot be held guilty of committing rape punishable under section 376 of IPC.

(ii) Outraging modesty of girl – Use of criminal force, when may amount to? Intentional use of force on the part of the accused to any person without consent in order to commit offence amounts to use of criminal force.

Act of accused causing child to hold his penis in her hands without consent of her parents knowing it to be likely that he would outrage her modesty amounts to use of criminal force on her punishable under section 354 IPC.

(iii) Offence of sale, etc, of obscene objects to young person – Act of accused causing child to hold his penis in her hands is not covered under section 293 of IPC as it does not amount to sale, hire, distribution, exhibition or circulation of any obscene

object by accused – Therefore, offence punishable under section 293 IPC is not made out.

State of Bihar v. Musa Ansari

Judgment dated 06.10.2015 passed by the High Court of Patna in Govt. Appeal (DB) No. 18 of 2013, reported in 2016 CriLJ 2711 (Patna)

Relevant extracts from the Judgment:

The case of the prosecution, as unfolded at the trial, may, in brief, be described thus:

(i) On 01.08.2012, at about 9:00 AM, the accused came to the house of the first informant, where the first informant's children asked the accused to sing a song and, Patna High Court G. APP. (DB) No.18 of 2013 dt.06-10-2015 after a while, first informant's son, Horil Kumar, and her elder daughter left for their school and the first informant's eldest daughter went outside her house for some work. The accused continued to sing songs and showed pictures, on his mobile, to the first informant's youngest daughter (hereinafter referred to as "X"). The accused caught hold of the hands of the first informant's 5-year old daughter, X, and, making her hold his penis, told her that he was feeling good and, then, the accused forcibly had sexual intercourse with X, who started bleeding and the accused fled way.

(ii) When the first informant came back to her house, she found her daughter, X, weeping and, on making enquiry, her daughter, X, told her (first informant) that the accused had attempted to insert his penis into her vagina and when she started crying out of pain, accused fled away. Having noticed bleeding from X?s vagina, first informant lodged an information, in writing, in the form of fardbayan, against the accused alleging, inter alia, commission of rape by the accused on her daughter, X.

(iii) Treating the fardbayan, as First Information Report, Jehanabad (Mahila) Police Station Case No. 39 of 2012, under Section 376 of the Indian Penal Code, was registered against the sole accused, Musa Ansari.

(iv) During investigation, first informant's daughter, Patna High Court G. APP. (DB) No.18 of 2013 dt.06-10-2015 X, was medically examined, her statement, under Section 164 of the Code of Criminal Procedure, was recorded and, on completion of investigation, a charge sheet was laid, under Section 376 of the Indian Penal Code, against the sole accused, Musa Ansari.

According to her evidence, she (PW 2) was playing on a cot in her house, the accused came and, by making her hold his penis, told her that he was feeling good and, then, the accused sat on the cot. Thereafter, however, PW 2 refused to answer any question except saying that there was bleeding from her vagina and her urination stopped.

It is noteworthy that the occurrence, in the present case, took place on 01.08.2012, i.e., at the time, when Section 375 of the Indian Penal Code had not undergone amendment, which has come into force, with effect from 03.02.2013, by the Act 13 of 2013. In terms of the definition of rape, as stood embodied in Section 375 of the Indian Penal Code, prior to its amendment, with effect from 03.02.2013, by the Act 13 of 2013, no offence of rape could have been held to have been proved until penile Patna High Court G. APP. (DB) No.18 of 2013 dt.06-10-2015 penetration by an accused into the vagina of his victim was proved; whereas penile penetration is, in the light of the amended definition of rape, no longer the only means of committing rape as embodied in Section 375 of the Indian Penal Code, with effect from 03.02.2013, by the Act 13 of 2013.

The present case is a case, which arose prior to the amendment, which Section 375 of the Indian Penal Code has undergone.

In the case at hand, when there is, admittedly, nothing to show penile penetration by the accused into the vagina of X, the accused could not have been held, and has rightly not been held, to have committed an offence punishable under Section 376 of the Indian Penal Code.

In the case at hand, since there was no sale, hire, distribution, exhibition or circulation of any obscene object, no Patna High Court G. APP. (DB) No.18 of 2013 dt.06-10-2015 commission of offence, under Section 293 of the Indian Penal Code, can be said to have been made out. In fact, this position has not been disputed even by the learned Additional Public Prosecutor.

We have, therefore, no hesitation in holding conviction of the accused-appellant under Section 293 of the Indian Penal Code as wholly incorrect and not sustainable in law.

Thus, as long as a person intentionally uses “force? to any person without that person’s consent in order to commit any offence, such use of “force? has to be regarded as “criminal force?.

In the present case, when the accused-appellant uses „criminal force? to the informant’s daughter, X, knowingly it to be likely that he would thereby outrage her modesty, an offence under Section 354 of the Indian Penal Code can be safely held to have been committed by the accused-appellant.

In the light of the evidence on record, we do not find that the conviction of the accused-appellant, under Section 354 of the Indian Penal Code, is bad in law or calls for any interference in the appeals.

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284. INDIAN PENAL CODE, 1860 – Section 300

EVIDENCE ACT, 1872 – Section 3

Appreciation of evidence of hostile witness – The evidence of a witness who has been declared hostile can be relied if there are some other material on the basis of which said evidence can be

corroborated – Moreso, that part of evidence of a witness as contained in examination-in-chief, which remains unshaken even after cross-examination, is fully reliable even though the witness has been declared hostile.

Devraj v. State of Chhattisgarh

Judgment dated 25.07.2016 passed by the Supreme Court in Criminal Appeal No. 423 of 2015, reported in AIR 2016 SC 3498

Relevant extracts from the Judgment:

It is relevant to note that the trial began against six accused persons. Shivlochan-PW.13 in his examination-in-chief took the name of Devraj alone who was stated to have assaulted Devi Prasad. Shivlochan did not mention in his examination-in-chief about the presence of other accused which may be a reason for the prosecution to get the witness declared as hostile. It is, however, relevant to note that even in the cross-examination the witness repeated that he heard Devraj saying "Maro Sale Ko" who had assaulted Devi Prasad and Devi Prasad @ Prachar cried "Bachao Bachao". The factum of assault by Devraj was throughout maintained by the witness. Thus, even though witness was declared as hostile witness his evidence so far as the role of Devraj is unshaken. Similarly, evidence of Ajar Das-PW.16, where in his examination-in-chief he stated that accused Devraj gave three lathi blows to Devi Prasad which was seen by him. The witness further stated that Devraj threatened him to run away otherwise he shall also be assaulted. Even after the witness was declared hostile he maintained his stand that he forbidden Devraj from assaulting Devi Prasad. He further stated that he saw Devraj and Dinda assaulting Devi Prasad in the night and on the next day the dead body was found below Rakhet Pulia. The witness further stated that due to land dispute Devraj and Dinda had assaulted Devi Prasad. In cross-examination he voluntarily stated that he had seen the accused giving three lathi blows. Further, he stated that he did not see that whom he has beaten because it was dark. The statement in cross-examination in no manner dilute the value of the evidence. It was Devi Prasad who received injury whose dead body was found next day morning. The statement that it was Devraj who gave three lathi blows obviously referred to lathi blow to Devi Prasad-deceased. Thus, we conclude that in spite of witnesses PW.13 and PW.16 having been declared as hostile witnesses their evidence that Devraj assaulted Devi Prasad is unshaken and has rightly been relied by the courts below in recording conviction.

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285. INDIAN PENAL CODE, 1860 – Section 300

Murder – Circumstantial evidence – Appreciation of – Death by consumption of Organo Phosphorous poison.

State of Himachal Pradesh v. Rajiv Jassi

Judgment dated 06.05.2016 passed by the Supreme Court in Criminal Appeal No. 771 of 2005, reported in 2016 AIR SCW 2241

Extracts from the Judgment:

The trial court came to the conclusion that the circumstantial evidence brought on record contained positive proof, credible sequence of events, factual truth linking the accused with commission of offence by means of forcible administration of organo phosphorus poison to the wife. The trial court based conviction upon the following circumstances :

(i) Relied upon the statements of PWs.6 and 11 regarding consistent mal-treatment, beating and thrashing by the accused to the victim. (ii) Landlord Dayal Singh has stated that while in a state of intoxication accused used to beat the victim and quarreled with her. On that he had asked him to vacate the house. Then the accused had shifted to the house in question. (iii) Accused was maintaining his criminality consistently. The conduct of the accused on the fateful night indicates that he came to the house and started beating and hitting Anil Kumar PW-8 and his deceased sister. (iv) He kicked on the abdomen of the victim though she was pregnant. Abdominal swelling was found by the Atopsy Surgeon Dr. Piyush Kapila, PW-3. (v) On the fateful night the accused had turned out the brother of the deceased PW-8 from the house at Chail after beating him. PW-8 suffered three injuries in the form of multiple scratches over neck, chin, face and other parts of the body. (vi) the accused was present in the room of the deceased. (vii) The nature of injuries which was found on the person of the deceased were ante-mortem. All injuries were on the front portion of the body and could be caused while she was lying on the bed. Such injuries could be found in cases of smothering and strangulation and forcible administration of poison. The injuries suffered by the victim on her lips, chin, throat and neck could be caused by the accused while administering poison forcibly. (viii) The accused did not open the door immediately but opened it after considerable time of five minutes. (ix) The accused did not take the deceased to the hospital and stated that nothing had happened to her and that she would be alright very soon. It was the duty of the accused being a doctor to immediately rush her to the hospital. The accused wanted the victim to breathe her last and thus delayed taking her to the hospital. It was not a case of self-poisoning considering the nature of injuries found on the deceased. (x) The domestic articles and luggage were scattered in the room. Child was crying and his small empty bottle which contained the organo phosphorus poison was found lying there. Its cap used as stopper was also lying and a pungent poisonous odour was present in the room. (xi) When the witnesses asked what had happened to her, the victim had raised her hand towards the accused. Thus the victim raised her accusing finger towards the culprit that is her husband. (xii) The accused had purchased the organo phosphorus from the shop of Sanjay Kumar, PW-13, 14-15 days before the date of the incident for a sum of Rs. 50/-. There was no necessity for the accused to purchase the same to kill flies. He purchased the same with design to cause end of the life of the victim. (xiii) Considering the nature of injuries found on the body of the victim they could not have been caused by convulsion.

The accused was admittedly in the company of the deceased. It was for him to explain so many injuries found on the person of the deceased as to how they were caused including swelling in womb. He has totally failed to explain them. It was not stated by him that the injuries were caused to the deceased due to convulsions. It was not stated by him that she ever fell down during convulsions, if any. The injuries on her lips, chin, throat and neck etc. as held by the trial court, were caused while administering the poison forcibly is a strong circumstance against the accused which cannot be brushed aside lightly. More so, in view of the overall conduct of the accused to be discussed hereinafter. Injuries were on the front part of the body which indicates that the deceased was subjected to violence before she succumbed due to poisoning. Section 106 of the Evidence Act requires a person having special knowledge of the fact to explain the same as required by section 106 of the Evidence Act, and laid down by this Court in ***C.S.D. Swami v. The State, AIR 1960 SC 7, P.N. Krishna Lal & ors. v. Govt. of Kerala & anr., 1995 AIR SCW 1325 and Sidhartha Vashisht @ Manu Sharma v. State (N.C.T. of Delhi), AIR 2010 SC 2352.*** Failure to explain that the deceased was unconscious position coupled with other evidence is a grave circumstance Page 16 16 which militates against such a person.

Yet another circumstance which casts a grave doubt on the accused is that though he was fully aware that the condition of the victim was precarious and she was struggling for life due to organo phosphorous poisoning. In spite of that initially when the neighbours came hearing the shrieks of the victim, he did not open the door immediately and opened the door only after five minutes. Even if same is ignored there was absolutely no reason for the accused to state to the neighbours when they asked him to take victim to hospital that nothing had happened to the victim and it was his family affair and she would be all right very soon. He intentionally delayed taking the victim to the hospital and it was only when the Police came that victim was taken to the hospital and was examined by Dr. Chaudhary PW-2 at 6 a.m. In case the accused was innocent he would have taken the victim to the hospital immediately and would not have declined the request of the neighbours and delayed her taking to the hospital and ought not to have waited for arrival of the police and thereafter when police had taken the victim to the hospital, he accompanied her to the hospital. The High Court has erred in holding that accused accompanied victim to hospital as such that circumstance is in his favour. Whereas after causing enormous delay and accompanying police with victim appears to be an effort to save himself and to know what transpires and for giving wrong history to doctors. Thus the conduct of the accused of not taking the victim to the hospital points a finger of doubt upon him. Men may lie but the circumstances do not, is the cardinal principle of evaluation of evidence. The overall circumstances unerringly point towards the guilt of the accused. Accused was well-aware that the victim was suffering from organo phosphorous poisoning, the bottle was also lying open. There was a bad odour of ‘nuvan’ poison in the room. Domestic articles and luggage were scattered in the room and the child was found crying. The room indicated tell-

tale signs of violence. Several witnesses i.e. Dayal Singh, PW-6, Shiv Kumar, PW-10 and Gayatri Devi, PW-11 have clearly stated about it.

Shiv Kumar, PW-10, has clearly stated that on being asked what had happened, she raised her hand towards the accused, her husband. Similar is the statement of Anil Kumar, PW-8. Ram Kishan, PW-9 has also stated that the victim raised her hand towards the accused when asked as to what had happened. He could observe and feel that she had been administered poison by the accused forcibly. This last gesture of victim to raise her hand towards husband indicates that he had caused such condition. The victim was also crying to save her militates against suicidal attempt to kill herself.

Apart from that the administering of poison forcibly is supported by medical evidence in the form of injuries which were found on the front side shows sign of struggle by deceased to save herself in the said process. These injuries could not have been caused by convulsions and the overall conduct of the accused and the gesture of the deceased in pointing her hand towards her husband as the person responsible for her condition, delay caused by the accused in taking the victim to the hospital knowing fully well the kind of deadly poison organo phosphorous unerringly points towards his guilt and the chain of circumstances is complete.

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***286. INDIAN PENAL CODE, 1860 – Section 300**

EVIDENCE ACT, 1872 – Section 3

(i) Murder – Circumstantial evidence – Evidence of wife and son of victim that accused came to house in night and took victim alongwith him on pretext that he is being called at office by his Superior – Dead body recovered at the instance of the accused from inside of big water pipe on the next day – No time gap between last seen together and discovery of dead body – Further, recovery of buttons of shirt of accused, stone used for smashing head of victim and bunch of keys of office of victim at the instance of the accused is sufficient evidence to complete chain of events and link the accused to the crime.

(ii) Absence of motive – If motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. *Ravinder Kumar and another v. State of Punjab, AIR 2001 SC 3570, Paramjeet Singh v. State of Uttarakhand, AIR 2011 SC 2003* and *State of Himachal Pradesh v. Jeet Singh, AIR 1999 SC 1293* relied on.

Praful Sudhakar Parab v. State of Maharashtra

Judgment dated 29.06.2016 passed by the Supreme Court in Criminal Appeal No. 261 of 2008, reported in AIR 2016 SC 3107

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***287. INDIAN PENAL CODE, 1860 – Sections 300 and 96**

Murder, self-defence – Accused and co-accused armed with pistol reached to the place of occurrence to kill one Mohanlal – Unarmed neighbours and co-villagers requested them to desist from their intention – They had gathered to protect Mohanlal – These villagers were standing 17 to 18 feet from accused – Thus, there was no real threat to accused – The accused fired gun shots indiscriminately at villagers causing death of two persons and a woman and caused injuries to a child of five years – Held, the accused cannot be said to have fired gun shots only as a matter of self-defence as there was no evidence showing that the accused were actually attacked by the villagers – The plea by the accused that their intention was to murder Mohanlal and not the villagers was held, to be not tenable.

Brij Lal v. State of Rajasthan

Judgment dated 17.08.2016 passed by the Supreme Court in Criminal Appeal No. 991 of 2010, reported in AIR 2016 SC 3875

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288. INDIAN PENAL CODE, 1908 – Sections 301, 200 firstly, 302, 304-Part I

Murder or culpable homicide not amounting to murder, determination of – Doctrine of transfer of malice, applicability of.

Facts of the case:

Appellant/accused who was pillion rider of a motorcycle, fired from pistol towards motorcyclist 'R' and pillion rider deceased 'M' – Deceased injured 'M' was first taken to Kuchera hospital and thereafter, to Nagpur from where he was referred to Jodhpur hospital – Later on, he succumbed to injury – Trial Court convicted the appellant accused under section 302 IPC – In appeal, High Court altered the conviction from section 302 IPC to section 304 Part I IPC – Held, High Court failed to take into consideration doctrine of transfer of malice under section 301 IPC although the respondent accused did not know as to whom he was causing harm to, out of the two on the motor cycle, it cannot be said that he did not know about the likelihood of causing death – His intention to cause bodily injury as is likely to cause death is clearly established – His act attracts ingredients of section 300 IPC – Restoring conviction and sentence passed by the Trial Court, it was further held by the Apex Court that High Court has grossly erred in holding it as a case of Section 299 (3) (b) r/w/s 304 Part-I IPC.

State of Rajasthan v. Ram Kailash alias Ram Vilas

Judgment dated 28.01.2016 passed by the Supreme Court in Criminal Appeal No. 2454 of 2009, reported in (2016) 4 SCC 590

Relevant extracts from the Judgment:

We have heard the learned Additional Advocate General for the State of Rajasthan and the learned counsel appearing for the respondent-accused. We have also examined the facts of the case and evidence both oral and documentary adduced on behalf of the prosecution. In our considered opinion the Trial Court rightly convicted the respondent accused under Section 302, IPC whereas, the High Court grossly erred in holding that it is a case of Section 299 Clause (b) read with Section 304 Part-I, IPC only. The reason given by the High Court that, the respondent did not know as to whom he was causing harm out of the two on the motorcycle and it was only one gunshot injury which resulted in death is not tenable in law. The High Court has failed to take into consideration the doctrine of transfer of malice as provided in Section 301 of the Court.

The facts and the law applicable thereto in such a case has been discussed by this Court in the case of ***State of Andhra Pradesh v. Rayavarapu Punnayya and another, AIR 1977 SCC 45***:-

> "21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder' on the facts of a case, it will be convenient for it to, approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of 'murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Sec. 299 is applicable. If this question is found in the positive, but the case comes within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code."

Keeping in view the above test and on the perusal of the Trial Court and the High Court judgment and the evidences on record, it is not a disputed fact

as to whose fire shot resulted in the death of the deceased. The only question which is to be examined here is whether the offence committed by the respondent is culpable homicide amounting to murder punishable under Section 302 or culpable homicide not amounting to murder punishable under Section 304 Part-I. Here, the intention on the part of the respondent-accused in causing bodily injury as is likely to cause death is also not a disputed fact. The only thing which is to be tested is whether the bodily injury is covered under either of the Clauses of Section 300 of the Indian Penal Code.

We are, therefore, of the view that the High Court has further erred in not taking into consideration Section 301, IPC in forming its opinion before converting the sentence from Section 302 to Section 304 Part-I. Moreover, in view of the fact that respondent-accused knew that his act of shooting the deceased person is likely to cause death of that person to whom harm is caused. It cannot be believed that respondent-accused did not know about the likelihood of causing death, though, he may not know as to whom he is causing bodily harm, but his act in totality and in the light of evidences on record clearly prove the ingredients of Section 300, IPC.

For the reason aforesaid, we are of the view that the judgment of the High Court converting the sentence from Section 302 to Section 304 Part-I, IPC cannot be sustained. In the light of the above, this appeal is allowed and the judgment of the High court is set aside and restore the conviction and sentence passed by the Trial Court under Section 302, IPC read with other sections of the Arms Act.

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289. INDIAN PENAL CODE, 1860 – Sections 306 and 498-A

(i) Precedent, applicability of – A judgment, be it of the Supreme Court or of the High Courts, ought not to be understood or interpreted like a statute – The ratio has to be culled from the attendant circumstances in which the judgment was delivered – Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

(ii) Abetment by instigation, commission of – Instigation is the creation of an environment, apparent or subtle, where the person so instigated is compelled to act in a particular manner on account of such instigation.

(iii) Power of discharge in relation to offences under sections 498-A, 306 or 304-B IPC, exercise of – Such a power may be exercised only in those exceptional cases where there is no evidence at all against the accused or where the evidence available is no evidence at all in the eyes of law – Further held, at the stage of charge, the trial court only has to see if the evidence on record, uncontroverted, raises a strong suspicion that the accused may have committed an offence.

