JOTI JOURNAL

(BI-MONTHLY)

DECEMBER 2021

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

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Former Chief Justice, High Court of M.P.

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EDITORIAL

Esteemed Readers,

As this year draws to a close, we can look back with pride and enumerate the accomplishments of the Academy over this year. We are well poised to make significant strides in the year ahead as the pre-eminent institution of judicial education. This is the time to reflect and look back as well as look into the future.

Education, even within the judicial environment, has long been recognised as an agent of change. Judges are charged to resolve disputes and apply complex laws, yet, clearly, Judges cannot possess all the technical knowledge needed to decide all cases. The continuing education equips the judiciary individually and institutionally to cope with the problems and challenges confronting the Courts. From this perspective, education is seen as an agent of change which is promoted through effective learning. This ability to change is of unique significance to judging.

In this year, the continuing judicial education programmes accomplished by use of technology has made accessible learning approaches that extend educational opportunities. Initially we were compelled by the pandemic last year to conduct education and training programmes through virtual mode but now we made this distance learning methodology as a permanent feature of our scheme. This new environment facilitates the sharing of expertise, practice, and resources in continuing judicial education and maximizes accessibility to judicial education and resources by removing the barriers of location and time, and in most cases, cost.

The Academy, in a phased manner, is also resuming its in-person training, which is conducted physically, unlike the online course that was conducted virtually. In 2021, the Academy organized 83 programmes out of which 13 programmes were conducted off-line and remaining were on-line. In these programmes, the Academy has imparted judicial education and trainings to 4754 Judges of the District Judiciary. In all 6762 participants as other stakeholders of the Justice Dispensation System were also imparted training in 21 programmes. Thus, the Academy has successfully campaigned for justice delivery through continuing judicial education.

In the months of November and December, we have conducted Induction Institutional Training Course and a week long Special Institutional Training Courses in four groups for Civil Judges Junior Division. Online Workshops on

Key issues relating to Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Narcotic Drugs & Psychotropic Substances Act, 1985 were also organised. Programmes on Criminal Appeal & Revision and on Civil Appeal were conducted in interactive manner was another highlight of this span.

Taking a hands-on approach to learning often results in more ingrained knowledge, with the ability to retain information quickly and for longer periods of time. When learning in a practical environment, we're remembering actions and scenarios which our brains find easier to retain. It's for these reasons that we have to provide our new Judges the best practical learning experience to complement their legal knowledge. With this objective, Madhya Pradesh State Judicial Academy developed IT-enabled Model Court Room in its premises for training of the new Judges through mock trials. It was a matter of great honour for the Academy that on 18th December, Hon'ble the Chief Justice inaugurated this Model Court Room. Hon'ble Shri Justice Sujoy Paul, Chairman of the Academy and other Hon'ble Judges also graced the occasion.

This December 2021 edition marks the end of the year. It is therefore, a time of reflection and a time to thank the many people who have contributed to the success of the Academy during the year. This year we conducted a varied range of offline and online training courses. This would not have been possible without the guidance and support rendered by Hon'ble Judges and the active co-operation of the Judges of the District Courts. It was a kind gesture on their part and we express our sincere gratitude.

Of course, the quality of this Journal is very dependent on its readers. A special mention of thanks to our readers also who from time to time sent in their suggestions and constructive opinion. We hope this symbiotic relationship is perpetual and continues to lay the groundwork for further progress in the development of this ever-evolving journal. Hence, kindly send in your suggestions and remarks as we so dearly appreciate every single one of them.

By the time this issue reaches your hands, we shall be celebrating the advent of the Year 2022. This change of calendar is a carrefour from where we may outset new challenges with expectancies. We look forward to the challenges that lie ahead of us with our experiences of the past and certainly with enough grit and mettle, we will get through those as well.

I wish the New Year bring good health, happiness and good fortune.

Ramkumar Choubey
Director

HON'BLE THE CHIEF JUSTICE VISITING THE MADHYA PRADESH STATE JUDICIAL ACADEMY

GLIMPSES OF INAUGURATION OF MODEL COURT ROOM AT MADHYA PRADESH STATE JUDICIAL ACADEMY (18.12.2021)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Special Institutional Course for the Civil Judges, Junior Division of 2020 Batch (Group-I)
(22.11.2021 to 27.11.2021)

Special Institutional Course for the Civil Judges, Junior Division of 2020 Batch (Group-II)
(29.11.2021 to 04.12.2021)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Special Institutional Course for the Civil Judges, Junior Division of 2020 Batch (Group-III)
(06.12.2021 to 11.12.2021)

Special Institutional Course for the Civil Judges, Junior Division of 2020 Batch (Group-IV)
(13.12.2021 to 18.12.2021)

GLIMPSES OF EDUCATIONAL PROGRAMMES CONDUCTED ONLINE

Interactive Session on – Key issues relating to Criminal Appeals and Revisions (20.11.2021)

Workshop on – Key issues relating to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (27.11.2021)

Interactive Session on – Key issues relating to Civil Appeals (04.12.2021)

Workshop on – Key issues relating to N.D.P.S. Act,1985 (18.12.2021)

HON'BLE SHRI JUSTICE SATISH KUMAR SHARMA ASSUMES CHARGE AS JUDGE OF HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Satish Kumar Sharma, on His Lordship's transfer from Rajasthan High Court to High Court of Madhya Pradesh, was administered oath of office on 25th November, 2021 by Hon'ble the Chief Justice Shri Ravi Malimath in a brief Swearing-in-Ceremony held in the Conference hall of South Block of High Court of Madhya Pradesh at Jabalpur.

His Lordship was born on 25th May, 1960. After obtaining degrees of B.Sc., M.A. and LL.B., His Lordship was appointed as Civil Judge-cum-Judicial Magistrate on 19th July, 1985 in Rajasthan Judicial Services. His Lordship was promoted to Higher Judicial Services as officiating District Judge on 19th May, 2001 and as District & Sessions Judge on 13th August, 2008. His Lordship held the post of Registrar General of Rajasthan High Court with effect from 11th April, 2016 till 5th March, 2020.

His Lordship was appointed as Judge of the Rajasthan High Court on 6th March, 2020.

We on behalf of JOTI Journal, welcome His Lordship and wish him a healthy, happy and successful tenure.

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"It is the spirit of law and not the form of law that keeps justice alive."

Earl Warren

HON'BLE SHRI JUSTICE SHAILENDRA SHUKLA DEMITS OFFICE

Hon'ble Shri Justice Shailendra Shukla demitted office on His Lordship's attaining superannuation.

Hon'ble Shri Justice Shailendra Shukla, was born on 17th November, 1959. After obtaining degrees of M.Sc. and LL.B., joined Madhya Pradesh Judicial Services on 18th August, 1987. His Lordship was promoted to Higher Judicial Services as officiating District Judge on 29th August, 1998. His Lordship was granted Selection Grade Scale with effect from 10th October, 2007 and Super Time Scale with effect from 1st October, 2015.

His Lordship, as Judge of District Judiciary, worked in different capacities at Jabalpur, Narsinghpur, Seoni, Damoh, Sagar, Chhindwara, Bhopal and Khandwa. His Lordship also worked as Officer-on-Special Duty., High Court of Madhya Pradesh, Jabalpur, Additional Registrar (Vigilance) and Principal Registrar (Vigilance), High Court of Madhya Pradesh, Jabalpur, President, District Consumer Forum, Additional Director and Director, Madhya Pradesh State Judicial Academy (the then JOTRI). His Lordship held the post of District & Sessions Judge, Bhopal from 21st October, 2016 till elevation.

His Lordship took oath as Judge, High Court of Madhya Pradesh on 19th November, 2018. During His Lordship's tenure, rendered valuable services as Judge and also as Member of various Administrative Committees.

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

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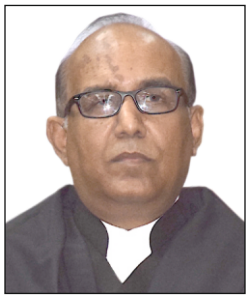
HON'BLE SHRI JUSTICE RAJENDRA KUMAR SRIVASTAVA DEMITS OFFICE



Hon'ble Shri Justice Rajendra Kumar Srivastava demitted office on His Lordship's attaining superannuation.

Hon'ble Shri Justice Rajendra Kumar Srivastava, was born on 1st January, 1960. His Lordship after obtaining degrees of B.A. and LL.B., joined Madhya Pradesh Judicial Services as Civil Judge Class II on 30th January, 1986. His Lordship was promoted to Higher Judicial Services as Additional District & Sessions Judge on 26th May, 1997.

His Lordship worked in different capacities at Narsinghpur, Seoni, Burhar, Bhikangaon, Chhindwara, Maihar, Sagar, Raipur, Manawar, Seoni, Chhatarpur. His Lordship also held the post of Additional Principal Judge, Family Court, Gwalior. His Lordship was District & Sessions Judge, Raisen and Rewa. His Lordship was District & Sessions Judge, Chhatarpur from 25th March, 2017 till elevation.

His Lordship took oath as Judge, High Court of Madhya Pradesh on 19th June, 2018. During His Lordship's tenure, rendered valuable services as Judge and also as Member of various Administrative Committees.

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

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"It is duty of a judge to see that the justice is appropriately administered, for that is the paramount consideration of a judge."

Dipak Misra, J.

in ***K. Anbazhagan v. State of Karnataka, (2015) 6 SCC 158***

PART - I

AWARD OF LOK ADALAT: EFFECT AND EXECUTION

Dhirendra Singh,
Faculty (Senior), MPSJA

Resolution of dispute through agreeable and amicable settlement is a innovative and revolutionary democratic method contributed by India to the World Jurisprudence. In Lok Adalat, as it is popularly called i.e peoples court, the litigants are at the centre stage, mutually negotiating, as to what each of them want. Since the litigants on both sides get what they wanted, it is said there are no victors and vanquished and, thus, no rancour. Experiment of Lok Adalat as an alternate mode of dispute settlement has come to be widely adopted in India, as a viable, economic, efficient and informal one.

The advent of Legal Services Authorities Act, 1987 (in short "the Act, 1987") gave a statutory status to Lok Adalats, pursuant to the constitutional mandate in Article 39-A of the Constitution of India. It contains various provisions for settlement of disputes through Lok Adalat.

Here it would be appropriate to refer 238th Report of the Law Commission on amendment of Section 89 of the Code of Civil Procedure, 1908 (in short "CPC"), which reads thus:

89. Settlement of disputes outside the Court –

(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for – (a) arbitration; (b) conciliation, (c) judicial settlement including settlement through Lok Adalat; or (d) mediation.

(2) Where a dispute has been referred –

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

With the introduction of these provisions, a mandatory duty has been cast on the civil courts to endeavour for settlement of disputes by relegating the parties to an ADR process. Five ADR methods are referred to in section 89. They are: (a) Arbitration, (b) Conciliation, (c) Judicial settlement, (d) Settlement through Lok Adalat, and (e) Mediation.

While interpreting above provision in ***Afcons Infrastructure Limited v. Cherian Varkey Construction Co (P) Ltd and ors., 2010 LawSuit(SC) 503*** it was observed that

> "16. In view of the foregoing, it has to be concluded that proper interpretation of section 89 of the Code requires two changes from a plain and literal reading of the section. Firstly, it is not necessary for the court, before referring the parties to an ADR process to formulate or re-formulate the terms of a possible settlement. It is sufficient if the court merely describes the nature of dispute (in a sentence or two) and makes the reference. Secondly, the definitions of 'judicial settlement' and 'mediation' in clauses (c) and (d) of section 89(2) shall have to be interchanged to correct the draftsman's error. Clauses (c) and (d) of section 89(2) of the Code will read as under when the two terms are interchanged:
>
> (c) for "mediation", the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
>
> (d) for "judicial settlement", the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.
>
> The above changes made by interpretative process shall remain in force till the legislature corrects the mistakes, so

that section 89 is not rendered meaningless and infructuous."

It would be beneficial here to refer the decision of the Hon'ble Supreme Court in ***P.T. Thomas v. Thomas Job, AIR 2005 SC 3575*** where-under the benefits of Lok Adalat itself and the duty of the Court in giving fair and reasonable interpretation to the decree passed by the Lok Adalat have been highlighted.

What is Lok Adalat

The "Lok Adalat" is an old form of adjudicating system prevailed in ancient India and its validity has not been taken away even in the modern days too. The word 'Lok Adalat' means 'People Court'. This system is based on Gandhian Principles. It is one of the components of ADR system. As the Indian Courts are over burdened with the backlog of cases and the regular Courts are to decide the cases involve a lengthy, expensive and tedious procedure. The Court takes years together to settle even petty cases. Lok Adalat, therefore provides alternative resolution or devise for expeditious and inexpensive justice.

Lok Adalat is another alternative to Judicial Justice. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of settling disputes, which are pending in Courts and also those, which have not yet reached Courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants, with the assistance of specially trained and experienced Members of a Team of Conciliators."

Benefits under Lok Adalat

1. There is no Court fee and if Court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat according to the rules.
2. The basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes. There is no strict application of procedural laws like Civil Procedure Code and Evidence Act while assessing the claim by Lok Adalat.
3. The parties to the dispute can directly interact with the Judge through their Counsel which is not possible in regular Courts of law.
4. The award by the Lok Adalat is binding on the parties and it has the status of a decree of a Civil Court and it is non-appealable which does not cause the delay in the settlement of disputes finally.

In view of above facilities provided by the 'Act' Lok Adalats are boon to the litigating public, they can get their disputes settled fast and free of cost amicably.

Award of Lok Adalat

The Lok Adalat shall proceed and dispose the case and arrive at a compromise or settlement by following the legal principles, equity and natural justice and ultimately the Lok Adalat will pass an award.

Award of Lok Adalat shall be Final

The Lok Adalat will pass the award with the consent of the parties, therefore there is no need either to reconsider or review the matter again and again, as the award passed by the Lok Adalat shall be final.

Now a question arises that when the Lok Adalat passes an award based on the compromise or settlement then what will be the effect of such award and what will be the mode of execution of such award.

Sections 21 and 22 of the Act 1987, provides answer to this issue, which reads as under:

> **21. Award of Lok Adalat.**—[(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).]
>
> (2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.
>
> **22. Powers of Lok Adalats -**
>
> (1) The Lok Adalat shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely :
>
> (a) the summoning and enforcing the attendance of any witness and examining him on oath;
>
> (b) the discovery and production of any document;
>
> (c) the reception of evidence on affidavits;
>
> (d) the requisitioning of any public record or document or copy of such record or document from any Court or Office; and
>
> (e) such other matters as may be prescribed.
>
> (2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

> (3) All proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat shall be deemed to be a Civil Court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2) of 1974).

The High Court of Andhra Pradesh held in ***Board of Trustees of the Port of Visakhapatnam v. Presiding Officer, Permanent, Lok Adalat-cum-Secretary, District Legal Services Authority, Visakhapatnam and anr.*** reported in ***2000(5) ALT 577***, that:

> "The award is enforceable as a decree and it is final. In all fours, the endeavour is only to see that the disputes are narrowed down and make the final settlement so that the parties are not again driven to further litigation or any dispute. Though the award of a Lok Adalat is not a result of a contest on merits just as a regular suit by a Court on a regular trial, however, it is as equal and on par with a decree on compromise and will have the same binding effect and conclusive just as the decree passed on the compromises"

It would be appropriate here to refer the decision of the Hon'ble Supreme Court, rendered in ***P.T. Thomas*** (supra) and in the said case, it has been held that:

> "In our opinion, the award of the Lok Adalat is fictionally deemed to be decree of Court and therefore the Courts have all the powers in relation thereto as it has in relation to a decree passed by itself. This, in our opinion, includes the powers to extend time in appropriate cases. In our opinion, the award passed by the Lok Adalat is the decision of the court itself though arrived at by the simpler method of conciliation instead of the process of arguments in court. The effect is the same."

In ***Subhash Narasappa Mangrule (M/S) and ors. v. Sidramappa Jagdevappa Unnad***, reported in ***2009 (3) Mh.L.J. 857***, learned single Judge of the High Court of Bombay, after adverting to Section 20 and other provisions of the Act, 1987 has concluded thus:-

> "The parties were fully aware that under the Act, the District Legal Services Authority may explore the possibility of holding pre-litigation Lok Adalats in respect of the cheque bouncing cases. The compromise in such cases would be treated as Award having force of a decree."

In ***M/s Valarmathi Oil Industries & anr. v. M/s Saradhi Ginning Factory, AIR 2009 Madras 180***, it was held that in view of the Lok Adalat award passed under Section 20(1)(i)(b), 20(1)(ii) of Legal Services Authorities Act (Act, 39/1987), as the Judicial Magistrate became *functus officio* and the award is an executable decree in the eye of law, as per Section 21 of the Act, 1987." After arriving at such conclusion, learned single Judge made it clear that as per the award passed by the Lok Adalat, the respondent/complainant is at liberty to file Execution Petition before the appropriate court to get the award amount of ₹ 3,75,000/- reimbursed with subsequent interest and costs, as per procedure known to law.

In ***Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and ors., (2003) 2 SCC 111***, it was held that the purpose and object of creating a legal fiction in the statute is well known and when a legal fiction is created, it must be given its full effect. In ***Ittianam and ors. v. Cherichi @ Padmini, (2010) 8 SCC 612***, it was held that when the Legislature uses a deeming provision to create a legal fiction, it is always used to achieve a purpose.

In ***K.N. Govindan Kutty Menon v. C.D. Shaji, AIR 2012 SC 719*** Hon'ble Apex Court held that in view of the unambiguous language of Section 21 of the Legal Services Authorities Act every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court.

So now it is clear that when a Civil Court refers any civil case to the Lok Adalat and if in such case, the Lok Adalat passes an award on the basis of compromise or settlement then such award is treated as decree of Civil Court and execution petition related to above award may be filed before the appropriate Civil Court.

Here arises an interesting question that if a criminal matter specially u/s 138 Negotiable Instruments Act, 1881 (in short "N.I. Act") is referred by a Magistrate Court to the Lok Adalat and an award for compensation is passed by the Lok Adalat then may execution petition for such award be filed in any Civil Court or an application should be filed for recovery before Criminal Court.

The above question was posed for consideration before the Apex Court and the Apex Court, after interpretation of Section 21 of the Act, 1987 held in the case of ***K.N. Govindan Kutty*** (supra) that:-

(1) In view of the unambiguous language of Section 21 of the Act 1987, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court.

(2) The Act does not make out any such distinction between the reference made by a civil court and criminal court.

(3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between

the parties in respect of cases referred to by various Courts (both civil and criminal), Tribunals, Family court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature.

(4) Even if a matter is referred by a criminal court under Section 138 of the N.I. Act and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.

So now it is clear that every award of a Lok Adalat including an order recording a settlement between the parties in a cheque bounce case under Section 138 N.I. Act is deemed a civil court decree, and as such it is executable by a civil court.

Now comes another twist about executability of an award passed by the Lok Adalat in a case of cheque bounce under section 138 N.I. Act and question arises that which Civil Court will have jurisdiction regarding execution of such award.

Jurisdiction of Civil Courts regarding execution

Sections 36 to 74 of CPC deal with execution of decrees. Section 36 of CPC makes all the provisions of CPC applicable to the execution of decrees. Be it also noted that as per Section 141 of CPC the procedure provided therein in regard to suits shall be followed in all proceedings. Order XXI of CPC contains elaborate procedure for execution of all types of decrees; both pecuniary and non-pecuniary. Section 9 of CPC, recognizes remedy for enforcing all civil rights in the Courts having jurisdiction to try all suits of civil nature. Such Courts however cannot take cognizance of a suit, when the amount or value of subject matter of which exceeds the pecuniary limits or the subject matter falls outside the territorial jurisdiction of Civil Court. After the decree is passed, decree holder shall institute an execution petition in the Civil Court which passed the decree or by the Court to which the decree is sent for execution (Section 38 of CPC). Section 37 of CPC is very relevant here and reads under –

> **37. Definition of Court which passed a decree** – The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include –
>
> (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and
>
> (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit

where in the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation.– The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but in every such case, such other court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Definition of Court which passed a decree

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include:-

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Before analysing Section 37 of CPC, it is necessary to advert to M. P. Civil Courts Act, 1958. It is an Act of the M.P. State Legislature relating to Civil Courts subordinate to High Court in the State. The Act provides for three-tier subordinate Court structure, namely, Courts of Civil Judges, Junior Division, Civil Judges, Senior Division and Principal District Judge. Section 6 of Civil Courts Act, 1958 enumerates the limits of pecuniary jurisdiction and reads as under.

Section 6 – Original Jurisdiction of Civil Courts – (1) Subject to the provisions of any law for the time being in force. –

(a) the Court of the Civil Judge Junior Division shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding ₹ 5,00,000;

(b) the Court of the Civil Judge Senior Division shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding ₹ 1,00,00,000;

(c) the Court of the Principal District Judge shall have jurisdiction to hear and determine any suit or original proceeding without restriction as regards value.

So as of now, pecuniary jurisdiction of Principal District Judge (District Court) is extended to all original suits and proceedings, regardless the value. The pecuniary jurisdiction of Civil Judge, Senior Division is extended to all original suits and proceedings, the amount or value of the subject matter of which exceeds ₹ 5,00,000/- but does not exceed ₹ 1,00,00,000/-. The pecuniary jurisdiction of Civil Judge, Junior Division is extended to all original suits and proceedings, the amount or value of the subject matter of which does not exceed ₹ 5,00,000/-. Therefore, if a Court of Civil Judge, Junior Division entertains a suit, the subject matter of which does not exceed ₹ 5,00,000/-, and decrees the same, execution petition has to be filed before the Court of Civil Judge, Junior Division which passed the decree or the Court of Civil Judge, Junior Division to which the decree is transferred. Similar is the case when the decree is passed by Civil Judge, Senior Division or Principal District Judge, as the case may be. If the decree is passed by the District Court in a suit, the amount or value of subject matter of which exceeds ₹ 1,00,00,000/-., the same has to be executed only before a District Judge which passed the decree or before the Court to which the decree is transferred but it cannot be executed before the Court of Civil Judge, Senior Division or Civil Judge, Junior Division.

What would be the position if a Court after passing decree ceases to exist or ceases to have jurisdiction to execute it.

It is settled that award passed by the Lok Adalat is treated as a decree and is executable by Civil Court. It is also not doubtful that the Lok Adalat does not has jurisdiction to execute its own award and such award has to be filed before appropriate Civil Court for its execution.

In the case of ***M/s Bhoomatha Para boiled Rice and Oil Mill v. M/s Maheshwari Trading Company, AIR 2010 AP 137 (DB)*** it is held that -

> "This is clarified by Section 37 of CPC, which defines, the Court which passed the decree. As per Section 37(a) of CPC, the Court of first instance which passed the decree shall be the Court even after the decree to be executed has been passed by appellate Court. For instance, if a suit for recovery of money or for any other non-pecuniary relief is dismissed by original Court but reversed by appellate Court, decreeing the suit, the original Court shall be the Court, which is competent to execute the same. Section 37(b) of CPC needs careful examination as it has some relevance to the case on hand. It deals with two situations, which might create procedural hurdle in executing the decree and offer solution. If the Court which passed the decree ceased to exist or such Court ceased to have jurisdiction to execute the decree, in either case the Court

which would have jurisdiction to try such suit, is the Court to execute the decree. Section 37(b) of CPC creates a fiction. Even though the decree is passed by one Court, it deems another Court as a Court which passed the decree in the event of earlier Court ceasing to exist or losing jurisdiction to execute the decree."

From the above provisions it is clear now that depending on the amount awarded by the Lok Adalat in case of cheque bounce also, subject to territorial jurisdiction, an application for execution u/s 37 r/w Order 21 CPC will have to be filed before the Court of Civil Judge, Junior Division if the value of the award is upto ₹ 5,00,000/- and if the value of the award is more than ₹ 5,00,000/- but not more than ₹ 1,00,00,000/-. before the Court of Civil Judge, Senior Division and if the value of the award is more than ₹ 1,00,00,000/-. before the Principal District Judge or District Judge.

CONCLUSION

(1) In view of the unambiguous language of Section 21 of the Act 1987, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court.

(2) The Act does not make out any such distinction between the reference made by a civil court and criminal court.

(3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various Courts (both civil and criminal), Tribunals, Family Court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature.

(4) Even if a matter is referred by a criminal court u/s 138 of the N.I. Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court of competent territorial and pecuniary jurisdiction as defined in Section 37 (b) of CPC.

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COMPROMISE IN CIVIL CASES – VARIOUS ASPECTS

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OBJECT

Finality of decisions is an underlying principle of all adjudicating forums. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the Court of competent jurisdiction fully and finally. The provisions of Order XXIII of the Civil Procedure Code, 1908 (for brevity "CPC") postulate that it is only some forms of compromises or agreements which, subject to their being in writing and lawful, can be recorded by a Court and a decree passed in terms thereof provided they judiciously satisfy the Court of these ingredients. The minimum pre-requisite of a valid compromise is that it must emerge from a willing and voluntary act of the parties and an act which is forced on the parties looses the very essence of its being a valid and lawful agreement. The parties have to be *ad idem* with regard to the terms which emerge from a valid consent and terms which are lawful.

PROVISION

Order XXIII Rule 3 CPC to reads as follows:

> "**Compromise of suit** - Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:
>
> Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.
>
> *Explanation* – An agreement or compromise which is void or voidable under the Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."

DISTINCTION BETWEEN FIRST & SECOND PART OF O. XXIII R.3

Provision under Order XXIII Rule 3 CPC indisputably is in two parts. In ***Pushpa Devi Bhagat (dead) through LR Sadhna Rai (Smt) v. Rajinder Singh and ors (2006) 5 SCC 566***, the Supreme Court has recognised that the first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. When the court is satisfied that the suit has been adjusted either wholly or in part and that it is lawful, a decree follows in terms of what is agreed between the parties. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. Where the defendant so 'satisfies' the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any 'enforcement' or 'execution' of the decree to be passed in terms of it.

In ***Gurpreet Singh v. Chatur Bhuj Goel, (1988) 1 SCC 270***, it has been held that the view to the contrary expressed by the High Court in ***Manohar Lal v. Surjan Singh, AIR 1983 Punj and Har 393*** that the first part relates to a lawful agreement or compromise arrived at by the parties out of Court, does not seem to be correct. In ***Mahalaxmi Coop. Housing Society Ltd. v. Ashabhai Atmaram Patel, (2013) 4 SCC 404*** it has been observed that the requirement of "in writing and signed by the parties" does not apply to the second part where the defendant satisfies the plaintiff in respect of whole or part of the subject-matter of the suit.

LAWFUL COMPROMISE : DUTY OF COURT

The statute requires the Court to be first satisfied that the agreement or compromise which has been entered into between the parties is lawful, before accepting the same. Court is expected to apply its judicial mind while examining the terms of the settlement before the suit is disposed of in terms of the agreement arrived at between the parties. It need not be pointed out that once such a petition of compromise is accepted, it becomes the order of the Court and acquires the sanctity of a judicial order. The Supreme Court in ***Asha Devi v. Chaturdas, (2008) 17 SCC 678*** held that how a part of any compromise could be said to be valid when the compromise has been held to be void.

HOW TO WRITE COMPROMISE

Rule 167 0f M.P. Civil Court Rules, 1961 categorically mentions that in dealing with cases of satisfaction, compromise or adjustment, the attention of presiding judges is invited to the provisions of Rule 3 of Order XXIII. This rule contemplates two separate actions by the court – (1) Ordering the agreement, compromise or satisfaction to be recorded, and (2) Passing decree in accordance therewith so far as it relates to the suit. A proper and effectual way of carrying out these actions will be either to recite the whole agreement in the decree and to conclude with an order relative to that part which was the subject-matter of the suit or to introduce the agreement as a schedule to the decree.

EFFECT OF CONSENT DECREE

In ***Sailendra Narayan Bhanja Deo v. State of Orissa, AIR 1956 SC 346*** the Constitution Bench guided that a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case. Again in ***Tulsan v. Pyare Lal, (2006) 10 SCC 782*** it has been observed that a consent decree, it is trite, remains valid unless it is set aside, It would be binding on the parties, Although, the principles of *res judicata stricto sensu* would not apply, the principles of estoppel would. In ***Compack Enterprises India (P) Ltd. v. Beant Singh, (2021) 3 SCC 702*** after relying on earlier pronouncement of Supreme Court, it has been clarified that however, this formulation is far from absolute and does not apply as a blanket rule in all cases. In ***Byram Pestonji Gariwala v. Union Bank of India, (1992) 1 SCC 31*** it has been held that a consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation or mistake.

WHERE IT IS ALLEGED BY ONE PARTY AND DENIED BY THE OTHER THAT AN ADJUSTMENT OR SATISFACTION HAS BEEN ARRIVED AT?

A proviso was introduced by Amendment of 1976 to the CPC. The proviso along with Explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement, and not void or voidable under the Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the Explanation to the proviso to Rule 3 and as such not lawful.

If any of the parties has any objection to the recording of compromise on the ground that the same was not genuine inasmuch as it did not bear the signature of the affected party, in that event, Apex Court in ***Zahoor Bux and anr. v. Fareed Bux and ors., (2005) 13 SCC 383*** held that the court, which recorded the compromise, is required to hold an inquiry with regard to genuineness or otherwise of the compromise after giving opportunity to the parties to lead oral and documentary evidence on the said question.

In cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice. In ***Ranganayakamma and anr. v. K.S. Prakash (D) bt LRs. and ors., (2008) 15 SCC 673*** it has been observed that unless fraud was proved, they could not have got rid of the same. The said decree has been acted upon. Only in a case where fraud on the party or fraud on the court has been alleged or established, the court shall treat the same to be a nullity.

COMPROMISE IN CONSOLIDATED SUIT

The transfer of the suits from one court to another to be tried together will not take away the right of the parties to invoke Order XXIII Rule 3 CPC and there is also no prohibition under Order XXIII Rule 3 or section 24 CPC to record a compromise in one suit. Suits always retain their independent identity and even after an order of consolidation, the court is not powerless to dispose of any suit independently once the ingredients of Order XXIII Rule 3 have been satisfied.

ON THE BASIS OF COMPROMISE WHETHER SUIT OR APPEAL CAN BE WITHDRAWN?

- If a suit is to be decreed or dismissed on the basis of a compromise, even if permission is sought to withdraw the suit pursuant thereto, Order XXIII Rule 1 CPC may not have any application. Even in such a case, a permission to withdraw the suit could have been given only with notice to the respondents who had become entitled to some interest in the property by reason of a judgment and decree passed in the suit. [See: ***Sneh Gupta v. Devi Sarup and ors., (2009) 6 SCC 194***]
- Where a decree passed by the trial court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. Unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights. [***R. Rathinavel Chettiar and anr. v. V. Sivaraman and ors., (1999) 4 SCC 89***].
- When an appeal has been withdrawn by the persons who filed the appeal, it is not open to some other parties to file an appeal challenging the withdrawal of the first appeal on the ground that a "compromise" was illegally entered. [***Hussainbhai Allarakhbhai Dariaya v. State of Gujarat, (2010) 8 SCC 75***].

COMPROMISE BY COUNSEL

Various clauses in the vakalatnama undoubtedly gives power to the counsel to act with utmost interest which includes to enter into a compromise or settlement. Considering the traditionally recognized role of counsel in the common law system, and the evil sought to be remedied by Parliament by the Civil Procedure Code (Amendment) Act, 1976, accordingly, in ***Byram Pestonji Gariwala v. Union Bank of India, 1992 1 SCC 31***, the Supreme Court guided that the words 'in writing and signed by the parties', must necessarily mean, to borrow the language of Order 3 Rule 1 CPC, however as a rule of caution Apex Court suggested thus:

> "We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding

> immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession".

In ***Bakshi Dev Raj (2) v. Sudheer Kumar, (2011) 8 SCC 679*** after relying on ***Pushpa Devi Bhagat*** (supra), it has been affirmed that the Court not only recorded the terms of settlement but thereafter directed that the statements of the counsel be recorded. The statements of the counsel were also recorded on oath, read over and accepted by the counsel to be correct and then signed by both the counsel. In view of the same, it was concluded that there was a valid compromise in writing signed by the parties (represented by counsel).

COMPROMISE FOR MINOR

A Constitution Bench in ***Bishundeo Narain and anr. v. Seogeni Rai and Jagernath, AIR 1951 SC 280*** guided that Order XXXII Rule 7, of the Code read as a whole, clearly means that no next friend or guardian for the suit can enter into an agreement or compromise which will bind the minor unless the Court sanctions it. A compromise without leave of Court and a decree passed thereon is not a nullity but is merely voidable at the option of the minor. It is not necessary that the guardian should obtain the sanction even before he begins negotiations with the other side. Such sanction is not necessary even to enable a guardian to conclude a provisional agreement with a view to compromise. There is no set form in which the certificate which the Court is required to record need be made. Where the Judge passes an order granting permission to compromise on behalf of the minor on ground that it is for minor's benefit after applying his mind to the question there is substantial compliance.

WHETHER COMPROMISE PERMISSIBLE IN EVICTION PROCEEDINGS?

The question of validity of an eviction order based on a compromise was subject-matter of numerous decisions of various High Courts. But the decisions of the Apex Court in ***K.K. Chari v. R.M. Sheshadri, (1973) 1 SCC 761; Nagindas Ramdas v. Dalpatram Ichharam @ Brijram and ors., (1974) 1 SCC 242; Roshan Lal v. Madan Lal, (1975) 2 SCC 785*** and ***Suleman Noormohamed etc. v. Umarbhai Janubhai, (1978) 2 SCC 179*** have resolved the conflict and clarified the matter.

In ***K.K. Chari*** (supra) Supreme Court took the view that it is true that a decree for eviction of a tenant cannot be passed solely on the basis of a compromise between the parties, the Court is to be satisfied whether a statutory

ground for eviction has been pleaded which the tenant was admitted by the compromise. Thus dispensing with further proof, on account of the compromise, the Court is to be satisfied about compliance with the statutory requirement on the totality of facts of a particular case bearing in mind the entire circumstances from the stage of pleadings upto the stage when the compromise is affected. ***Suleman Noormohamed*** (supra) was again a case in which the order of compromise did not mention that the Court was satisfied about the grounds for eviction. The court relied that an admission by the tenant about the existence of a statutory ground, expressly or impliedly, will be sufficient and there need not be any evidence before the court on the merits of the grounds before the compromise order is passed. If there is an admission of the tenant it will not be open to him to challenge its correctness as the admission made in judicial proceedings are absolutely binding on the parties.

MODIFICATION IN COMPROMISE ORDER

A consent decree on compromise, the court would be loath to interfere with the terms thereof by way of modification unless both parties give consent thereto. Recently, in ***Compack Enterprises India (P) Ltd***. (supra). It has been observed that consent decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties. Resultantly, the Supreme Court has held that it would be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, unless it is done with the revised consent of all the parties thereto.

WHETHER COPY OF COMPROMISE IS ADMISSIBLE IN EVIDENCE?

The Supreme Court in ***Jaswant Singh v. Gurdev Singh and ors., (2012) 1 SCC 425*** held that inasmuch as the decree was passed and drafted in the light of the compromise entered into between the parties, the compromise has merged into a decree and has become part and parcel of it. Hence, it is a public document in terms of section 74 of the Evidence Act, 1872 and certified copy of the public document prepared under section 76 of the Act is admissible in evidence under section 77 of the said Act.

BAR TO SUIT

The legislature has brought into force Order XXIII Rule 3-A, vide amendment of 1976 which creates bar to institute the suit to set aside a decree on the ground that the compromise on which decree is based was not lawful. In ***Horil v. Keshav and anr., (2012) 5 SCC 525*** it has been clarified that it is equally true that the expression “not lawful” used in Order XXIII Rule 3-A also covers a decree based on a fraudulent compromise. The Court cannot direct the parties to file a separate suit on the subject.

EXCEPTION

- Order XXIII Rule 3 CPC, provides that a compromise decree is not binding on such defendants who are not parties there to. If the compromise has been accepted in absence of all the parties, the same would be void. But if the same having resulted in grant of a decree, the decree based on compromise was required to be set aside. The compromise may be void or voidable but it is required to be set aside by filing a suit within the period of limitation. ***Md. Noorul Hoda v. Bibi Raifunnisa and ors., (1996) 7 SCC 767***.
- If the challenge is founded on the ground of fraud committed by the parties in obtaining any judicial orders, the suit, in appropriate case, may lie. ***Ved Pal (D) through LRs and ors. v. Prem Devi (D) through LRs. and ors., (2018) 9 SCC 496***.
- Section 25 of the Contract Act, 1872 provides that any agreement which is opposed to public policy is not enforceable in a court of law and such an agreement is void, since the object is unlawful. Any order passed under section 125 CrPC by compromise under Order XXIII Rule 3 of the Code or otherwise cannot foreclose the remedy available to a wife under section 18(2) of the Hindu Adoptions and Maintenance Act, 1956. [***Nagendrappa Natikar v. Neelamma, (2014) 14 SCC 452***].

APPEAL AGAINST COMPROMISE

Earlier under Order XLIII Rule 1(m) CPC, an appeal which recorded compromise and decided whether it was a valid compromise or not, was maintainable against an order under Order XXIII Rule 3 recording or refusing to record an agreement, compromise or satisfaction. But by the amending Act, aforesaid clause has been deleted, the result whereof is that now no appeal is maintainable against an order recording or refusing to record an agreement or compromise under Order XXIII Rule 3. Being conscious of this fact that the right of appeal against the order recording a compromise or refusing to record a compromise was being taken away, a new Rule 1-A was added to Order XLIII which provides that in an appeal against decree passed in a suit for recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should or should not have been recorded. Section 96(3) CPC shall not be a bar to such an appeal, because it is applicable where the factum of compromise or agreement is not in dispute. [***Triloki Nath Singh v. Anirudh Singh (D) thr. LRs. and ors., (2020) 6 SCC 629***].

In ***Pushpa Devi Bhagat*** (supra) after taking note of the scheme of Order XXIII Rule 3 the position that emerges from the amended provisions is summed up as follows:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.

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

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

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

In ***Kishun @ Ram Kishan (Dead) thr. LRs. v. Behari (Dead) by LRs., (2005) 6 SCC 300*** it has been held that When one of the parties sets up a compromise and the other disputes it, the court is forced to adjudicate on whether there was a compromise or not and to pass a decree, it could not be understood as a decree passed by the court with the consent of the parties. Therefore, the bar under section 96(3) CPC could not have application. An appeal and a second appeal with its limitations would be available to the party feeling aggrieved by the decree based on such a disputed compromise or on a rejection of the compromise set up.

REQUIREMENT OF REGISTRATION

A plain reading of section 17(2)(vi) of the Registration Act, 1908 clearly shows that if a compromise is entered into in respect of an immovable property, comprising other than that which was the subject-matter of the suit or the proceeding, the same would require registration. In ***Bhoop Singh v. Ram Singh and ors., (1995) 5 SCC 709***, provision of section 17(2)(vi) of the Registration Act, 1908 came for consideration. While considering various aspects, the Supreme Court laid down the following legal position:

(1) Compromise decree if bonafide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. Conversely, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs. 100 or upwards in favour of any party to the suit, the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of section 17, as was the position in the aforesaid Privy Council [Ed. : The reference is to ***Hemanta Kumari Debi v. Midnapur Zamindari***

Co. Ltd., 1919 SCC OnLine PC 41 :] and this Court's cases [Ed. : The reference is to ***Mangan Lal Deoshi v. Mohd. Moinul Haque and ors., AIR 1951 SC 11; Bishundeo Narain and anr. v. Seogeni Rai and Jagernath, AIR 1951 SC 280*** and ***Shankar Sitaram Sontakke v. Balkrishna Sitaram Sontakke, AIR 1954 SC 352***], it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case [***Fazal Rasul Khan v. Mohd-ul-Nisa, 1943 SCC OnLine Lah 128 : AIR 1944 Lah 394***], benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject-matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

In ***Mohammade. Yusuf v. Rajkumar, (2020) 10 SCC 264***, the Supreme Court held that it would be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court, one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.

FEW ILLUSTRATION

- Where suit was based on pre-existing right it was held that when legislature has specifically excluded applicability of clause (b) and (c) with regard to any decree or order of a Court, applicability of section 17(1)(b) cannot be imported in section 17(2)(v) by any indirect method. [***Gurcharan Singh v. Angrez Kaur, (2020) 10 SCC 250***].
- Words "Subject-matter of the suit" is not the same as "subject-matter of plaint or subject-matter of dispute". Consent decree covering property which was not in plaint but which constituted inseparable part of consideration for compromise property can be regarded as subject-matter of the suit decree is exempted from registration. ***M. Pappu Reddiar (died) and ors. v. Amaravathi Ammal and ors., AIR 1971 Mad 182***.
- In suit a right based on an earlier transaction of relinquishment or family arrangement by which they had acquired interest in property scheduled to that plaint. As a decree, it did not require registration in

view of clause (vi) of section 17(2) of Registration Act, 1908 though it was a decree based on admission. [***Som Dev & ors. v. Rati Ram & anr., (2006) 10 SCC 788***].

- Terms of compromise operating as transfer and not providing for execution of deed of transfer Decree in terms of compromise, unless terms of compromise decree necessarily involved execution of deed of conveyance, registered deed not necessary for its enforcement. ***Girdhari Lal (Dead) by LRs. v. Hukam Singh and ors., (1977) 3 SCC 347***.

SETTLEMENT IN LOK ADALAT

In ***State of Punjab and anr. v. Jalour Singh and ors., AIR 2008 SC 1209*** it has been held that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and 227 of the Constitution of India, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat.

COMPROMISE IN EXECUTION PROCEEDING

In ***Smt Kalloo & ors v. Dhakadevi, (1982) 1 SCC 633***, it has been observed that when a compromise takes place in the course of execution of a decree for eviction, the compromise may extinguish the decree and create a fresh lease, or the compromise may provide a mere mode for the discharge of the decree. What actually takes place depends on the intention of the parties to the compromise and the intention has to be gathered from the terms of the compromise and the surrounding circumstances including the order recorded by the court on the basis of the compromise.

In ***Som Dutt (Dead) by L.Rs. v. Govind Ram, (2000) 9 SCC 345***, a suit for eviction, a compromise was recorded between the parties in the appeal where one person even though was not a party to the said suit, High Court in revision holding that the compromise did create a new tenancy in favour of that person. The Supreme Court, however, held that a person who filed the application even though not a party to the suit clearly estopped from filing any application objecting to the execution of the decree.

In ***Smt Periyakkal and ors. v. Smt. Dakshyani, (1983) 2 SCC 127*** it has been clarified that where there was a statutory compulsion to confirm the sale on the dismissal of the application under Order XXI Rule 90 CPC and, therefore,

postponement and further postponement of the confirmation of the sale could only be by the consent of the parties. The parties, however, entered into a compromise and invited the court to make an order in terms of the compromise, which the court did. The time for deposit stipulated by the parties became the time allowed by the court and this gave the court the jurisdiction to extend time in appropriate cases.

In ***Pushpa Sahakari Avas Samiti Ltd. v. Gangotri Sahakari Avas Samiti Ltd., (2012) 4 SCC 751*** it has been clarified that it is absolutely unacceptable that the executing court could not have entertained the execution proceeding solely because it was instituted before the expiry of the period stipulated in the compromise decree despite the factum that by the time the Court adverted to the petition the said period was over.

CONCLUSION

- Provision under Order XXIII Rule 3 CPC indisputably is in two parts. The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties, when the court is satisfied that it is lawful, a decree follows in terms of what is agreed between the parties. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim.
- A consent decree, it is trite, remains valid unless it is set aside. It would be binding on the parties. Although, the principles of res judicata stricto sensu would not apply, the principles of estoppel would.
- No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A of Order XXIII.
- No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC. A new Rule 1-A was added to Order XLIII which provides that in an appeal against the decree passed in a suit for recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should or should not have been recorded.
- It would be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of Rs. 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.

- In a consent decree on compromise, the court would be loath to interfere with the terms thereof by way of modification unless both parties give consent thereto.
- In cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars. General allegations are insufficient. Unless the proof of fraud, they could not have got rid of the same. The said decree has been acted upon. Only in a case where fraud on the party or fraud on the court, has been alleged or established, the court shall treat the same to be a nullity
- If a suit is to be decreed or dismissed on the basis of a compromise, Order XXIII Rule 1 CPC may not have any application. In such a case, permission to withdraw the suit could have been given only with notice to the respondents
- Suits always retain their independent identity and even after an order of consolidation, the court is not powerless to dispose of any suit independently, once the ingredients of Order XXIII Rule 3 CPC have been satisfied.

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CONDITIONS THAT CAN BE IMPOSED ON BAIL

– Yashpal Singh
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INTRODUCTION

Chapter XXXIII of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) deals with provisions related to bail and bond. As per the given provisions offences are classified in two categories – bailable or non-bailable. In case of bailable offences, bail is a matter of right on the part of accused, while in case of non-bailable offences, bail is a matter of discretion to be exercised by Court. As per section 437(3) of Cr.P.C. the Magistrate while granting bail may impose such conditions as are prescribed and in furtherance may also impose any such condition as it considers necessary in the interest of justice. Similar discretion is exercised by the Court of Sessions by virtue of powers conferred by sections 438(2) and 439(1)(a) of Cr.P.C.