Ramswaroop and others v. State of M.P. and another

Judgment dated 05.05.2016 passed by the High Court of M.P. in Criminal Revision No. 2143 of 2015, reported in 2016 (2) JLJ 334

Relevant extracts from the Judgment:

It is trite law that a judgment, be it of the Supreme Court or of the High Courts, ought not to be understood or interpreted like a statute. A judgment has to be appreciated in the fact circumstances in which it was passed. The adage "one shoe fits all sizes" is never applicable to the law of precedents. The ratio has to be culled from the attendant circumstances in which the judgment was delivered. The Supreme Court in ***Union of India and another v. Major Bahadur Singh, (2006) 1 SCC 368,*** held at paragraph 7:

> "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes".

The said judgment was followed by this Court in ***Dheer Singh Yadav v. State of Madhya Pradesh and another, 2013 (3) MPLJ 126,*** wherein at paragraph 5 it was succinctly held:

> ".....it is noteworthy that the basic principle to consider the judgment/precedent is that a judgment has to be examined in the facts and circumstances in which it is passed. This is settled in law that a judgment is an authority on a question which has been decided by it and is not a precedent on something which is logically flowing from it".

Abetment can be by instigation, conspiracy or by participation/aiding the act so proscribed. In ***Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618***, the Supreme Court held in paragraph 20:

> "Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the

> consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out…..".

Instigation, I feel is also the creation of an environment, apparent or subtle, where the person so instigated is compelled to act in a particular manner on account of such instigation. Instances of instigation or what constitutes instigation can never be straight jacketed and the same will have to be construed in every case from the attending facts and circumstances that are specific to that case.

Cruelty in the matrimonial home, to the extent that it compels a wife to commit suicide, is unique and distinguishable from other instances of abetment to suicide as the same always happens behind closed doors of the matrimonial home. The most credible witnesses of the offence are invariably the perpetrators of the offence. It is practically inconceivable that a newly married bride would maintain a diary noting therein the date and time of instances of cruelty being committed on her and the instances of demand for dowry by the husband and his family members. Likewise, it is equally improbable that the parents and relations of the girl so exposed to cruelty would also meticulously maintain the dates and narratives of the actions by the husband and in laws, amounting to cruelty. No parent would think that their daughter would one day commit suicide on account of cruelty inflicted upon her by the in laws. Therefore, if a case arising from matrimonial cruelty or dowry demand, be it one under Sections 498-A, 306 or 304-B, is to be quashed or the accused discharged, only because it lacks in specificity with relations to date, time and nature of act then a substantial number of the cases relating to sections 498-A and 306 must be terminated at the very inception. Such cannot be the intent of the various judgments of the Supreme Court.

This is not to suggest that the power of discharge cannot be exercised by the Trial Court or the plenary powers vested in this Court under Section 482 can never be exercised in relations to cases under S. 498-A and 306 IPC, but only to caution, that such powers may be exercised only in those exceptional cases where there is no evidence at all against the accused or where the evidence available is no evidence at all in the eyes of the law. At the stage of discharge, the Trial Court only has to see if the evidence on record, uncontroverted, raises a strong suspicion that the accused may have committed the offence. In this regard, the judgment of the Hon'ble Supreme Court in ***Union of India v. Prafulla Kumar Samal & Anr, AIR 1979 SC 366 & 1979 Cri.L.J 154*** lays down the law with great clarity wherein it held in paragraph 7 that

> "The words 'not sufficient ground for proceeding against the accused' clearly shows that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros

and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of evidence recorded by the police or the documents produced before the Court which ex facie discloses that there are suspicious circumstances against the accused so as to frame a charge against him".

Thereafter in paragraph 10 of the same judgment, the Supreme Court lays down:

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code, has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court discloses a grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the code the Judge which under the present code is a senior and experienced Court cannot act merely as a post office or mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial".

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***290. INDIAN PENAL CODE, 1860 – Sections 415 and 420**

It is alleged that accused fraudulently deceived complainant by making a false representation with regard to his age and has intentionally induced the complainant to accord her consent to the marriage – Whether an offence of cheating is made out? Held, delivery of property or consent for retention of property by any person is not necessary in all cases of cheating – Offence of cheating may be committed without aforesaid elements under the second limb of section 415 of IPC – *G.V. Rao v. L.H.V. Prasad, 2000 CriLJ 3487 (SC)* and *Kanumukkala Krishnamurthy v. State of A.P., AIR SC 333* relied on.

Nilofer Khan (Smt.) v. Mohd. Yusuf Khan

Order dated 24.09.2015 passed by the High Court in Criminal Revision No. 579 of 2013, reported in ILR (2016) MP 882

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***291. LAND REVENUE CODE, 1959 (M.P.) – Sections 109 and 110**

TRANSFER OF PROPERTY ACT, 1882 – Section 54

(i) Mutation of record – No mutation can be carried out by the Revenue Authorities on the basis of agreement to sell.

(ii) Contract for sale – A contract for sale is not a document for acquisition of title and possession – It does not create any right or title.

Kishorilal Tiwari v. Kandhilal

Order dated 22.01.2014 passed by the High Court of M.P. in Second Appeal No. 762 of 2013, reported in ILR (2016) MP 512

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292. LAND REVENUE CODE, 1959 (M.P.) – Section 158 (1) b)

LAND REVENUE AND TENANCY ACT, 1950 (M.B.) – Sections 54 (vii) and 101 (1)

MADHYA BHARAT BHUAGAM TATHA KRISHAK-KA ADHIKAR VIDHAN KRAMANK 66 SAMVAT, 2007

CONSTITUTION OF INDIA – Article 226

(i) Government land – Bhumiswami rights, accrual of – Government land allotted by erstwhile Gwalior State other than for agricultural purpose therefore, such *pattedar* (lesse) could not be *pucca* tenant and it cannot be said that he has acquired Bhumiswami rights over such land.

(ii) Proceedings for revocation of *patta*, initiation of – In violation of terms and conditions of *patta*, Revenue Authorities mutated Government land allotted by erstwhile Gwalior State other than for agricultural purpose in Bhumiswami rights and thereafter, transferred and converted into residential and commercial purposes – Is sufficient reason for initiation of proceedings

for revocation of *patta* – Setting aside the orders of Revenue Authorities, private respondents were directed to refrain from alienation of such land.

Shantilal Verma v. State of M.P. and others

Order dated 13.05.2016 passed by the High Court of M.P. in Writ Petition No. 6775 of 2011 (PIL), reported in 2016 (2) RN 1 (HC) (DB)

Relevant extracts from the Order:

From the averments mentioned in the petition it is clear that the land was the Government land which was allotted for other than the agricultural purposes by the then Gwalior State and this contention of the private respondents cannot be accepted that they were "Pucca Tenant" within the meaning of provisions of Section 54 (7) of Madhya Bharat Land Revenue and Tenancy Act Samvat 2007 and thereafter they have acquired Bhumiswami rights therein. In the Pattas which has been 22 reproduced in the preceding paragraphs it has been mentioned that lessee will pay land revenue to the Government which clearly prove the fact that the Patta was granted by the Government. 19. We have gone through the orders passed by the Revenue Officers including the order of Additional Commissioner and Board of Revenue. The Senior Officers have not recorded the proper findings nor considered the terms and conditions of the Patta, 2007 Act and Section 101 (1) of the Madhya Bharat Bhu Agam Tatha Krishak-Ka-Adhikar Vidhan Kramank 66 Samvat 2007. It has not been disputed by the State Government in its return and they have prayed for enquiry against them. The State in their return very categorically stated that the Patta was granted for the other than agricultural purposes by the Erstwhile State, before coming into the force of M. P. Land Revenue Code, 1959, therefore, during the course of transfer of land from Gwalior State to State of Madhya Pradesh neither such a land can be transferred in any manner nor it can be sold or converted into the 23 commercial or residential purposes. It is true that in a public Interest Litigation the sale deeds cannot be set aside and for that the party has to file a Civil Suit for cancellation of sale deeds as has been explained in the petition that it is the Government land and Government has granted Pattas and that Pattas has been granted for other than agricultural purposes the same cannot be transferred to the private party for residential purposes. In PIL, we have certainly have the power to examine this question when Revenue authorities contrary to settled law permitted the transfer of land and mutation in the name of M/s. Hanuman Trading Company. 20. The State of M.P. also filed separate writ petition No. 10428/2011, challenging the transfer of title in favour of M/s Hanuman Trading Company on the ground that as per terms and conditions of Patta the same was not transferable and was to be used properly for the purpose for which it was granted. The Patta was conditional and if there was contravention of the terms and conditions then the same shall be revoked/cancelled 24 and the entire land shall vest in the State of Government. 21. As per provisions of Section 101 (1) of the Madhya Bharat Bhu Agam Tatha Krishak-Ka-Adhikar Vidhan Kramank 66

Samvat 2007 the land was to be governed as per terms and conditions of the Patta in violation of the terms and conditions of the Patta which was sufficient to initiate proceedings for revocation of the Patta. 22. For these reasons, we quash the order dated 3 rd September, 2004 passed in Case No. 1082-4/2002, order dated 3 rd December, 1998 passed in Case No. 14/Aa-39/97- 98 and order dated 29.9.2004 passed in Case No.R1082- IV/02 and we grant permission to the Municipal Corporation, Committee Constituted by Collector, Ratlam and direct the respondent Nos. 1 to 5 to implement the joint report submitted by Collector Ratlam in its letter and spirit. The private respondents are restrained from disposing/alienating of the plot demarcated at the land in question bearing Survey No. 86 admeasuring 2.240 hectre till the joint report of the Committee constituted by the Collector, Ratlam is in 25 existence.

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293. LAND REVENUE CODE, 1959 (M.P.) – Sections 172, 234 (3), 237 (2) and 236

FOREST (CONSERVATION) ACT, 1980 – Section 2

FOREST (CONSERVATION) RULES, 2003 – Rules 2 (e) and 6 (3) (a), (b) & (c)

Charnoyi land or land reserved for grazing for cattle forming part of forest compartment also, allotment of – Such land cannot be allotted to individual or for establishing any project or plant except in accordance with the procedure prescribed under provisions of Code of 1959 and after obtaining no objection certificate from Conservator of Forest or Divisional Forest Officer of the Forest Division.

Ram Singh and another v. State of M.P. and others

Order dated 10.05.2016 passed by the High Court of M.P. in Writ Petition No. 2259 of 2015 (PIL), reported in 2016 (2) RN 13 (HC) (DB)

Relevant extracts from the Order:

The Apex Court in the case of State of ***Jharkhand & ors. v. Pakur Jagran Manch & ors., reported as 2011 (2) SCC 591,*** held that no dereservation of any government land reserved as gochar, should only be in exceptional circumstances and for valid reasons, having regard to the importance of gochar in every village. Any attempt by either the villagers or others to encroach upon or illegally convert the gochar to house plots or other non-grazing use should be resisted and firmly dealt with. Any requirement of land for any public purpose should be met from available waste or un-utilized land in the village and not gochar. Whenever it becomes inevitable or necessary to de-reserve any gochar for any public purpose, the procedure prescribed under the Act and Rules has to be followed strictly.

As per provisions of Forest (Conservation) Act, 1980, no State Government or other authority shall make 11 WP (PIL) No.2259/2015 any order, directing that any reserved forest or any portion thereof, or any forest land, or any portion thereof, may be used for any non-forest purpose and may be assigned by way

of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government; any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation, except with the prior approval of the Central Government.

Under the Forest (Conservation) Rules, 2003, Advisory Committee has been constituted to recommend the case for grant of approval under Section 2 of the Act and procedure has been prescribed for referring the matter to the Central Government. Under the Forest (Conservation) Rules, 2003, Officer not below the rank of Conservator of Forest was authorized by the State Government to deal with the case relating to forest conservation.

As per the forest compartment map of protected Compartment No.7, a part of the forest area of Survey No.1548 of village Nataram, Tahsil Sitamau, District Mandsaur is under the aforesaid forest compartment and rest of the area between the revenue and forest land, which is known as Bardi (buffer) land and the same cannot be granted to anyone. In the case in hand, respondent No.2, without taking No Objection Certificate from the 12 WP (PIL) No.2259/2015 Conservator of Forest and the Divisional Forest Officer of Mandsaur Forest Division, on the basis of the report of Forest Ranger, granted the area in violation to the provisions of Forest (Conservation) Act, 1980 and law laid down by the Apex Court in the case of ***T.N. Godavarman Thirumulkpad v. Union of India & others, reported in (1997) 2 SCC 267***.

The land included in the Nistar Patrak for use of the villager community cannot be diverted to any other use contrary to the provisions of Section 237 (2) of the Madhya Pradesh Land Revenue Code, 1959, which is prohibited by the MP Land Revenue Code, 1959, cannot be allowed to be done, indirectly done by resort to inherent jurisdiction of the revenue Court. The power of diversion of use of land is to be exercised, in accordance with the provisions under Section 172 of the MP Land Revenue Code, 1959 and the power in that behalf rests with the Sub Divisional Officer.

It is well settled law that carrying on any non -forest activities in a forest area can only be performed with the prior approval of the Central Government under Section 2 of the Indian Forest (Conservation) Act, 1980. In the present case, an area of 11.434 hectares in Survey No.1548 is adjoining to the protected forest area of 4.453 hectares. The Government of Madhya Pradesh, Ministry of Environment & Forest has issued a circular that no nonforest activities shall be permitted within 250-500 metres of the forest area or an area, which was declared forest under Section 4/20 of the Indian Forest Act, 1927. The Collector, without examining the aforesaid provisions of law, allotted the area of 10.434 hectares in Survey No.1548 to the private respondents for non-forest activities, that too, without obtaining NOC from the Conservator of Forest, Department of Forest, Government of Madhya Pradesh, Bhopal. The villagers have also objections for grant of such an area, which was reserved for Nistar rights of the villagers.

In Writ Petition No.2684/2015, water shed pond & Talai, 11 KVA Chikla Feeder line, public road and water sheds are in existence and thus, the area cannot be granted to the private respondents for establishing solar energy plant. As per order dated 05.12.2014, they destroyed the tank and also constructed a boundary and restrained the villagers to use the aforesaid land, which was reserved for their Nistar use.

In Writ Petition No.3322/2015, the respondent / State Government granted Nistar area to the private respondents; pond and road have been destroyed by them. It has also come on record that the Government has incurred a huge amount for construction of pond.

Considering the aforesaid, we set aside the orders [order dated 14.02.2015 (Annexure P/1) in Writ Petition (PIL) No.2259/2015; order dated 05.12.2015 (Annexure P/1) in Writ Petition (PIL) No.2684/2015 and order dated 05.12.2015 (Annexure P/1 and P/1-A) in Writ 14 WP (PIL) No.2259/2015 Petition (PIL) No.3322/2015] of grants of land in favour of the private respondents for setting up solar energy plant and direct the Collector to inspect the whole area along with the Divisional Forest Officer; in presence of the villagers, consider their objections, revenue and forest records and thereafter, grant the area, if it is found that there is no violation of any of the provisions of the Madhya Pradesh Land Revenue Code, 1959 and Forest (Conservation) Act, 1980, nor by granting such permission there would be non-forest activities over the adjoining protected forest area, strictly as per the provisions of law on the issue within a period of four months from today. Violation of any statutory provisions of law will make personally liable to them.

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***294. LIMITATION ACT, 1963 – Article 54**

CIVIL PROCEDURE CODE, 1908 – Section 96

(i) Limitation of suit for specific performance based on agreement to sell – No specific date fixed for performance of agreement – Suit for specific performance filed by plaintiff within three years from the date when the plaintiff had noticed that defendant has refused performance of agreement – Suit is within limitation.

(ii) First appeal – It is the duty of the first appellate court to deal with all the issues and evidence led by the parties before recording its findings – It is impermissible for the first appellate court to consider only the issue of limitation and not to consider other issues in appeal.

Madina Begum and another v. Shiv Murti Prasad Pandey and others

Judgment dated 01.08.2016 passed by the Supreme Court in Civil Appeal No. 6687 of 2016, reported in AIR 2016 SC 3554

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295. N.D.P.S. ACT, 1985 – Section 8 (c) r/w/s 21, 25 and 29

Recovery of contraband – Discrepancy in seal number, effect of.

Facts of the case:

Two bags containing 26 packets of contraband from lorry were seized from the custody of respondents/accused persons – Seal number 12 was affixed on the bags – However, inadvertently, in godown receipt, seal number 11 was mentioned in place of seal number 12 – Trial Court convicted the accused persons – In appeal, the High Court acquitted them on the ground that due to discrepancy in seal number, it cannot be said to be proved beyond reasonable doubt that seized articles were sent for chemical analysis – Remanding the matter to High Court to decide the appeal afresh in accordance with law, it was held that High Court ought to have taken into consideration reasons given by Trial Court regarding discrepancy in seal number alongwith entire evidence in this regard.

State through Narcotics Control Bureau v. Yusuf alias Asif and others

Judgment dated 18.01.2016 passed by the Supreme Court in Criminal Appeal No. 1219 of 2009, reported in (2016) 4 SCC 626

Relevant extracts from the judgment:

We have heard learned counsel appearing for the appellant and perused the record. In our considered opinion, the High Court has not considered various reasonings given by the trial court in its judgment.

The trial court has given various reasons, considered statement of witnesses, effect of various documents including of sending them to the chemical analyst and trial Judge also compared the seals and came to the conclusion that the same articles which were seized were sent for chemical examination. The High Court has not considered the other material on record which according to trial court established identity of sample sent for chemical examination with the contraband which was seized, and has also overlooked the effect of forwarding memo to godown which contained seal No.12, and effect of remanding Magistrate endorsement. Merely because no departmental action had been taken against PW-9 for mentioning seal No.11 instead of seal No.12 the prosecution case could not have been disbelieved. The effect of document Ex. D-2 which indicated that samples "are duly checked and sealed with my office Seal and sent through Shri B.Sharan (PW-6). ... Ex. D-2 contains the facsimile of both seal No.12 affixed by NCB on the samples at the time of seizure and the facsimile of the Special Judge's seal", has not been considered. The effect of the fact that the trial Judge saw and compared seals on the samples and contraband at the time of marking them as MOs. 1 to 29, has not been adverted to by the High Court. The High Court has also not compared the seals. It was also submitted that the High Court has not considered that the chemical examiner has stated

that the sample covers contained NCB seal and court seal on contraband and samples sent for analysis. In the report Ex. P-22 it was mentioned that the seals in each packet were compared with the respective facsimile given on the above-referred letter and found to tally. Reasons given in para 25 of the judgment of trial court have not been taken into consideration by the High Court.

It is trite law that while reversing the Judgment the reasons given by the trial court ought to have been taken into consideration along with the entire evidence in that regard. Same has not been done by the High Court. As such without commenting on the merits of the case we find the judgment and order of the High Court to be unsustainable. Same is hereby quashed and we remit the case to the High Court to decide the appeal afresh in accordance with law duly considering the reasoning employed by the trial court and the entire evidence.

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296. N.D.P.S. ACT, 1985 – Sections 42 (1), 42 (2), Proviso and Section 43

(i) Search and seizure – Breach of section 42 (2) of the Act as to sending of information recorded, effect of – Where an Officer takes down an information in writing under sub section (1), copy thereof is to be sent to his immediate senior Officer – If the communication sent to the senior Officer is not the information recorded but is different, it amounts to breach of section 42 (2) and is fatal.

(ii) Search without warrant after sunset – Recording of reasons of belief – Breach of section 42 (2), Proviso, effect of – Non-recording of ground of belief by Officer carrying out search is violation of section 42 (2), Proviso and is fatal.

(iii) Search and arrest in public place – Section 43, explanation & section 42 (1), Proviso, applicability of – Warrant, necessity of – Public place includes public conveyance to mean, conveyance which can be used by public in general for which necessary permits have to be obtained under the Motor Vehicles Act, 1988 for transporting the passengers – However, if there is no material on record to indicate that the vehicle was being used as public transport vehicle, section 43 will not be attracted and provisions of section 42 (1), Proviso is required to be complied with and non-compliance of such statutory mandatory provision is fatal.

State of Rajasthan v. Jag Raj Singh alias Hansa

Judgment dated 29.06.2016 passed by the Supreme Court in Criminal Appeal No. 1233 of 2006, reported in 2016 AIR SCW 3041

Relevant extracts from the Judgment:

What Section 42(2) requires is that where an officer takes down an information in writing under sub-Section (1) he shall sent a copy thereof to his

immediate officer senior. The communication Exh. P-15 which was sent to Circle Officer, Nohar was not as per the information recorded in Exh. P 14 and Exh. P 24. Thus, no error was committed by the High Court in coming to the conclusion that there was breach of Section 42(2).