It is evident that Court is having discretion to impose any such conditions as it considers necessary in the interest of justice, but such discretion cannot be exercised in an arbitrary manner overlooking the settled principle of law. The cardinal principle of bail jurisprudence still is – *"Bail is rule and jail is exception"*. Our criminal justice system recognizes the principle of *"presumption of innocence"* which says that accused is innocent until proven guilty. Therefore, it is responsibility of the Courts while granting bail to ensure that no such condition is imposed on accused which frustrates the principle of *"presumption of innocence"* in favour of accused.

At present, serious discussion is going on at different forums on the kind of conditions that may be imposed by Courts on bail. This article is an attempt to analyse the kind of conditions that may and may not be imposed while allowing bail applications, alongwith other allied issues.

OBJECTIVE OF IMPOSING CONDITIONS ON BAIL

The primary objective of the provisions for bail is not to detain and arrest an accused person but is to ensure his appearance at the time of trial and to make sure if the accused is held guilty, he is available to suffer the consequence of the offence, in terms of punishment in accordance with law. In ***Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40*** it was held that objective of imposing conditions is to secure attendance of accused during pendency of trial and is neither punitive nor preventive. In ***Parvez Noordin Lokhandwalla v. State of Maharashtra, (2020) 10 SCC 77***, Apex Court has held that the object of imposing conditions on bail is to facilitate the administration of justice, secure the presence of accused and to ensure that liberty of accused is not misused.

Conditions on bail are generally imposed to make sure that accused after getting bail do not scot away or do not threatens nor offer any inducement to the complainant or witnesses. Therefore, it is duty of the Courts while imposing

conditions to provide proper reasoning as to how proposed condition is justified and necessary in the interest of justice.

The release on bail upon appropriate considerations and imposition of reasonable conditions is significant not only to the accused and his family members who might be dependent upon him but also the society at large. Hence, Courts are duty bound to contemplate the facts and circumstances prevailing in the matter and strike a balance between considerations and imposition of the reasonable conditions and then pass an appropriate order.

VIEW OF HON'BLE SUPREME COURT

The Apex Court has not laid down any strait jacket formula or an exhaustive list of conditions which can be imposed by competent Court while granting bail and has left this discretion to be exercised by competent Court itself in given circumstances.

In ***Hazari Lal Gupta v. Rameshwar Prasad, AIR 1972 SC 484***, it was held that accused cannot be subjected to any condition which is not pragmatic and is unfair. It is the duty of the Court to ensure that the condition imposed on the accused is in consonance with the intendment and provisions of the sections and not onerous.

In ***Sumit Mehta v. State (NCT of Delhi), (2013) 15 SCC 570***, in the context of conditions u/s 438(2) CrPC, Apex Court observed that the object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial cannot be countenanced as permissible under the law. So, the discretion of the court while imposing conditions must be exercised with utmost restraint.

Apex Court also discussed the scope of the discretion of the Court to impose 'any condition' on the grant of bail and observed: [***Sumit Mehta*** (supra)]

> "The words 'any condition' used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail."

In ***Dataram Singh v. State of U.P., (2018) 3 SCC 22***, it was observed that the grant or refusal of bail is entirely within the discretion of the Judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

In a more recent judgment of ***Parvez Noordin Lokhandwalla*** (supra), Apex Court has noted its several decisions which dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail and observed that:

> "The conditions which a court imposes for the grant of bail – in this case temporary bail – have to balance the public interest in the enforcement of criminal justice with the rights of the accused. The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case."

The crux of above decisions of the Apex Court is that it must be kept in mind that while granting bail such conditions must not be imposed which are very difficult to be complied with, thereby resulting indirect rejection of bail or resulting in pre-trial conviction. Law in respect of imposition of condition for granting bail is crystal clear, as condition not having an iota of nexus with the very objective of granting bail cannot be imposed.

CONDITIONS THAT MAY BE IMPOSED

(i) Statutory conditions

There are some statutory provisions which clearly specify the kind of conditions that may be imposed while allowing bail application.

Section 437(3) of Cr.P.C. provides that –

> **437. When bail may be taken in case of non-bailable offence –**
>
> (3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court shall impose the conditions,-
>
> (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,
>
> (b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

Similarly, section 438(2) of CrPC provides that –

438. Direction for grant of bail to person apprehending arrest –

(2) Where the High Court or, as the case may be, the Court of Session, considers it expedient to issue an interim order to grant anticipatory bail under sub-section (1), the Court shall indicate therein the date, on which the application for grant of, anticipatory bail shall be finally heard for passing an order thereon, as the Court may deem fit; and if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely:-

(i) that the applicant shall make himself available for interrogation by a police officer as and when required;

(ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) that the applicant shall not leave India without the previous permission of the Court; and

(iv) such other conditions as may be imposed under sub-section (3) of section 437 as if the bail was granted under that section.

In case of acused arrested under the provisions of Protection of Women from Domestic Violence Act, 2005, Rule 15(9) of the Protection of Women from Domestic Violence Rules, 2006 provides that –

15. Breach of Protection Orders –

(9) While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include-

(a) an order restraining the accused from threatening to commit or committing an act of domestic violence;

(b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;

(c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;

(d) an order prohibiting the possession or use of firearm or any other dangerous weapon;

(e) an order prohibiting the consumption of alcohol or other drugs;

(f) any other order required for protection, safety and adequate relief to the aggrieved person.

(ii) Other conditions

Other conditions that require a person to do or refrain from doing something are also imposed while releasing an accused on bail. Some common legitimate conditions are as follows :

Reporting to a police station

This condition may be imposed where there are concerns that the accused is not going to remain at his address or where there is a risk that accused will try to leave the jurisdiction without facing the trial. How often it is reasonable to require a person to report to the local police station will depend on factors such as how far from the person's residence the police station is and to what extent it will interfere with his commitments, such as employment and care of children.

A person may be required to report to the police, weekly, twice weekly or even daily and may be required to do so at particular times of day.

Residing at a particular address

It is very common for a person's bail conditions to specify the address they must live at. If the address proposed is the residence of another person, such as a friend, relative or parent, that person's consent may generally need to be obtained.

Not contacting specified persons

A bail condition that the accused is not to contact specified persons is common where there is a concern for the safety of the alleged victim of crime or where the offence is alleged to have occurred in company with co-offenders. The accused may be directed not to contact the alleged victim or the alleged co-offenders while on bail. This may be to minimise the chances of interfering with witnesses.

Surrendering passport

Where the accused is considered a flight risk, he may be required to surrender his passport while on bail. This may be because he has strong ties to other countries, because he is a person who travels often or because he has significant financial means. However, this condition should only be imposed when circumstatnces of the case so warrant.

In ***Hazari Lal Gupta*** (supra), it was held that Court while granting bail to an Indian residing in a foreign country can restrict his departure from India by requiring him to surrender his passport.

Not attending certain places at certain times

Where the accused is alleged to have committed offences in a particular place, he may be made subject to a bail condition that he refrain from attending this place while on bail – for example, a particular place of worship, educational institution, public office etc.

Not consuming alcohol or drugs

Where the alleged offence is drug or alcohol related or is perpetuated by usage of drug or alcohol, the accused may be required to abstain from consuming alcohol or drugs while on bail. He may be required to comply with breath or urine tests to verify compliance with this condition.

Surrendering firearms or other weapons

In suitable cases, accused may be required to surrender and deposit licenced firearm or any other weapon in his possesion to ensure the safety of victim and witnesses of the case.

CONDITIONS THAT MAY NOT BE IMPOSED

As discussed above, the view of Apex Court is that it must be kept in mind that while granting bail only reasonable conditions having direct nexus with the very objective of granting bail can only be imposed. However, it is pertinent to discuss some kind of conditions that are often being imposed by the Courts on bail, which cannot legitimately be imposed.

(i) Deposit of money/ payment of compensation

The most common illegitimate condition imposed by trial Courts is deposit of money which is subject matter of offence alleged to have been committed.

In ***Moti Ram and ors. v. State of M.P., AIR 1978 SC 1594***, it was specifically laid down by the Apex Court that condition to deposit particular amount of money for grant of bail in unjust, irregular and improper. In ***Sumit Mehta*** (supra), the Apex Court set aside the direction wherein the bail applicant was directed to deposit an amount of ₹ 1,00,00,000/- (One Crore) in fixed deposit in the name of the complainant in the nationalized bank and to keep the FDR with the Investigating Officer. In ***Suresh Kukreja v. State of M.P. and anr., 2021 CriLJ 2998 (SC)***, High Court allowed application preferred u/s 439 of CrPC seeking release on bail with a condition that the appellant would deposit National Saving Certificates in the sum of ₹ 50 lakhs with the trial Court. Apex Court relieved the condition by holding that such a condition imposed while releasing the appellant on bail is definitely onerous.

Recently in ***Dilip Singh v. State of M.P. and Anr., (2021) 2 SCC 779***, considering on the issue of jurisdiction of Courts to impose conditions while allowing bail application, Apex Court has held that a criminal court exercising bail jurisdiction is not expected to act a recovery agent to realize the dues of the complainant. In this case, condition to deposit ₹ 41 lakhs before trial court while allowing anticipatory bail application was set aside.

In a more recent case of ***Dharmesh @ Dharmendra @ Dhamo v. The State of Gujarat, 2021 (3) Crimes 171 (SC)***, relieving the condition to pay compensation of ₹ 2 lakh by each of the applicants at the stage of bail, Apex Court has held that unnecessary harassment may be prevented by order of compensation to the victim but such compensation should not be determined while granting bail to the accused.

(ii) Deposit of money in some Relief Fund or Legal Services Authority etc. or donation in public hospital

In ***Fahad Ahmed and ors. v. State of Madhya Pradesh*** (order dated 12.05.2020 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 13259 of 2020), a condition was imposed by Sessions Judge to deposit ₹ 25,000/- in PM CARES Fund while allowing application for bail. Madhya Pradesh High Court relying on the decision of the Supreme Court in ***Moti Ram*** (supra) has held that such a condition is improper and unjust.

On the same lines, it can safely be said that any condition to deposit a particular sum with Legal Services Authority or donation in cash or kind to hospital or any charity is also improper and unjust.

(iii) Payment of arrears and/or continuous maintenance

In ***Munish Bhasin and others v. State (Government of NCT of Delhi) and anr., (2009) 4 SCC 45***, bail order directing accused to pay ₹ 3,00,000/- for past maintenance and a sum of ₹ 12,500/- per month as future maintenance as pre-condition for release of accused on anticipatory bail was held to be unjustified by the Apex Court.

(iv) Order of community service

It is debatable whether order of community service may be imposed as a condition of bail. Right to personal liberty guaranteed by Article 21 of the Constitution of India runs as core golden thread of criminal administration. No punishment can be imposed upon an accused unless he is proven guilty. Thus, at the stage of pre-trial or in-trial bail, those conditions which have the tendency of punishment cannot be imposed. Imposing such odd conditions never serves the objective to secure accused from fleeing but only produce an impression on Court and public at large that alleged offence was definitely committed by the accused and therefore, he is accepting the odd condition imposed by the Court.

The Apex Court in ***Babu Singh and ors. v. State of U.P., (1978) 1 SCC 579***, has held that restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated. Relying upon this judgment, Apex Court in ***Prahladbhai Jagabhai Patel v. State of Gujarat, (2020) 3 SCC 341*** allowed bail application of accused *inter alia* with following condition –

> "(4) That the appellants shall engage themselves in any spiritual programme or do some social/community services

for a minimum period of six hours in a week during the period of bail in view of the judgment and order passed by this Court in the case of ***Babu Singh*** (supra)."

However, in both these cases, ***Babu Singh*** (supra) as well as ***Prahladbhai Jagabhai Patel*** (supra), Apex Court ordered community service as a condition of bail while suspending the sentences of life imprisonment awarded to the accused persons during pendency of their criminal appeals. It were not the cases of pre-trial or in-trail bail. Therefore, Apex Court didn't allowed community service as one of the conditions of bail.

On the other hand, in a recent judgment titled as ***Aparna Bhat and ors. v. State of Madhya Pradesh, AIR 2021 SC 1492***, Apex Court has held in clear terms that imposing conditions that implicitly tend to condone or diminish the harm caused by the accused and have the effect of potentially exposing the survivor to secondary trauma, such as mandating mediation processes in non-compoundable offences, mandating as part of bail conditions, community service (in a manner of speaking with the so-called reformative approach towards the perpetrator of sexual offence) or requiring tendering of apology once or repeatedly, or in any manner getting or being in touch with the survivor, is especially forbidden.

It is submitted that community service is a matter of choice. It is a mode of reformation as held in ***Babu Singh*** (supra). Compelling a person to enjoy his liberty at the compulsion of community service would be violative of Article 21 of the Constitution of India. It is also noteworthy that Hon'ble High Court may impose other conditions under their inherent powers u/s 482 CrPC as held in ***Sumit Mehta*** (supra). But trial Courts do not enjoy inherent powers in criminal matters.

WHETHER CONDITIONS CAN BE IMPOSED ON DEFAULT BAIL?

Hon'ble Apex Court in catena of judgments and more particularly in the case of ***Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67***, has held that where the investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day, accused gets an 'indefeasible right' to default bail. Therefore, power of Court to impose conditions u/s 437 CrPC cannot be pressed into service at the time of default bail.

In ***Saravanan v. State represented by the Inspector of Police, AIR 2020 SC 5010***, a three Judge Bench of the Apex Court has held that imposing condition of depositing the alleged amount while releasing the accused would frustrate the very object and purpose of default bail. However, if accused released on default bail refuses or neglects to cooperate with the investigating agency, then such agency may apply for cancellation of bail.

CASE OF BAILABLE OFFENCES

Bail can be claimed as a matter of right in case of bailable offences. No condition can be imposed either by the police or by the Court while releasing an accused in bailable offences. This view finds support by series of judgments of

various High Courts. Reference may be made to ***Rex v. Genda Singh, AIR 1950 All 417, Azeez v. State of Kerala, 1984 (2) Crimes 413 (Kerala), Anwar Hussain v. State of Orissa, 1995 CrLJ 863 (Orissa), Hasmukhlal Kalidas Choksi v. State of Gujarat, (2007) 2 GLH 12***.

However, if in the midst of the trial if the Court finds, on the basis of some material, that the accused is likely to flee and thereby put the trial in jeopardy, then it is always open for the trial Court to take care of such a situation and impose appropriate conditions.

MODIFICATION IN CONDITIONS OF BAIL

Section 439(1)(b) of Cr.P.C. is enabling provision which gives express power to High Court and Court of Sessions to modify or alter the conditions imposed by Magistrate while grating bail.

Whether Court can modify or alter the conditions imposed by itself in the bail order? This question came up for consideration before Madhya Pradesh High Court in ***Aniruddh Khehuriya v. State of M.P., ILR (2020) MP 2880***. It is held that since legislature has not expressly given power to Magistrate to change or alter the conditions of bail order, such power cannot be exercised by Magistrate impliedly u/s 437(5) and 439(2) of CrPC. Further, High Court and Sessions Court cannot modify or alter the conditions of bail order passed by it by a subsequent order.

CONCLUSION

On the basis of above discussion, it can be concluded that the onus is upon the Court to consider the entire facts and circumstances of the case before imposing the conditions for granting bail. However, the conditions should be legitimate and not freakish, having direct nexus with the alleged offence and objective of releasing accused on bail. At the same time, Courts should exercise a restraint while imposing conditions and consider that proposed condition should not result in pre-trial conviction.

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SECTION 156(3) CRPC: NEW CONTOURS

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INTRODUCTION

In December, 2008 and April, 2016 two articles were published in JOTI Journal discussing the law relating to section 156(3) CrPC. In February, 2018 and June, 2021, guidelines to be followed by Judicial Magistrates while dealing with applications u/s 156(3) CrPC were also published. However, recently Hon'ble Apex Court has considered the scope of Section 173(8) and 156(3) of CrPC *in extenso* in ***Vinubhai Haribhai Malaviya and ors. v. State of Gujarat and anr., 2019 SCC Online SC 1346*** making path for paradigm shift in the scope or ambit of powers of the Magistrates. Renowned distinction between the authority of Magistrate u/s 156(3) and 202 of CrPC as spelt out in ***Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, (1976) 3 SCC 252*** that the power to order police investigation u/s 156(3) CrPC is different from the power to direct investigation conferred by Section 202(1) CrPC, the two operate in distinct spheres at different stages, the first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage, has also been held to be no more a good law. Therefore, in light of the observation of Hon'ble Apex Court and further investigation that can be directed by Magistrate necessitated afresh discussion on this topic. So this article is an attempt to discuss and elaborate the new contours of section 156(3) CrPC.

LEGAL PROVISION

> **156. Police officer's power to investigate cognizable case.**
>
> (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
>
> (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

LAW BEFORE *VINUBHAI HARIBHAI MALAVIYA*

Law propounded by a three Judge Bench of Hon'ble Apex Court in ***Devarapalli Lakshminarayana Reddy*** (supra) held the field before it was distinguished by another three Judge Bench in ***Vinubhai Haribhai Malaviya*** (supra).

In ***Devarapalli Lakshminarayana Reddy*** (supra), Hon'ble Apex Court had held that the power to order police investigation u/s 156(3) CrPC is different from the power to direct investigation conferred by section 202(1) CrPC. The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage and the second at the post-cognizance stage when the Magistrate is *in seisin* of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power u/s 156(3) CrPC can be invoked by the Magistrate before he takes cognizance of the offence u/s 190(1)(a) CrPC. But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail section 156(3) CrPC.

LAW LAID DOWN IN VINUBHAI HARIBHAI MALAVIYA

It would be apposite to refer to the specific question that the Hon'ble Apex Court considered in ***Vinubhai Haribhai Malaviya*** (supra). It is recorded in paragraph 10 of the said judgment that:

> "10. The question of law that therefore arises in this case is whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding?"

While considering the position of law in the context of the said specific question framed by the Hon'ble Supreme Court, it was observed in paragraphs 30, 31 and 42 as follows:

> "30. Whereas it is true that Section 156(3) remains unchanged even after the 1973 CrPC has been brought into force, yet the 1973 CrPC has one very important addition, namely, Section 173(8), which did not exist under the 1898 CrPC. As we have noticed earlier in this judgment, Section 2(h) of the 1973 Criminal Procedure Code defines "investigation" in the same terms as the earlier definition contained in Section 2(l) of the 1898 Criminal Procedure Code with this difference – that "investigation" after the 1973 CrPC has come into force will now include all the proceedings under the CrPC for collection of evidence conducted by a police officer. "All" would clearly include proceedings u/s 173(8) as well. Thus, when Section 156(3) states that a Magistrate empowered u/s 190 may order "such an investigation", such Magistrate may also order further investigation u/s 173(8), regard being had to the definition of "investigation" contained in Section 2(h).
>
> 31. Section 2(h) is not noticed by the aforesaid judgment at all, resulting in the erroneous finding in law that the power

u/s 156(3) can only be exercised at the pre-cognizance stage. The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun. For these reasons, the statement of the law contained in paragraph 17 in ***Devarapalli Lakshminarayana Reddy*** (supra) cannot be relied upon.

42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, ***Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440, Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365, Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557 and Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86*** having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusions that the police retain the power, subject, of course, to the Magistrate's nod u/s 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually

commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain person, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in ***Hasanbhai Valibhai Quereshi v. State of Gujarat, (2004) 5 SCC 347***. Therefore, to the extent that the judgments in ***Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, (2017) 4 SCC 177, Athul Rao v. State of Karnataka, (2018) 14 SCC 298*** and ***Bikash Ranjan Rout v. State (NCT of Delhi), (2019) 5 SCC 542*** have held to the contrary, they stand overruled. Needless to add, ***Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361*** and ***Reeta Nag v. State of W.B., (2009) 9 SCC 129*** also stand overruled."

EFFECT OF VINUBHAI HARIBHAI MALAVIYA'S CASE

The most important effect of the verdict of the Apex Court in ***Vinubhai Haribhai Malaviya*** (supra) is that a Magistrate or Special Judge exercising powers of a Magistrate may order investigation or further investigation by police u/s 156(3) CrPC even after taking cognizance of the offence. The only caveat in exercising such power is that it can be exercised up to the stage till charges are framed. Once charges are framed, no such order can be passed.

In order to understand the other contours of the verdict of Apex Court in ***Vinubhai Haribhai Malaviya*** (supra), it would be appropriate to see some other aspects of 'further investigation'.

Meaning of word 'further investigation'

In ***Rama Chaudhary v. State of Bihar (2009) 6 SCC 346***, the Hon'ble Apex Court held that 'further investigation' within the meaning of provision of Section 173(8) CrPC is additional; more; or supplemental. 'Further investigation', therefore, is the continuation of the earlier investigation and not a fresh investigation or re-investigation to be started *ab initio* wiping out the earlier investigation altogether.

What is the prime consideration for 'further investigation'?

As observed in ***Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347***, the prime consideration for further investigation is to arrive at the truth and

do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real, substantial and effective justice.

Whether further investigation can be ordered on the prayer of de-facto complainant on his/her protest petition?

In this connection, it is pertinent to mention the ratio of a Calcutta High Court in the case of ***Sumanta Sinha v. State of W.B., 2013 SCC Online Cal 23010***, wherein on relying on the three-Judge Bench decision of the Hon'ble Supreme Court in ***Bhagwant Singh v. Commissioner of Police, (1985) 2 SCC 537*** it was observed that:

> "7. … no illegality has been committed by the learned Magistrate in passing a direction for further investigation on the protest petition filed by the de-facto complainant, since there is no bar in entertaining protest petition to pass order for further investigation."

Whether the Public Prosecutor himself has the right or authority to file a petition u/s 173(8) CrPC seeking further investigation, on the basis of the materials on record without the request of the investigating officer?

There is nothing wrong on the part of the Public Prosecutor to file a petition u/s 173(8) CrPC before the Court, seeking an order directing the investigating officer to conduct further investigation u/s 173(8) CrPC. The Court can exercise the power to order further investigation u/s 173(8) CrPC and such petition filed by the Public Prosecutor can only be treated as an application seeking to invite the attention of the Court regarding the necessity to invoke the power of the Court u/s 173(8) CrPC. If any such petition is filed by the Public Prosecutor u/s 173(8) CrPC, the Court has to apply its mind on it and to satisfy itself with regard to the necessity, if any, to invoke the power of the Court u/s 173(8) CrPC. On a satisfaction that such power has to be invoked, the Court has to do it, and if it feels that there is no such necessity, the Court can ignore such petition filed by the Public Prosecutor, and to reject the same.

Can the Court on its own motion trigger a further investigation u/s 173(8) CrPC to be done by the investigating officer?

In ***Randhir Singh Rana*** (supra), Hon'ble Supreme Court, posed a question that "if for further investigation, the police should ordinarily take the formal permission of the Court, can the Court on its own not ask for further investigation, if the same be thought necessary to arrive at a just decision of the case?" After discussion, it was held that within the gray area to which their Lordships have referred, the Magistrate on his own cannot order for further investigation.

In ***Vinubhai Haribhai Malaviya*** (supra), ***Randhir Singh Rana*** (supra) has been overruled and it is held that it would also be in the interest of justice that this power be exercised *suo motu* by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law.

By which agency further investigation be done?

In this connection, the decision of the Hon'ble Supreme Court in ***K. Chandrasekhar v. State of Kerala, (1998) 5 SCC 223*** is to be looked into. That case is popularly known as "***ISRO Espionage case***". A close reading of the judgment of the Supreme Court in ***ISRO Espionage case*** will show that the Government of Kerala had given consent u/s 6 of the Delhi Special Police Establishment Act, 1944 ("the DSPE Act", for short) resulting in CBI investigating the case and filing the final report. Thereafter, State withdrew the consent and ordered re-investigation by issuing a notification. Subsequently, the explanatory note to the said notification was amended to substitute the word "re-investigation" with "further investigation". It was in that context that the Supreme Court in Para 25 of the judgment considered the scope and ambit of "further investigation" occurring in Section 173(8) CrPC. It was accordingly held that further investigation was a continuation of the earlier investigation and not a "fresh investigation" or "re-investigation" or "de-novo investigation" to be started *ab initio* wiping out the earlier investigation altogether. The Supreme Court also held that once the consent is granted u/s 6 of the DSPE Act, an investigation undertaken by CBI pursuant to such consent is to be completed notwithstanding the withdrawal of the consent and that withdrawal of such consent by the State Government would not entitle the State Police to further investigate the case. In other words, what the Supreme Court held was that such further investigation could be conducted only by CBI which alone was granted consent u/s 6 of the DSPE Act.

There is nothing in Section 173(8) of CrPC to indicate that further investigation can be conducted only by the same agency which conducted the earlier investigation. There is no observation by the Supreme Court in ***ISRO Espionage case*** also to the effect that the very same agency which conducted the earlier investigation should conduct the further investigation. Although Hon'ble the Apex Court has held that the notification withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law. But that was on the count that once consent for investigation was given to CBI and in pursuance of which investigation was also conducted, then such consent cannot be withdrawn subsequently. Accordingly, there is no warrant for taking the view that further investigation u/s 173(8) CrPC has to be conducted by the very same agency which conducted the earlier investigation.

SOME INSTANCES

1. Where the police/investigating agency files a closure report or a chargesheet –

Where the police/investigating agency files a closure report or a chargesheet u/s 173(2) CrPC after the completion of investigation, the Court may, if it is not satisfied by the investigation conducted by the police, direct further investigation u/s 156(3) CrPC. However, before passing such an order, the Magistrate shall study the final report diligently and shall be assisted in this endeavour by the Public Prosecutor, who bears upon his shoulders the responsibility of ensuring that the final report filed by the police is such that the same can be effectively stand the scrutiny of a criminal trial. He must assist the Magistrate in the scrutiny of the charge sheet/closure report, if called upon to do so by the Magistrate. Thereafter, the order u/s 156(3) passed by the Court shall be precise giving clear cut directions to investigating agency to further investigate into specific areas, hitherto not done by the investigating agency. However, such an order for further investigation may be passed only once by the Court. Judgments in ***State of Bihar v. J.A.C. Saldhana and ors., (1980) 1 SCC 554*** and ***Kuntal Baran Chaakraaborty v. Superintendent of Police & ors., decided on 03/10/2017 by the High Court of MP in MCRC No. 9969/2016*** may be referred in this regard.

2. Where the investigating agency in compliance of the order u/s 156(3) CrPC for further investigation files a closure report yet again –

Where the investigating agency in compliance of the order of Magistrate passed u/s 156(3) CrPC files a closure report yet again or a charge sheet which is not to the satisfaction of the Court, Magistrate shall not indulge in the subliminal coercion of the investigating agency by passing an order u/s 156(3) CrPC second time. Instead, where the offence is one for which no previous sanction of the State is required to take cognizance of the offence, proceed under Chapter XV of the CrPC and issue notice to the *de facto* complainant, take cognizance of the offence u/s 190(1)(a) CrPC, record the statement of the complainant and his witnesses and if need be, direct the police or anyone else to investigate u/s 202 CrPC and file a report and thereafter decide whether a case exists for the issuance of process against the accused u/s 204 CrPC or whether the case ought to be dismissed u/s 203 CrPC. (***Kuntal Baran Chaakraaborty v. Superintendent of Police & ors., decided on 03/10/2017 by the High Court of MP in MCRC No. 9969/2016***)

3. Where the offence is one which requires previous sanction of a sanctioning authority before cognizance –

Where the offence is one which requires previous sanction of a sanctioning authority before cognizance can be taken, the Court may exercise the power of

inquiry on its own u/s 311 CrPC without taking cognizance of the offence and, if necessary summon and examine as witnesses all such persons whose testimony the Court feels would be essential to unravel the truth and also exercise powers u/s 91 CrPC and direct a person to produce a document or thing which the Court considers desirable for the purposes of the inquiry. Thereafter, if the Court is of the opinion that there lies before it a case fit for trial, it shall place the report of the police u/s 173(2) CrPC as well as the material collected by it in the course of its inquiry u/s 311 CrPC before the sanctioning authority (through the investigating agency). The sanctioning authority shall, as soon as possible, decide on the question of sanction, preferably within three months from the receipt of material forwarded by the Court through the police. If sanction is granted, the Court shall proceed to take cognizance of the offence u/s 190(1)(b) CrPC and issue process to the accused person. If sanction is declined, the case shall be closed by the Court. (***Kuntal Baran Chaakraaborty v. Superintendent of Police & ors., decided on 03/10/2017 by the High Court of MP in MCRC No. 9969/2016***)

4. Does Magistrate has power to direct "reinvestigation" or "fresh investigation" (de novo investigation) –

Although Magistrate has the power to direct 'further investigation' after filing of a police report in terms of Section 173(8) of the CrPC but has no power to direct 're-investigation' or 'fresh investigation' (*de novo*) in the case initiated on the basis of a police report. [***Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537*** and ***Vinay Tyagi v. Irshad Ali and ors., (2013) 5 SCC 762***]

SECTION 156(3) & 200 CrPC – INTERPLAY

Judicial Magistrates are often called upon to decide applications u/s 156(3) CrPC which are also annexed with a complaint containing same set of facts or are framed in the form of complaint. In both the cases, Magistrate may treat such application as complaint and proceed u/s 200 CrPC after taking cognizance of the offence if application u/s 156(3) CrPC is dismissed. Question arises whether Magistrate may refer such a complaint to the officer-in-charge of police station for registration of FIR and investigation u/s 156(3) CrPC?

In the light of judgment of Hon'ble Apex Court in ***Vinubhai Haribhai Malaviya*** (supra), since power u/s 156(3) CrPC may be exercised by a Magistrate at post cognizance stage also, there is no iota of doubt that a Magistrate may refer complaint to the officer-in-charge of police station for registration of FIR and investigation u/s 156(3) CrPC, after taking cognizance and even after issuing the process for appearance of accused, but before the commencement of trial.

INVESTIGATION U/S 156(3) AND 202 CrPC

There is difference between a reference of complaint to the police u/s 156(3) and section 202 CrPC. In former case, a Magistrates ordains the police to conduct investigation on entire complaint and whereas in the latter case that

Magistrate requires only some more details for proceeding further in the matter. This distinction, though very subtle, has clearly been brought out by the Supreme Court in ***Devarapalli Lakshaminarayana Reddy*** (supra). Though ***Devarapalli Lakshaminarayana Reddy*** (supra) has been held to be not a good law but only to the extent that section 156(3) can be envoked only at pre-cognizance stage. Hence, rest of the observation of Hon'ble Apex Court in ***Devarapalli Lakshaminarayana Reddy*** (supra) still holds the field. In this case it was observed that –

> "It may be noted further that an order made under sub-section (3) of section 156, is in the nature of a peremptory reminder to intimation to the police to exercise their plenary powers of investigation u/s 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence u/s 156 and ends with a report or charge-sheet u/s 173. On the other hand, section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered u/s 202 to direct, within the limits circumscribed by that section, an investigation for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus the object of an investigation u/s 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."

CONCLUSION

Magistrate's powers to order further investigation would not suddenly cease upon process being issued, or an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences and accordingly in suitable cases further investigation can be ordered u/s 156(3) CrPC even at post cognizance stage too. Further in the interest of justice this power be exercised *suo motu* as well.

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विधिक समस्यायें एवं समाधान

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

1. क्या मृतक के विवाहित और आय अर्जित कर रहे वयस्क पुत्र/पुत्रों के द्वारा मोटरयान अधिनियम, 1988 के अंतर्गत प्रतिकर का दावा किया जा सकता है?

मोटरयान अधिनियम, 1988 की धारा 166(1) के अनुसार धारा 165 की उपधारा (1) में विनिर्दिष्ट प्रकार की दुर्घटना से उद्भूत प्रतिकर के लिये आवेदन निम्नलिखित द्वारा किया जा सकेगा, अर्थात्–

(क) .....

(ख) .....

(ग) जब दुर्घटना के परिणामस्वरूप मृत्यु हुई है तब मृतक के सभी या किसी विधिक प्रतिनिधि द्वारा; या

(घ) .....

धारा 2(11) सिविल प्रक्रिया संहिता के अनुसार ''विधिक प्रतिनिधि'' से वह व्यक्ति अभिप्रेत है जो मृत व्यक्ति की सम्पदा का विधिक प्रतिनिधित्व करता है और इसके अंतर्गत कोई ऐसा व्यक्ति आता है जो मृतक की सम्पदा में दखलंदाजी करता है और जहां कोई पक्षकार प्रतिनिधि रूप में वाद लाता है या जहां किसी पक्षकार पर प्रतिनिधि रूप में वाद लाया जाता है वहां वह व्यक्ति इसके अंतर्गत आता है जिसे वह सम्पदा उस पक्षकार के मरने पर न्यागत होती है जो इस प्रकार वाद लाया है या जिस पर इस प्रकार वाद लाया गया है।

मोटरयान अधिनियम, 1988 की धारा 166(1)(ग) से यह स्पष्ट है कि इस प्रावधान में ''आश्रित'' शब्द का उपयोग नहीं किया गया है बल्कि विधिक प्रतिनिधि शब्द का प्रयोग किया गया है और विधिक प्रतिनिधि को सिविल प्रक्रिया संहिता की धारा 2(11) में परिभाषित किया गया है। न्यायदृष्टांत ***गुजरात एस.आर.टी.सी. वि. रमन भाई प्रभात भाई, (1987) 3 एस.सी.सी. 234*** में माननीय सर्वोच्च न्यायालय द्वारा यह प्रतिपादित किया गया है कि मोटर वाहन दुर्घटना में मृतक व्यक्ति का विधिक प्रतिनिधि वह होता है जो ऐसी मृत्यु से पीड़ित होता है। इस सिद्धांत की पुष्टि माननीय सर्वोच्च न्यायालय द्वारा नवीनतम न्यायदृष्टांत ***एन. जयश्री एवं अन्य वि. चोलामण्डलम एम.एस. जनरल इंश्योरेंस कम्पनी लिमिटेड, एल.एल. 2021 सुप्रीम कोर्ट 588 निर्णय दिनांक 25.10.2021*** में भी की गई है। न्यायदृष्टांत ***रमनभाई*** (पूर्वोक्त) में यह भी प्रतिपादित किया गया है कि भले ही आवेदक को आश्रितता की कोई हानि न हुई हो तब भी यदि वह मृतक का विधिक प्रतिनिधि है तो वह प्रतिकर प्राप्त करने का अधिकारी होगा।

न्यायदृष्टांत ***मंजुरी बेरा वि. ओरिएण्टल इंश्योरंस कंपनी लिमिटेड एवं अन्य, 2007 एसीजे 1279*** में माननीय सर्वोच्च न्यायालय द्वारा यह प्रतिपादित किया गया कि मोटरयान अधिनियम के अंतर्गत प्रतिकर के भुगतान का दायित्व मात्र इस आधार पर समाप्त नहीं हो जाता है कि संबंधित विधिक प्रतिनिधियों की मृतक पर आश्रितता का अभाव पाया गया है।

न्यायदृष्टांत ***नेशनल इंश्योरंस कंपनी लिमिटेड वि. बिरेन्दर एवं अन्य, ए.आई.आर. 2020 सुप्रीम कोर्ट 434*** में भी माननीय सर्वोच्च न्यायालय द्वारा यह निर्धारित किया गया कि मृतक के विधिक प्रतिनिधि प्रतिकर हेतु आवेदन करने के अधिकारी होते हैं और मृतक के विवाहित और आय अर्जित करने वाले वयस्क पुत्रों को भी मृतक का विधिक प्रतिनिधि होने के आधार पर प्रतिकर हेतु आवेदन प्रस्तुत करने का अधिकार है और दावा अधिकरण ऐसे आवेदकों की विवाहित स्थिति, आय एवं वयस्कता के पश्चात् भी उनके आवेदन का निराकरण करने हेतु बाध्य है और उनके दावे को मात्र पारम्परिक मदों तक सीमित नहीं किया जा सकता।

अतः स्पष्ट है कि मोटरयान दुर्घटना में मृतक के विवाहित एवं आय अर्जित करने वाले वयस्क पुत्र/पुत्रों को भी प्रतिकर हेतु दावा प्रस्तुत करने और मोटरयान अधिनियम की धारा 168 के अंतर्गत न्यायसंगत प्रतिकर प्राप्त करने का अधिकार है।

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2. क्या विधि का उल्लंघन करने वाले बालक के संबंध में जमानत का निराकरण करते समय अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 की धारा 15ए (5) लागू होगी ?

किशोर न्यायालय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 की धारा 1(4) में यह प्रावधान है कि ''(4) तत्समय प्रवृत्त किसी अन्य विधि में अंतर्विष्ट किसी बात के होते हुए भी, इस अधिनियम के उपबंध देखरेख और संरक्षण के जरूरतमंद बालकों तथा विधि का उल्लंघन करने वाले बालकों से संबंधित सभी मामलों में लागू होंगे, जिनके अंतर्गत–

(i) विधि का उल्लंघन करने वाले बालकों की गिरफ्तारी, निरोध, अभियोजन, शास्ति या कारावास, पुनर्वास और समाज में पुनः मिलाना; – .... भी है।

इस अधिनियम में विधि का उल्लंघन करने वाले बालक की जमानत से संबंधित प्रावधान धारा 12 में निम्नानुसार वर्णित है –

''**ऐसे व्यक्ति की जमानत जो दृश्यमान रूप से विधि का उल्लंघन करने वाला अभिकथित बालक है**; – (1) जब कोई ऐसा व्यक्ति, जो दृश्यमान रूप से एक बालक है और जिसने अभिकथित जमानतीय या अजमानतीय अपराध किया है, पुलिस द्वारा गिरफ्तार या निरूद्ध किया जाता है या बोर्ड के समक्ष उपसंजात होता है या लाया जाता है, तब दंड प्रक्रिया संहिता, 1973 (1974 का 2) या तत्समय प्रवृत्त किसी अन्य विधि में किसी बात के होते हुए भी, ऐसे व्यक्ति को प्रतिभू सहित या रहित जमानत पर छोड़ दिया जाएगा या उसे किसी परिवीक्षा अधिकारी के पर्यवेक्षणाधीन या किसी उपयुक्त व्यक्ति की देखरेख के अधीन रखा जाएगा :

परन्तु ऐसे व्यक्ति को तब इस प्रकार छोड़ा नहीं जाएगा जब यह विश्वास करने के युक्तियुक्त आधार प्रतीत होते हैं कि उस व्यक्ति को छोड़े जाने से यह संभाव्य है कि उसका संसर्ग किसी ज्ञात अपराधी से होगा या उक्त व्यक्ति नैतिक, शारीरिक या मनोवैज्ञानिक रूप से खतरे में पड़ जाएगा या उस व्यक्ति के छोड़े जाने से न्याय का उद्देश्य विफल हो जाएगा और बोर्ड जमानत देने से इंकार करने के कारणों को और ऐसा विनिश्चय होने से संबंधित परिस्थितियों को अभिलिखित करेगा।''

इस प्रकार धारा 1(4) तथा 12 में प्रयुक्त शब्द ''तत्समय प्रवृत्त किसी अन्य विधि में किसी बात के होते हुए भी'' के माध्यम से अधिनियम के प्रावधानों को अन्य विधियों पर अधिरोही प्रभाव दिया गया है। इस संबंध में न्यायदृष्टांत ***एक्स विरूद्ध छत्तीसगढ़ राज्य, 2019 सीआरएलजे 4017 (डीबी)*** में प्रतिपादित विधि अवलोकनीय है जिसमें यह प्रतिपादित किया गया है कि "grant of bail to a juvenile is required to be dealt with u/s 12 of JJ Act. Section 437 or 439 of CrPC has no application. Court of Sessions and High Court in their appellate and revisional powers, are also governed by the provisions of Section 12 of JJ Act"

तारा चन्द विरूद्ध राजस्थान राज्य, 2007 सीआरएलजे 3047 में यह अवधारित किया गया है कि विधि का उल्लंघन करने वाले किशोर के संबंध में प्रस्तुत जमानत के संदर्भ में मात्र किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 के प्रावधान लागू होंगे और अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 के प्रावधान आकर्षित नहीं होते है। 2000 के अधिनियम मे जमानत के संबंध में जो प्रावधान थे (Mutatis Mutandis) वैसे ही प्रावधान 2015 के अधिनियम में भी है अतः इस न्यायदृष्टांत में प्रतिपादित विधि वर्तमान में भी लागू होती है।

अतएव विधि का उल्लंघन करने वाले बालक के संबंध में प्रस्तुत जमानत के निराकरण के समय अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 की धारा 15ए (5) आकर्षित नहीं होती है।

3. क्या किशोर न्याय बोर्ड आदेश दिनांक को इक्कीस वर्ष की आयु पूर्ण कर लेने वाले बालक के द्वारा विधि का उल्लंघन करना पाए जाने पर, उसे जेल भेजने का निर्देश दे सकेगा?

इस संदर्भ में किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 की धारा 6 में यह प्रावधान है कि–

> ''6. **उस व्यक्ति का स्थानन, जिसने अपराध तब किया था जब वह व्यक्ति अठारह वर्ष से कम आयु का था –**
>
> (1) ऐसा कोई व्यक्ति, जिसने अठारह वर्ष की आयु पूरी कर ली है और उसे उस समय जब वह अठारह वर्ष की आयु से नीचे का था, किसी अपराध

को करने के लिए गिरफ्तार किया जाता है तो उस व्यक्ति को इस धारा के उपबंधों के अधीन रहते हुए जांच की प्रक्रिया के दौरान बालक समझा जाएगा।

(2) उपधारा (1) में निर्दिष्ट व्यक्ति, यदि उसे बोर्ड द्वारा जमानत पर छोड़ा नहीं जाता है, जांच की प्रक्रिया के दौरान सुरक्षित स्थान पर रखा जाएगा।

(3) उपधारा (1) में निर्दिष्ट व्यक्ति को इस अधिनियम के उपबंधों के अधीन विनिर्दिष्ट प्रक्रिया के अनुसार माना जाएगा।''

इस प्रकार यह स्पष्ट है कि जांच की प्रक्रिया के दौरान अठारह वर्ष की आयु पूर्ण कर लेने वाले व्यक्ति को धारा 6(1) के अनुसार जांच की प्रक्रिया के दौरान बालक समझा जाएगा और धारा 6(3) के अनुसार ऐसे व्यक्ति के साथ अधिनियम के प्रावधानों के अनुसार व्यवहार किया जाएगा। अधिनियम की धारा 18(1) के अनुसार जब किसी बालक को विधि का उल्लंघन करते हुए कोई 'छोटा अपराध' या 'घोर अपराध' या सोलह वर्ष से कम आयु के बालक द्वारा कोई जघन्य अपराध कारित किया जाना पाया जाता है तब अधिनियम की धारा 18(1) तथा जब किसी सोलह वर्ष व उससे अधिक आयु के बालक के द्वारा जघन्य प्रकृति का अपराध कारित किया जाना पाया जाता है, तब किशोर न्याय बोर्ड, किशोर न्याय (बालकों की देखरेख और संरक्षण) आदर्श नियम, 2016 के नियम 11(1) सहपठित धारा 18(1) के अंतर्गत विनिर्दिष्ट निपटान आदेश जारी कर सकेगा। धारा 18(1) के अनुसार बालक के संबंध में 18(1)(क) से (छ) तक के आदेश पारित किए जा सकेंगे परन्तु इस प्रावधान में बालक को जेल प्रेषित किए जाने का कोई भी आदेश किया जाना प्राधिकृत नहीं है।

यद्यपि अधिनियम की धारा 19(3) तथा 20 इक्कीस वर्ष की आयु पूर्ण कर लेने वाले बालक को विनिर्दिष्ट परिस्थितियों में जेल प्रेषित करने का प्रावधान करती है परन्तु यह प्राधिकार मात्र बालक न्यायालय को उपलब्ध है, वह भी केवल उन परिस्थितियों में जब उनके द्वारा अधिनियम की धारा 15 के अधीन बोर्ड से प्रारंभिक निर्धारण प्राप्त होने के पश्चात् बालक का विचारण वयस्क के रूप में किया गया था। अर्थात् बालक न्यायालय या उच्च न्यायालय द्वारा अपीलीय न्यायालय के रूप में किशोर न्याय बोर्ड के आदेश के विरूद्ध अपील या पुनरीक्षण की सुनवाई के उपरांत भी इस प्रकार का आदेश पारित नहीं किया जा सकता है।

ऐसे व्यक्ति को कहां प्रेषित किया जाए, इस संबंध में अधिनियम की धारा 2(46) में परिभाषित सुरक्षित स्थान तथा इस बालक देखरेख संस्था में किस वर्ग के बालकों का रखा जाना आशयित है, से संबंधित धारा 49 का अवलोकन आवश्यक है –

2 (46) "सुरक्षित स्थान" से ऐसा कोई स्थान या ऐसी संस्था, जो पुलिस हवालात या जेल नहीं है, अभिप्रेत है, जिसकी स्थापना पृथक रुप से की गई है या जो, यथास्थिति, किसी संप्रेक्षण गृह या किसी विशेष गृह से जुड़ी हुई है, जिसका भारसाधक व्यक्ति विधि का उल्लंघन करने वाले अभिकथित बालक या उल्लंघन करते पाए गए ऐसे बालकों को, बोर्ड या बालक न्यायालय, के

आदेश से जांच के दौरान या आदेश में यथा विनिर्दिष्ट अवधि और प्रयोजन के लिए दोषी पाए जाने के पश्चात् सतत् पुनवार्सन, दोनों के दौरान अपनाने और उनकी देखरेख करने का इच्छुक है।

49. सुरक्षित स्थान – (1) राज्य सरकार, किसी राज्य में धारा 41 के अधीन रजिस्ट्रीकृत कम से कम एक सुरक्षित स्थान की स्थापना करेगी जिससे अठारह वर्ष से अधिक आयु के किसी व्यक्ति को या विधि का उल्लंघन करने वाले किसी बालक को, जो सोलह से अठारह वर्ष की आयु के बीच का है और कोई जघन्य अपराध कारित करने का अभियुक्त है या सिद्धदोष ठहराया गया है, रखा जा सके।

(2) प्रत्येक सुरक्षित स्थान में जांच की प्रक्रिया के दौरान ऐसे बालकों या व्यक्तियों के और कोई अपराध कारित करने के दोषसिद्ध बालकों या व्यक्तियों के ठहरने के लिए अलग प्रबंध और सुविधाएं होंगी।

(3) राज्य सरकार, नियम द्वारा उस प्रकार के स्थानों को, जिन्हें उपधारा (1) के अधीन सुरक्षित स्थान के लिये अभिहित किया जा सकता है और उन सुविधाओं और सेवाओं को, जिनका उसमें उपबंध किया जाए, विहित कर सकेगी।

उपरोक्त प्रावधानों से यह स्पष्ट है कि अठारह वर्ष से अधिक आयु के किसी व्यक्ति को जिसे सिद्धदोष ठहराया गया है, यदि उसे संस्थागत पुर्नवास की आवश्यकता है तो, उसे सुरक्षित स्थान प्रेषित करने का आदेश दिया जा सकता है।

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4. धारा 138 परक्राम्य लिखत अधिनियम के अन्तर्गत अपराध का शमन अपील न्यायालय के समक्ष होता है। इस स्थिति में क्या परिवादी विचारण न्यायालय के समक्ष भुगतान किया गया न्यायालय शुल्क प्राप्त करने का अधिकारी है?