Another aspect of non-compliance of Section 42(1) proviso, which has been found by the High Court needs to be adverted. Section 42 (1) indicates that any authorised officer can carry out search between sun rise and sun set without warrant or authorisation. The scheme indicates that in event the search has to be made between sun set and sun rise, the warrant would be necessary unless officer has reasons to believe that a search warrant or authorisation cannot be obtained without affording the opportunity for escape of offender which grounds of his belief has to be recorded. In the present case, there is no case that any ground for belief as contemplated by proviso to sub-section (1) of Section 42 or Sub-section (2) of Section 42 was ever recorded by Station House Officer who proceeded to carry on search. Station House Officer has appeared as PD-11 and in his statement also he has not come with any case that as required by the proviso to Sub-section (1), he recorded his grounds of belief anywhere. The High Court after considering the entire evidence has made following observations :

> "Shishupal Singh PD-11 by whom search has been conducted, on reaching at the place of occurrence by him no reasons to believe have been recorded before conducting the search of jeep bearing HR 24 4057 under Section 42(1), nor any reasons in regard to not obtaining the search warrant have been recorded. He has also not stated any such facts in his statements that he has conducted any proceedings in regard to compliance of proviso of Section 42(1). Since reasons to believe have not been recorded, therefore, under Section 42(2) it is not found on record that copy thereof has been sent to the senior officials. Shishupal Singh could be the best witness in this regard, who has not stated any fact in his statement regarding compliance of proviso to Section 42(1) and Section 42(2), sending of copy of reasons to believe recorded by him to his senior officials."

In this context, it is relevant to note that before the Special Judge also the breach of Section 42(1) and 42(2) was contended on behalf of the defence. In paragraph 12 of the judgment Special Judge noted the above arguments of defence. However, the arguments based on non-compliance of Section 42 (2) were brushed aside by observing that discrepancy in Exh. P-14 and Exh. P-15 is totally due to clerical mistake and there was compliance of Section 42(2). Special Judge coming to compliance of proviso to Section 42(1) held that vehicle searched was being used to transport passengers as has been clearly sated by its owner Veera Ram, hence, as per the explanation to Section 43 of the Act,

the vehicle was a public transport vehicle and there was no need of any warrant or authority to search such a vehicle. The High Court has reversed the above findings of the Special Judge.

Explanation to Section 43 defines expression "public place" which includes any public conveyance. The word "public conveyance" as used in the Act has to be understood as a conveyance which can be used by public in general. The Motor Vehicles Act, 1939 and thereafter the Motor Vehicles Act, 1988 were enacted to regulate the law relating to motor vehicles. The vehicles which can be used for public are public Motor Vehicles for which necessary permits have to be obtained. Without obtaining a permit in accordance with the Motor Vehicles Act, 1988, no vehicle can be used for transporting passengers. In the present case, it is not the case of the prosecution that the jeep HR-24 4057 had any permit for transporting the passengers. The High Court has looked into the evidence and come to the conclusion that there was no material to indicate that there was any permit for running the jeep as public transport vehicle. The High Court has further held that even Kartara Ram who as per owner of the vehicle Veera Ram was using the vehicle, do not support that the jeep was used as public transport vehicle. The High Court held that personal jeep could not be treated as public transport vehicle. Following observations were made by the High Court:

> "Kartara Ram is produced as PD-5,who has deposed the statement that Vira Ram is his brother-in-law (Saala), on whose name jeep bearing No.HR 24 4057 is lying registered. He had employed Inderjit singh as driver for that jeep. Person namely Krishan has never been employed as driver. This witness has been declared hostile and he has been examined too, who does not support the prosecution case. In this manner, Viraram is the owner of the jeep. According to him he had given the jeep to Kartara Ram, but Kartara Ram has not stated anywhere in is statement that this jeep was given to him and he used the same as Public Transport Vehicle. Since powder of opium was caught in this jeep and even Notice Exh. P-6 was also served upon him by the police, he with a view to save himself, can also depose such statement that Kartara used to use the jeep as Public Transport Vehicle, whereas Kartara Ram PD-5 does not affirm this fact. Jeep was personal, it is clear on the record. In this manner, just on this ground that he has given the jeep to his brother-in-law and he used it to carry the passengers, the personal jeep could not be treated as public transport vehicle. However, the fact that jeep is used to carry the passengers has not been affirmed from the statements of Kartara Ram. There is no evidence on record

on the basis of which it could be stated that jeep was public transport vehicle and they have the permit for it, rather it was the private vehicle and it is stated that Vira Ram himself is the owner of that vehicle"

There is nothing to impeach the aforesaid findings. We have also perused the statement of Vira Ram in which statement he has never even stated that he has any permit for running the vehicle as transport vehicle. He has stated that

"..... I had given this jeep to Kartara Ram resident of ..... who is my relative to run it for transporting passengers"

Admittedly the jeep was intercepted and was seized by the police. In view of the above, the jeep cannot be said to be a public conveyance within the meaning of Explanation to Section 43. Hence, Section 43 was clearly not attracted and provisions of Section 42(1) proviso were required to be complied with and the aforesaid statutory mandatory provisions having not been complied with, the High Court did not commit any error in setting aside the conviction.

After referring to the earlier judgments [***Abdul Rashid Ibrahim Mansuri v. State of Gujarat, (2000) 2 SCC 513 (3-Judge Bench) and Sajan Abraham v. State of Kerala, (2001) 6 SCC 692 (3-Judge Bench)***], the Constitution Bench in ***Karnail Singh v. State of Haryana, (2009) 8 SCC 539*** came to the conclusion that non-compliance of requirement of Sections 42 and 50 is impermissible whereas delayed compliance with satisfactory explanation will be acceptable compliance of Section 42. The Constitution Bench noted the effect of the aforesaid two decisions in paragraph 5. The present is not a case where insofar as compliance of Section 42(1) proviso even an arguments based on substantial compliance is raised there is total non-compliance of Section 42 (1) proviso. As observed above, Section 43 being not attracted search was to be conducted after complying the provisions of Section 42. We thus, conclude that the High Court has rightly held that non compliance of Section 42(1) and Section 42(2) were proved on the record and the High Court has not committed any error in setting aside the conviction order.

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297. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

Whether the dishonour of a post-dated cheque given for repayment of loan installment which is also described as "security" in the loan agreement is covered by section 138 of the Act? Held, Yes. [*M/s Indus Airways Pvt. Ltd. & others v. M/s Magnum Aviation Pvt. Ltd. & another, 2014 (2) Crimes 105 (SC)* distinguished]

Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited

Judgment dated 19.09.2016 passed by the Supreme Court in Criminal Appeal No. 867 of 2016, reported in 2016 SCC OnLine SC 956

Extracts from the Judgment:

Reference may now be made to the decision of this Court in ***Indus Airways Private Limited versus Magnum Aviation Private Limited, (2014) 12 SCC 539*** on which strong reliance has been placed by learned counsel for the appellant. The question therein was whether post-dated cheque issued by way of advance payment for a purchase order could be considered for discharge of legally enforceable debt.

The cheque was issued by way of advance payment for the purchase order but the purchase order was cancelled and payment of the cheque was stopped. This Court held that while the purchaser may be liable for breach of the contract, when a contract provides that the purchaser has to pay in advance and cheque towards advance payment is dishonoured, it will not give rise to criminal liability under Section 138 of the Act. Issuance of cheque towards advance payment could not be considered as discharge of any subsisting liability. View to this effect of the Andhra Pradesh High Court in ***Swastik Coaters (P) Ltd. v. Deepak Bros., (1997) Crl. LJ 1942 (AP)*** Madras High Court in ***Balaji Seafoods Exports (India) Ltd. v. Mac Industries Ltd., (1999) 1 CTC 6 (Mad),*** Gujarat High Court in ***Shanku Concretes (P) Ltd. versus State of Gujarat, (2000) Crl LJ 1988 (Guj) and*** Kerala High Court in ***Supply House v. Ullas, (2006) Crl. LJ 4330 (Ker)*** was held to be correct view as against the view of Delhi High Court in ***Magnum Aviation (P) Ltd. versus State, (2010) 172 DLT 91: (2010) 118 DRJ 505*** and ***Mojj Engg. Systems Ltd. v. A.B. Sugars Ltd., (2008) 154 DLT 579*** which was disapproved.

We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in Indus Airways (supra) with reference to the explanation to Section 138 of the Act and the expression "for discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque liability or debt exists or the amount has become legally recoverable, the Section is attracted and not otherwise.

Reference to the facts of the present case clearly shows that though the word "security" is used in clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of installments. The repayment becomes due under the agreement, the moment the loan is advanced and the installment falls due. It is undisputed that the loan was duly disbursed on 28th February, 2002 which was prior to the date of the cheques. Once the loan was disbursed and installments have fallen due on the date of the cheque as per the agreement, dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

Judgment in ***Indus Airways*** (supra) is clearly distinguishable. As already noted, it was held therein that liability arising out of claim for breach of contract under Section 138, which arises on account of dishonour of cheque issued was not by itself at par with criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of cheque issued for discharge

of later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque there was a debt/liability in presenti in terms of the loan agreement, as against the case of ***Indus Airways*** (supra) where the purchase order had been cancelled and cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for discharge of liability but as advance for the purchase order which was cancelled. Keeping in mind this fine but real distinction, the said judgment cannot be applied to a case of present nature where the cheque was for repayment of loan installment which had fallen due though such deposit of cheques towards repayment of installments was also described as "security" in the loan agreement. In applying the judgment in ***Indus Airways*** (supra), one cannot lose sight of the difference between a transaction of purchase order which is cancelled and that of a loan transaction where loan has actually been advanced and its repayment is due on the date of the cheque.

Crucial question to determine applicability of Section 138 of the Act is whether the cheque represents discharge of existing enforceable debt or liability or whether it represents advance payment without there being subsisting debt or liability. While approving the views of different High Courts noted earlier, this is the underlying principle as can be discerned from discussion of the said cases in the judgment of this Court.

In ***Balaji Seafoods*** (supra), the High Court noted that the cheque was not handed over with the intention of discharging the subsisting liability or debt. There is, thus, no similarity in the facts of that case simply because in that case also loan was advanced. It was noticed specifically therein – as was the admitted case of the parties – that the cheque was issued as "security" for the advance and was not intended to be in discharge of the liability, as in the present case.

In ***HMT Watches Ltd. versus M.A. Abida, (2015) 11 SCC 776*** relied upon on behalf of the respondent, this Court dealt with the contention that the proceedings under Section 138 were liable to be quashed as the cheques were given as "security" as per defence of the accused. Negativing the contention, this Court held :-

> "10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the

factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplied with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.

11. In ***Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., (2008) 13 SCC 678,*** this Court has made the following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure: (SCC pp. 685-87, paras 17 & 22)

> "17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter.
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> 22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise

genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."

12. In ***Rallis India Ltd. v. Poduru Vidya Bhushan, (2011) 13 SCC 88,*** this Court expressed its views on this point as under: (SCC p. 93, para 12)

> "12. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since what date the respondents ceased to be the partners of the firm."

We are in respectful agreement with the above observations. In the present case, reference to the complaint (a copy of which is Annexures P-7) shows that as per the case of the complainant, the cheques which were subject matter of the said complaint were towards the partial repayment of the dues under the loan agreement (para 5 of the complaint).

As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.

In ***Rangappa v. Sri Mohan, (2010) 11 SCC 441*** this Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. A post dated cheque is a well recognized mode of payment [***Goaplast (P) Ltd. v. Chico Ursula D' Souza, (2003) 3 SCC 232***].

Thus, the question has to be answered in favour of the respondent and against the appellant. Dishonour of cheque in the present case being for discharge of existing liability is covered by Section 138 of the Act, as rightly held by the High Court.

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***298. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 141**

(i) Dishonour of cheque – Offence by Company – Directors, liability of – If the concerned Director was incharge of and was responsible to the Company for its conduct of business, he can be held to be guilty of the offence.

(ii) Complaint as to dishonour of cheque – Offence by Company – Liability of Directors – Averments, necessity of – It is necessary to specifically aver in a complaint that at the time the offence was committed, the person accused was incharge of, and responsible for the conduct of business of the company.

Tamil Nadu News Print and Papers Ltd. v. D. Karunakar and others

Judgment dated 06.08.2015 passed by the Supreme Court in Criminal Appeal No. 1846 of 2008, reported in 2016 (3) MPLJ 565 (SC)

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299. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 142 and 145 CRIMINAL PROCEDURE CODE, 1973 – Sections 200 and 202

(i) Dishonour of cheque – Offence under section 138 of the Act – Examination of complainant – Evidence on affidavit, permissibility of – The *non-obstante* clause in sub-section (1) of section 145 overrules the requirement of examination of the complainant on solemn affirmation under section 200 of the Code – Complainant is entitled to give his evidence on affidavit and subject to all just exceptions, the same has to be read in evidence in any enquiry, trial or other proceedings under the Code of Criminal Procedure.

(ii) Dishonour of cheque – Offence under section 138 of the Act – Time barred complaint – Taking cognizance and issuance of process without issuing notice to condone the delay, permissibility of – Taking cognizance upon a time barred complaint and issuance of process without issuing notice to proposed accused to condone the delay is impermissible.

(iii) Postponement of issue of process and conduction of enquiry or direction as to investigation, necessity of – In a case where the accused is residing at a place beyond the area in which he exercises jurisdiction, whether it is necessary to postpone issuance of process and to conduct enquiry himself or direct investigation, the Apex Court has left this legal question open.

K.S. Joseph v. Philips Carbon Black Ltd. & anr.

Judgment dated 11.04.2016 passed by the Supreme Court in Criminal Appeal No. 247 of 2016, reported in 2016 (3) Crimes 118 (SC)

Relevant extracts from the Judgment:

By the common impugned order dated 04.09.2012 passed in Crl.M.C. Nos. 2902 and 2903 of 2012 by the High Court of Kerala at Ernakulam under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') prayer of the appellant to quash order of cognizance and issuance of summons in a case under Section 138 of the Negotiable Instruments Act, 1881 (herein-after referred

to as 'the Act') has been rejected by a very short and summary order to the effect that submissions were not impressive and if the appellant has any sustainable ground of defence, he can canvass the same before the Magistrate.

The appellant is an accused in two cases of similar nature wherein cheques issued by the accused person in favour of the complainant have not been honoured. On behalf of appellant it was highlighted that the cheques bounced on 24.01.2006 because of a direction to stop payment issued by the appellant because he had allegedly already made all the required payments. His defence that five blank cheques had been given to the complainant by way of security cannot be considered at the present stage but he has raised three other legal grounds. Firstly, the complaint suffered from delay of 62/63 days and the same had to be condoned after notice but that was not done. The second grievance of the appellant is that cognizance could not have been taken without complying with the mandate of Section 200 of the Cr. P. C. and examining the complainant on solemn affirmation. The last submission of learned senior counsel for the complainant, is that the appellant being an accused and a resident of an area outside the territorial jurisdiction of the Magistrate who has issued summons, an enquiry within the meaning of Section 202 of the Cr.P.C. was mandatory and since that was not done, the order of cognizance and issuance of summons is bad in law.

So far as the issue of examination of complainant on solemn affirmation under Section 200 of the Cr. P.C. is concerned, the submissions are misconceived on account of Section 145 of the Act which was inserted along with some other Sections through an amendment in the year 2002 w.e.f. 06.02.2003. Section 145 of the Act is as follows:

Section 145. Evidence on affidavit. — (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

The non obstante clause in sub-section (1) of Section 145 is self-explanatory and over rules the requirement of examination of the complainant on solemn affirmation under Section 200 of the Cr. P. C. Now the complainant is entitled to give his evidence on affidavit and subject to all just exceptions, the same has to be read in evidence in any enquiry, trial or other proceeding under the Cr. P. C. This view is also supported by the judgment of this Court in the case of ***Mandavi Cooperative Bank Ltd. v. Nimesh B. Thakore, (2010) 3 SCC 83.*** No doubt this judgment was in a different factual scenario but this Court went into details of the amendment of 2002 including Section 145 and in paragraph 18 it also noted the Statement of Objects and Reasons appended to the Amendment

Bill Inter alia, the objects included "to prescribe procedure for dispensing with preliminary evidence of the complainant."

In view of discussion made above, the plea based on Section 200 of the Cr. P. C. is rejected as untenable. The other plea relating to delay of 62days and taking of cognizance without issuing notice to dispense with such delay is however found to have substance. The relevant provision under Section 142 of the Act requires making of the complaint within one month of cause of action arising on account of non-compliance with the demand in the notice to make payment within 15 days. According to appellant the notice was dated 03.02.2006 alleging no-payment of two cheques each for Rs.1,80,000/- Allegedly the appellant had sent a reply denying his liability through a reply dated 20.02.2006. The complaint was filed on 24.05.2006. Prima facie, in view of aforesaid dates the complaint was beyond the permissible period. No doubt the court has been empowered to take cognizance even after the prescribed period but only if the complainant satisfies the court that he had sufficient cause for not making complaint within the prescribed period.

On the basis of Order sheet of the court of magistrate it has been shown that initially summons were ordered to be issued to the accused on 05.12.2006 after recording a single sentence that the complainant was represented. Since proper steps were not taken summons appear to have been re-issued at the correct address on 22.10.2011 The orders of the Magistrate do not show any application of mind to the issue of delay nor has delay been condoned before issuance of summons. The Order Sheet does not shown any application of mind of the fact that the accused was shown to be residing at a place beyond his jurisdiction and there fore an enquiry or investigation may be required on account of amendment in Section 202 of the Cr.P.C. inserted by the Act 25 of 2005, effective from 23.06.2006. The relevant part of Section 202 is reproduced herein below:

The amendment has a purpose in requiring the concerned Magistrate to postpone the issue of process against the accused if he is residing at a place beyond the area of his jurisdiction and to hold an enquiry or direct an investigation by a police officer or any other person for the purpose of deciding whether or not there is sufficient ground for proceedings. It is to avoid unnecessary harassment to the proposed accused. In such an enquiry, the Magistrate may take evidence of witness on oath but in view of Section 145 of the Act, complainant's evidence on affidavit will also be permissible for the purpose of such enquiry.

Learned senior counsel for the appellant has relied upon judgment of this Court in the case of ***P.K. Choudhury v. Commander, 48 BRTF (GREF)*** to support his submission that for condoning delay in filing complaint beyond the period of limitation, natural justice warrants notice to the accused so as to grant him an opportunity to show that the delay should not be condoned.

Learned senior counsel for the appellant has also placed reliance upon a judgment of this Court in the case of ***Vijay Dhanuka v. Najima Mantaj (2014) 14***

SCC 638 to support his submission based upon requirement of Section 202 of the Cr. P.C. warranting enquiry or investigation where the accused is found to be residing outside the jurisdiction of the Magistrate.

Learned counsel for the respondent-complainant could not place any material to counter the two submissions noted above. We have already noted earlier that the Order Sheet does not disclose any application of mind either to the issue of delay or to the requirement of section 202 CrPC. Since the order of the Magistrate issuing summons is clearly without due application of mind to the issue of delay, we have not gone into the detailed consideration of the correctness of submission based upon section 202 of the CrPC and as to whether such requirement of enquiry or investigation is attracted even for offences under the Act. This question of law is therefore left open. But on the ground of non application of mind to the issue of delay and considering that the High Court has passed a summary order without even noticing the contentions advanced on behalf of the appellant, we set aside the impugned order of the High Court as well as the order of cognizance summoning the accused passed by the learned Magistrate. The facts of the Complaint Case including the issue of delay and its condonation in accordance with law as well as the requirement of enquiry etc. under section 202 CrPC and pass fresh orders in accordance with law. The appeals stand allowed to the aforesaid extent.

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300. PARTNERSHIP ACT, 1932 – Section 69 and 69 (3)

EVIDENCE ACT, 1872 – Section 3

(i) Other proceedings – Bar of suit – Bar to suit against or by unregistered firm under sub-sections (1) & (2) has to be read in sub-section (3) – "Other proceedings" in sub-section (3) means proceeding intrinsically connected with suit by or against unregistered firm.

(ii) Bar of suit – Expression "other proceedings" in Section 69 (3), does not cover an arbitral proceeding as well as arbitral award – Interpretation of Section 14 of the Limitation Act to treat arbitral proceedings at par with other proceeding is not applicable – Further, definition of Court u/s 2 (h) of Interest Act, 1978 cannot be interpreted to apply section 69 (3) – Deeming provisions under sections 35 and 36 of Arbitration and Conciliation Act, 1996 equating arbitral proceedings with civil proceedings is specifically meant for enforcement and execution of award – Therefore, it cannot be held that arbitral proceedings is a civil court proceeding for the purpose of applicability of Section 69 (3) of the Partnership Act.