न्यायालय फीस अधिनियम, 1870 की धारा 16 वाद के पक्षकारों को सिविल प्रक्रिया संहिता की धारा 89 में निर्दिष्ट विवाद के निपटारे के ढंगो में से कोई ढंग के द्वारा निपटारा होने पर न्यायालय शुल्क के रूप में प्रदत्त पूरी रकम वापस प्राप्त करने के लिए प्राधिकृत करती है। यहां यह उल्लेखनीय होगा कि धारा 89 में उल्लेखित 'लोक अदालत' तथा 'बीच बचाव' की कार्यवाही में विधिक सेवा प्राधिकरण अधिनियम, 1987 के उपबंध लागू होते है अतः यदि आपराधिक प्रकरण का निराकरण भी इनके माध्यम से होता है तब न्यायालय फीस धारा 16 न्यायालय शुल्क अधिनियम के आलोक में वापस होगी।

यदि शमन/समझौता विचारण न्यायालय के समक्ष लंबित कार्यवाही में होता है तो पक्षकार उस फीस को वापस प्राप्त करने का अधिकारी है जो उसके द्वारा विचारण न्यायालय के समक्ष भुगतान की गई थी। किन्तु यदि शमन/समझौता अपील न्यायालय के समक्ष अभिलिखित किया जाता है तब पक्षकार केवल वह न्यायालय शुल्क वापस प्राप्त कर सकता है जो उसके द्वारा अपील मेमो के साथ संदत्त किया गया है।

केसरी लाल विरूद्ध धनराज, 2010(3) एमपीडब्ल्यूएन 54 के मामले में अपील प्रकरण में समझौते के आधार पर आवेदन प्रस्तुत करते हुए अपील वापस लेने की प्रार्थना की गई थी। मध्यप्रदेश उच्च न्यायालय द्वारा प्रकरण को लोक अदालत को संदर्भित करने में होने वाले विलंब को दृष्टिगत रखते हुए धारा 16 न्यायालय फीस अधिनियम तथा धारा 89 सिविल प्रक्रिया संहिता के प्रावधानों के अंतर्गत अपीलार्थी द्वारा अपील मेमों पर संदत्त न्यायालय फीस वापस करने का निर्देश दिया गया।

हिमेश विरूद्ध कैलास चंद, एफ.ए.क्र.1289/2018 आदेश दिनांक 08.12.2018 के मामले मे अपील के लंबित रहते हुए लोक अदालत में समझौता होने पर मध्यप्रदेश उच्च न्यायालय द्वारा वाद पत्र के साथ प्रस्तुत न्यायालय फीस वापस करने से इंकार करते हुये आदेश दिया गया कि केवल अपील मेमो पर संदत्त न्यायालय फीस वापस होगी। इस प्रकार यहां यह ध्यान रखने योग्य है कि यदि समझौता अपील न्यायालय के समक्ष होता है तो पक्षकार केवल वह न्यायालय फीस प्राप्त कर सकेगा जो अपील मेमो पर दी गई है। विचारण न्यायालय के समक्ष वाद पत्र के साथ दी गई न्यायालय फीस वापस नहीं होगी।

इस प्रकार स्पष्ट है कि अपील न्यायालय के समक्ष लंबित मामले का निराकरण धारा 89 सिविल प्रक्रिया संहिता में निर्दिष्ट माध्यम मे से किसी माध्यम से होने पर पक्षकार केवल अपील मेमो पर संदत्त न्यायालय शुल्क वापस प्राप्त करने का अधिकारी है चाहे वह अपील सिविल हो या आपराधिक।

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PART - II

NOTES ON IMPORTANT JUDGMENTS

276. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 9 and 17

(i) Interim measures by Court – Bar of – When applies? Held, bar u/s 9(3) applies when application u/s 9(1) is yet to be considered – Once an application is entertained and considered and is reserved for order, constitution of Arbitral Tribunal does not affect power of Court to order interim measures.

(ii) Interim measures by Court – Bar of – Inefficacy of remedy u/s 17 to obtain interim measures from Arbitral Tribunal – Consideration of – Once application is taken up for consideration u/s 9 by the Court, question whether remedy u/s 17 is efficacious or not would not arise.

(iii) Inefficacy of remedy u/s 17 – Instances of – There may be various reasons which render the remedy u/s 17 inefficacious – For example, different arbitrators constituting Arbitral Tribunal are not in a position to assemble immediately – In such cases application for interim measures has to be entertained by Court u/s 9.

माध्यस्थम एवं सुलह अधिनियम, 1996 – धाराएं 9 एवं 17

(i) न्यायालय द्वारा अंतरिम उपाय – वर्जन – कब लागू होता है? अभिनिर्धारित, धारा 9(3) के अधीन वर्जन तब लागू होता है जब धारा 9(1) के अधीन आवेदन पर अभी विचार किया जाना शेष हो – एक बार एक आवेदन पर विचार करते हुए आवेदन आदेश के लिए सुरक्षित कर लिए जाने पर, माध्यस्थम अधिकरण का गठन न्यायालय की अंतरिम उपायों का आदेश करने की शक्ति को प्रभावित नहीं करता है।

(ii) न्यायालय द्वारा अंतरिम उपाय – वर्जन – माध्यस्थम अधिकरण से अंतरिम उपचार प्राप्त करने के लिए धारा 17 के अधीन अनुतोष का प्रभावहीन होना – विचारण – एक बार न्यायालय द्वारा धारा 9 के अधीन आवेदन पर विचार कर लिए जाने पर यह प्रश्न कि धारा 17 के अधीन उपचार प्रभावी है अथवा नहीं, उत्पन्न नहीं होगा।

(iii) धारा 17 के अधीन उपचार का प्रभावहीन होना – उदाहरण – ऐसे कई कारण हो सकते हैं जो धारा 17 के अधीन उपचार को प्रभावहीन बना दें – जैसे, माध्यस्थम अधिकरण का गठन करने वाले विभिन्न मध्यस्थ तत्काल एकत्रित होने की स्थिति में नहीं हैं – ऐसे मामलों में अंतरिम उपायों के लिए आवेदन धारा 9 के अधीन न्यायालय द्वारा ही विचारणीय होगा।

Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.
Judgment dated 14.09.2021 passed by the Supreme Court in Civil Appeal No. 5700 of 2021, reported in AIR 2021 SC 4350

Relevant extracts from the judgment:

On a combined reading of section 9 with section 17 of the Arbitration Act, once an Arbitral Tribunal is constituted, the Court would not entertain and/or in other words take up for consideration and apply its mind to an application for interim measure, unless the remedy u/s 17 is inefficacious, even though the application may have been filed before the constitution of the Arbitral Tribunal. The bar of Section 9(3) would not operate, once an application has been entertained and taken up for consideration, as in the instant case, where hearing has been concluded and judgment has been reserved. Learned Counsel for petitioner may be right, that the process of consideration continues till the pronouncement of judgment. However, that would make no difference. The question is whether the process of consideration has commenced, and/or whether the Court has applied its mind to some extent before the constitution of the Arbitral Tribunal. If so, the application can be said to have been entertained before constitution of the Arbitral Tribunal.

When an application has already been taken up for consideration and is in the process of consideration or has already been considered, the question of examining whether remedy u/s 17 is efficacious or not would not arise. The requirement to conduct the exercise arises only when the application is being entertained and/or taken up for consideration. As observed above, there could be numerous reasons which render the remedy u/s 17 inefficacious. To cite an example, the different arbitrators constituting an Arbitral Tribunal could be located at faraway places and not in a position to assemble immediately. In such a case an application for urgent interim relief may have to be entertained by the Court u/s 9(1).

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277. CIVIL PROCEDURE CODE, 1908 – Section 11 and Order 7 Rule 11(d) Rejection of plaint – Application under Order 7 Rule 11 must be decided within the four corners of the plaint – Earlier suit was filed for possession and subsequent suit for challenging sale deed in favour of auction purchaser – At the time of institution of subsequent suit no decree had been passed in the earlier suit – Thus, the issues raised in earlier suit had not been adjudicated upon – Therefore, the plaint, on the face of it, cannot deserves to be rejected on the ground that it is barred by principles of *res judicata*.

सिविल प्रक्रिया संहिता, 1908 – धारा 11 एवं आदेश 7 नियम 11(घ) वादपत्र का नामंजूर किया जाना – आदेश 7 नियम 11 के अंतर्गत आवेदन को वादपत्र की समग्रता के आधार पर निराकृत किया जाना चाहिए – पूर्ववर्ती वाद आधिपत्य के लिए एवं पश्चात्वर्ती वाद नीलामी क्रेता के पक्ष में किए गए विक्रय पत्र

को चुनौती देने के लिए संस्थित किया गया था – पश्चात्वर्ती वाद संस्थित किए जाते समय पूर्ववर्ती वाद में कोई आज्ञप्ति पारित नहीं की गई थी – इस प्रकार पूर्व वाद में उत्पन्न विवाद्यक न्यायनिर्णीत नहीं हुये थे – परिणामस्वरुप, वाद को प्रथम दृष्ट्या प्रांगन्याय के सिद्धांत से बाधित होने के आधार पर नामंजूर किए जाने योग्य होना नहीं माना जा सकता।

Srihari Hanumandas Totala v. Hemant Vithal Kamat and ors.
Judgment dated 09.08.2021 passed by the Supreme Court in Civil Appeal No. 4665 of 2021, reported in AIR 2021 SC 3802

Relevant extracts from the judgment:

In the present case, a meaningful reading of the plaint makes it abundantly clear that when the first Respondent instituted the subsequent suit, he had been impleaded as the second Defendant to the earlier suit (OS No. 103/2007) that was instituted on 13 March, 2007. The first Respondent instituted the subsequent suit, OS 138/2008 though he had knowledge of the earlier suit. The plaint in the subsequent suit which was instituted by the first Respondent indicates that the he was aware of the mortgage executed in favour of KSFC, that KSFC had executed its charge by selling the property for the recovery of its dues and that the property had been sold on 8 August, 2006 in favour of the predecessor of the Appellant. As a matter of fact, the plaint contains an averment that there was every possibility that the first Respondent may suffer a decree for possession in OS 103/2007 which "has forced" the first Respondent to institute the suit for challenging the legality of the sale deed. Given the fact that an argument was raised in the previous suit regarding no challenge having been made to the auction and the subsequent sale deed executed by the KFSC, it is possible that the first Respondent then decided to exercise his rights and filed the subsequent suit. Be that as it may, on a reading of the plaint, it is evident that the first Respondent has not made an attempt to conceal the fact that a suit regarding the property was pending before the civil court at the time.

It is also relevant to note that at the time of institution of the suit (OS No. 138/2008) by the first Respondent, no decree had been passed by the civil court in OS No. 103/2007. Thus, the issues raised in OS No. 103/2007, at the time, had not been adjudicated upon. Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the Trial Court were correct in their approach in holding, that to decide on the arguments raised by the Appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in OS No. 103/2007. An application Under Order 7 Rule 11 must be decided within the four corners of the plaint. The Trial court and High Court were correct in rejecting the application Under Order 7 Rule 11(d).

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278. CIVIL PROCEDURE CODE, 1908 – Section 100
LIMITATION ACT, 1963 – Section 3
CIVIL PRACTICE:

(i) Suit for Possession – A person claiming a decree of possession has to establish his entitlement to get such possession and also establish that his claim is not barred by the laws of limitation. The Court is obliged to dismiss a suit filed after expiry of the period of limitation, even though the plea of limitation may not have been taken in defence.

(ii) Legal Maxim – Possession follows title – This presumption arises only where there is no definite proof of possession by anyone else.

सिविल प्रक्रिया संहिता, 1908 – धारा 100
परिसीमा अधिनियम, 1963 – धारा 3
सिविल प्रथाः

(i) आधिपत्य के लिए वाद – आधिपत्य की आज्ञप्ति का दावा करने वाले व्यक्ति को ऐसा आधिपत्य प्राप्त करने के लिए अपनी पात्रता स्थापित करनी होती है और साथ ही यह भी स्थापित करना होता है कि उसका दावा परिसीमा विधि से बाधित नहीं है। न्यायालय बाध्य है कि वह परिसीमा अवधि के पश्चात् प्रस्तुत किए गए वाद को खारिज करे, भले ही प्रतिरक्षा में परिसीमा का अभिवाक् नहीं लिया गया हो।

(ii) विधिक सूक्ति – आधिपत्य स्वत्व का अनुसरण करता है – यह उपधारणा केवल उस समय उत्पन्न होती है जहां पर आधिपत्य के संबंध में किसी अन्य के द्वारा कोई निश्चित प्रमाण न दिया गया हो।

Nazir Mohamed v. J. Kamala and ors.

Judgment dated 27.08.2020 passed by the Supreme Court in Civil Appeal No. 2843 of 2010, reported in 2021 (4) MPLJ 46 (SC)

Relevant extracts from the judgment:

A person claiming a decree of possession has to establish his entitlement to get such possession and also establish that his claim is not barred by the laws of limitation. He must show that he had possession before the alleged trespasser got possession.

The maxim “possession follows title” is limited in its application to property, which having regard to its nature, does not admit to actual and exclusive occupation, as in the case of open spaces accessible to all. The presumption that possession must be deemed to follow title, arises only where there is no definite proof of possession by anyone else. In this case it is admitted that the Appellant-Defendant is in possession and not the Respondent Plaintiff.

A suit for recovery of possession of immovable property is governed by the Limitation Act, 1963. Section 3 of the Limitation Act bars the institution of any suit after expiry of the period of limitation prescribed in the said Act. The Court is obliged to dismiss a suit filed after expiry of the period of limitation, even though the plea of limitation may not have been taken in defence.

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279. CIVIL PROCEDURE CODE, 1908 – Order 2 Rule 2

Bar to suit – Suits based on same cause of action – First suit filed on 27.01.1995 for possession after tenanted premises were demolished – Second suit filed on 30.10.1995 for damages for loss of property including goods and machinery alleging cause of action on 09.01.1995 – Right to claim damages was available to plaintiff in first suit – Held, both suits are based on same cause of action and second suit is barred.

सिविल प्रक्रिया संहिता, 1908 – आदेश 2 नियम 2

वाद का वर्जन – एक ही वाद–कारण के आधार पर दावे – प्रथम वाद किरायेदारी परिसर को ध्वस्त करने के बाद दिनांक 27.01.1995 को आधिपत्य प्राप्त करने के लिए संस्थित किया गया – दूसरा वाद दिनांक 30.10.1995 को माल व मशीनरी सहित संपत्ति के नुकसान के लिए 09.01.1995 को वाद–कारण उत्पन्न होना अभिकथित करते हुए प्रतिकर के लिए संस्थित किया गया – पहले वाद में वादी को प्रतिकर का दावा करने का अधिकार उपलब्ध था – अवधारित, दोनों वाद एक ही वाद–कारण पर आधारित हैं और दूसरा वाद वर्जित है।

Abdul Khuddus v. H.M. Chandiramani (Dead) By LRs and ors.
Judgment dated 14.09.2021 passed by the Supreme Court in Civil Appeal No. 1833 of 2008, reported in AIR 2021 SC 4321

Relevant extracts from the judgment:

The plaintiff had filed the first suit on 27.01.1995 after the tenanted premises were demolished. The right to claim damages for loss of the property including goods and machines was available to the Plaintiff on the said date. In fact, in the second suit, the Plaintiff has pleaded that the cause of action arose to him on 9.01.1995.

A perusal of the Order 2 Rule 2 CPC would show that every suit shall include whole of the claim which the plaintiff is entitled to make in respect of the cause of action. The cause of action is a bundle of facts and relief of damages is construed to be a component of such bundle of facts. The plaintiff was conscious of the fact that he wants to sue for damages which is evident from his averment in para 9 of the plaint of the first suit but the plaintiff was required to obtain leave of the Court before filing suit for damages subsequently. The High Court has clearly erred in law in holding that the cause of action for both the suits is different.

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***280. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 14 and Order 11 Rule 1 (as applicable to Commercial Courts)**
COMMERCIAL COURTS ACT, 2015 – Section 16
Production of documents during trial – Application for taking documents on record filed stating that they were not filed earlier due to their being voluminous – Held, application rightly rejected in light of Order 11 Rule 1 CPC, as applicable to Commercial Courts.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 14 एवं आदेश 11 नियम 1 (जैसा वाणिज्यिक न्यायालयों को लागू है)

वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 16

विचारण के दौरान दस्तावेजों की प्रस्तुति – दस्तावेजों को अभिलेख में लेने हेतु आवेदन में प्रकट किया गया है कि उन्हें पहले प्रस्तुत नहीं किया गया था क्योंकि वे बहुत विस्तीर्ण थे – अभिनिर्धारित, आवेदन आदेश 11 नियम 1 सि.प्र.सं. जैसी वाणिज्यिक न्यायालयों को लागू है, के आलोक में उचित ही अस्वीकार किया गया।

Sudhir Kumar alias S. Baliyan v. Vinay Kumar G.B.
Judgment dated 15.09.2021 passed by the Supreme Court in Civil Appeal No. 5620 of 2021, reported in AIR 2021 SC 4303

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281. CIVIL PROCEDURE CODE, 1908 – Order 18 Rule 4
Examination-in-chief by way of affidavit – Withdrawal not permissible – Once examination-in-chief is affirmed by way of filing affidavit before the trial Court, thereafter, it is not possible to withdraw the said affidavit – Deponent may file an affidavit subsequent to it and to add or supplement the facts for the reason that order XVIII Rule 4 of CPC does not limit itself to a single affidavit but nonetheless deponent ought not be allowed to keep on filing fresh affidavits to keep improving his case in routine manner.

सिविल प्रक्रिया संहिता, 1908 – आदेश 18 नियम 4

शपथ–पत्र के माध्यम से मुख्य परीक्षण – वापस लिया जाना अनुमत नहीं – एक बार विचारण न्यायालय के समक्ष शपथ–पत्र प्रस्तुत कर मुख्य परीक्षण की पुष्टि कर दी जाती है, तत्पश्चात् ऐसे शपथ पत्र को वापस लिया जाना संभव नहीं है – इसके उपरांत शपथकर्ता अन्य शपथ पत्र प्रस्तुत कर तथ्यों का समावेश कर कमी पूरी कर सकता है क्योंकि आदेश 18 नियम 4 सि.प्र.सं. केवल एक ही शपथ पत्र प्रस्तुत किए जाने तक सीमित नहीं है परन्तु शपथकर्ता को नया शपथ पत्र केवल इस आधार पर कि वह अपने प्रकरण में सुधार कर सके प्रस्तुत करने की नियमित रूप से अनुमति नहीं देनी चाहिए।

Batsiya and ors. v. Ramgovind and ors.

Order dated 28.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 6650 of 2014, reported in AIR 2021 MP 153

Relevant extracts from the order:

Once an Evidence Affidavit is filed, examination-in-chief of the deponent has, to all intents and purposes, begun because once Evidence Affidavit is filed, since there is no absolute requirement of it being required to be reaffirmed by the deponent while appearing in the witness box before that affidavit forms part of the evidentiary record, it follows that it is examination-in-chief as soon as it is affirmed. Once examination-in-chief is affirmed by way of filing it before the trial Court, thereafter, it is not possible to withdraw the said affidavit. Deponent may file an affidavit subsequent to it and to add or supplement the facts for the reason that order XVIII Rule 4 of CPC does not limit itself to a single affidavit but nonetheless deponent ought not be allowed to keep on filing fresh affidavits to keep improving his case in routine manner.

In the present case, plaintiffs not only filed another affidavit for examination-in-chief but also very cleverly tried to get the earlier affidavit deleted from record which is not permissible. All the affidavits shall form the part of record and evidence over which the other side (defendant in the present case) shall have all authority and opportunity to cross-examine the witness on the basis of his examination-in-chief as reflected in different affidavits filed under Order XVIII Rule 4 CPC.

Trial Court erred in causing deletion of earlier affidavits. Plaintiffs cannot be allowed to thrive on their own wrong and cannot derive premium from their omission or manipulations. The maxim ***"Nullus cmmodum capere ptest de injuria sua propria"***, No man can take advantage of his own wrong is one of the salient tenets of equity as has been held by the Apex Court in the case of ***Eureka Forbes Limited v. Allahabad Bank and others, (2010) 6 SCC 193 : (2010 AIR SCW 3429)*** and recently by this Court in the case of ***Dharmendra Jatav v. State of M.P., 2021 (2) MPLJ 327***. On this count also, case of plaintiffs (Respondents herein) lacks merit.