M/s. Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society Ltd.

Judgment dated 29.06.2016 passed by the Supreme Court in Civil Appeal No. 7916 of 2009, reported in AIR 2016 SC 3116

Relevant extracts from the Judgment:

The question for our consideration is by virtue of sub-section (3) whether the expression "other proceedings" contained therein will include Arbitral proceedings and can be equated to a suit filed in a Court and thereby the ban imposed against an unregistered firm can operate in the matter of arbitral proceedings. If sub-sections (1) and (2) are virtually lifted whole hog and incorporated in sub-section (3), it must be stated that it is not the mere ban that is imposed in sub-sections (1) and (2) that alone is contemplated for the application of sub-section (3). In other words, when the whole of the ingredients contained in sub-sections (1) and (2) are wholly incorporated in sub-section (3), the resultant position would be that the ban can operate in respect of an unregistered firm even relating to a set off or other proceedings only when such claim of set off or other proceedings are intrinsically connected with the suit that is pending in a Court. To put it differently, in order to invoke sub-section (3) of Section 69 and for the ban to operate either the firm should be an unregistered one or the person who wants to sue should be a partner of an unregistered firm, that its / his endeavour should be to file a suit in a Court, in which event even if it pertains to a claim of set off or in respect of 'other proceedings' connected with any right arising from a contract or conferred by the Partnership Act which is sought to be enforced through a Court by way of a suit then and then alone the said sub-section can operate to its full extent.

As far as the construction of the said sub-section (3) of Section 69 is concerned, we are able to discern the above legal position without any scope of ambiguity. To be more precise, the condition precedent for the operation of ban under sub-section (3) is that the launching of a suit in a Court of law should be present and it should be by an unregistered firm or by a person claiming to be partner of an unregistered firm either to a claim for set off in the said suit or any other proceedings intrinsically connected with the said suit. 14. In the event of the above ingredients set out under sub-sections (1), (2) and (3) being fulfilled then and then alone the ban prescribed against an unregistered firm under Section 69(1), (2) and (3) would operate and not otherwise.

When we read sub-section (4), the ban imposed under sub-sections (1), (2) and (3) will have no application to any of those proceedings set out in sub-clauses (a) and (b) of the said sub-section (4). A specific reference to sub-clause (b) of sub-section (4) disclose that in the last part of the said sub-clause it is specifically provided that other proceedings incidental to or arising from any suit or claim of set off not exceeding Rs.100 in value under those specific statute referred to in the said sub-clause can also be launched without any ban being operated as provided under sub-sections (1), (2) and (3). The said part of sub-clause (b) of sub-section (4) thus gives a vivid picture as to the position that the 'other proceeding' specified in the said sub-section can only relate to a

pending suit in a Court and not to any other different proceeding which can be categorized as 'other proceedings'.

Though the learned senior counsel for the appellant and the respondent referred to certain other decisions in support of their respective submissions, as we are fortified by our conclusion, based on the interpretation of Section 69 of the Partnership Act vis-à-vis the 1996 Act and the 1940 Act as well as supported by the decision in ***Jagdish Chander Gupta v. Kajaria Traders (India) Ltd., AIR 1964 SC 1882*** and ***Kamal Pushp Enterprises v. D.R. Construction Co., AIR 2000 SC 2676,*** we do not find any necessity to refer to those decisions in detail. Having regard to our conclusion that Arbitral Proceedings will not come under the expression "other proceedings" of Section 69(3) of the Partnership Act, the ban imposed under the said Section 69 can have no application to Arbitral proceedings as well as the Arbitration Award. Therefore, the appeal stands allowed, the impugned judgment of the Division Bench is set aside and the judgment of the learned Single Judge stands restored.

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301. PREVENTION OF CORRUPTION ACT, 1988 – Sections 7, 13 (1) (d) and 20

(i) Offence of demand and acceptance of illegal gratification, proof of acceptance of illegal gratification as motive or reward – Inference when can be drawn.

The premise to be established on the facts for drawing the presumption is that there was demand, payment and acceptance of gratification – Once the said premise is established, the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act – It is a settled principle of law that once the demand and voluntary acceptance of illegal gratification are proved by evidence, then conviction must follow under section 7 of the Act.

(ii) Trap case – Chemical examination of phial, necessity of – On proof of demand, acceptance and recovery of the incriminating currency notes from the accused, the objection that reliability of the trap was impaired as the solution collected in the phial was not sent to the chemical examination is too puerile for acceptance.

Mukhtiar Singh v. State of Punjab

Judgment dated 05.07.2016 passed by the Supreme Court in Criminal Appeal No. 618 of 2012, reported in AIR 2016 SC 3100

Relevant extracts from the Judgment:

In order to prove the manner of investigation and various aspects relating to the prosecution one Kewal Krishan was examined as PW-5. PW-5 is the official witness and was associated with the raid. Balbir Singh Kanungo (PW-3), a clerk of the office of the Deputy Commissioner, Patiala deposed before the court that the appellant-accused was working under him and he used to receive writings

of the accused. On this basis, he identified the writing and signature of the accused on the copy of the Jamabandi. The complainant, in his deposition, narrated the whole incident before the court. PW-5 completely corroborated with the statement of the complainant-Arjan Singh (PW-6). Though learned counsel for the appellant-accused pointed out the flaws in the process, no discrepancy was found with respect to the material aspects of the matter such as recovery of the incriminating currency notes, their identity or the credibility of the witnesses. When witness is examined on oath at length, it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. An objection was raised by learned counsel for the appellant-accused that the copy of the Jamabandi stood prepared on 04.09.1996 and thus, there was no occasion for the appellant-accused to ask for the illegal gratification on 06.09.1996. The best piece of evidence to establish this point was the Ujrat Register wherein signatures of the complainant were obtained as a token of delivery of copy of Jamabandi but no attempt was made on behalf of the appellant-accused to get the said Register produced on record. The said entry bears the date as 04.09.1996 in the relevant column but signatures of the complainant regarding receipt thereof were obtained on the said entry by the appellant-accused at the time of trap, that is, on 06.09.1996. Even otherwise, the demand, acceptance and recovery of the incriminating currency notes from the accused have been sufficiently proved. The objection that reliability of the trap was impaired as the solution collected in the phial was not sent to the Chemical Examiner is too puerile for acceptance. This point was considered by this Court in ***State of U.P. v. Zakaullah, (1998) 1 SCC 557*** wherein it was held as under:-

> "13.....We have not come across any case where a trap was conducted by the police in which the phenolphthalein solution was sent to the Chemical Examiner. We know that the said solution is always used not because there is any such direction by the statutory provision, but for the satisfaction of the officials that the suspected public servant would have really handled the bribe money....."

Further, it was asserted that the hands of the appellant-accused might have got in touch with the phenolphthalein powder when he was caught hold by the investigating officer and, thus, finding on conviction cannot be recorded on the basis of the phenolphthalein sodium carbonate test. In the case on hand, there is no evidence on record to show that the investigating officer shook hands with the appellant-accused or caught his hands and, as such there was no occasion for the phenolphthalein powder being transferred from the hands of the investigating officer to those of the accused. Even otherwise, the recovery of the tainted currency notes from the custody of the appellant-accused has been proved by direct evidence. It was also brought to the notice of the court that the complainant-Arjan Singh nursed a grudge against the appellant-accused for having supplied a copy of the Jamabandi to Nirmal Singh-adopted son of the complainant and the present case is the outcome of the said grudge only. In

view of the above, it was stated before the court by learned counsel for the respondent-State that the matter between the aforesaid Nirmal Singh and the complainant was compromised and even otherwise no material on record has been placed to show that a copy of the Jamabandi was supplied to Nirmal Singh by the appellant-accused. The contention is misconceived. Moreover, the said suit has no relevance at all with the instant case as it was filed on 16.01.1997, i.e., much later than the date of incident of 06.09.1996.

It may also be mentioned here that Head Constable Gurcharan Singh (PW-1) has categorically stated in his deposition that the sealed nip of hand-wash of the appellant-accused was also deposited with him on 06.09.1996 along with other case properties and he made the entry thereof in the relevant register. Though he was not cross-examined on this aspect, it was he who made the entry and he should have been confronted with the said entry if learned counsel for the appellant-accused thought that there was some discrepancy in it and if the appellant-accused wanted to take benefit thereof. In fact, there was no such discrepancy as deposit of sealed nip of hand-wash of the appellant-accused has been mentioned in the register.

The premise to be established on the facts for drawing the presumption is that there was demand, payment and acceptance of gratification. Once the said premise is established, the inference to be drawn is that the said gratification was accepted "as motive or reward" for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it. In the case on hand, from the facts on record, it is proved beyond doubt that the appellant-accused asked for the money to do a particular act and actually accepted the same. He was caught red-handed and, therefore, we do not find any reason to disagree with the findings of the trial court and the High Court.

It is a settled principle of law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 of the PC Act against the accused. Indeed, these twin requirements are sine qua non for proving the offence under Section 7 of the PC Act. In the light of our own re-appraisal of the evidence and keeping in view the abovesaid principle in mind, we have also come to a conclusion that twin requirements of demand and acceptance of illegal gratification were proved in the case on hand on the basis of evidence adduced by the prosecution against the appellant and hence the appellant was rightly convicted and sentenced for the offences

punishable under Section 7 read with Section 13(1)(d) and Section 13(2) of the Act. Conclusion: 19) On the face of the specific and positive evidence which cannot be said to be inherently improbable, the plea of the appellant-accused that the prosecution case is fit to be rejected on the ground of improbability does not appeal to us. The courts below, in our opinion, have rightly rejected the defence evidence. Therefore, in our opinion, the prosecution in this case has proved the guilt of the appellant-accused beyond all reasonable doubt.

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302. PREVENTION OF CORRUPTION ACT, 1988 – Section 13 (1) (d) (ii)

Offence of criminal misconduct – Misuse of official position and obtaining pecuniary advantage – Ingredients and proof of.

A public servant is said to commit an offence of criminal misconduct if he, by abusing his position as a public servant, obtaining for himself or for any other person any valuable thing or pecuniary advantage.

A. Sivaprakash v. State of Kerala

Judgment dated 10.05.2016 passed by the Supreme Court in Criminal Appeal No. 131 of 2007, reported in 2016 CriLJ 2654 (SC)

Relevant extracts from the Judgment:

In this hue, let us consider the nature of Ex.P/16(a). It is issued on the request of Panchayat President. It mentions that "valuation cost" of the said project is 25%. This letter never stated that A-3 had 'completed' 25% work. It only mentioned "valuation cost". A specific plea was raised by the appellant that it was the cost which was mentioned by him and that included the cost of material as well which was brought on site by A-3. High Court rejected this argument which is clearly erroneous. It was equally wrong in terming it as the stage certificate. The High Court wrongly proceeded on the basis that advance payment could be given only on installment basis depending upon the percentage of the work completed. We, thus, are of the opinion that there is no causal connection between release of payment to A-3 and letter Ex.P/16(a).

It was not even the case set up by the prosecution that appellant had taken that money from some person and had obtained any pecuniary advantage thereby. It was the obligation of the prosecution to satisfy the aforesaid mandatory ingredients which could implicate the appellant under the provisions of Section 13(1)(d)(ii). The attempt of the prosecution was to bring the case within the fold of clause (ii) alleging that he misused his official position in issuing the certificate utterly fails as it is not even alleged in the chargesheet and not even iota of evidence is led as to what kind of pecuniary advantage was obtained by the appellant in issuing the said letter.

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303. PREVENTION OF FOOD ADULTERATION ACT, 1954 – Section 13 (1), (2) and (3) Right under section 13 (2) of the Act, exercise and extent of – If any of the accused persons exercises such right and a certificate is issued from the CFL, that report would supersede the earlier report under section 13 (1) of the Act – Such supersession must ensure to the benefit of all the co-accused even if they have not exercised such right.

Hindustan Unilever Ltd. v. State of Rajasthan & anr.

Judgment dated 12.04.2016 passed by the Supreme Court in Criminal Appeal No. 252 of 2016, reported in 2016 (3) Crimes 116 (SC)

Relevant extracts from the Judgment:

The impugned order of the High Court shows that all the relevant issues as well as case laws were placed and considered and thereafter prayer of the appellant was rejected on the ground that although the second sample sent for analysis was found to be deteriorated, the third sample was not made available to the court till the year 2007 and the appellant as a co-accused did not exercise its right under Section 13(2) of the PFA Act.

On hearing the parties we find ourselves in complete agreement with the submissions advanced on behalf of the appellant that in case like the present where there are many accused, once right is exercised under Section 13(2) of the PFA Act by any of the accused leading to a certificate from the Director of the CFL, the consequence would be supersession of the report given earlier by the Public Analyst under sub-section (1) of Section 13 and such supersession must enure to the benefit of all the co-accused. The submission advanced on behalf of the respondents by learned Additional Advocate General for the State of Rajasthan that such supersession will be only to the benefit of the accused who exercised their right under Section 13(2) of the PFA Act does not merit acceptance. The first and foremost reason for the aforesaid view is plain and simple words of sub-sections (2) and (3) of Section 13.

The aforesaid view is also warranted by the fact that in the prevailing situation it will be a sheer waste of time and an empty formality to get the third sample also declared as deteriorated, by the CFL. There may also be cases like the present one where the number of accused is more than three. In such cases there is no possibility of complying with individual prayer of all the co-accused to send different samples for re-analysis by the CFL because Statute requires preparation of only 3 samples.

For the aforesaid reasons we are of the considered opinion that the view taken by the High Court in this case was erroneous and contrary to law. The view taken by us in this case gets support from a judgment of this Court in the case of ***Girishbhai Dahyabhai Shah v. C.C. Jani & Anr., (2009) 15 SCC 64*** though rendered in a different factual matrix. The impugned order is therefore set aside.

As a sequel, the prayer of the appellant before the High Court for quashing the criminal complaint stands allowed. The Criminal Appeal is also thus allowed.

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304. PREVENTION OF FOOD ADULTERATION ACT, 1954 – Sections 16 and 17
SPECIAL ECONOMIC ZONES ACT, 2005 – Sections 21 and 22
Offence of adulteration of food article meant for export – Provisions of Prevention of Food Adulteration Act, 1954, applicability of – Since manufacturing unit is situated in Special Economic Zone and is absolutely export orientated unit and food articles are meant for export, therefore, provisions of the Act of 1954 are not applicable and the Food Inspector will have no authority to take sample from such unit – Further held, taking of samples by Food Inspector from such unit and taking cognizance by Magistrate is without jurisdiction.
Vivekanand and others v. State of M.P.
Order dated 06.01.2016 passed by the High Court of M.P. in Misc. Criminal Case No. 1211 of 2012, reported in 2016 (3) MPLJ 125

Relevant extracts from the Order:

Central Government while exercising the power under Section 1(3) of SEZ Act, 2005, appointed the date 13/01/2010 on which the Sections 20,21 and 22 of the said Act came into force. Central Govt. has also notified that the Act or omission made punishable under the foreign trade (Development and Regulation) Act, 1992 as notified offences for the purpose of SEZ Act, 2005 and authorized the Development Commissioner of the jurisdictional Special Economic Zone to be enforcement Officer in respect of the notified offences committed in a Special Economic Zone.

Section 22 of the SEZ Act provided that no investigation, inspection and search or seizure carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of Section 21 without prior approval of the Development Commissioner concerned:

In the present case Food Inspector K.S. Solanki has taken the sample without prior approval of the concerned Development Commissioner and certainly he is not notified officer to carry out search or inspection. For securing the compliance of provision of any Central Act it is also relevant to mention that Section 51 of the SEZ Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent herewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

The provisions of P.F.A. Act applies only to articles of food meant for consumption inside the country and as such no application to articles of food meant for export. In the present case, petitioner's unit is situated in Special Economic Zone and petitioner's unit is 100% export oriented unit. Thus, the provisions of PFA Act are not applicable to the petitioner's unit.

The development Commissioner Indore, Special Economic Zone, granted permission to establish the unit in the Special Economic Zone vide Letter No. G-3/SSE/PROJ/2006-07/167 dated 25/07/2006. Prosecution has not filed any document to the effect that the petitioner's unit is manufacturing good or services for domestic tariff area. There is no case of the complainant that the chili powder and organic turmeric powder were meant for local sale or sale inside the country.

In such a situation, I am of the view that the provisions of PFA Act shall not be applicable to the petitioners unit, situated inside the Special Economic Zone. Thus, the Food Inspector has no authority to take the sample from petitioners unit which is 100% export oriented unit. Therefore, taking samples from the petitioner's unit and taking cognizance by the CJM is without jurisdiction.

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***305. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 12 and 29**

(i) Nature of proceeding – Domestic violence *per se* is not an offence – Proceedings are quasi civil in nature.

(ii) No revision is provided in the Act – Section 29 provides for an appeal against all orders – So revision filed by wife against the order of interim maintenance may be converted into an appeal under section 29 of the Act.

Yogendra Nath Dwivedi v. Smt. Vinita Dwivedi & ors.

Order dated 10.08.2015 passed by the High Court of M.P. in Criminal Revision No. 1758 of 2015, reported in ILR (2016) MP 575

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306. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 12 and 29

Payment of maintenance – Duty of husband – When can be absolved?

Facts of the case:

Husband left the shared household on account of marital discord – Wife filed an application under section 12 of the Act – Magistrate directed husband to pay maintenance to wife – Exercising revisionary jurisdiction on appeal against order of maintenance being dismissed and upholding the order of maintenance, it was held that it is not a case where the wife has left the house of the husband, but under the peculiar facts and circumstances of the case, it is the husband who has left the shared household, but that would not relieve him from paying maintenance to his wife and children.

Naresh Sharma v. Jyoti Sharma

Order dated 10.02.2016 passed by the High Court of M.P. in Criminal Revision No. 949 of 2015, reported in 2016 (2) JLJ 259

Relevant extracts from the Order:

On considering the above submissions I find that the sole consideration before this Court is whether the Appellate had erred in passing the order of maintenance against the petitioner/husband in the light of the fact that the petitioner/husband was living elsewhere and the respondent/wife was residing with the in-laws in the house which was in the name of the husband. I find that there is no infirmity in the order passed by the Trial Court primarily because it is not a case, where the wife has left the house of the husband, but under the peculiar facts and circumstances of the case, it is the husband who has left the shared household, but that would not relieve him from paying maintenance to his wife and children. Apparently children are aged 16 and 14 years and in these days of inflation, schooling is expensive and the aged father-in-law has also supported the daughter-in-law, whereas the husband has lost the suit of divorce then, under the circumstances, I have no hesitation in holding that wife is entitled to the maintenance as alleged by the Courts below, besides what has been ordered is also reasonable under the circumstances and on that score also the impugned orders does not call for any interference. The judicial conscience of the Court cannot shut itself from the peculiar facts and circumstances of the case. Moreover, this being a criminal revision, the findings of fact by the lower courts are unassailable, as the Court cannot re-appreciate the entire evidence and the jurisdiction being limited to question of law and errors apparent on the face of record, I do not find any infirmity in the order passed by the lower Court. The petition is bereft of merits and is dismissed as such.

307. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 18, 19, 20, 21, 28 and 31

ADMINISTRATION OF JUSTICE:

(i) Enactment of Domestic Violence Act, objectives of – Is to provide for a remedy which is an amalgamation of civil rights of the aggrieved person and to protect women against violence of any kind specially that occurring within the family as the civil law does not address this phenomenon in its entirety.

(ii) Proceedings under Domestic Violence Act, nature of – Although section 28 of the Act provides that proceedings shall be governed by CrPC but the disputes are predominately of civil nature – Therefore, the order to be passed by the Magistrate in first instance are of civil nature – If the order is violated, it assumes the character of criminality.

(iii) Administration of justice – Legal infirmity – Cure of and amendment – Permissibility of.

Section 28 (2) of the Act permits the Court to lay down its own procedure for disposal of an application under section 12 or 23 (2) – Therefore, such amendments which does not cause

prejudice to the other side and necessary to cure legal infirmity must be allowed although there is no enabling provision in CrPC – However, such power has to be exercised sparingly and with caution under limited circumstances.

Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari & anr. Judgment dated 18.04.2016 passed by the Supreme Court in Criminal Appeal No. 516 of 2016, reported in 2016 (3) Crimes 74 (SC)

Relevant extracts from the Judgment:

We have already mentioned the prayers which were made by respondent no.1 in the original petition and prayer 'A' thereof relates to Section 9. However, in prayer 'B', the respondent no.1 also sought relief of grant of monthly maintenance to her as well as her children. This prayer falls within the ambit of Section 20 of the DV Act. In fact, prayer 'A" is covered by Section 18 which empowers the Magistrate to grant such a protection which is claimed by the respondent no.1. Therefore, the petition is essentially under Sections 18 and 20 of the DV Act, though in the heading these provisions are not mentioned. However, that may not make any difference and, therefore, no issue was raised by the appellant on this count. In respect of the petition filed under Sections 18 and 20 of the DV Act, the proceedings are to be governed by the Code, as provided under Section 28 of the DV Act. At the same time, it cannot be disputed that these proceedings are predominantly of civil nature.

In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498A of the Indian Penal Code. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the Scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality.

Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorizes the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of

the shared household in which the aggrieved person resides etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act include giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex-parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.

In the aforesaid scenario, merely because Section 28 of the DV Act provides for that the proceedings under some of the provisions including Sections 18 and 20 are essentially of civil nature. We may take some aid and assistance from the nature of the proceedings filed under Section 125 of the Code. Under the said provision as well, a woman and children can claim maintenance. At the same time these proceedings are treated essentially as of civil nature.

We understood in this backdrop, it cannot be said that the Court dealing with the application under DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events [escalation of prices in the instant case] or to avoid multiplicity of litigation, Court will have the power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that respondent no. 1 was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the complaints in criminal Courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances. The pronouncement on this is contained in the recent judgment of this Court in ***S.R.Sukumar vs. S. Sunaad Raghuram, (2015) 9 SCC 609*** in the following paras:

> "17. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of

complaints. In ***U.P. Pollution Control Board vs. Modi Distillery And Ors., (1987) 3 SCC 684,*** wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. The name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:-

> "…The learned Single Judge has focused his attention only on the [pic] technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery…. Furthermore, the legal infirmity is of such a nature which could be easily cured…"

What is discernible from the U.P. Pollution Control Board's case is that easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.

In the instant case, the amendment application was filed on 24.05.2007 to carry out the amendment by adding paras 11(a) and 11 (b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Firstly, Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of

poem ‘Khalnayakaru’ being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India.”

What we are emphasising is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.

In this context, provisions of Sub-Section(2) of Section 28 of the DV Act gain significance. Whereas proceedings under certain sections of the DV Act as specified in sub-Section (1) of Section 28 are to be governed by the Code, the Legislature at the same time incorporated the provisions like sub-Section(2) as well which empowers the Court to lay down its own procedure for disposal of the application under Section 12 or Section 23(2) of the DV Act.

This provision has been incorporated by the Legislature keeping a definite purpose in mind. Under Section 12, an application can be made to a Magistrate by an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to claim one or more reliefs under the said Act. Section 23 deals with the power of the Magistrate to grant interim and ex-parte orders and sub-Section (2) of Section 23 is a special provision carved out in this behalf which is as follows: “(2).If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

The reliefs that can be granted by the final order or by an interim order, have already been pointed out above wherein it is noticed that most of these reliefs are of civil nature. If the power to amend the complaint/application etc. is not read into the aforesaid provision, the very purpose which the Act attempts to sub-serve itself may be defeated in many cases.

We, thus, are of the opinion that the amendment was rightly allowed by the Trial Court and there is no blemish in the impugned judgment of the High Court affirming the order of the Trial Court. This appeal is, thus, devoid of any merits and is, accordingly, dismissed with costs.

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308. RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 – Section 21

LAND ACQUISITION ACT, 1894 – Section 31

Lapse of proceedings for non-payment of compensation – Although Board had deposited the amount of compensation with Collector and possession was taken, however, there is nothing on record to show that the amount has been paid to the beneficiaries – Proceedings stood lapsed.

Purushottam Lal & ors. v. State of M.P. & ors.

Judgment dated 15.10.2015 passed by the High Court in Writ Appeal No. 305 of 2007, reported in ILR (2016) MP 713 (DB)

Relevant extracts from the Judgment:

A perusal of sub section (2) of Section 24 indicates that - Notwithstanding anything contained in sub section (1) of Section 24, in case where land acquisition proceedings are initiated under the Land Acquisition Act of 1894 and when an award under Section 11 has been made five years prior to commencement of the Act of 2013 but physical possession of the land has not been taken or compensation has not been paid, the said proceeding shall be deemed to have been lapsed. Further Section 31 of the Land Acquisition Act, 1984 pertains to payment of compensation or deposit of the same in Court. This provision contemplates that on making of an award under Section 11, the Collector shall tender the payment of compensation awarded by him to the person interested, entitled thereto according to the award and shall pay to them unless prevented by someone or some competency. Sub section (2) contemplates that if for any reason, amount is not paid or there is no competent person to receive the compensation, Collector shall deposit the amount of compensation to the Court to which reference under Section 18 would be submitted. A conjoint reading of both these sections clearly indicates that if award under land acquisition proceeding held under the Land Acquisition Act of 1894 is passed five years prior to coming into force of Act of 2013 and if either physical possession of the land has not been taken over or compensation is not paid to the beneficiaries, then the land acquisition proceedings lapse. The manner of payment of compensation is contemplated under Section 31 of the 1894 Act and the eventualities or non receipt of compensation warrants the Collector to deposit the amount with the Court where the reference can be submitted. Both these provisions, particularly, the provisions of Section 24 has been interpreted by the Supreme Court in the case of ***Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others, (2014) 3 SCC 183*** and after considering various aspects of the matter in para 11, 19 and 21 the following principles have been laid down :-

"11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

* * *

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes[2], relying upon the earlier decision in Prem Nath Kapur[3], has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in court.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of

repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

It has been clearly laid down by the Supreme Court in the aforesaid case, that if compensation is not paid or if possession of the land is not taken over and if five years period or more is over, prior to commencement of the Act of 2013, the land acquisition proceedings lapse. Section 31(1) of the Act is also taken note of and it has been clearly held that if compensation is neither paid to the beneficiaries nor deposited in the Court where reference would be met under Section 18 , land acquisition proceedings would lapse. It is also held that deposit of the amount as per the award with the treasury of the Government of State Revenue Department is not sufficient compliance. This judgment of the Supreme Court in the case of ***Pune Municipal Corporation*** (supra) has been subsequently considered in the case of ***Union of India & others v. Shiv Raj and others, (2014) 6 SCC 564*** and after taking note of the said judgment certain other judgments in the case of ***Bharat Kumar v. State of Haryana and another, (2014)6 SCC 586 and Bimla Devi and others v. State of Haryana, (2014)6 SCC 583*** have been taken note of and in para 26 and 27 the matter has been crystallized in the following manner :-

"26. The objects and Reasons of the 2013 Act and particularly Clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under :-

"18. The benefits under the new law would be available in all the cases of the land acquisition under the Land Acquisition Act 1894 where award has not been made or possession of land has not been taken."

27. However, the aforesaid appeals have to be decided in the light of the above settled legal prepositions. The admitted facts of the case remain that the respondent tenure holders had filed objections under Section 5-A of the 1894 Act as admitted in the affidavit filed by Smt. Usha Chaturvedi, Deputy Secretary (Land Acquisition), Land and Building Department, Vikas Bhawan, New Delhi, filed in January 2014 before this Court. Award No.15/87-88 had been made on 5.6.1987 and possession has not been taken till date though compensation has been deposited with the Revenue Department, which cannot be termed as "deemed payment" as has been held in Harakchand case."

Similar is the view taken by the Supreme Court in the case of ***Sharma Agro Industries v. State of Haryana and others, (2015)3 SCC 341*** wherein also the principles laid down in the case of ***Pune Municipal Corporation*** (supra) etc., has been considered and principle reiterated. It is therefore, clear from these judgments and interpretation of Section 24 of the Act of 2013 and implication of Section 31 of the Act of 1894 that if after passing of the award and five years prior to coming into force of Act of 2013, amount is not paid in accordance to the requirement of law, the entire proceedings lapsed. If aforesaid principle is applied in the present case, we find that award in question was passed on 15.4.1999 and from the averments made by the M.P. State Housing Board in their counter affidavit filed, it is only indicated that the amount of compensation has been deposited with the competent authority namely the Collector, Bhopal. Thereafter, in the additional affidavit filed on 5.10.2015, they only indicate about taking over of possession. However, nothing is said with regard to payment of the compensation to the beneficiaries in accordance to the requirement of Section 24(2). The Supreme Court has clearly laid down the principle that if either of the eventualities contemplated under sub section 2 of Section 24 are in existence, the land acquisition proceedings lapsed. The two eventualities are that possession is not taken over or compensation in accordance to law is not given to the beneficiaries. In this case even though the affidavit filed by the Housing Board indicates that possession is taken over by them and they have entered into some agreement with the contractor for development of the area and have also paid some amount in furtherance thereto but the amount of compensation has not been paid to the beneficiaries in accordance to the requirement of Section 31 of the Land Acquisition Act of 1894. On the contrary, the note sheet of the Collector dated 17.1.2003 available in the record of W.P. No.2633/2002 filed along with an interlocutory application I.A. No.9867/2015 which was heard by us along with this appeal, goes to show that after the amount of compensation was deposited by the Housing Board with the Revenue Department, namely the Collector on 17.1.2003. It was indicated that the amount has not been paid to the beneficiaries and therefore, in accordance to the provisions of Section 31 of the Act of 1894, the amount should be deposited in the Court where the proceeding under Section 18 are normally held. However, there is no material to show as to when, how and in what manner the amount has been deposited in the Court where the proceeding under Section 18 is maintainable. Inspite of granting repeated opportunities respondents have failed to demonstrate before this Court that the amount of compensation as required under law was paid. As held by the Supreme Court mere deposit of the amount in the Government Treasury or with the Revenue Department is not sufficient, it has to be paid to the beneficiaries or deposit in the Court where a reference under Section 18 is normally filed. That being so, we are satisfied that documents overwhelming available on record do demonstrates that inspite of award having been passed more than five years prior to coming into force of the Act of 2013 i.e. w.e.f. 1.1.2014, the award of compensation has not been paid to the beneficiaries as

required under law and therefore, in the light of legal principles laid down by the Supreme Court as referred to herein above, entire proceedings lapsed.

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***309. SENTENCE:**

CRIMINAL PROCEDURE CODE, 1973 – Sections 432 (7) and 433-A

CONSTITUTION OF INDIA – Articles 72, 161 and 226

PRISON RULES:

(i) Sentence – Life imprisonment, meaning of – It means sentence for the entire life unless part or whole of the sentence is remitted – Prisoner has no indefeasible right to be unconditionally released on the expiry of period of 20 years – Life imprisonment for 25 or 30 years without remission is permissible.

(ii) Power under section 433 of the Code of 1973 *vis-à-vis* Constitutional power under Articles 72 and 161, comparison of – Both cannot be equated with each other – Section 433-A CrPC cannot be invalidated as directly violative of Articles 72 and 161 – Orders passed under these Articles are amenable to judicial review.

(iii) Commutation and remission of sentences, status of – Both are independent to each other and are not same.

(iv) Power of remission vests with the State – The Court cannot grant any remission and provide for pre-mature release and at best can only issue direction to consider any such claim.

(v) Appropriate Government under section 432 (7) of the Code of 1973, who may be? Appropriate Government may be Central Government or State Government and depends upon the fact whether the sentence ordered by the Criminal Court is found under any law relating to which the executing power of the Union/State extends.

(vi) Parole, grant of – Although power to grant temporary release or parole is administrative in character yet it does not affect the power of the High Court under Article 226 of the Constitution – High Court may sparingly exercise such power of granting parole where request for it has been unjustifiably refused or where the interest of justice warrants the grant of parole.

State of Gujarat and anr. v. Lal Singh @ Manjit Singh and ors.

Judgment dated 29.06.2016 passed by the Supreme Court in Criminal Appeal No. 171 of 2016, reported in 2016 (3) Crimes 96 (SC)

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***310. SPECIFIC RELIEF ACT, 1963 – Section 6**

TRANSFER OF PROPERTY ACT, 1882 – Section 54

(i) Suit for possession – Suit filed by plaintiff for possession based on title on strength of sale deed executed in his favour by sole surviving heir of one of the deceased sons of deceased owner – Main plea of defendant was that she was the adopted daughter of deceased widow of deceased owner who was in possession of property as widow's estate before it was sold to plaintiff – Defendant unable to prove adoption – Plea of defendant does not *prima facie* put any cloud over plaintiff's title – Suit for possession simplicitor without declaration of title is maintainable.

(ii) Sale – Passing of sale consideration – Cannot be questioned by third party – *Ramjilal Tiwari v. Vijai Kumar & Ors., 1970 MPLJ 50* and *Maroti Bansi Teli v. Radhabai w/p Tukaram Kunbi & ors., AIR 1945 Nagpur 60* approved.

Muddasani Venkata Narsaiah (D) th. LRs. v. Muddasani Sarojana

Judgment dated 05.05.2016 passed by the Supreme Court in Civil Appeal No. 4816 of 2016, reported in 2016 AIR SCW 2250

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311. SPECIFIC RELIEF ACT, 1963 – Section 34

CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11

(i) Due process, connotation of – It means an opportunity to the other side to file pleading and documents before the Court of law – It does not mean the whole trial – Due process of law is satisfied the moment rights of parties are adjudicated upon by the competent Court.

(ii) Absence of cause of action – Suit for injunction by caretaker (employee) against true owner, rejection of – If on a meaningful and not on formal reading of the plaint, it is manifestly vexatiously and meritless in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order 7 Rule 11 of the Code – A caretaker, agent or employee who is in possession in that capacity does not possess any right to continue in the possession after cessation of service – Further held, he must handover possession on being demanded and such suit is not maintainable.

Jai Vilas Parisar & anr. v. Alok Kumar Hardatt & anr.

Judgment dated 28.09.2015 passed by the High Court of M.P. in Civil Revision No. 105 of 2011, reported in 2016 (I) MPJR 64

Relevant extracts from the Judgment:

The learned Counsel for the respondents on the strength of ***Prataprai N. Kothari v. John Braganza, (1999) 4 SCC 403*** contended that plaintiff cannot be dispossessed without following 'due process'. The Apex Court way back in ***T. Arivandandam v. T.V. Satyapal and anr., (1977) 4 SCC 467*** opined that the trial Court must remember that if on a meaningful-not formal - reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII Rule 11 C.P.C. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist judge is the answer to irresponsible law suits.

In ***Maria Margarida Sequeira Fernandes and ors. v. Erasmo Jack De Sequeira, (2012) 5 SCC 370,*** the Apex Court after taking stock of various judgments on the question of dispossession after following "due process of law", opined that due process of law means that nobody ought to be condemned unheard. Due process of law means a person in settled possession will not be dispossessed except by due process of law. "Due process" means an opportunity to the other side to file pleadings and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment right of parties are adjudicated upon by the competent Court.

The Delhi High Court in ***Thomas Cook (India) Ltd. v. Hotel Imperial, (2006) 88 DRJ 545*** opined as under :-

> "28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing — ejectment from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.
>
> Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What

> is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law"

This judgment of Delhi High Court is approved on the aspect of 'due process' of law by Supreme Court in ***Maria Margarida*** (supra) (para 80).

If the impugned order is tested as per acid test laid down by the Supreme Court in aforesaid judgment, it will be clear as per plaint averments itself that the plaintiff was given possession only in the capacity of an employee. No right to remain or continue in the possession after cessation of service is shown in plaint averments. A caretaker, agent or employee does not have any right or interest to continue in accommodation. The court below while deciding application under Order 7 Rule 11 C.P.C was required to examine whether there exists any triable cause of action, right or legal character. If averments of the plaint do not indicate any such right to continue in possession, plaint is lacking in showing the triable cause of action. For this purpose, no evidence is required to be lead / recorded. In Maria Margarida (supra) the Apex Court held that trial does not mean complete trial. It can be decided even at the stage of deciding application under Order 7 Rule 11 C.P.C. Justice R.C. Lahoti (as he then was) in Sham Lal v. Rajinder Kumar and Ors., 1994 (30) DRJ 596 opined that merely because the plaintiff was employed as a servant, or chowkidar to look after the property it cannot be said that he had entered into such possession of the property as would entitle him to exclude even the master from enjoying or claiming possession of the property or as would entitle him to compel the master staying away from his own property.

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312. SPECIFIC RELIEF ACT, 1963 – Section 39

TRANSFER OF PROPERTY ACT, 1882 – Section 108

REGISTRATION ACT, 1908 – Sections 17 and 49

(i) Suit for mandatory injunction in respect of leased land, maintainability of – Section 108 of the 1882 Act provides for statutory liability of lessor to deliver possession to lessee, therefore, suit for grant of mandatory injunction is maintainable.

(ii) Renewal of lease, effect of – Every renewal of lease is in fact amounts to fresh grant.

(iii) Rights and liabilities of lessor, reiterated.

(iv) Unregistered lease deed, evidentiary value of – Distinguishing *(2003) 8 SCC 752* and ***AIR 2004 SC 4082*, it was held that if execution of the document for purposes of granting lease is admitted in evidence by witness of the opposite party, an objection as to admissibility of such unregistered document cannot be entertained.**

Girdhar Jetha and others v. Municipal Corporation, through Commissioner Nagar Nigam, Jabalpur

Judgment dated 27.11.2015 passed by the High Court of M.P. in First Appeal No. 485 of 2004, reported in 2016 (3) MPLJ 181 (DB)

Relevant extracts from the Judgment:

The first part of the right and liability of the lessor deals with three contingencies, namely, the lessor is bound to disclose any material defect in the property to the lessee and the lessor is bound on the lessee request to put him in possession of the property. Likewise, the lessee is also responsible to deliver back the possession of the property to the lessor on the determination of the lease. In either case, when the lease is executed though the property was not in possession of the lessor, it would be the responsibility of the lessor to get the property vacated and deliver its possession to the lessee. Likewise, the lessee is also liable to deliver back the possession to the lessor the moment the lease is determined. On a perusal of the lease deed and the documents which have been placed on record by the appellants/plaintiffs, it is clear that on the date the renewal of the lease was ordered, the respondent Municipal Corporation was not in possession of the land so leased to the appellants/plaintiffs. It is also born from the record and the evidence adduced by the parties that the land was subsequently got vacated by the Municipal Corporation in the year 1999. That being so, for the purposes of enforcement of statutory liability prescribed under Section 108 of the Transfer of Property Act, lessor was required to put the appellants/plaintiffs in possession of the leased land. For the said purposes, in the considered opinion of this Court, a suit under Section 39 of the Specific Relief Act for grant of mandatory injunction would be maintainable as it is a statutory liability which the 2 respondent-defendant was required to discharge, and for which a mandatory injunction can be issued.

It is contended by learned counsel for the respondent/ defendant that there was determination of the lease in terms of provisions of Section 111 of the Transfer of Property Act. Alternatively, it is contended that there was an implied surrender of the lease by the appellants/ plaintiffs and, therefore, the suit for grant of mandatory injunction was not maintainable. We are unable to accept such a submission of learned counsel for the respondent/ defendant. The fact that the land was not in possession of the Municipal Corporation right from the year 1926, was well within the knowledge of the Municipal Corporation. The said Corporation was also knowing that the initial lease granted in the year 1926 had expired in the year 1956 and then thereafter there was no renewal whatsoever in favour of the appellant No.2-plaintiff Jabalpur Club. There was no action taken by the respondent Municipal Corporation to take the possession of the suit land from the appellants/plaintiffs after the expiry of the said period. On their own, it was stated in the letter issued to the appellants/plaintiffs that the land was being enjoyed by the appellants/plaintiffs though there was no continuity of the lease. From these documentary evidence, by no stretch of imagination, could it be said that the appellants/plaintiffs have surrendered the lease or possession of the suit land to the respondent/defendant or there was any implied surrender as is envisaged under Section 111 of Transfer of Property Act. To claim such a benefit, at least the documentary evidence to the effect that such a demand was made and then thereafter possession was taken by the respondent/defendant, was required to be produced before the trial Court. Not a single document to that effect was filed precisely because none was available. Even there is no determination of the lease or any intention shown in that respect. Only a threat is given that in case reply is not filed, such an order would be passed, but at least till the date of suit, there was no determination of lease by the respondent Municipal Corporation. The situation as have been enumerated in Section 111 of the Transfer of Property Act, which amounts to determination of lease are thus not achieved as the respondent Municipal Corporation itself has regularised the period of lease which was already lapsed, by grant of lease on 19.12.1989. Therefore, the provisions of Section 111 of the Transfer of Property Act, would not come to the rescue of the respondent/defendant.