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282. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 22(2) and 34(2)

Execution – Requirement of notice – It cannot be said that the judgment debtor had no knowledge of execution proceedings as she has contested the matter throughout till the Supreme Court and was well aware of the execution proceedings pending before the Executing Court, hence, her absence in the Executing Court appears deliberate – In such circumstances, issuance of notice under sub-rule (2) of Order 21 Rule 34 at this juncture would cause not only unreasonable delay but would also defeat the ends of justice.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 22(2) एवं 34(2)

निष्पादन – सूचना–पत्र की आवश्यकता – यह नहीं कहा जा सकता कि निर्णीत ऋणी को निष्पादन कार्यवाही की जानकारी नहीं थी क्योंकि उसके द्वारा उच्चतम न्यायालय के स्तर तक वाद को चुनौती दी गई और निष्पादन न्यायालय के समक्ष निष्पादन कार्यवाहियों के लंबित रहने से भी वह अवगत थी, इस प्रकार, निष्पादन न्यायालय में उसकी अनुपस्थिति जानबूझकर दर्शित होती है – इन परिस्थितियों में इस स्तर पर आदेश 21 नियम 34 के उपनियम (2) के तहत् सूचना–पत्र जारी किया जाना न केवल विलंब कारित करेगा अपितु न्याय के उद्देश्य को विफल करने वाला भी होगा।

Ashok s/o Nemichand Patni v. Gyan w/o Late Dr. Indra Bhargav
Order dated 01.07.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 1318 of 2021, reported in 2021 (4) MPLJ 176

Relevant extracts from the order:

There appears to be no dispute regarding the compliance of the procedural aspect of the decree by the petitioner is concerned. In such circumstances, taking note of the age of the petitioner, who is also 77 years old and the fact that the judgment debtor Smt. Gyan Bhargav W/o Late Dr. Indra Bhargav was also represented by her Counsel in the Executing Court on 04.10.2019, this Court finds force with the contentions raised by the Counsel for the petitioner that in such circumstances actual furnishing of the draft sale deed to the judgment debtor can be dispensed with. So far as the compliance of Order 21 Rule 34 (2) of Civil Procedure Code is concerned, it was necessary, had there been no representation at all in the Executing Court, however, when the order-sheet itself reveals that the judgment debtor appeared before the Court through her Counsel Shri Ratnesh Pal on 04.10.2019, and thereafter vanished from the scene, there is no point in again sending a notice to the judgment debtor and prolong the execution of the decree any further. It is also found that it cannot be said that the judgment debtor had no knowledge of such proceedings as she has contested the matter throughout till the Supreme Court and was well aware of the execution proceedings pending before the Executing Court, hence, her absence in the Executing Court appears deliberate. In such circumstances, this court is of the considered opinion that as provided under sub-rule (2) of Rule 21 of Order 22 of Civil Procedure Code, issuance of notice under sub-rule (2) of Order 21 rule 34 at this juncture would cause not only unreasonable delay but would also defeat the ends of justice because furnishing a draft sale deed under Order 21 Rule 34 (2) of Civil Procedure Code to the respondent/ judgement at this stage would only be an empty formality and can be dispensed with.

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283. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 29 and Order 41 Rules 3-A and 5

Stay of execution – Unless and until, a stay order is passed by the Appellate Court, appeal shall not operate as stay of proceedings – Even the execution of decree shall not be stayed by reason that the appeal has been preferred from the decree.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 29 एवं आदेश 41 नियम 3–क एवं 5

निष्पादन का रोका जाना – जब तक कि, अपीलीय न्यायालय द्वारा स्थगन आदेश पारित नहीं किया गया हो, कार्यवाहियों को स्थगित करने के संदर्भ में अपील प्रवर्तित नहीं होगी – यहां तक कि इस कारण से कि आज्ञप्ति के विरुद्ध अपील प्रस्तुत की गई है, आज्ञप्ति का निष्पादन स्थगित नहीं किया जाएगा।

Hemraj and ors. v. Kallu Khan

Order dated 18.06.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Civil Revision No. 284 of 2020, reported in 2021 (4) MPLJ 158

Relevant extracts from the order:

From the plain reading of Order 41 Rule 5(1) of C.P.C. it is clear that the appeal shall not operate as stay of proceedings unless and until, a stay order is passed by the Appellate Court. It is also clear from Rule 5(1) Order 41 of C.P.C. that even the execution of decree shall not be stayed by reason that the appeal has been preferred from the decree.

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284. CONTRACT ACT, 1872 – Section 25

NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

(i) Dishonour of cheque – Question whether the debt was time-barred or not – When to be decided? Held, such question being a mixed question of law and fact can be decided only after the evidence is adduced.

(ii) Acknowledgment of debt in writing – Amount borrowed by accused shown in the balance sheet may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgment was made – It is a question of fact to be decided after trial.

संविदा अधिनियम, 1872 – धारा 25

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

(i) चेक का अनादरण – प्रश्न कि क्या ऋण कालातीत था अथवा नहीं – कब विनिश्चित किया जाए? अवधारित, इस तरह के प्रश्न विधि एवं तथ्य के मिश्रित प्रश्न होने से साक्ष्य प्रस्तुत किए जाने के उपरांत ही विनिश्चित किए जा सकते हैं।

(ii) ऋण की लिखित अभिस्वीकृति – अभियुक्त द्वारा उधार ली गई राशि का वित्तीय स्थिति विवरण में उल्लेख अभिस्वीकृति माना जा सकता है और लेनदार के पास उस तिथि से परिसीमा की एक नई अवधि प्रारंभ हो सकती है जिस दिन ऐसी अभिस्वीकृति की गई थी – यह तथ्य का प्रश्न है जो विचारण के उपरांत विनिश्चित किया जाना चाहिए।

S. Natarajan v. Sama Dharman

Order dated 15.07.2014 passed by the Supreme Court in Criminal Appeal No. 1524 of 2014, reported in (2021) 6 SCC 413

Relevant extracts from the order:

The High Court referred to Section 25(3) of the Contract Act, 1872 on which reliance was placed by the complainant and observed that with regard to payment of time-barred debt, there must be a distinct promise to pay either whole or in part the debt; that the promise must be in writing either signed by the person concerned or by his duly appointed agent. The High Court then observed that unless a specific direction in the form of novation is created with regard to payment of the time-barred debt, Section 25(3) of the Contract Act cannot be invoked. The High Court then went into the question whether issuance of cheque itself is a promise to pay time-barred debt and referred to Sections 4 and 6 of the NI Act. After referring to certain judgments on the question of legally enforceable debt, the High Court stated that for the purpose of invoking Section 138 read with Section 142 of the NI Act, the cheque in question must be issued in respect of legally enforceable debt or other liability. The High Court then observed that since at the time of issuance of cheque i.e. on 1-2-2011, the alleged debt of the accused had become time-barred, the proceedings deserve to be quashed.

In our opinion, the High Court erred in quashing the complaint on the ground that the debt or liability was barred by limitation and, therefore, there was no legally enforceable debt or liability against the accused. The case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage. Whether the debt was time-barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact.

In this connection, we may usefully refer to a judgment of this Court in ***A.V. Murthy v. B.S. Nagabasavanna, (2002) 2 SCC 642*** where the accused had alleged that the cheque issued by him in favour of the complainant in respect of sum advanced to the accused by the complainant four years ago was dishonoured by the bank for the reasons “account closed”. The Magistrate had issued

summons to the accused. The Sessions Court quashed the proceedings on the ground that the alleged debt was barred by limitation at the time of issuance of cheque and, therefore, there was no legally enforceable debt or liability against the accused under the Explanation to Section 138 of the NI Act and, therefore, the complaint was not maintainable. While dealing with the challenge to this order, this Court observed that under Section 118 of the NI Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. This Court further observed that Section 139 of the NI Act specifically notes that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of the NI Act for discharge, in whole or in part, of any debt or other liability. This Court further observed that under sub-section (3) of Section 25 of the Contract Act, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Referring to the facts before it, this Court observed that the complainant therein had submitted his balance sheet, prepared for every year subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends. This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the accused therein is shown in the balance sheet, it may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgment was made. After highlighting further facts of the case, this Court held that at this stage of proceedings, to say that the cheque drawn by the accused was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous. In the circumstances, this Court set aside the order passed by the High Court upholding the Sessions Court's order quashing the entire proceedings on the ground that the debt or liability is barred by limitation and, hence, the complaint was not maintainable. It is, therefore, clear that the contention urged by the appellant herein can be examined only during trial since it involves examination of facts.

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***285. CRIMINAL PROCEDURE CODE, 1973 – Sections 53-A, 311 and 374**
Direction to conduct DNA test – It was clear that in the FSL report, human sperm and semen were found on the undergarments of the prosecutrix – DNA test is essential for just decision of the case – Trial Court rightly directed for conducting DNA as per the provision of section 53-A CrPC u/s 311 CrPC.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 53–ए, 311 एवं 374

डीएनए परीक्षण का निर्देश – यह स्पष्ट था कि एफएसएल रिपोर्ट में, मानव शुक्राणु तथा सीमन अभियोक्त्री के अन्तर्वस्त्रों पर पाए गए थे – प्रकरण के न्यायोचित

निराकरण के लिए डीएनए परीक्षण कराना आवश्यक है – विचारण न्यायालय ने द. प्र.सं. की धारा 53–ए के प्रावधानानुसार द.प्र.सं. की धारा 311 के अन्तर्गत डीएनए परीक्षण कराने का उचित निर्देश दिया।

Rahul Pandey v. State of M.P. and ors.
Order dated 06.04.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 1020 of 2021, reported in 2021 CriLJ 3572

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286. CRIMINAL PROCEDURE CODE, 1973 – Sections 87, 170, 437 and 439

(i) Bail – Whether an accused of non-bailable offence whose custody was not required during investigation be released on bail on filing of chargesheet? Held, yes – To direct arrest and incarceration of such an accused merely because chargesheet has been filed would be contrary to the principles of grant of bail – Directions issued by Delhi High Court in *Court on its own Motion v. Central Bureau of Investigation, (2004) 72 DRJ 629* given imprimatur of Supreme Court.

(ii) Issue of process on taking cognizance – Accused of non-bailable offence – In such cases, invariably summons should be issued and not non-bailable warrant – To issue warrant of arrest, Magistrate or Court is required to record the reasons as per Section 87 of CrPC.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 87, 170, 437 एवं 439

(i) जमानत – क्या गैर–जमानतीय अपराध के अभियुक्त को, जिसकी अनुसंधान के दौरान अभिरक्षा की आवश्यकता नहीं थी, अभियोग–पत्र प्रस्तुत होने पर जमानत पर रिहा किया जा सकता है? अभिनिर्धारित, हाँ – ऐसे अभियुक्त को मात्र इसलिए गिरफ्तार करने और अभिरक्षा में निरुद्ध रखने का निर्देश देना कि अभियोग–पत्र प्रस्तुत किया गया है, जमानत देने के सिद्धांतों के विपरीत होगा – दिल्ली उच्च न्यायालय द्वारा *कोर्ट ऑन इट्स ओन मोशन वि. सेन्ट्रल ब्यूरो ऑफ इन्वेस्टिगेशन, (2004) 72 डीआरजे 629* में दिए गए दिशानिर्देशों की सर्वोच्च न्यायालय ने संपुष्टि की।

(ii) संज्ञान लेने पर आदेशिका जारी करना – गैर–जमानतीय अपराध का अभियुक्त – ऐसे मामलों में अनिवार्य रूप से समन जारी किया जाना चाहिए न कि गैर – जमानतीय वारंट – गिरफ्तारी वारंट जारी करने के लिए मजिस्ट्रेट या न्यायालय को द.प्र.सं. की धारा 87 के अनुसार कारण लेखबद्ध करना आवश्यक है।

Aman Preet Singh v. C.B.I.

Judgment dated 02.09.2021 passed by the Supreme Court in Criminal Appeal No. 929 of 2021, reported in AIR 2021 SC 4154

Relevant extracts from the judgment:

In our view, the purport of section 170, Cr.P.C. should no more be in doubt in view of the recent judgment passed by us in ***Siddharth v. State of Uttar Pradesh and anr., 2021 SCC onLine SC 615***.

The only additional submission made by learned counsel is that while the relevant paragraphs of the judgment of the Delhi High Court in ***Court on its own Motion v. Central Bureau of Investigation, (2004) 72 DRJ 629*** have received the imprimatur of this Court, the extracted portions from the judgment of the Delhi High Court did not include para 26. The said paragraph deals with directions issued to the criminal Courts and we would like to extract the portion of the same as under:

> "26. Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilized society.
>
> Directions for Criminal Courts:
>
> (i) Whenever officer-in-charge of police station or Investigating Agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in section 170, Cr.P.C. the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according to the procedure laid down in section 173, Cr.P.C. and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.
>
> (ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the charge-sheet, he or it shall have to record the reasons in writing as contemplated u/s 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.
>
> (iii) Rejection of an application for exemption from personal appearance on any date of hearing or even at first instance does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the Court in such a case shall not issue warrant of arrest

and may either give direction to the accused to appear or issue process of summons.

(iv) That the Court shall on appearance of an accused in a bailable offence release him forthwith on his furnishing a personal bond with or without sureties as per the mandatory provisions of section 436, Cr.P.C.

(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail."

x x x

It is the guiding principle for a Magistrate while exercising powers u/s 170, Cr.P.C. which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge sheet forthwith and proceed in accordance with the procedure laid down u/s 173, Cr.P.C. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated u/s 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in sub-para (iii) above by the High Court are in the nature of caution.

Insofar as the present case is concerned and the general principles u/s 170 Cr.P.C. the most apposite observations are in sub-para (v) of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail.

The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge

sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this.

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287. CRIMINAL PROCEDURE CODE, 1973 – Sections 91 and 233

Defence evidence – An accused has the right to render evidence in his defence and he may file an application u/s 91 CrPC for information related to CCTV footage, call detail and tower locations of the mobile nos. of himself to prove his absence from the place of incident.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 91 एवं 233

प्रतिरक्षा साक्ष्य – एक अभियुक्त को अपने बचाव में साक्ष्य प्रस्तुत करने का अधिकार होता है और वह घटनास्थल पर अपनी अनुपस्थिति प्रमाणित करने हेतु सीसीटीवी फुटेज, काल डिटेल्स और स्वयं के मोबाइल नम्बर की टावर लोकेशन से संबंधित जानकारी के लिये धारा 91 दं.प्रं.सं. के अंतर्गत आवेदन प्रस्तुत कर सकता है।

Ajay Nogare v. State of Madhya Pradesh

Order dated 01.07.2021 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 491 of 2020, reported in 2021 (3) Crimes 137 (M.P.)

Relevant extracts from the order:

In the considered opinion of this court, an accused cannot be denied his right to adduce evidence within parameters of law, and in the present case he is only seeking to secure the evidence which he might lead at the appropriate stage of the trial which cannot be said to be unwarranted or unreasonable. In such circumstances, it would be expedient to direct the respondent to ensure that the aforesaid data regarding the telephone numbers of the present applicant-Ajay and Monu be secured, including the call details and the tower locations, as also the CCTV footage of Shankh Dwar Mahakaal Mandir, if they are not already deleted.

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288. CRIMINAL PROCEDURE CODE, 1973 – Section 125

Maintenance – Separate residence by wife – When justified? Levelling of serious allegation against wife by the husband and thereafter failure to prove those allegation gives sufficient reason to wife for a separate residence and when husband is healthy and able bodied person, he is legally bound to support his wife.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125

भरण पोषण – पत्नि द्वारा पृथक निवास – कब उचित है? पति के द्वारा पत्नि पर गंभीर आक्षेप लगाना और तत्पश्चात उन आक्षेपों को प्रमाणित करने में विफल होना पत्नि को पृथक निवास हेतु पर्याप्त कारण प्रदान करते हैं और यदि पति स्वस्थ एवं शारीरिक रूप

से सक्षम व्यक्ति है तब वह अपनी पत्नि को सहारा देने के लिये वैधानिक रूप से बाध्य है।

Amar Singh v. Vimla

Judgment dated 22.06.2021 passed by the High Court of Madhya Pradesh in Criminal Revision No. 2376 of 2020, reported in 2021 (3) Crimes 120 (M.P.)

Relevant extracts from the judgment:

This Court of the considered opinion that after having levelled serious allegations against her and her parents and having failed to prove the same, it cannot be said that the respondent is residing separately without any reasonable reason.

Thus, if the husband is healthy and is an able bodied person, then he is under legal obligation to support his wife.

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289. CRIMINAL PROCEDURE CODE, 1973 – Section 197

Sanction for prosecution – Shield of Section 197 of CrPC protects a public servant from malicious prosecution but it should not be used to protect corrupt officers.

दण्ड प्रक्रिया संहिता, 1973 – धारा 197

अभियोजन हेतु स्वीकृति – धारा 197 द.प्र.सं. का कवच लोकसेवकों का विद्वेषपूर्ण अभियोजन से बचाव करता है किंतु इसका उपयोग भ्रष्ट अधिकारियों को बचाने के लिये नहीं करना चाहिए।

Indra Devi v. State of Rajasthan and anr.

Judgment dated 23.07.2021 passed by the Supreme Court in Criminal Appeal No. 593 of 2021, reported in 2021 (3) Crimes 141 (SC)

Relevant extracts from the judgment:

Section 197 of the Cr.P.C. seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognizance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. [See: ***Subramanian Swamy v. Manmohan Singh, (2012) 3 SCC 64***]. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. However, such sanction is necessary if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duty" and in order to find out whether the alleged offence is committed "while

acting or purporting to act in the discharge of his official duty", the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. [See ***State of Maharashtra v. Dr. Budhikota Subbarao, (1993) 3 SCC 339***]. The real question, therefore, is whether the act committed is directly concerned with the official duty.

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290. CRIMINAL PROCEDURE CODE, 1973 – Section 309

Adjournment – Judges of the Trial Court should not adjourn cases of heinous offences in routine manner and provisions of Section 309 CrPC should be strictly complied by them in sensitive cases.

दण्ड प्रक्रिया संहिता, 1973 – धारा 309

स्थगन – विचारण न्यायालय के न्यायाधीशों को जघन्य अपराधों के प्रकरणों को सामान्य अनुक्रम में स्थगित नहीं करना चाहिए और उनके द्वारा संवेदनशील प्रकरणों में धारा 309 दं.प्र.सं. के प्रावधानों का कठोरता से पालन किया जाना चाहिए।

Hirdesh Sahu v. State of Madhya Pradesh

Order dated 24.06.2021 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 29219 of 2021, reported in 2021 (3) Crimes 135 (M.P.)

Relevant extracts from the order:

This court is well aware of the time constrains of the trial courts for myriad of reasons but it appears that the aforesaid provision of law has been given a complete go-by by the learned judge of the trial court while fixing the date for cross-examination. The relevant excerpts of the order dated 04.10.2019 read as under:-

''प्रकरण अभियोजन साक्ष्य हेतु नियत है। अभियोजन साक्षी रोहित जैन एवं अक्षत जैन उपस्थित। अभियोजन साक्षी रोहित जैन अ.सा.–1 को शेष प्रतिपरीक्षण उपरांत उन्मुक्त किया गया तथा अभियोजन बाल साक्षी अक्षत जैन से प्रश्न पूछे गये उसके द्वारा दिये गये उत्तर को दृष्टिगत रखते हुये साक्षी प्रश्नों को समझकर उनका उत्तर देने में सक्षम प्रतीत होने के कारण उसका मुख्य परीक्षण प्रारंभ किया गया तथा न्यायालयीन समय समाप्त होने के कारण साक्षी का प्रतिपरीक्षण स्थगित किया जाकर आगामी पेशी तारीख की सूचना देकर उन्मुक्त किया गया। प्रकरण अभियोजन साक्षी अक्षत जैन के प्रतिपरीक्षण हेतु दिनांक 13/11/2019 को पेश हो।''

This court is at pains to see the casual manner in which the next date is fixed in this case. In the considered opinion of this court the learned judge ought to have seen the sensitivity of the matter and should not have given such long date for no apparent reasons for the purposes of cross-examination which has led to the material witness turning hostile, seriously jeopardizing and undermining the efforts made by the police officers to bring home the charges against the accused persons, and to say the least, of the cost involve in the rescue operation which is always borne by the State.

In such circumstances, lest it is again forgotten, it is hereby directed to all the judges of the trial court, to ensure the compliance of Section 309 of Cr.P.C. and specially in sensitive cases like murder, abduction and rape, it should be observed religiously, without fail and cases should not be adjourned on the drop of a hat.

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291. CRIMINAL PROCEDURE CODE, 1973 – Section 319

(i) Summoning of additional accused – Whether power u/s 319 CrPC be exercised only on the basis of examination-in-chief of a witness? Held, yes.

(ii) Summoning of additional accused – Nature of order to be passed – At this stage, Court is not required to appreciate the evidence or enter into the merits of the case.

(iii) Summoning of additional accused – Stage at which power u/s 319 CrPC may be exercised – Held, such power can be exercised at any stage from commencement of trial and recording of evidence and before the conclusion of trial.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

(i) अतिरिक्त अभियुक्त को समन – क्या धारा 319 द.प्र.सं. की शक्ति का प्रयोग मात्र साक्षी के मुख्य परीक्षण के आधार पर किया जा सकता है? अभिनिर्धारित, हाँ।

(ii) अतिरिक्त अभियुक्त को समन – पारित किए जाने वाले आदेश की प्रकृति – इस स्तर पर न्यायालय को साक्ष्य का मूल्यांकन करने अथवा मामले के गुण–दोष पर विचार करने की आवश्यकता नहीं है।

(iii) अतिरिक्त अभियुक्त को समन – वह चरण जिस पर धारा 319 द.प्र.सं. की शक्ति का प्रयोग किया जा सकता है – अभिनिर्धारित, ऐसी शक्ति का प्रयोग विचारण प्रारंभ होने व साक्ष्य अभिलिखित करने से लेकर विचारण के समापन से पूर्व किसी भी स्तर पर किया जा सकता है।

Manjeet Singh v. State of Haryana and ors.