On the aforesaid analogy and discussions, we have to hold that the suit for grant of mandatory injunction was rightly filed by the appellants/plaintiffs and the same was maintainable for grant of possession of the leased land to the appellants/plaintiffs by the respondent Municipal Corporation in performance of the statutory liability prescribed under Section 108 of the Transfer of Property Act read with Section 80 of the Municipal Corporation Act.

Learned counsel for the respondent/defendant has vehemently contended that the entire suit was founded on an unregistered document of lease, which was inadmissible in evidence as the registration of such document was necessary under Section 17 of the Registration Act. It is contended that such a document though was relied by the appellants/plaintiffs was neither registered nor impounded and the consequence of such was as prescribed under Section 49

of the Registration Act, therefore, even for this 31 reason, the relief was not available to the appellants/plaintiffs as claimed in the suit founded on an unregistered document and the suit was liable to be dismissed on this count alone. For the purpose of aforesaid, learned counsel for the respondent/defendant has placed his reliance in the case of ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and another, (2003) 8 SCC 752*** and would contend that since such an objection can be taken at any stage even in the appellate Court and if make out such a suit is to be treated as dismissed. It is contended that relying on the said decision in the case of ***R.V.E. Venkatachala Gounder*** (supra), further the law has been laid down by the Apex Court in the case of ***Smt. Dayamathi Bai v. K.M. Shaffi, AIR 2004 SC 4082***.

We have given our considered thought to the aforesaid submissions of learned counsel for the respondent/defendant and we have reasons to reject the same. First of all, the document was not made the basis for grant of any such relief of possession. It was shown for the purposes of pointing out the liability on the lessor, the respondent-Municipal Corporation in terms of the provisions of Section 108 of the Transfer of Property Act. Secondly, though the said document was said to be denied by the respondent/defendant, but their own action was based only on the said document as all notices were issued by the respondent-Municipal Corporation to the appellants/plaintiffs alleging breach of the said lease deed. Further, the lease deed was a statutory one and, therefore, merely because the same was not registered, a right accrued under the said lease deed that too a statutory right was not to be denied to the appellants/plaintiffs. The facts and circumstances in the case of ***R.V.E. Venkatachala Gounder*** (supra) and ***Smt Dayamathi Bai*** (supra), are distinguishable. In the case of ***R.V.E. Venkatachala Gounder*** (supra), a private contract was in between the parties and there were certain private documents relating to the title. The Apex Court while considering the said documents, reached to the conclusion that unregistered documents were of no consequence as Section 49 of the Registration Act prohibit admission of such documents in evidence. The similar distinguishable features were also available in the case of ***Smt. Dayamathi Bai*** (supra), which facts were considered in relation to a certified copy of the documents in absence of the proof of execution of the said document. Factual aspect that such a lease deed was executed in favour of the appellants/ plaintiffs was in fact admitted by DW/2, who himself has proved the said document of lease dated 19.12.1989. If execution of such a document for the purposes of granting lease was admitted in evidence, by the witnesses of the respondent/defendant, at this stage, such an objection raised regarding admissibility of the document is not to be entertained. The respondent would not be benefited by the decisions of the Apex Court relied by the learned counsel for the respondent/defendant in view of the aforesaid distinguishable features.

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GUIDELINES ISSUED BY THE APEX COURT IN VARIOUS DECISIONS
ARREST

The Supreme Court has issued various guidelines in the matter of arrest and detentions in the case ***D.K. Basu v. State of West Bengal, AIR 1997 SC 610 = (1997) 1 SCC 416 Arnesh Kumar v. State of Bihar and another, (2014) 8 SCC 273 = 2014 (3) Crimes 40 (SC)*** and ***Raghuuvanshi Dewanchand Bhasin v. State of Maharashtra & Anr. AIR 2011 SC3393.***

The guidelines are being published to facilitate the Judges while dealing cases relating to arrest.

D.K. BASU GUIDELINES:

(i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(ii) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(v) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(vii) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(viii) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(ix) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(x) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(xi) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

Other Directions:

The Apex Court has held that failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render his liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

The requirements, referred to above flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed. These would apply with equal force to the other governmental agencies also to which a reference has been made earlier.

These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the courts from time to time in connection with the safeguarding of the rights and dignity of the arrestee.

ARNESH KUMAR: GUIDELINES:

To ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/ producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

FURTHER ORDERS:

The Supreme Court further held that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

RAGHUVANSH DEWANCHAND BHASN GUIDELINES:

(a) All the High Court shall ensure that the Subordinate Courts use printed and machine numbered Form No.2 for issuing warrant of arrest and each such form is duly accounted for;

(b) Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;

(c) The presiding Judge of the court (or responsible officer specially authorized for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process, also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;

(d) The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;

(e) Every Court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;

(f) No warrant of arrest shall be issued without being entered in the register mentioned above and the concerned court shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the concerned case;

(g) A register similar to the one in clause (e) supra shall be maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;

(h) Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;

(i) On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the Station House Officer of the concerned Police Station or the Officer In-charge of the concerned agency;

(j) The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;

(k) In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and

(l) In the event of cancellation of the arrest warrant by the Court, the order cancelling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused.

Format of the Register

S. No.	The number printed on the form used	Case title And particulars	Name & particulars of the person against whom warrant of arrest is issued (accused/ witness)	The officer/ person to whom directed	Date of judicial order directing Arrest Warrant to be issued	Date of issue if any	Date of cancellation	Due date of return	Report returned on	The action taken as reported	Remarks

The Apex Court further directed that all the High Courts will issue appropriate directions in this behalf to the Subordinate Courts, which shall endeavour to put into practice the aforesaid directions at the earliest, preferably within six months from today i.e. 09.09.2011.

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PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 8th SEPTEMBER, 2016 NOTIFYING ALL DISTRICT JUDGES (EX-OFFICIO) AS PRESIDING OFFICER AS PER SECTION 64 OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

F-12-2-2014-VII-Sec.2A.– In exercise of the powers conferred by sub-sections (1) and (2) of section 51 read with section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No.30 of 2013), the State Government, hereby, notifies all present District Judges (ex-officio) as Presiding Officer for exercising the jurisdiction, powers and authority conferred on it by or under the said Act within their respective territorial jurisdiction and it shall also exercise jurisdiction for entertaining and deciding the references made to it under section 64 or applications made by the applicant under second proviso to sub-section (1) of section 64 of the said Act.

By order and in the name of the Governor of Madhya Pradesh

K.K. Singh, Principal Secy.

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I am not the BEST

but certainly,

I will try my BEST

ONE…..

One tree can start a forest,

One candle can wipeout darkness,

One smile can start friendship,

One laugh can conquer gloom,

One hand can lift a soul,

One word can set a goal,

One hope can raise spirits,

One touch can assure care,

One person can make the difference,

I promise to be

that "ONE" today …..

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT RULES, 2016

(Notification No. G.S.R. 424 (E). – ***New Delhi, the 14th April, 2016, Published in Gazette of India (Extraordinary) Part II Sec. 3 Sub-section (i) Dated 14-04-2016, Page No. 12-28.)***

In exercise of the powers conferred by sub-section (1) of section 23 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989), the Central Government hereby makes the following rules further to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, namely: –

1. (1) These rules may be called the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016.**

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as the said rules), in rule 2, for clause (b), the following clause shall be substituted, namely: –

‘(b) “dependent” means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for support and maintenance; ‘.

3. In the said rules, in rule 4, –

(a) for sub-rule (1), the following shall be substituted, namely: –

“(1) The State Government, on the recommendation of the District Magistrate, shall prepare for each District a panel of such number of eminent senior advocates who have been in practice for not less than seven years, as it may deem necessary for conducting cases in the Special Courts and Exclusive Special Courts.

(1A) The State Government in consultation with the Director Prosecution or in charge of the prosecution, shall also specify a panel of such number of Public Prosecutors and Exclusive Special Pubic Prosecutors, as it may deem necessary for conducting cases in the Special Courts and Exclusive Special Courts, as the case may be.

(1B) Both the panels referred to in sub-rule (1) and sub-rule (1A) shall be notified in the Official Gazette of the State and shall remain in force for a period of three years. " ;

(b) in sub-rule (2), for the words "Special Public Prosecutors", the words "Special Public Prosecutors and Exclusive Special Public Prosecutors" shall be substituted;

(c) in sub-rule (3), for the words "a Special Public Prosecutor", the words" a Special Public Prosecutor or an Exclusive Special Public Prosecutor" shall be substituted;

(d) for sub-rule (4) of rule 4, the following sub-rule shall be substituted, namely: –

"(4) The District Magistrate and the officer-in-charge of the prosecution at the District level, shall review,––

(a) the position of cases registered under the Act ;

(b) the implementation of the rights of victims and witnesses, specified under the provisions of Chapter IV A of the Act, and submit a monthly report on or before 20th day of each subsequent month to the Director of Prosecution and the State Government, which shall specify the actions taken or proposed to be taken in respect of investigation and prosecution of each case.";

(e) in sub-rule (5), for the words "conducting cases in the Special Courts", the words "conducting cases in the Special Courts or Exclusive Special Courts" shall be substituted;

(f) in sub-rule (6), for the words "Special Public Prosecutor", the words "Special Public Prosecutor and Exclusive Special Public Prosecutor" shall be substituted.

4. In the said rules, in rule 7, –

(a) for sub-rule (2), the following shall be substituted, namely: –

"(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority, submit the report to the Superintendent of Police, who in turn shall immediately forward the report to the Director General of Police or Commissioner of Police of the State Government, and the officer in-charge of the concerned police station shall file the charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days (the period is inclusive of investigation and filing of charge-sheet).

(2A) The delay, if any, in investigation or filing of charge-sheet in accordance with sub-rule (2) shall be explained in writing by the investigating officer.";

(b) for sub-rule (3), the following sub-rule shall be substituted, namely: –

"(3) The Secretary, Home Department and the Secretary, Scheduled Castes and Scheduled Tribes Development Department (the name of the Department may vary from State to State) of the State Government or Union territory Administration, Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police or the Commissioner of Police in-charge of the concerned State or Union territory shall review by the end of every quarter the position of all investigations done by the investigating officer"

5. In the said rules, in rule 8, in sub-rule (1), after clause (vi), the following clause shall be inserted, namely: –

"(via) informing the nodal officer and the concerned District Magistrates about implementation of the rights of victims and witnesses specified under the provisions of Chapter IV A of the Act;".

6. In the said rules, in rule 9, after clause (vi), the following clause shall be inserted namely: –

"(vii) implementation of the rights of victims and witnesses specified under the provisions of Chapter IVA the Act.''.

7. In the said rules, in rule 10, after clause (iii), the following clause shall be inserted, namely: –

"(iv) implementation of the rights of victims and witnesses specified under the provisions of Chapter IVA of the Act, in the identified areas.".

8. In the said rules, in rule 12, –

(a) for sub-rule (4), the following shall be substituted , namely: –

"(4) The District Magistrate or the Sub- Divisional Magistrate or any other Executive Magistrate shall make necessary administrative and other arrangements and provide relief in cash or in kind or both within seven days to the victims of atrocity, their family members and dependents according to the scale as provided in Annexure-I read with Annexure-II of the Schedule annexed to these rules and such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items.

(4A) For immediate withdrawal of money from the treasury so as to timely provide the relief amount as specified in sub-rule (4), the concerned State Government or Union territory Administration may provide necessary authorisation and powers to the District Magistrate.

(4B) The Special Court or the Exclusive Special Court may also order socio-economic rehabilitation during investigation, inquiry and trial, as provided in clause (c) of sub-section 6 of section 15A of the Act. ";

(b) in sub-rule (7), for the words "Special Court" at both the places where they occur, the words "Special Court or Exclusive Special Court" shall respectively be substituted.

9. In the said rules, for rule 14, the following rule shall be substituted, namely: –

14. Specific Responsibility of State Government.- (1) The State Government shall make necessary provisions in its annual budget for providing relief and rehabilitation facilities to the victims of atrocity, as well as for implementing an appropriate scheme for the rights and entitlements of victims and witnesses in accessing justice as specified in sub-section (11) of section 15A of Chapter IV A of the Act.

(2) The State Government shall review at least twice in a calendar year, in the month of January and July the performance of the Special Public Prosecutor and Exclusive Special Public Prosecutor specified or appointed under section 15 of the Act, various reports received, investigation made and preventive steps taken by the District Magistrate, Sub-Divisional Magistrate and Superintendent of Police, relief and rehabilitation facilities provided to the victims and the reports in respect of lapses on behalf of the concerned officers. ".

10. In the said rules, in rule 15, –

(i) in sub-rule (1),–

(A) for the words "shall prepare a model contingency plan for implementing", the words "shall frame and implement a plan to effectively implement" shall be substituted;

(B) after clause (a), the following clause shall be inserted, namely: –

"(aa) an appropriate scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of section 15 A of Chapter IV A of the Act;

(ii) in sub-rule (2), for the words "to the Central Government in the Ministry of Welfare", the words "to the Central Government in the Department of Social Justice and Empowerment, Ministry of Social Justice and Empowerment" shall be substituted.

11. In the said rules, for rule 16, the following rule shall be substituted, namely: –

''16. Constitution of State-level vigilance and monitoring committee:- (1) The State Government shall constitute high power vigilance and monitoring committee of not more than twenty-five members consisting of the following, namely: –

(i) Chief Minister or Administrator – Chairman (in case of a State under President's Rule, the Governor shall be the Chairman);

(ii) Home Minister, Finance Minister and Minister(s) in-charge of welfare and development of the Scheduled Castes and the Scheduled Tribes - Members (in case of a State under the President's Rule, the Advisors shall be Members);

(iii) all elected Members of Parliament and State Legislative Assembly and Legislative Council from the State belonging to the Scheduled Castes and the Scheduled Tribes shall be Members;

(iv) Chief Secretary, the Home Secretary, the Director General of Police, Director/Deputy Director, the National Commission for the Scheduled Castes and the National Commission for the Scheduled Tribes shall be Members;

(v) the Secretary in-charge to the welfare and development of the Scheduled Castes and the Scheduled Tribes shall be Convener.

(2) The high power vigilance and monitoring committee shall meet at least twice in a calendar year, in the month of January and July to review the implementation of the provisions of the Act, scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of section 15A of Chapter IV A of the Act, relief and rehabilitation facilities provided to the victims and other matters connected therewith, prosecution of cases under the Act, role of different officers or agencies responsible for implementing the provisions of the Act and review of various reports received by the State Government including that of the nodal officer and special officer."

12. In the said rules in rule 17, in sub-rule (1), after the words "review the implementation of the provisions of the Act, ", the words " scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of section 15A of Chapter IV A of the Act, " shall be inserted.

13. In the said rules, in rule 17A, in sub-rule(1), after the words, " review the implementation of the provisions of the Act", the words "scheme for the rights and entitlements of victims and witnesses in accessing justice, as specified in sub-section (11) of section 15A of Chapter IV A of the Act, ", shall be inserted.

14. In the said rules, in the Schedule, for Annexure-I, the following Annexure shall be substituted, namely: –

"ANNEXURE-I

[See rule 12(4)]

NORMS FOR RELIEF AMOUNT

Sr. No.	**Name of the Offence**	**Minimum amount of relief**
(1)	**(2)**	**(3)**
1.	Putting any inedible or obnoxious substance [Section 3(1)(a) of the Act]	One lakh rupees to the victim. Payment to then victim be made as follows: (i) 10 per cent, at First Information Report (FIR) stage for serial numbers (2) and (3) and 25 percent at FIR stage for serial numbers (1), (4) and (5); (ii) 50 per cent, when the charge sheet is sent to the court; (iii) 40 per cent, when the accused are convicted by the lower court for serial numbers (2) and (3) and likewise 25 Percent for serial numbers (1), (4) and (5).
2.	Dumping excreta, sewage, carcasses or any other obnoxious substance [Section 3 (1)(b) of the Act]	
3.	Dumping excreta, waste matter, carcasses with intent to cause injury, insult or annoyance [Section 3(1)(c) of the Act]	
4.	Garlanding with footwear or parading naked or semi-naked [Section 3 (1)(d) of the Act]	
5.	Forcibly committing acts such as removing clothes, forcible tonsuring of head, removing moustaches, painting face or body [Section 3 (1)(f)(e) of the Act]	
6.	Wrongful occupation or cultivation of land [Section 3 (1)(f) of the Act]	One lakh rupees to the victim. The land or premises or water supply or irrigation facility shall be restored where necessary at Government or Union territory Administration. Payment to the victim be made as follows: (i) 25 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court. One lakh rupees to the victim. Payment to be made as follows: (i) Payment of 25 per cent. First Information Report (FIR) stage;
7.	Wrongful dispossession of land or premises or interfering with the rights, including forest rights. [Section 3 (1)(g) of the Act]	
8.	Bagar or other forms of forced of bonded labour [Section 3 (1)(h) of the Act]	
9.	Compelling to dispose or carry human or animal carcasses, or to dig graves Section 3 (1)(i) of the Act]	

10. Making a member of the Scheduled Castes or the Scheduled Tribes to do manual scavenging or employing him for such purpose [Section 3(1)(j) of the Act]	(ii) 50 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
11. Performing, or promoting dedication of a Scheduled Caste or a Scheduled Tribe woman as a devadasi [Section 3 (1)(k) of the Act]	
12. Prevention from voting filing nomination [Section 3 (1)(1) of the Act]	Eighty-five thousand rupees to the victim. Payment to be made as follows: (i) 25 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when he charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
13. Forcing, intimidating or obstructing a holder of office of Panchayat or Municipality from performing duties [Section 3 (1)(m) of the Act]	
14. After poll violence and imposition of social and economic boycott [Section 3 (1)(n) of the Act]	
15. Committing any offence under this Act for having voted or not having voted for a particular candidate [Section 3 (1)(o) of the Act]	
16. Instituting false, malicious or vexatious legal proceedings [Section 3 (1)(p) of the Act]	Eighty-five thousand rupees to the victim or reimbursement of actual legal expenses and damages, whichever is less. Payment to be made as follows: (i) 25 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
17. Giving false and frivolous information to a public servant [Section 3 (1)(q) of the Act]	One lakh rupees to the victim or reimbursement of actual legal expenses and damages, whichever is less. Payment to be made as follows: (i) 25 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
18. Intentional insult or intimidation to humiliate in any place within public view [Section 3 (1)(r) of the Act]	One lakh rupees to the victim. Payment to be made as follows:

19. Abusing by caste name in any place within public view [Section 3 (1)(s) of the Act]	(i) 25 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when he charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
20. Destroying, damaging or defiling any object held sacred or in high esteem [section 3 (1)(t) of the Act]	
21. Promoting feelings of enmity, hatred or ill-will [Section 3 (1)(u) of the Act]	
22. Disrespecting by words or any other means of any late person held in high esteem [Section 3 (1)(v) of the Act]	
23. Intentionally touching a Scheduled Caste or a Scheduled Tribe woman without consent, using acts or gestures, as an act of sexual nature, [Section 3 (1)(w) of the Act]	Two lakh rupees to the victim. Payment to be made as follows: (i) 25 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
24. Section 326B of the Indian Penal Code (45 of 1860) – Voluntarily throwing or attempting to throw acid. Section 3 (2)(va) read with Schedule to the Act]	(a) Eight lakh and twenty-five thousand rupees to the victim with burns exceeding and 2 per cent and above burns on face or in case of functional impairment of eye, ear, nose and mouth and or burn injury on body exceeding 30 per cent; (b) four lakh and fifteen thousand rupees to the victim with burns between 10 per cent to the 30 per cent on the body; (c) eighty-five thousand rupees to the victim with burns less than 10 per cent, on the body other than on face. In addition, the State Government or Union territory Administration shall take full responsibility for the treatment of the victim of acid attack. The payment in terms of items (a) to (c) are to be made as follows: (i) 50 per cent at First Information Report (FIR) stage; (ii) 50 percent, after receipt of medical report.

25. Section 354 of the Indian Penal Code (45 of 1860) – Assault or criminal force to woman with intent to outrage her modesty. [Section 3 (2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows: (i) 50 per cent, at First Information Report (FIR) stage; (ii) 25 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, on conclusion of trial by the lower court.
26. Section 354A of the Indian Penal Code (45 of 1860) – Sexual harassment and punishment for sexual harassment. [Section 3 (2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows: (i) 50 per cent, at First Information Report (FIR) stage; (ii) 25 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, on conclusion of trial by the lower court.
27. Section 354B of the Indian Penal Code (45 of 1860) – Assault or use of Criminal force to woman with intent to disrobe [Section 3 (2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows: (i) 50 per cent, at First Information Report (FIR) stage; (ii) 25 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, on conclusion of trial by the lower court.
28. Section 354 C of the Indian Penal Code (45 of 1860) – voyeurism. [Section 3 (2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows: (i) 10 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when the charge sheet is sent to the court; (iii) 40 per cent, when the accused are convicted by the lower court.
29. Section 354 D of the Indian Penal Code (45 of 1860) – Stalking. [Section 3 (2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows: (i) 10 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when the charge sheet is sent to the court; (iii) 40 per cent, when the accused are convicted by the lower court.

30. Section 376B of the Indian Penal Code (45 of 1860) – Sexual intercourse by husband upon his wfe during separation. [Section 3 (2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows: (i) 50 per cent, after medical examination and confirmatory medical report; (ii) 25 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
31. Section 376C of the Indian Penal Code (45 of 1860) – Sexual intercourse by a person in authority. [Section 3 (2)(va) read with Schedule to the Act]	Four lakh rupees to the victim. Payment to be made as follows: (i) 50 per cent, after medical examination and confirmatory medical report; (ii) 25 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, on conclusion of trial by the lower court.
32. Section 509 of the Indian Penal Code (45 of 1860) – Word, gesture or act intended to insult the modesty of a woman. [Section 3 (2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows: (i) 25 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
33. Fouling or corrupting of water [Section 3 (1)(x) of the Act]	Full cost of restoration of normal facility, including cleaning when the water is fouled, to be borne by the concerned State Government or Union territory Administration. In addition, an amount of eight lakh twenty-five thousand rupees shall be deposited with the District Magistrate for creating community assets of the nature to be decided by the District Authority in consultation with the Local Body.
34. Denial of customary right of passage to a place of public resort or obstruction from using or accessing public resort [Section 3 (1)(y) of the Act]	Four lakh twenty-five thousand rupees to the victim and cost of restoration of right of passage by the concerned State Government or Union territory Administration. Payment to be made as follows: (i) 25 per cent, at First Information Report (FIR) stage;

	(ii) 50 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
35. Forcing of causing to leave house, village, residence desert place o residence [Section 3 (1)(z) of the Act]	Restoration of the site or right to stay in house, village or other place of residence by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim and reconstruction of the house at Government cost, if destroyed. Payment to be made as follows: (i) 25 per cent, at First Information Report (FIR) stage; (ii) 50 per cent, when the charge sheet is sent to the court; (iii) 25 per cent, when the accused are convicted by the lower court.
36. Obstructing or preventing a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to— (A) using common property resources of an area, or burial cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage [Section 3 (1) (za) (A) of the Act]	(A): Restoration of the right using common or property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage equally with others, by the concerned State Government or Union Territory Administration and relief of one lakh rupees to the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court.
(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or	(B): Restoration of the right of mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public

	taking out wedding procession, or mounting a horse or any other vehicle during wedding processions [Section 3 (1) (za) (B) of the Act]	places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions, equally with others by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim. Payment to be made as follows: (i) Payment of 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court;
(C)	entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jatras [Section 3 (1) (za) (C) of the Act]	(C): Restoration of the right of entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out any religious procession or jatras, as is open to the public or other persons professing the same religion, social or cultural processions including jatras, equally with other persons, by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage (ii) 50 per cent. when the charge sheet is sent to the court. (iii) 25 per cent. when the accused are convicted by the lower court.
(D)	entering any educational institution, hospital, dispensary, primary health center, shop or place of public entertainment or any other public place; or using any utensils or articles meant forpublic use in any place open to the public[Section 3 (1) (za) (D) of the Act]	(D): Restoration of the right of entering any educational institution, hospital, dispensary, primary health center, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public, equally with other persons by the concerned State Government or Union territory Administration and relief of one lakh

(E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to [Section 3 (1)(za)(E) of the Act]	rupees to the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court. (E): Restoration of the right of practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to, by the concerned State Government/ Union territory Administration and relief of one lakh rupees to the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court.
37. Causing physical harm or mental agony on the allegation of being a witch or practicing witchcraft or being a witch [Section 3(1)(zb) of the Act]	One lakh rupees to the victim and also commensurate with the indignity, insult, injury and defamation suffered by the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court.
38. Imposing or threatening a social or economic boycott. [Section 3(1)(zc) the Act]	Restoration of provision of all economic and social services equally with other persons, by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim. To be paid in full when charge sheet is sent to the lower court.

39. Giving or fabricating false evidence [Section 3(2)(i) and (ii) of the Act]	Four lakh fifteen thousand rupees to the victim. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court.
40. Committing offences under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more [Section 3(2) of the Act]	Four lakh rupees to the victim and or his dependents. The amount would vary, if specifically otherwise provided in this Schedule. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court.
41. Committing offences under the Indian Penal Code (45 of 1860) specified in the Schedule to the Act punishable with suchpunishment as specified under the Indian Penal Code for such offences[Section 3(2) (va) read with the Schedule to the Act]	Two lakh rupees to the victim and or his dependents. The amount would vary if specifically otherwise provided in this Schedule. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court;
42. Victimisation at the hands of a public servant [Section 3(2) (vii) of the Act]	Two lakh rupees to the victim and or his dependents. Payment to be made as follows: (i) 25 per cent. at First Information Report (FIR) stage; (ii) 50 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. when the accused are convicted by the lower court.
43. Disability. Guidelines for evaluation of various disabilities and procedure for certification as contained in the Ministry	

of Social Justice and Empowerment Notification No. 16-18/97-NI, dated the 1st June, 2001. A copy of the notification is at Annexure-II.	
(a) 100 per cent. Incapacitation	Eight lakh and twenty-five thousand rupees to the victim. Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 50 per cent. when the charge sheet is sent to the court;
(b) where incapacitation is less than 100 per cent. but more than 50 per cent.	Four lakh and fifty thousand rupees to the victim. Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 50 per cent. when the charge sheet is sent to the court;
(c) where incapacitation is less than 50 per cent.	Two lakh and fifty thousand rupees to the victim Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 50 per cent. when the charge sheet is sent to the court.
44. Rape or Gang rape.	
(i) Rape[Section 375 of the Indian Penal Code(45 of 1860)]	Five lakh rupees to the victim. Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 25 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. on conclusion of trial by the lower court.
(ii) Gang rape [Section 376D of the Indian Penal Code(45 of 1860)]	Eight lakh and twenty-five thousand rupees to the victim. Payment to be made as follows: (i) 50 per cent. after medical examination and confirmatory medical report; (ii) 25 per cent. when the charge sheet is sent to the court; (iii) 25 per cent. on conclusion of trial by the lower court.

45. Murder or Death.	Eight lakh and twenty-five thousand rupees to the victim. Payment to be made as follows: (i) 50 per cent. after post mortem report; (ii) 50 per cent. when the charge sheet is sent to the court.
46. Additional relief to victims of murder, death, massacre, rape, gang rape, permanent incapacitation and dacoity.	In addition to relief amounts paid under above items, relief may be arranged within three months of date of atrocity as follows:- (i) Basic Pension to the widow or other dependents of deceased persons belonging to a Scheduled Caste or a Scheduled Tribe amounting to five thousand rupees per month, as applicable to a Government servant of the concerned State Government or Union territory Administration, with admissible dearness allowance and employment to one member of the family of the deceased, and provision of agricultural land, an house, if necessary by outright purchase; (ii) Full cost of the education up to graduation level and maintenance of the children of the victims. Children may be admitted to Ashram schools or residential schools, fully funded by the Government; (iii) Provision of utensils, rice, wheat, dals, pulses, etc., for a period of three months.
47. Complete destruction or burnt houses.	Brick or stone masonary house to be constructed or provided at Government cost where it has been burnt or destroyed.”

Note: The Principal Rules were published in the Gagette of India, Extraordinary, vide notfication number G.S.R. 316 (E), dated the 31st March, 1995 and last amended vide G.S.R. 774 (G), dated the 5th November, 2014.

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THE MADHYA PRADESH VEXATIOUS LITIGATION (PREVENTION) ACT, 2015

[Received the assent of the Governor on the 26th August, 2015; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 26th August, 2015, page no. 702(2) to 402(4)]

An Act to prevent the institution or continuance of vexatious proceedings in courts.

Be it enacted by the Madhya Pradesh Legislature in the Sixty-sixth year of the Republic of India as follows: –

1. Short title, extent and commencement. – (1) This Act may be called the **Madhya Pradesh Vexatious Litigation (Prevention) Act, 2015**.

(2) It extends to the whole of the State of Madhya Pradesh.

(3) It shall come into force on such date as the State Government may, by notification in the official Gazette, appoint.

2. Leave of Court necessary for vexatious litigant to institute or continue any civil or criminal proceedings. – (1) If, on an application made by the Advocate General the High Court is satisfied that any person has habitually and without any reasonable ground instituted vexatious proceedings, civil or criminal, in any Court or Courts, whether against the same person or against different persons, the High court may, after hearing that person or giving him an opportunity of being heard, order that no proceedings, civil or criminal, shall be instituted by him in any Court (and that any legal proceeding instituted by him in any Court before the order shall not be continued by him). –

(a) in the High Court of Madhya Pradesh without the leave of the High Court; and

(b) elsewhere in the State, without the leave of the District and Sessions Judge.

At the hearing of any such application, the Advocate General may appear through a pleader.

(2) Such leave shall not be given unless the High Court or the Judge, as the case may be, is satisfied that the proceedings are not an abuse of the process of the court and that there is prima facie ground for the proceedings.

(3) No appeal shall lie against an order refusing leave for institution or Continuance of any proceedings by a person who is the subject of an order for the time being in force under sub-section (1):

Provided that nothing in this sub-section shall apply to any appeal which may lie to or any proceeding before the Supreme Court.

(4) If it appears to the High Court that the person against whom an application is made under sub-section (1), is unable, on account of poverty, to engage a pleader, the High Court may engage a pleader to appear for him.

Explanation. – For the purpose of this section, "pleader" has the same meaning as in clause (15) of Section 2 of the Code of Civil Procedure, 1908 (V of 1908).

(5) Every order made under sub-section (1) directing any person to obtain leave before instituting or continuing proceedings shall be published in the official Gazette and may also be published in such other manner as the High Court thinks fit.

3. Proceedings instituted or continued without leave to e dismissed. – Any proceeding instituted or continued in any Court by a person against whom an order under sub-section (1) o the last preceding section has been made, without obtaining he leave referred to in that section, shall be dismissed by the Court:

Provided that this section shall not apply to any proceeding instituted for the purpose of obtaining such leave.

4. Exclusion o time required for obtaining leave, for computation of limitation period. – Where a person, against whom an order under sub-section (1) of Section 2 has been made applies for leave for institution of any proceeding, the time required by the High Court or the Judge, as the case may be, for deciding the application shall be excluded in computing the period of limitation (if any) prescribed under any law for the time being in force for instituting such proceedings.

Explanation. – In excluding such time, the date on which the application for leave was made to the proper authority and the date on which such authority made its order on the application shall both be counted.

5. Power to make rules. – The High Court may make rules for carrying out the purposes of this Act.

6. Saving. – The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force for prevention of vexatious preceedings or other abuse of legal process, or which require consent, sanction or approval in any form of any other authority for the institution or continuance of any proceeding.

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THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT, 2015

An Act to provide for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement — (1) This Act may be called the **Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015**.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 23rd day of October, 2015.

2. Definition — (1) In this Act, unless the context otherwise requires,––

(a) "Commercial Appellate Division" means the Commercial Appellate Division in a High Court constituted under sub-section (1) of section 5;

(b) "Commercial Court" means the Commercial Court constituted under sub-section (1) of section 3;

(c) "commercial dispute" means a dispute arising out of––

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce;

(viii) franchising agreements;

(ix) distribution and licensing agreements;

(x) management and consultancy agreements;

(xi) joint venture agreements;

(xii) shareholders agreements;

(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(xiv) mercantile agency and mercantile usage;

(xv) partnership agreements;

(xvi) technology development agreements;

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

(xviii) agreements for sale of goods or provision of services;

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) insurance and re-insurance;

(xxi) contracts of agency relating to any of the above; and

(xxii) such other commercial disputes as may be notified by the Central Government.

Explanation–– A commercial dispute shall not cease to be a commercial dispute merely because—

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;

(d) "Commercial Division" means the Commercial Division in a High Court constituted under sub-section (1) of section 4;

(e) "District Judge" shall have the same meaning as assigned to it in clause (a) of article 236 of the Constitution of India;

(f) "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;

(g) "notification" means a notification published in the Official Gazette and the expression "notify" with its cognate meanings and grammatical variations shall be construed accordingly;

(h) "Schedule" means the Schedule appended to the Act; and

(i) "Specified Value", in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government.

(2) The words and expressions used and not defined in this Act but defined in the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872, shall have the same meanings respectively assigned to them in that Code and the Act.

CHAPTER II

CONSTITUTION OF COMMERCIAL COURTS, COMMERCIAL DIVISIONS AND COMMERCIAL APPELLATE DIVISIONS

3. Constitution of Commercial Courts — (1) The State Government, may after consultation with the concerned High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

Provided that no Commercial Court shall be constituted for the territory over which the High Court has ordinary original civil jurisdiction.

(2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The State Government shall, with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a Commercial Court, from amongst the cadre of Higher Judicial Service in the State.

4. Constitution of Commercial Division of High Court — (1) In all High Courts, having ordinary civil jurisdiction, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Division.

5. Constitution of Commercial Appellate Division — (1) After issuing notification under sub-section (1) of section 3 or order under sub-section (1) of section 4, the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches for the purpose of exercising the jurisdiction and powers conferred on it by the Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Appellate Division.

6. Jurisdiction of Commercial Court — The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation.– For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908.

7. Jurisdiction of Commercial Divisions of High Courts — All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 or section 104 of the Patents Act, 1970 shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 or section 104 of the Patents Act, 1970 shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.

8. Bar against revision application or petition against an interlocutory order — Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the

provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.

9. Transfer of suit if counterclaim in a commercial dispute is of Specified Value — (1). Notwithstanding anything contained in the Code of Civil Procedure, 1908, in the event that a counterclaim filed in a suit before a civil court relating to a commercial disputeis of Specified Value, such suit shall be transferred by the civil court to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit.

(2) In the event that such suit is not transferred in the manner contemplated in sub-section (1), the Commercial Appellate Division of the High Court exercising supervisory jurisdiction over the civil court in question may, on the application of any of the parties to the suit, withdraw such suit pending before the civil court and transfer the same for trial or disposal to the Commercial Court or Commercial Division or, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

10. Jurisdiction in respect of arbitration matters — Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and––

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

11. Bar of jurisdiction of Commercial Courts and Commercial Divisions — Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction

of the civil court is either expressly or impliedly barred under any other law for the time being in force.

CHAPTER III

SPECIFIED VALUE

12. Determination of Specified Value — (1) The Specified Value of the subject-matter of the commercial dispute in a suit, appeal or application shall be determined in the following manner:––

(a) where the relief sought in a suit or application is for recovery of money, the money sought to be recovered in the suit or application inclusive of interest, if any, computed up to the date of filing of the suit or application, as the case may be, shall be taken into account for determining such Specified Value;

(b) where the relief sought in a suit, appeal or application relates to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining such Specified Value;

(c) where the relief sought in a suit, appeal or application relates to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be, shall be taken into account for determining Specified Value;

(d) where the relief sought in a suit, appeal or application relates to any other intangible right, the market value of the said rights as estimated by the plaintiff shall be taken into account for determining Specified Value; and

(e) where the counterclaim is raised in any suit, appeal or application, the value of the subject-matter of the commercial dispute in such counterclaim as on the date of the counterclaim shall be taken into account.

(2) The aggregate value of the claim and counterclaim, if any as set out in the statement of claim and the counterclaim, if any, in an arbitration of a commercial dispute shall be the basis for determining whether such arbitration is subject to the jurisdiction of a Commercial Division, Commercial Appellate Division or Commercial Court, as the case may be.

(3) No appeal or civil revision application under section 115 of the Code of Civil Procedure, 1908, as the case may be, shall lie from an order of a Commercial Division or Commercial Court finding that it has jurisdiction to hear a commercial dispute under this Act.

CHAPTER IV

APPEALS

13. Appeals from decrees of Commercial Courts and Commercial Divisions — (1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996.

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

14. Expeditious disposal of appeals — The Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal.

CHAPTER V

TRANSFER OF PENDING SUITS

15. Transfer of pending cases — (1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of a Specified Value pending in any civil court in any district or area in respect of which a Commercial Court has been constituted, shall be transferred to such Commercial Court:

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were notcomplete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy andefficacious disposal of such suit or application in accordance with Order XIV-A of the Codeof Civil Procedure, 1908:

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

CHAPTER VI
AMENDMENTS TO THE PROVISIONS OF THE CODE OF CIVIL PROCEDURE, 1908

16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes — (1) The provisions of the Code of Civil Procedure, 1908 shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908, as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908, as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.

CHAPTER VII
MISCELLANEOUS

17. Collection and disclosure of data by Commercial Courts, Commercial Divisions and Commercial Appellate Divisions — The statistical data regarding the number of suits, applications, appeals or writ 18. The High Court may, by notification, issue practice directions to supplement the petitions filed before the Commercial Court, Commercial Division, or Commercial

Appellate provisions of Chapter II of this Act or the Code of Civil Procedure, 1908 insofar as such Division, as the case may be, the pendency of such cases, the status of each case, and the provisions apply to the hearing of commercial disputes of a Specified Value. number of cases disposed of, shall be maintained and updated every month by each Commercial Court, Commercial Division, Commercial Appellate Division and shall be published on the website of the relevant High Court.

18. Power of High Court to issue directions — The High Court may, by notification, issue practice directions to supplement the provisions of Chapter II of this Act or the Code of Civil Procedure, 1908 insofar as such provisions apply to the hearing of commercial disputes of a Specified Value.

19. Infrastructure facilities — The State Government shall provide necessary infrastructure to facilitate the working of a Commercial Court or a Commercial Division of a High Court.

20. Training and continuous education — The State Government may, in consultation with the High Court, establish necessary facilities providing for training of Judges who may be appointed to the Commercial Court, Commercial Division or the Commercial Appellate Division in a High Court.

21. Act to have overriding effect — Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.

22. Power to remove difficulties — (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

23. Repeal and savings — (1) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

SCHEDULE
(SEE SECTION 16)

1. Amendment of section 26 — In section 26 of the Code of Civil Procedure, 1908 (hereafter referred to as the Code), in sub-section (2), the following proviso shall be inserted, namely:––

"Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of Rule 15A".

2. Substitution of new section for section 35 — For section 35 of the Code, the following section shall be substituted, namely:––

'35. Costs. (1) In relation to any commercial dispute, the Court, notwithstanding anything contained in any other law for the time being in force or Rule, has the discretion to determine:

(a) whether costs are payable by one party to another;

(b) the quantum of those costs; and

(c) when they are to be paid.

Explanation — For the purpose of clause (a), the expression "costs" shall mean reasonable costs relating to—

(i) the fees and expenses of the witnesses incurred;

(ii) legal fees and expenses incurred;

(iii) any other expenses incurred in connection with the proceedings.

(2) If the Court decides to make an order for payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party:

Provided that the Court may make an order deviating from the general rule for reasons to be recorded in writing.

Illustration

The Plaintiff, in his suit, seeks a money decree for breach of contract, and damages. The Court holds that the Plaintiff is entitled to the money decree. However, it returns a finding that the claim for damages is frivolous and vexatious.

In such circumstances the Court may impose costs on the Plaintiff, despite the Plaintiff being the successful party, for having raised frivolous claims for damages.

(3) In making an order for the payment of costs, the Court shall have regard to the following circumstances, including—

(a) the conduct of the parties;

(b) whether a party has succeeded on part of its case, even if that party has not been wholly successful;

(c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the case;

(d) whether any reasonable offer to settle is made by a party and unreasonably refused by the other party; and

(e) whether the party had made a frivolous claim and instituted a vexatious proceeding wasting the time of the Court.

(4) The orders which the Court may make under this provision include an order that a party must pay––

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating to a distinct part of the proceedings; and

(g) interest on costs from or until a certain date.'.