Judgment dated 24.08.2021 passed by the Supreme Court in Criminal Appeal No. 875 of 2021, reported in AIR 2021 SC 4274

Relevant extracts from the judgment:

Now thereafter when in the examination-in-chief the appellant herein-victim-injured eye witness has specifically named the private respondents herein with specific role attributed to them, the learned Trial Court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eye witness. As observed by this Court in the cases of ***State of M.P. v. Mansingh, (2003) 10 SCC 414; Abdul Sayeed v. State of M.P., (2010) 10 SCC 259; State of Uttar Pradesh v. Naresh, (2011) 4 SCC 324,*** the evidence of an injured eye witness has greater evidential value and unless compelling reasons exist,

their statements are not to be discarded lightly. As observed hereinabove while exercising the powers u/s 319 Cr.P.C. the Court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial u/s 319 Cr.P.C.

x x x

At the stage of exercising the powers u/s 319 Cr.P.C., the Court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences u/s 302, 307, 341, 148 & 149 I.P.C. The High Court has failed to appreciate the fact that for attracting the offence u/s 149 I.P.C. only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable.

x x x

As per the settled preposition of law and as observed by this Court in the case of ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***, the powers u/s 319 Cr.P.C. can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application u/s 319 Cr.P.C. was given only one witness was examined and examination-in-chief of P.W. 1 was recorded and while the cross-examination of P.W. 1 was going on, application u/s 319 Cr.P.C. was given which came to be rejected by the learned Trial Court. The order passed by the learned Trial Court is held to be unsustainable. If the learned trial Court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may as observed herein powers u/s 319 Cr.P.C. can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

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***292. CRIMINAL PROCEDURE CODE, 1973 – Section 319**
INDIAN PENAL CODE, 1860 – Section 376-D
Summoning of additional accused – Exercise of power u/s 319 CrPC – Proposed accused persons were named in FIR registered u/s 376-D IPC as well as in statement of witnesses recorded during investigation – They were also named in court statements – Held, this is fit case to issue summons to proposed accused u/s 319 CrPC.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

भारतीय दण्ड संहिता, 1860 – धारा 376–घ

अतिरिक्त अभियुक्त को समन – धारा 319 द.प्र.सं. की शक्ति का प्रयोग – प्रस्तावित अभियुक्तगण का नाम भा.द.सं. की धारा 376–घ के अधीन पंजीबद्ध प्रथम सूचना

प्रतिवेदन के साथ–साथ अनुसंधान के दौरान लेखबद्ध साक्षियों के कथनों में था – उन्हें न्यायालय में दिए गए कथनों में भी नामित किया गया था – अवधारित, धारा 319 द.प्र.सं. के अधीन प्रस्तावित अभियुक्त को समन जारी करने के लिए यह उपयुक्त मामला है।

Gulshan v. State of Uttar Pradesh and ors.

Judgment dated 29.07.2021 passed by the Supreme Court in Criminal Appeal No. 703 of 2021, reported in AIR 2021 SC 4318

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293. CRIMINAL PROCEDURE CODE, 1973 – Section 320
NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 147
Compounding of offence – Effect of compounding of offence on the parties and on the public should be kept in mind by the Court – For compounding the offence of Section 138 Negotiable Instruments Act u/s 147 of Negotiable Instruments Act, permission of the Court is not necessary because this crime does not affect the society at large.

दण्ड प्रक्रिया संहिता, 1973 – धारा 320

परक्राम्य लिखत अधिनियम, 1881 – धारा 147

अपराधों का शमन – अपराध के शमन का पक्षकारों एवं आम जनता पर पड़ने वाले प्रभाव को न्यायालय को ध्यान में रखना चाहिए – धारा 147 परक्राम्य लिखत अधिनियम के अंतर्गत धारा 138 परक्राम्य लिखत अधिनियम के अपराध का शमन करने के लिये न्यायालय की अनुमति की आवश्यकता नहीं होती है क्योंकि यह अपराध सम्पूर्ण समाज को प्रभावित नहीं करता है।

Prakash Gupta v. Securities and Exchange Board of India

Judgment dated 23.07.2021 passed by the Supreme Court in Criminal Appeal No. 569 of 2021, reported in 2021 (3) Crimes 107 (SC)

Relevant extracts from the judgment:

Analyzing the decisions in ***Biswabahan Das v. Gopen Chandra Hazarika, AIR 1967 SC 895*** (three Judge Bench) and ***Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288*** (Constitution Bench), it is evident that that legislative sanction for compounding of offences is based upon two contrasting principles: first, that private parties should be allowed to settle a dispute between them at any stage (with or without the permission of the Court, depending on the offence), even of a criminal nature, if proper restitution has been made to the aggrieved party; and second, that, however, this should not extend to situations where the offence committed is of a public nature, even when it may have directly affected the aggrieved party. The first of these principles is crucial so as to allow for amicable resolution of disputes between parties without the adversarial role of Courts, and also to ease the burden of cases coming before the Courts. However, the

second principle is equally important because even an offence committed against a private party may affect the fabric of society at large. Non-prosecution of such an offence may affect the limits of conduct which is acceptable in the society. The Courts play an important role in setting these limits through their adjudication and by prescribing punishment in proportion to how far away from these limits was the offence which was committed. As such, in deciding on whether to compound an offence, a Court does not just have to understand its effect on the parties before it but also consider the effect it will have on the public. Hence, societal interest in the prosecution of crime which has a wider social dimension must be borne in mind.

Provisions begin with a *non-obstante* provision overriding the provisions of the Cr.P.C., insofar as the compounding of offence is concerned. Having stipulated a *non-obstante* clause in Section 147 of the N.I. Act, Parliament has provided that "every offence punishable under this Act shall be compoundable". Section 147 of the N.I. Act does not expressly incorporate the permission of the Court for compounding, conceivably because the impact of the crime is against an individual.

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294. CRIMINAL PROCEDURE CODE, 1973 – Section 321

Withdrawal of prosecution – It should be ensured by the Court that the public prosecutor is not exercising his function for illegitimate reason or purpose.

दण्ड प्रक्रिया संहिता, 1973 – धारा 321

अभियोजन की वापसी – न्यायालय द्वारा यह सुनिश्चित किया जाना चाहिए कि लोक अभियोजक द्वारा अपने अधिकार का उपयोग किसी अवैध कारण या उद्देश्य के लिये नहीं किया जा रहा है।

The State of Kerala v. K. Ajith and ors.

Judgment dated 28.07.2021 passed by the Supreme Court in Criminal Appeal No. 697 of 2021, reported in 2021 (3) Crimes 51 (SC)

Relevant extracts from the judgment:

The true function of the court when an application under Section 321 is filed is to ensure that the executive function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes.

The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321 of the Cr.P.C. can now be formulated:

(i) Section 321 entrusts the decision to withdraw from a prosecution to the public prosecutor but the consent of the court is required for a withdrawal of the prosecution;

(ii) The public prosecutor may withdraw from a prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice;

(iii) The public prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution;

(iv) While the mere fact that the initiative has come from the government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the public prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons;

(v) In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:

  (a) The function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;

  (b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

  (c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;

  (d) The grant of consent sub-serves the administration of justice; and

  (e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;

(vi) While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated; and

(vii) In a situation where both the trial judge and the revisional court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent.

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295. CRIMINAL PROCEDURE CODE, 1973 – Sections 353, 354 and 389 CRIMINAL TRIAL:

Judgment; contents of – Process of reaching to conclusion – Explained – Held, a judgment should not only be accurate but also be reasonable, logical and easily comprehensible – It should be coherent, systematic and logically organized – The reasoning in the judgment should be intelligible and logical, with clarity and precision.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 353, 354 एवं 389

आपराधिक विचारणः

निर्णय की अंतर्वस्तु – निष्कर्ष तक पहुंचने की प्रक्रिया – समझाई गई – अभिनिर्धारित, एक निर्णय न केवल सटीक होना चाहिए, बल्कि उचित, तार्किक और आसानी से समझने योग्य भी होना चाहिए – यह सुसंगत, यथाक्रम और तार्किक रूप से व्यवस्थित होना चाहिए – निर्णय में कारण तार्किक, स्पष्ट और सटीकता के साथ बोधगम्य होने चाहिए।

Shakuntala Shukla v. State of Uttar Pradesh and anr.

Judgment dated 07.09.2021 passed by the Supreme Court in Criminal Appeal No. 876 of 2021, reported in AIR 2021 SC 4384

Relevant extracts from the judgment:

It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. The judicial opinion is to be written in such a way that it elucidates in a convincing manner and proves the fact that the verdict is righteous and judicious. What the court says, and how it says it, is equally important as what the court decides.

Every judgment contains four basic elements and they are (i) statement of material (relevant) facts, (ii) legal issues or questions, (iii) deliberation to reach at decision and (iv) the ratio or conclusive decision. A judgment should be coherent, systematic and logically organised. It should enable the reader to trace the fact to a logical conclusion on the basis of legal principles. It is pertinent to examine the important elements in a judgment in order to fully understand the art of reading a judgment. In the Path of Law, Holmes J. has stressed the insentient factors that persuade a judge. A judgment has to formulate findings of fact, it has to decide what the relevant principles of law are, and it has to apply those legal principles to the facts. The important elements of a judgment are:

i) Caption

ii) Case number and citation

iii) Facts

iv) Issues

v) Summary of arguments by both the parties

vi) Application of law

vii) Final conclusive verdict

The judgment replicates the individuality of the judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skillful application of law and logic. We are conscious of the fact that the judges may be overburdened with the pending cases and the arrears, but at the same time, quality can never be sacrificed for quantity. Unless judgment is not in a precise manner, it would not have a sweeping impact. There are some judgments that eventually get overruled because of lack of clarity. Therefore, whenever a judgment is written, it should have clarity on facts; on submissions made on behalf of the rival parties; discussion on law points and thereafter reasoning and thereafter the ultimate conclusion and the findings and thereafter the operative portion of the order. There must be a clarity on the final relief granted. A party to the litigation must know what actually he has got by way of final relief. The aforesaid aspects are to be borne in mind while writing the judgment, which would reduce the burden of the appellate court too. We have come across many judgments which lack clarity on facts, reasoning and the findings and many a times it is very difficult to appreciate what the learned judge wants to convey through the judgment and because of that, matters are required to be remanded for fresh consideration. Therefore, it is desirable that the judgment should have a clarity, both on facts and law and on submissions, findings, reasonings and the ultimate relief granted.

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296. CRIMINAL PROCEDURE CODE, 1973 – Sections 357 and 439

Compensation – Unnecessary harassment may be prevented by order of compensation to the victim but such compensation should not be determined while granting bail to the accused.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 357 एवं 439

प्रतिकर – प्रतिकर आदेश के द्वारा पीड़ित के अनावश्यक उत्पीड़न को रोका जा सकता है किंतु ऐसे प्रतिकर का निर्धारण अभियुक्त को जमानत प्रदान करते समय ही नहीं कर देना चाहिए।

Dharmesh @ Dharmendra @ Dhamo Jagdishbhai @ Jagabhai Bhagubhai Ratadia and anr. v. The State of Gujarat

Judgment dated 07.07.2021 passed by the Supreme Court in Criminal Appeal No. 432 of 2021, reported in 2021 (3) Crimes 171 (SC)

Relevant extracts from the judgment:

In our view the objective is clear that in cases of offences against body, compensation to the victim should be a methodology for redemption. Similarly,

to prevent unnecessary harassment, compensation has been provided where meaningless criminal proceedings had been started. Such a compensation can hardly be determined at the stage of grant of bail.

We may hasten to add that we are not saying that no monetary condition can be imposed for grant of bail. We say so as there are cases of offences against property or otherwise but that cannot be a compensation to be deposited and disbursed as if that grant has to take place as a condition of the person being enlarged on bail.

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***297. CRIMINAL PROCEDURE CODE, 1973 – Sections 374 and 386**

Appeal against conviction – Whether non-appealing accused may also be given benefit of conclusion in appeal preferred by co-accused? Held, yes – Where prosecution case is disbelieved in entirety, the benefit of conclusion of appeal may also be given to the non-appealing accused.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 374 एवं 386

दोषसिद्धि के विरुद्ध अपील – क्या अपील न करने वाले अभियुक्त को भी सह–अभियुक्त द्वारा प्रस्तुत अपील में निष्कर्ष का लाभ दिया जा सकता है? अवधारित, हाँ – जहाँ अभियोजन के मामले को पूरी तरह से अस्वीकार कर दिया गया हो, वहां अपील के निष्कर्ष का लाभ अपील न करने वाले अभियुक्त को भी दिया जा सकता है।

Madhav v. State of Madhya Pradesh

Judgment dated 18.08.2021 passed by the Supreme Court in Criminal Appeal No. 852 of 2021, reported in 2021 CriLJ 3902

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298. CRIMINAL PROCEDURE CODE, 1973 – Sections 437 and 439

(i) Bail; grant of – Offence of forgery and manipulation of court record – Held, is a serious offence and in such a case, bail should not be granted – Seriousness of offence is a relevant consideration while considering grant of bail.

(ii) Bail; grant of – Whether filing of charge sheet is a ground to release accused on bail? Held, no.

(iii) Cancellation of bail; locus standi to apply for – Whether informant can apply for cancellation of bail granted to accused in absence of challenge of bail order by State? Held, yes – Further held, in case of tampering with court order, locus is insignificant.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437 एवं 439

(i) जमानत स्वीकार किया जाना – कूटरचना एवं न्यायालय के अभिलेख में हेरफेर का अपराध – अवधारित, यह एक गंभीर अपराध है और ऐसे मामले में जमानत नहीं दी जानी चाहिए – जमानत देने पर विचार करते समय अपराध की गंभीरता एक प्रासंगिक तत्व है।

(ii) जमानत स्वीकार किया जाना – क्या अभियोग–पत्र प्रस्तुत होना अभियुक्त को जमानत पर रिहा करने का आधार है? अवधारित, नहीं।

(iii) जमानत रद्द किया जाना – आवेदन करने का अधिकार – क्या राज्य द्वारा जमानत आदेश को चुनौती न दिए जाने पर सूचनाकर्ता अभियुक्त की जमानत को रद्द करने के लिए आवेदन कर सकता है? अवधारित, हाँ – आगे अवधारित, न्यायालय के आदेश में हेरफेर के मामले में, आवेदन करने का अधिकार महत्वहीन है।

Naveen Singh v. State of Uttar Pradesh and anr.

Judgment dated 15.03.2021 passed by the Supreme Court in Criminal Appeal No. 320 of 2021, reported in (2021) 6 SCC 191

Relevant extracts from the judgment:

At this stage, it is required to be noted that Pappu Singh has died subsequently. We do not express anything further on merits and go into detail as the trial is yet to take place and any further observation on merits may affect the case of the accused. Suffice it to say that in the facts and circumstances of the case and looking to the very serious allegations of forging/manipulating court order and having taken advantage of the same, the High Court is not justified in releasing Respondent 2 on bail. Merely because the charge-sheet is filed is no ground to release the accused on bail. The submission on behalf of the accused that as the record is now in the court's custody there is no chance of tampering, is concerned, the allegation against the respondent-accused is of tampering/forging/manipulating the court record which was in the custody of the court. Seriousness of the offence is one of the relevant considerations while considering the grant of bail, which has not been considered at all by the High Court while releasing Respondent 2-accused on bail.

Now, so far as the submission on behalf of the respondent-accused that the appellant has no locus to file the present application for cancellation of the bail is concerned, it is required to be noted that in fact, it was the appellant who approached the High Court alleging tampering of court record by Respondent 2-accused and thereafter, the High Court directed the learned Additional Sessions Judge to submit his comments and thereafter the learned Additional Sessions Judge submitted its enquiry report and thereafter, the FIR has been lodged. Therefore, it cannot be said that the appellant has no locus to file the present application for cancellation of the bail. Even otherwise in a case like this, where the allegations are of tampering with the court order and for whatever reason the State has not filed the bail application the locus is not that much important and it is insignificant.

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299. EVIDENCE ACT, 1872 – Section 3

(i) Circumstantial evidence – For applying the last seen theory, entire prosecution case should be looked into and the fact of last seen should not be segregated from other prosecution evidence.

(ii) Adverse inference – If the best evidence is not produced by the prosecution in spite of its availability then an adverse inference may be drawn against prosecution.

साक्ष्य अधिनियम, 1872 – धारा 3

(i) परिस्थितिजन्य साक्ष्य – अंतिम बार देखे जाने का सिद्धांत लागू करने के लिये अभियोजन का सम्पूर्ण प्रकरण देखा जाना चाहिए और अंतिम बार देखे जाने का तथ्य अभियोजन की अन्य साक्ष्य से पृथक नहीं किया जाना चाहिए।

(ii) प्रतिकूल उपधारणा – यदि सर्वोत्तम साक्ष्य की उपलब्धता के पश्चात् भी उसे अभियोजन द्वारा प्रस्तुत नहीं किया जाता है तब अभियोजन के विरूद्ध प्रतिकूल उपधारणा की जा सकती है।

Surajdeo Mahto and anr. v. The State of Bihar

Judgment dated 04.08.2021 passed by the Supreme Court in Criminal Appeal No. 1677 of 2011, reported in 2021 (3) Crimes 190 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

The last seen theory is applied where the time interval between the point of when the accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the accused being the perpetrator of crime becomes impossible.

The fact of last seen should not be weighed in isolation or be segregated from the other evidence led by the prosecution. The last seen theory should rather be applied taking into account the case of the prosecution in its entirety. Hence, the Courts have to not only consider the factum of last seen, but also have to keep in mind the circumstances that preceded and followed from the point of the deceased being so last seen in the presence of the accused.

Although it is ideal that the prosecution case is further substantiated through independent witnesses, but it would be unreasonable to expect the presence of third¬ parties in every case. This Court has consistently held that the prosecution's case cannot be discarded merely on a bald plea of all witnesses being related to the complainant party. Hence, in order to draw an adverse inference against the non-examination of independent witnesses, it must also be shown that though the best evidence was available, but it was withheld by the prosecution.

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300. EVIDENCE ACT, 1872 – Section 3
INDIAN PENAL CODE, 1860 – Section 302
APPRECIATION OF EVIDENCE:

(i) Eye witness – Who can be called as? Informant who was father of victim projected as eye witness by prosecution – He admitted in cross-examination that he was sitting in the house when the incident had occurred and came out on shouts of children and other passers-by – Held, informant cannot be accepted as an eye-witness of the occurrence.

(ii) Circumstantial evidence – When can form the basis of conviction – Principles reiterated – Instantly, dead body was found from open field, post mortem disclosed sexual assault on deceased but FSL report did not connect accused with sexual assault on deceased, there was nothing on record to prove that when accused persons were arrested and in what manner their disclosure statements led to the discovery of dead body – Held, circumstances do not form a cogent and consistent chain to prove guilt of accused – Conviction reversed.

साक्ष्य अधिनियम, 1872 – धारा 3

भारतीय दण्ड संहिता, 1860 – धारा 302

साक्ष्य का मूल्यांकनः

(i) चक्षुदर्शी साक्षी – किसे कहा जा सकता है? सूचनाकर्ता जो पीड़ित का पिता था, अभियोजन द्वारा चक्षुदर्शी साक्षी के रूप में प्रस्तावित किया गया – उसने प्रतिपरीक्षण में स्वीकार किया कि जब घटना हुई थी तब वह घर में बैठा था और बच्चों व अन्य राहगीरों के चिल्लाने पर बाहर आया – अवधारित, सूचनाकर्ता को घटना के चक्षुदर्शी साक्षी के रूप में स्वीकार नहीं किया जा सकता है।

(ii) परिस्थितिजन्य साक्ष्य – दोषसिद्धि का आधार कब बन सकती है – सिद्धांत दोहराए गए – हस्तगत मामले में खुले मैदान से शव मिला, शव परीक्षण में मृतक पर लैंगिक हमला किया जाना प्रकट हुआ परन्तु विधि–विज्ञान प्रयोगशाला का प्रतिवेदन अभियुक्त को मृतक पर हुए लैंगिक हमले से संयोजित नहीं करता था, अभिलेख पर यह दर्शाने वाली कोई भी सामग्री नहीं थी कि अभियुक्तगण को कब गिरफ्तार किया गया था और किस तरह उनके प्रकटन कथनों के आधार शव बरामद हुआ – अभिनिर्धारित, अभियुक्तगण की दोषिता साबित करने के लिए परिस्थितियां एक ठोस एवं सुसंगत श्रृंखला नहीं बनाती हैं – दोषसिद्धि अपास्त की गई।

Yogesh v. State of Haryana
Judgment dated 06.04.2021 passed by the Supreme Court in Criminal Appeal No. 1306 of 2017, reported in (2021) 5 SCC 730

Relevant extracts from the judgment:

We are thus left with the testimony of PW 10 Manoj, the informant and the father of the victim. The reporting made by this witness, based on which the crime was registered neither shows that he was an eyewitness to the occurrence nor does it disclose that the identity of the accused who had kidnapped the victim was in any way known at the stage when the occurrence took place. The statement given by the witness in his cross-examination further discloses that he was sitting inside the house when the incident had occurred and that the shouts of the children and other passers-by had attracted his attention whereafter the witness came out of the house. In the circumstances, it is extremely difficult to accept PW 10 to be an eyewitness to the occurrence. The observations made by the High Court while placing reliance on his version, in our view, were totally incorrect.

We now turn to the other circumstances on record to see whether circumstances on record by themselves are sufficient to bring home the guilt of the accused.

Certain salient features of the instant case are:

- Though the post-mortem report discloses that the victim was sexually assaulted, the FSL Report on record does not establish any connection of the accused with the sexual assault on the deceased victim.
- The dead body of the victim was found lying in an open field.
- The record is again not clear as to when the present appellants were arrested and how and in what manner their disclosure statements led to the recovery of the dead body.

There are of course circumstances like recovery of clothing apparel as well as tiffin box, etc. belonging to the victim. However, such recoveries by themselves, in the absence of any other material evidence on record pointing towards the guilt of the accused, cannot be termed sufficient to hold that the case was proved beyond reasonable doubt. Not only those circumstances are not conclusive in nature but they also do not form a cogent and consistent chain so as to exclude every other hypothesis except the guilt of the appellants.

We, therefore, find ourselves in disagreement with the view taken by the courts below. In our considered view, the case of the prosecution has not been proved beyond reasonable doubt, and the appellants are entitled to the benefit of doubt.

●

301 EVIDENCE ACT, 1872 – Sections 45 and 61
SUCCESSION ACT, 1925 – Section 281

(i) Thumb impression – Evidentiary value – The key characteristic of thumb impression is that every person has a unique thumb impression – Forgery of thumb impressions is nearly impossible – Therefore, genuineness of the Cancellation Deed

cannot be doubted only due to the fact that same was not signed and a literate person, affixed his thumb impression on the deed.

(ii) Objection regarding admissibility of document – Plea regarding mode of proof cannot be permitted to be taken at the appellate stage for the first time, if not raised before the trial court at the appropriate stage.

साक्ष्य अधिनियम, 1872 – धाराएं 45 एवं 61

उत्तराधिकार अधिनियम, 1925 – धारा 281

(i) अंगूठा निशान – साक्ष्यिक मूल्य – अंगूठा निशान का मुख्य लक्षण यह है कि प्रत्येक व्यक्ति एक विशिष्ट अंगूठा निशान रखता है – अंगूठा निशान की कूटरचना लगभग असंभव है – परिणामस्वरूप, निरस्ती विलेख की शुचिता पर केवल इस तथ्य के आधार पर संदेह नहीं किया जा सकता कि वह हस्ताक्षरित नहीं है और एक पढ़े–लिखे व्यक्ति द्वारा विलेख पर अंगूठा निशान लगाया गया है।

(ii) दस्तावेज की ग्राह्यता के संबंध में आपत्ति – प्रमाणन की रीति के संबंध में अपीलीय स्तर पर प्रथम बार अभिवाक् लिया जाना अनुमत नहीं किया जा सकता, यदि विचारण न्यायालय के समक्ष युक्तियुक्त स्तर पर नहीं उठाया गया हो।

Lachhmi Narain Singh (D) through L.Rs. and ors. v. Sarjug Singh (Dead) through L.Rs. and ors.