3. Amendment of section 35A — In section 35A of the Code, sub-section (2) shall be omitted.

4. Amendment of First Schedule — In the First Schedule to the Code,–

(A) in the Order V, in Rule 1, in sub-rule (1), for the second proviso, the following proviso shall be substituted, namely:––

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.";

(B) in Order VI,––

(i) after Rule 3, the following Rule shall be inserted, namely:––

"3A. Forms of pleading in Commercial Courts––In a commercial dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms.";

(ii) after Rule 15, the following Rule shall be inserted, namely:–

''15A. Verification of pleadings in a commercial dispute.—

(1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.";

(C) in Order VII, after Rule 2, the following Rule shall be inserted, namely:—

"2A. Where interest is sought in the suit,—

(1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state—

(a) the rate at which interest is claimed;

(b) the date from which it is claimed;

(c) the date to which it is calculated;

d) the total amount of interest claimed to the date of calculation; and

(e) the daily rate at which interest accrues after that date.";

(D) in Order VIII, —

(i) in Rule 1, for the proviso, the following proviso shall be substituted, namely: —

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.";

(ii) after Rule 3, the following Rule shall be inserted, namely:––

"3A. Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court—

(1) Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.

(2) The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit or deny, but which he requires the plaintiff to prove, and which allegations he admits.

(3) Where the defendant denies an allegation of fact in a plaint, he must state his reasons for doing so and if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.

(4) If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.

(5) If the defendant disputes the plaintiff's valuation of the suit, he must state his reasons for doing so, and if he is able, give his own statement of the value of the suit.";

(iii) in Rule 5, in sub-rule (1), after the first proviso, the following proviso shall be inserted, namely:––

''Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability." ;

(iv) in Rule 10, after the first proviso, the following proviso shall be inserted, namely: —

''Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.";

(E) for Order XI of the Code, the following Order shall be substituted, namely:—

"ORDER XI
DISCLOSURE, DISCOVERY AND INSPECTION OF DOCUMENTS IN SUITS BEFORE THE COMMERCIAL DIVISION OF A HIGH COURT OR A COMMERCIAL COURT

1. Disclosure and discovery of documents — (1) Plaintiff shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the plaint, including:—

(a) documents referred to and relied on by the plaintiff in the plaint;

(b) documents relating to any matter in question in the proceedings, in the power, possession, control or custody of the plaintiff, as on the date of filing the plaint, irrespective of whether the same is in support of or adverse to the plaintiff's case;

(c) nothing in this Rule shall apply to documents produced by plaintiffs and relevant only—

(i) for the cross-examination of the defendant's witnesses, or

(ii) in answer to any case set up by the defendant subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(2) The list of documents filed with the plaint shall specify whether the documents in the power, possession, control or custody of the plaintiff are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document, mode of execution, issuance or receipt and line of custody of each document.

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation — A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.

(4) In case of urgent filings, the plaintiff may seek leave to rely on additional documents, as part of the above declaration on oath and subject to grant of such leave by Court, the plaintiff shall file such additional documents in Court, within thirty days of filing the suit, along with a declaration on oath that the plaintiff has produced all documents in its power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff and that the plaintiff does not have any other documents, in its power, possession, control or custody.

(5) The plaintiff shall not be allowed to rely on documents, which were in the plaintiff's power, possession, control or custody and not disclosed along with plaint or within the extended period set out above, save and except by leave of Court and such leave shall be granted only upon the plaintiff establishing reasonable cause for non–disclosure along with the plaint.

(6) The plaint shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

(7) The defendant shall file a list of all documents and photocopies of all documents, in its power, possession, control or custody, pertaining to the suit, along with the written statement or with its counterclaim if any, including—

(a) the documents referred to and relied on by the defendant in the written statement;

(b) the documents relating to any matter in question in the proceeding in the power, possession, control or custody of the defendant, irrespective of whether the same is in support of or adverse to the defendant's defence;

(c) nothing in this Rule shall apply to documents produced by the defendants and relevant only––

(i) for the cross-examination of the plaintiff's witnesses,

(ii) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(iii) handed over to a witness merely to refresh his memory.

(8) The list of documents filed with the written statement or counterclaim shall specify whether the documents, in the power, possession, control or custody of the defendant, are originals, office copies or photocopies and the list shall also set out in brief, details of parties to each document being produced by the defendant, mode of execution, issuance or receipt and line of custody of each document.

(9) The written statement or counterclaim shall contain a declaration on oath made by the deponent that all documents in the power, possession, control or custody of the defendant, save and except for those set out in sub-rule (7) (c) (iii) pertaining to the facts and circumstances of the proceedings initiated by the plaintiff or in the counterclaim, have been disclosed and copies thereof annexed with the written statement or counterclaim and that the defendant does not have in its power, possession, control or custody, any other documents.

(10) Save and except for sub-rule (7) (c) (iii), defendant shall not be allowed to rely on documents, which were in the defendant's power, possession,

control or custody and not disclosed along with the written statement or counterclaim, save and except by leave of Court and such leave shall be granted only upon the defendant establishing reasonable cause for non-disclosure along with the written statement or counterclaim.

(11) The written statement or counterclaim shall set out details of documents in the power, possession, control or custody of the plaintiff, which the defendant wishes to rely upon and which have not been disclosed with the plaint, and call upon the plaintiff to produce the same.

(12) Duty to disclose documents, which have come to the notice of a party, shall continue till disposal of the suit.

2. Discovery by interrogatories — (1) In any suit the plaintiff or defendant by leave of the court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose:

Provided further that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

(2) On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court, and that court shall decide within seven days from the day of filing of the said application, in deciding upon such application, the court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

(3) In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

(4) Interrogatories shall be in the form provided in Form No. 2 in Appendix C to the Code of Civil Procedure, 1908, with such variations as circumstances may require.

(5) Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer of other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

(6) Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on the ground of privilege or any other ground may be taken in the affidavit in answer.

(7) Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous and any application for this purpose may be made within seven days after service of the interrogatories.

(8) Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the court may allow.

(9) An affidavit in answer to interrogatories shall be in the form provided in Form No. 3 in Appendix C to the Code of Civil Procedure, 1908, with such variations as circumstances may require.

(10) No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court.

(11) Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court for an order requiring him to answer, or to answer further, as the case may be, and an order may be made requiring him to answer, or to answer further, either affidavit or by viva voice examination, as the court may direct.

3. Inspection — (1) All parties shall complete inspection of all documents disclosed within thirty days of the date of filing of the written statement or written statement to the counterclaim, whichever is later. The Court may extend this time limit upon application at its discretion, but not beyond thirty days in any event.

(2) Any party to the proceedings may seek directions from the Court, at any stage of the proceedings, for inspection or production of documents by the other party, of which inspection has been refused by such party or documents have not been produced despite issuance of a notice to produce.

(3) Order in such application shall be disposed of within thirty days of filing such application, including filing replies and rejoinders (if permitted by Court) and hearing.

(4) If the above application is allowed, inspection and copies thereof shall be furnished to the party seeking it, within five days of such order.

(5) No party shall be permitted to rely on a document, which it had failed to disclose or of which inspection has not been given, save and except with leave of Court.

(6) The Court may impose exemplary costs against a defaulting party, who willfully or negligently failed to disclose all documents pertaining to a suit or essential for a decision therein and which are in their power, possession, control or custody or where a Court holds that inspection or copies of any documents had been wrongfully or unreasonably withheld or refused.

4. Admission and denial of documents — (1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.

(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:—

(a) correctness of contents of a document;

(b) existence of a document;

(c) execution of a document;

(d) issuance or receipt of a document;

(e) custody of a document.

Explanation – A statement of admission or denial of the existence of a document made in accordance with sub-rule (2)(b) shall include the admission or denial of the contents of a document.

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

(4) Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.

(5) An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.

(6) In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria,– costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.

(7) The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.

5. Production of documents — (1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of any suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the Form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908.

(3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non–production are not given and order costs.

6. Electronic records — (1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify––

(a) the parties to such Electronic Record;

(b) the manner in which such electronic record was produced and by whom;

(c) the dates and time of preparation or storage or issuance or receipt of each such electronic record;

(d) the source of such electronic record and date and time when the electronic record was printed;

(e) in case of email ids, details of ownership, custody and access to such email ids;

(f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;

(g) deponent's knowledge of contents and correctness of contents;

(h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;

(i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.

(5) The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including metadata or logs before admission of such electronic record.

7. Certain provisions of the Code of Civil Procedure, 1908 not to apply — For avoidance of doubt, it is hereby clarified that Order XIII Rule 1, Order VII Rule 14 and Order VIII Rule 1A of the Code of Civil Procedure, 1908 shall not apply to suits or applications before the Commercial Divisions of High Court or Commercial Courts.".

5. Insertion of new Order XIII-A — After Order XIII of the Code, the following Order shall be inserted, namely:—

'ORDER XIII-A

SUMMARY JUDGMENT

1. Scope of and classes of suits to which this Order applies — (1) This Order sets out the procedure by which Courts may decide a claim pertaining to any Commercial Dispute without recording oral evidence.

(2) For the purposes of this Order, the word "claim" shall include—

(a) part of a claim;

(b) any particular question on which the claim (whether in whole or in part) depends; or

(c) a counterclaim, as the case may be.

(3) Notwithstanding anything to the contrary, an application for summary judgment under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgment — An applicant may apply for summary judgment at any time after summons has been served on the defendant:

Provided that, no application for summary judgment may be made by such applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgment — The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that––

(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

4. Procedure — (1) An application for summary judgment to a Court shall, in addition to any other matters the applicant may deem relevant, include the matters set forth in sub-clauses (a) to (f) mentioned hereunder:—

(a) the application must contain a statement that it is an application for summary judgment made under this Order;

(b) the application must precisely disclose all material facts and identify the point of law, if any;

(c) in the event the applicant seeks to rely upon any documentary evidence, the applicant must,––

(i) include such documentary evidence in its application, and

(ii) identify the relevant content of such documentary evidence on which the applicant relies;

(d) the application must state the reason why there are no real prospects of succeeding on the claim or defending the claim, as the case may be;

(e) the application must state what relief the applicant is seeking and briefly state the grounds for seeking such relief.

(2) Where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of:—

(a) the date fixed for the hearing; and

(b) the claim that is proposed to be decided by the Court at such hearing.

(3) The respondent may, within thirty days of the receipt of notice of application of summary judgment or notice of hearing (whichever is earlier), file a reply addressing the matters set forth in clauses (a) to (f) mentioned hereunder in addition to any other matters that the respondent may deem relevant:—

(a) the reply must precisely––

(i) disclose all material facts;

(ii) identify the point of law, if any; and

(iii) state the reasons why the relief sought by the applicant should not be granted;

(b) in the event the respondent seeks to rely upon any documentary evidence in its reply, the respondent must—

(i) include such documentary evidence in its reply; and

(ii) identify the relevant content of such documentary evidence on which the respondent relies;

(c) the reply must state the reason why there are real prospects of succeeding on the claim or defending the claim, as the case may be;

(d) the reply must concisely state the issues that should be framed for trial;

(e) the reply must identify what further evidence shall be brought on record at trial that could not be brought on record at the stage of summary judgment; and

(f) the reply must state why, in light of the evidence or material on record if any, the Court should not proceed to summary judgment.

5. Evidence for hearing of summary judgment — (1) Notwithstanding anything in this Order, if the respondent in an application for summary judgment wishes to rely on additional documentary evidence during the hearing, the respondent must:—

(a) file such documentary evidence; and

(b) serve copies of such documentary evidence on every other party to the application at least fifteen days prior to the date of the hearing.

(2) Notwithstanding anything in this Order, if the applicant for summary judgment wishes to rely on documentary evidence in reply to the defendant's documentary evidence, the applicant must:—

(a) file such documentary evidence in reply; and

(b) serve a copy of such documentary evidence on the respondent at least five days prior to the date of the hearing.

(3) Notwithstanding anything to the contrary, sub-rules (1) and (2) shall not require documentary evidence to be:—

(a) filed if such documentary evidence has already been filed; or

(b) served on a party on whom it has already been served.

6.Orders that may be made by Court — (1) Orders that may be made by Court.

(1) On an application made under this Order, the Court may make such orders that it may deem fit in its discretion including the following:—

(a) judgment on the claim;

(b) conditional order in accordance with Rule 7 mentioned hereunder;

(c) dismissing the application;

(d) dismissing part of the claim and a judgment on part of the claim that is not dismissed;

(e) striking out the pleadings (whether in whole or in part); or

(f) further directions to proceed for case management under Order XV-A.

(2) Where the Court makes any of the orders as set forth in sub-rule (1) (a) to (f), the Court shall record its reasons for making such order.

7. Conditional order — (1) Where it appears to the Court that it is possible that a claim or defence may succeed but it is improbable that it shall do so, the Court may make a conditional order as set forth in Rule 6 (1) (b).

(2) Where the Court makes a conditional order, it may:—

(a) make it subject to all or any of the following conditions:—

(i) require a party to deposit a sum of money in the Court;

(ii) require a party to take a specified step in relation to the claim or defence, as the case may be;

(iii) require a party, as the case may be, to give such security or provide such surety for restitution of costs as the Court deems fit and proper;

(iv) impose such other conditions, including providing security for restitution of losses that any party is likely to suffer during the pendency of the suit, as the Court may deem fit in its discretion; and

(b) specify the consequences of the failure to comply with the conditional order, including passing a judgment against the party that have not complied with the conditional order.

8. Power to impose costs — The Court may make an order for payment of costs in an application for summary judgment in accordance with the provisions of sections 35 and 35A of the Code.'.

6. Omission of Order XV — Order XV of the Code shall be omitted.

7. Insertion of Order XV-A — After Order XV of the Code, the following Order shall be inserted, namely:—

“ORDER XV-A

CASE MANAGEMENT HEARING

1.First Case Management Hearing — The Court shall hold the first Case Management Hearing, not later than four weeks from the date of filing of affidavit of admission or denial of documents by all parties to the suit.

2. Orders to be passed in a Case Management Hearing — In a Case Management Hearing, after hearing the parties, and once it finds that there are issues of fact and law which require to be tried, the Court may pass an order––

(a) framing the issues between the parties in accordance with Order XIV of the Code of Civil Procedure, 1908 after examining pleadings, documents and documents produced before it, and on examination conducted by the Court under Rule 2 of Order X, if required;

(b) listing witnesses to be examined by the parties;

(c) fixing the date by which affidavit of evidence to be filed by parties;

(d) fixing the date on which evidence of the witnesses of the parties to be recorded;

(e) fixing the date by which written arguments are to be filed before the Court by the parties;

(f) fixing the date on which oral arguments are to be heard by the Court; and

(g) setting time limits for parties and their advocates to address oral arguments.

3. Time limit for the completion of a trial — In fixing dates or setting time limits for the purposes of Rule 2 of this Order, the Court shall ensure that the arguments are closed not later than six months from the date of the first Case Management Hearing.

4. Recording of oral evidence on a day-to-day basis — The Court shall, as far as possible, ensure that the recording of evidence shall be carried on, on a day-to-day basis until the cross-examination of all the witnesses is complete.

5. Case Management Hearings during a trial — The Court may, if necessary, also hold Case Management Hearings anytime during the trial to issue appropriate orders so as to ensure adherence by the parties to the dates fixed under Rule 2 and facilitate speedy disposal of the suit.

6. Powers of the Court in a Case Management Hearing — (1) In any Case Management Hearing held under this Order, the Court shall have the power to—

(a) prior to the framing of issues, hear and decide any pending application filed by the parties under Order XIII-A;

(b) direct parties to file compilations of documents or pleadings relevant and necessary for framing issues;

(c) extend or shorten the time for compliance with any practice, direction or Court order if it finds sufficient reason to do so;

(d) adjourn or bring forward a hearing if it finds sufficient reason to do so;

(e) direct a party to attend the Court for the purposes of examination under Rule 2 of Order X;

(f) consolidate proceedings;

(g) strike off the name of any witness or evidence that it deems irrelevant to the issues framed;

(h) direct a separate trial of any issue;

(i) decide the order in which issues are to be tried;

(j) exclude an issue from consideration;

(k) dismiss or give judgment on a claim after a decision on a preliminary issue;

(l) direct that evidence be recorded by a Commission where necessary in accordance with Order XXVI;

(m) reject any affidavit of evidence filed by the parties for containing irrelevant, inadmissible or argumentative material;

(n) strike off any parts of the affidavit of evidence filed by the parties containing irrelevant, inadmissible or argumentative material;

(o) delegate the recording of evidence to such authority appointed by the Court for this purpose;

(p) pass any order relating to the monitoring of recording the evidence by a commission or any other authority;

(q) order any party to file and exchange a costs budget;

(r) issue directions or pass any order for the purpose of managing the case and furthering the overriding objective of ensuring the efficient disposal of the suit.

(2) When the Court passes an order in exercise of its powers under this Order, it may—

(a) make it subject to conditions, including a condition to pay a sum of money into Court; and

(b) specify the consequence of failure to comply with the order or a condition.

(3) While fixing the date for a Case Management Hearing, the Court may direct that the parties also be present for such Case Management Hearing, if it is of the view that there is a possibility of settlement between the parties.

7. Adjournment of Case Management Hearing — (1) The Court shall not adjourn the Case Management Hearing for the sole reason that the advocate appearing on behalf of a party is not present:

Provided that an adjournment of the hearing is sought in advance by moving an application, the Court may adjourn the hearing to another date upon the payment of such costs as the Court deems fit, by the party moving such application.

(2) Notwithstanding anything contained in this Rule, if the Court is satisfied that there is a justified reason for the absence of the advocate, it may adjourn the hearing to another date upon such terms and conditions it deems fit.

8. Consequences of noncompliance with orders — Where any party fails to comply with the order of the Court passed in a Case Management Hearing, the Court shall have the power to—

(a) condone such non-compliance by payment of costs to the Court;

(b) foreclose the non-compliant party's right to file affidavits, conduct cross-examination of witnesses, file written submissions, address oral arguments or make further arguments in the trial, as the case may be, or

(c) dismiss the plaint or allow the suit where such non-compliance is wilful, repeated and the imposition of costs is not adequate to ensure compliance.".

8. Amendment of Order XVIII — In Order XVIII of the Code, in Rule 2, for sub-rules (3A), (3B), (3C), (3D), (3E) and (3F), the following shall be substituted, namely:—

"(3A) A party shall, within four weeks prior to commencing the oral arguments, submit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record.

(3B) The written arguments shall clearly indicate the provisions of the laws being cited in support of the arguments and the citations of judgments being relied upon by the party and include copies of such judgments being relied upon by the party.

(3C) A copy of such written arguments shall be furnished simultaneously to the opposite party.

(3D) The Court may, if it deems fit, after the conclusion of arguments, permit the parties to file revised written arguments within a period of not more than one week after the date of conclusion of arguments.

(3E) No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(3F) It shall be open for the Court to limit the time for oral submissions having regard to the nature and complexity of the matter.".

9. Amendment of Order XVIII — In Order XVIII of the Code, in Rule 4, after sub-rule (1), the following sub-rules shall be inserted, namely:––

''(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal:

Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit.".

10.Amendment to Order XIX — In Order XIX of the Code, after Rule 3, the following Rules shall be inserted, namely:––

"4.Court may control evidence. (1) The Court may, by directions, regulate the evidence as to issues on which it requires evidence and the manner in which such evidence may be placed before the Court.

(2) The Court may, in its discretion and for reasons to be recorded in writing, exclude evidence that would otherwise be produced by the parties.".

5. Redacting or rejecting evidence — A Court may, in its discretion, for reasons to be recorded in writing––

(i) redact or order the redaction of such portions of the affidavit of examination-in-chief as do not, in its view, constitute evidence; or

(ii) return or reject an affidavit of examination-in-chief as not constituting admissible evidence.

6. Format and guidelines of affidavit of evidence **—** An affidavit must comply with the form and requirements set forth below:—

(a) such affidavit should be confined to, and should follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with;

(b) where the Court is of the view that an affidavit is a mere reproduction of the pleadings, or contains the legal grounds of any party's case, the Court may, by order, strike out the affidavit or such parts of the affidavit, as it deems fit and proper;

(c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;

(d) an affidavit shall state—

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source for any matters of information or belief;

(e) an affidavit should—

(i) have the pages numbered consecutively as a separate document (or as one of several documents contained in a file);

(ii) be divided into numbered paragraphs;

(iii) have all numbers, including dates, expressed in figures; and

(iv) if any of the documents referred to in the body of the affidavit are annexed to the affidavit or any other pleadings, give the annexures and page numbers of such documents that are relied upon.".

11. Amendment of Order XX — In Order XX of the Code, for Rule 1, the following Rule shall be substituted, namely:––

"(1) The Commercial Court, Commercial Division, or Commercial Appellate Division, as the case may be, shall, within ninety days of the conclusion of arguments, pronounce judgment and copies thereof shall be issued to all the parties to the dispute through electronic mail or otherwise.".

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मध्यप्रदेश उच्च न्यायालय, जबलपुर

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