Judgment dated 17.08.2021 passed by the Supreme Court in Civil Appeal No. 5823 of 2011, reported in AIR 2021 SC 3873

Relevant extracts from the judgment:

The key characteristic of thumb impression is that every person has a unique thumb impression. Forgery of thumb impressions is nearly impossible. Therefore, adverse conclusion should not be drawn for affixing thumb impression instead of signing documents of property transaction. Therefore, genuineness of the Cancellation deed cannot be doubted only due to the fact that same was not signed and Rajendra as a literate person, affixed his thumb impression. This is more so in this case since the testator's thumb impression was proved to be genuine by the expert.

In such scenario, where no protest was registered by the probate applicant against production of certified copy of the Cancellation Deed, he cannot later be allowed to take up the plea of non-production of original cancellation deed in course of the appellate proceeding. As already noted, the main contention of probate applicants was that the mode of proof of Cancellation deed was inadequate. However, such was not the stand of the probate applicants before the Trial Court. The objection as to the admissibility of a registered document must be raised at the earliest stage before the trial court and the objection could not have been taken in appeal, for the first time. On this we may draw

support from observations made by Justice Ameer Ali in ***Padman v. Hanwanta, AIR 1915 PC 111*** where the following was set out by the Privy Council.

> "The Defendants have now appealed to His Majesty-in-Council, and the case has been argued on their behalf in great detail. It was urged in the course of the argument that a registered copy of the Will of 1898 was admitted in evidence without sufficient foundation being laid for its admission. No objection, however, appears to have been taken in the first court against the copy obtained from the Registrar's office being put in evidence. Had such objection been made at the time, the District Judge, who tried the case in the first instance, would probably have seen that the deficiency was supplied. Their Lordships think that there is no substance in the present contention."

In view of the foregoing discussion, it is clear that plea regarding mode of proof cannot be permitted to be taken at the appellate stage for the first time, if not raised before the trial Court at the appropriate stage. This is to avoid prejudice to the party who produced the certified copy of an original document without protest by the other side. If such objection was raised before trial court, then the concerned party could have cured the mode of proof by summoning the original copy of document. But such opportunity may not be available or possible at a later stage. Therefore, allowing such objection to be raised during the appellate stage would put the party (who placed certified copy on record instead of original copy) in a jeopardy and would seriously prejudice interests of that party. It will also be inconsistent with the Rule of fair play as propounded by Justice Ashok Bhan in the case of ***R.V.E Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple, (2003) 8 SCC 752***.

●

302. EVIDENCE ACT, 1872 – Section 112

DNA test – Dispute between brother and sister regarding inheritance of property – Whether bar u/s 112 of Evidence Act is applicable? Held, no – In such cases between siblings, DNA test may be ordered.

साक्ष्य अधिनियम, 1872 – धारा 112

डीएनए परीक्षण – संपत्ति के उत्तराधिकार के संबंध में भाई–बहन के बीच विवाद – क्या साक्ष्य अधिनियम की धारा 112 का वर्जन लागू होगा? अभिनिर्धारित, नहीं – भाई–बहन के बीच के ऐसे मामलों में डीएनए परीक्षण का आदेश दिया जा सकता है।

Radheshyam v. Kamla Devi and ors.

Order dated 31.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 630 of 2020, reported in AIR 2021 MP 162

Relevant extracts from the order:

Hon'ble Apex Court in ***Shri Banarsi Dass v. Mr. Teeku Dutta and anr., AIR Online 2005 SC 87***, relying upon earlier judgment in ***Gautam Kundu v. State of West Bengal and anr., AIR 1993 SC 2295***, has held as under:

"(1) That courts in India cannot order blood test as matter of course;

(2) Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained;

(3) There must be a strong *prima facie* case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act; and

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman."

It is true that under Section 112 of Indian Evidence Act birth during marriage, is conclusive proof of legitimacy, therefore bars DNA testing but when blood relation of siblings is being challenged, there shall be no bar under Section 112 of Indian Evidence Act. In the present case a question arose as to whether petitioner/plaintiff and respondent No. 1/defendant are brother and sister or not, this fact has been denied by brother/petitioner Radheshyam, as such, the aforesaid fact can very well be decided by carrying out DNA test. Therefore, in my considered view, the trial Court has not committed any error in passing the order impugned.

●

303. HINDU MARRIAGE ACT, 1955 – Sections 9, 13(1)(i-a) and 13(1)(i-b) CIVIL PROCEDURE CODE, 1908 – Section 96

(i) Divorce on the ground of cruelty – Only institution of a criminal case *per se* will not constitute the cruelty for the parties for seeking divorce unless it is held by the Court of competent jurisdiction that the said complaint/allegation was false and vexatious.

(ii) Condonation of cruelty – Any earlier acts of cruelty on behalf of the wife, the same are deemed to be condoned by the husband once he files a petition u/s 9 of the Hindu Marriage Act for restitution of the conjugal rights.

(iii) Divorce on ground of desertion – Desertion is not to be tested by merely ascertaining which party left the matrimonial home first – If one spouse is forced by the conduct of the other to leave, the desertion could be by such conduct of other spouse.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 9, 13(1)(i-क) एवं 13(1)(i-ख) सिविल प्रक्रिया संहिता, 1908 – धारा 96

(i) क्रूरता के आधार पर विवाह–विच्छेद – केवल आपराधिक प्रकरण संस्थित किया जाना मात्र विवाह–विच्छेद प्रार्थित करने वाले पक्षकारों के प्रति क्रूरता गठित नहीं करता जब तक कि सक्षम क्षेत्राधिकार वाले न्यायालय द्वारा यह अभिनिर्धारित नहीं कर दिया गया हो कि कथित परिवाद अथवा आक्षेप झूठे एवं तंग करने वाले थे।

(ii) क्रूरता का क्षमा किया जाना – जहाँ पति द्वारा एक बार हिंदू विवाह अधिनियम की धारा 9 के अतंर्गत दाम्पत्य अधिकारों के पुनर्स्थापन के लिए याचिका प्रस्तुत कर दी गई हो वहाँ पत्नी की ओर से पूर्व में किए गए क्रूरता के कृत्य पति द्वारा क्षमा कर दिए गए समझे जाएंगे।

(iii) अभित्यजन के आधार पर विवाह–विच्छेद – केवल यह अभिनिश्चित कर कि किस पक्षकार ने दाम्पत्य निवास पहले छोड़ा है, अभित्यजन परीक्षित नहीं किया जा सकता – यदि एक पक्षकार के आचरण से दूसरे को निवास छोड़ने के लिए बाध्य होना पड़ा, तब अभित्यजन अन्य पक्षकार के ऐसे आचरण से हो सकता है।

Dipika Shukla v. Ashish Shukla

Judgment dated 29.06.2021 passed by the High Court of Madhya Pradesh in First Appeal No. 403 of 2016, reported in 2021 (4) MPLJ 195 (DB)

Relevant extracts from the judgment:

It can be said that the order dated 11-05-2012 was not the "final order". First appeal is the right of a party and the appeal is the continuation of the suit. The wife already filed the appeal and intimated the husband her intention to file the appeal by Ex.P.3. In the aforesaid situation, the trial court was not correct to grant the decree upon the aforesaid ground of non-compliance of the aforesaid order passed under section 9 of the Hindu Marriage Act, which was under challenge.

In our opinion only institution of a criminal case will *per se* not constitute the cruelty for the parties of seeking divorce unless it is held by the Court of competent jurisdiction that the said complaint/allegation was false and vexatious. The matter is still pending before the Court, therefore, it cannot be said that the false report was lodged by the wife to the police. The same view has been adopted by a Division Bench of Patna High Court in ***Bhola Kumar v. Seema Devi, AIR 2015 Patna 119***.

x x x

In this case, the petition for divorce was filed on 18-06-2013. Both parties were living separately since 01-06-2008, therefore, the main allegations of cruelty related to the period between 06-02-2006 (date of marriage) to 01-06-2008 (when the wife left the house of husband). The husband filed the petition under

section 9 of the Hindu Marriage Act for restitution of conjugal rights. Whether filing of application under section 9 of the Hindu Marriage Act amount to condoning the earlier act of cruelty, if any? The aforesaid question has been considered by Himachal Pradesh High Court in ***Jalmi Devi v. Ravi Kumar, AIR 2006 (NOC) 1542 = 2006(1) Hindu LR 471 (H.P.)***. In the aforesaid case, in Para 16 Hon'ble the Court referred Para 13 of the case of ***Nirmala Devi v. Ved Prakash, AIR 1993 HP 1*** as under:-

> "16. I have given my careful consideration to the matter. One important fact which has to be kept in mind is that the petitioner originally filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Mr Sharma, submits that without conceding and even assuming for the sake of arguments that there were any earlier acts of cruelty on behalf of the wife the same are deemed to be condoned by the husband once he files a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The question is, whether the filing of a petition under Section 9 of the Act for seeking a decree for restitution of conjugal rights amounts to condoning the earlier acts of cruelty, if any? In this behalf it would be apposite to refer to the observations of a Division Bench of this Court in ***Nirmala Devi v. Ved Prakash***, which are as under :-
>
> > 13...Condonation has not been defined anywhere. 'Condonation' is a word of technical import, which means and implies wiping of all rights of injured spouse to take matrimonial proceedings. In a sense condonation is reconciliation, namely, the intention to remit the wrong and restore the offending spouse to the original status which in every case deserves to be gathered from the attending circumstances. The forgiveness in order to constitute condonation need not be express. It may be implied by the husband of the wife's conduct and vice versa. Ordinarily, as a general rule, condonation of matrimonial offence deprives the condoning spouse of the right of seeking relief on the offending conduct. When a petition is filed claiming a decree for restitution of conjugal rights, it clearly stipulates that the person seeking relief has no grouse or cause of complaint against the other spouse and even if there was any cause or complaint, the same has either been condoned or forgiven. The intention being to resume normal cohabitation. As held

in ***Dastane's case, AIR 1975, SC 1534*** matrimonial offence is erased by condonation. In view of clear provisions contained in Clause (b) of Sub-section (1) of Section 23 of the Act, it is always for the person who has approached the Court to satisfy that the act of cruelty has not been condoned .... The conduct, in this case, of the husband in having moved the petition thereafter under Section 9 of the Act would amount to his intention to forgive the offending spouse in having made the statement before the Panchayat which alone was the ground made out which according to the husband was cruelty on the part of the wife. Admittedly, the allegation was made once and was not repeated thereafter. Due to the parties having lived together even for a short duration of 7/8 days on couple of occasions, as admitted by the husband, after the wife made the allegation amounts to the restoring of the offending spouse to the original status. By this act and conduct on the part of husband it can reasonably be inferred that the act stood condoned and as such husband was not entitled to the relief claimed.

x x x

The court granted the decree upon the ground of desertion. The desertion is not to be tested by merely ascertaining which party left the matrimonial home first. If one spouse is forced by the conduct of the other to leave, the desertion could be by such conduct of other spouse and compelled to live separately.

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304. INDIAN PENAL CODE, 1860 – Sections 34, 107 and 302
EVIDENCE ACT, 1872 – Section 3
APPRECIATION OF EVIDENCE:
Exhortation; effect of – Parents and brother initially exhorted accused to teach a lesson to the deceased – Thereafter, accused gone inside the house and collected firearm – While accused was at rooftop with firearm, crucial exhortation came from his brother immediately before the shot was fired – Held, parents entitled to benefit of doubt while involvement of brother stands completely proved beyond reasonable doubt.

भारतीय दण्ड संहिता, 1860 – धाराएं 34, 107 एवं 302
साक्ष्य अधिनियम, 1872 – धारा 3
साक्ष्य का मूल्यांकनः

उकसाने का प्रभाव – माता–पिता और भाई ने प्रारंभ में अभियुक्त को मृतक को सबक सिखाने के लिए उकसाया – इसके बाद, अभियुक्त ने घर के अंदर जाकर आग्नेयास्त्र एकत्र किया – जब अभियुक्त आग्नेयास्त्र के साथ छत पर था, गोली चलाने से ठीक पहले उसके भाई की ओर से विवेचनीय उकसावा आया – अभिनिर्धारित, माता–पिता संदेह के लाभ के अधिकारी हैं जबकि भाई की संलिप्तता पूरी तरह से युक्तियुक्त संदेह से परे साबित होती है।

Sandeep v. State of Haryana

Judgment dated 27.08.2021 passed by the Supreme Court in Criminal Appeal No. 1613 of 2018, reported in AIR 2021 SC 4105

Relevant extracts from the judgment:

The role ascribed to Ishwar and Krishana, the parents of accused-Pardeep was of initial exhortation. The parents were stated to have exhorted the sons; accused-Pardeep and accused-Sandeep to teach a lesson to the deceased-Surender. It is upon such exhortation that accused-Pardeep had gone inside, collected the firearm and reached the rooftop; and while he was there at the rooftop, the crucial exhortation came from the accused-Sandeep.

Thus, all three accused are said to have exhorted accused-Pardeep but the exhortation given by accused-Sandeep was immediately before the shot was fired and of a greater impact in as much as he had seen accused-Pardeep at the rooftop along with the firearm and then made the exhortation.

Considering the entirety of the circumstances, in our view, accused Ishwar and accused Krishana Devi are entitled to benefit of doubt whereas the involvement of accused Sandeep stands completely proved beyond reasonable doubt.

●

305. INDIAN PENAL CODE, 1860 – Sections 34 and 302
CRIMINAL PROCEDURE CODE, 1973 – Section 313
EVIDENCE ACT, 1872 – Section 3

(i) Examination of accused – Principles of natural justice – The allegation that the appellant stuffed cloth in the mouth of the deceased was serious and specific allegation against her – In absence of any question having been put to her in this regard u/s 313 CrPC, the appellant has been seriously prejudiced in her defence.

(ii) Benefit of doubt – The witness deposed that there was no cloth recovered from the mouth of the deceased – Evidence of the doctor who performed the post-mortem states that the mouth of the deceased was closed, the jaws were shut, all the 32 teeth were intact – Neither injuries of any nature have been found inside the mouth nor has the cloth been found – Benefit of doubt in these circumstances has to be given to the appellant.

भारतीय दण्ड संहिता, 1860 – धाराएं 34 एवं 302

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

साक्ष्य अधिनियम, 1872 – धारा 3

(i) अभियुक्त परीक्षण – नैसर्गिक न्याय का सिद्धांत – अपीलार्थी के विरुद्ध यह आक्षेप कि उसने मृतक के मुँह में कपड़ा रखा, गंभीर और विनिर्दिष्ट आक्षेप था – धारा 313 दं.प्र.सं. के अंतर्गत इस संबंध में प्रश्न नहीं रखे जाने से अपीलार्थी अपनी प्रतिरक्षा में गंभीर पूर्वाग्रह से ग्रसित हुई।

(ii) संदेह का लाभ – साक्षी ने कथन किया कि मृतक के मुँह से कोई भी कपड़ा बरामद नहीं हुआ – शव परीक्षण करने वाले चिकित्सक ने साक्ष्य में कथन किए कि मृतक का मुँह बंद था, जबड़े जुड़े हुए थे, सभी 32 दाँत अक्षुण्ण थे – मुँह के अंदर किसी भी प्रकार की चोटें नहीं थी न ही कपड़ा मिला – इन परिस्थितियों में संदेह का लाभ अपीलार्थी को देना होगा।

Pramila v. State of Uttar Pradesh

Judgment dated 28.07.2021 passed by the Supreme Court in Criminal Appeal No. 700 of 2021, reported in AIR 2021 SC 3781

Relevant extracts from the judgment:

The allegation that the appellant stuffed cloth in the mouth of the deceased was serious and specific against her. We are of the considered opinion that in absence of any question, having been put to her in this regard under Section 313 CrPC the appellant has been seriously prejudiced in her defence. It has repeatedly been held that the procedure under Section 313 CrPC is but a facet of the principles of natural justice giving an opportunity to an accused to present the defence. The burden of proof on an accused in support of the defence taken under Section 313 CrPC is not beyond all reasonable doubt as it lies on the prosecution to prove the charge. The accused has merely to create a doubt. It will be for the prosecution then to establish beyond reasonable doubt that no benefit can flow from the same to the accused. The mere fact that the house of the appellant was at near quarters cannot ipso facto lead to a conclusion with regard to her presence in her parental home at the time of occurrence. It is a fact to be established and assessed from the evidence on record.

According to PW-2, the appellant stuffed cloth in the mouth of the deceased, thereafter others tied her up and set her on fire leading to 95% burns. Events happened in continuity as is evident from the deposition of PW-2, where he states that after the deceased had suffered burn injuries he had seen the entire scenario including the room where the burnt articles were kept including that he was a witness to his sister being put in a vehicle while being taken to the hospital. He then states that the deceased in that condition was speaking. At no stage

has the witness deposed that the cloth was taken out from her mouth. It stands to reason that if cloth was stuffed in the mouth of deceased she would have been unable to speak.

PW-8 the Doctor who examined the deceased when she was brought to the hospital did not depose that the deceased was unable to speak. He only said that she was in a serious condition. The witness deposed that there was no cloth recovered from the mouth of the deceased. At this juncture the evidence of P.W. 5 the doctor who performed the postmortem the very next day is relevant. He states that the mouth of the deceased was closed, the jaws were shut, no cloth was present in the mouth but burnt cloth was present on the whole body starting from the wrist. More crucially he states that all the 32 teeth were intact. Blisters were present at various parts of the body but he does not talk about any blister being present in the mouth. The discussion and reasoning by the trial court that absence of any cloth in the mouth was irrelevant because if the deceased suffered hundred per cent burns the cloth naturally could not be available, suggesting that it would have been burnt also is completely fallacious.

We have already noticed no injuries of any nature have been found inside the mouth neither has the cloth been found. PW-5 has further deposed that all the 32 teeth were intact. In the aforesaid background, we are not sure and satisfied that the evidence of PW-2 attributing a specific role to the appellant is of such a sterling quality so as to inspire confidence in the court to base the conviction on the sole evidence of a child witness. The appellant was a daughter-in-law like the deceased herself. The nature of the evidence makes it highly unlikely that she would have engaged in such actions. The benefit of doubt in the circumstances has to be given to the appellant.

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306. INDIAN PENAL CODE, 1860 – Sections 55, 366-A and 376
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 4 and 42
EVIDENCE ACT, 1872 – Section 3

(i) Determination of age – Where the birth certificate from the school is available then, the ossification test report cannot be looked into.

(ii) Margin of error – There is no straight jacket formula to the effect that in every case the margin of error of two years has to be taken in favour of the accused irrespective of the surrounding circumstances – If the surrounding circumstances indicate the margin of error in favour of the prosecution then there is no bar under the law in considering the same against the accused.

(iii) Consent of minor – The prosecutrix was minor on the date of the incident, therefore, under such circumstances, her consent is immaterial.

(iv) Procuration of minor girl – If a minor girl leaves her house on the enticement by the accused then it cannot be said that the prosecutrix has left her house on her own volition – Held, that the appellant is guilty of kidnapping the prosecutrix as well as guilty of procuration of minor girl u/s 366A of IPC.

(v) Sentence – For an offence committed prior to POCSO Amendment Act, 2019, if the appellant has been held guilty for the offence p/u/s 376(1) of the IPC as well as for the offence u/s 4 of POCSO Act, 2012, then it was not necessary for the trial Court to award a separate sentence for offence p/u/s 4 of POCSO Act, 2012 in view of Section 42 of POCSO Act, 2012.

भारतीय दण्ड संहिता, 1860 – धाराएं 55, 366–क एवं 376

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 4 एवं 42

साक्ष्य अधिनियम, 1872 – धारा 3

(i) आयु निर्धारण – जहां स्कूल का जन्म प्रमाण पत्र उपलब्ध हो, तब अस्थि परीक्षण प्रतिवेदन विचार में नहीं लिया जा सकता।

(ii) त्रुटि की सीमा – इस प्रभाव का ऐसा कोई सीधा स्थापित नियम नहीं है कि प्रत्येक प्रकरण में दो वर्ष की त्रुटि की सीमा को आसपास की परिस्थितियों को विचार में लिए बिना अभियुक्त के पक्ष में ही माना जाएगा – यदि आसपास की परिस्थितियां त्रुटि की सीमा को अभियोजन के पक्ष में दर्शित करती हैं तब विधि के अंतर्गत उसे अभियुक्त के विरुद्ध विचार में लिए जाने में कोई बाधा नहीं है।

(iii) अवयस्क की सहमति – घटना दिनांक को अभियोक्त्री अवयस्क थी परिणामस्वरूप इन परिस्थितियों में उसकी सहमति अप्रासंगिक है।

(iv) अवयस्क लड़की का उपापन – यदि अवयस्क लड़की अभियुक्त द्वारा दिए गए प्रलोभन पर अपना घर छोड़ती है तब ये नहीं कहा जा सकता कि अभियोक्त्री ने अपनी मर्जी से घर छोड़ा – अभिनिर्धारित, कि अपीलार्थी अभियोक्त्री के व्यपहरण के साथ ही भा.दं.सं. की धारा 366क के अंतर्गत अप्राप्तवय लड़की के उपापन का दोषी है।

(v) दण्डादेश – पॉक्सो संशोधन अधिनियम, 2019 के पूर्व कारित अपराध के लिए यदि अपीलार्थी को भा.दं.सं. की धारा 376(1) साथ ही पॉक्सो अधिनियम, 2012 की धारा 4 के अंतर्गत दण्डनीय अपराध के लिए दोषसिद्ध पाया गया, तो पॉक्सो अधिनियम, 2012 की धारा 42 की दृष्टि से विचारण न्यायालय के लिए यह

आवश्यक नहीं था कि वह पॉक्सो अधिनियम, 2012 की धारा 4 के अंतर्गत पृथक दण्डादेश पारित करे।

Deepak Prajapati v. State of Madhya Pradesh

Judgment dated 16.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 12 of 2015, reported in 2021 CriLJ 4229

Relevant extracts from the judgment:

In the present case, the incident took place in the year 2014 whereas the Juvenile Justice (Care and Protection of Children) Rules, 2007 were framed under Section 68(1) of Juvenile Justice (Care and Protection of Children) Act, 2000 were in force. From bare perusal of Rule 12 of the Rules of 2007, it is clear that if the matriculation certificates are available and in the absence whereof, the date of birth certificate from the school first attended is available and in absence whereof, the birth certificate given by a Corporation or Municipal Authority or a Panchayat is available and in only in absence of the above mentioned documents, the medical opinion would be sought from a duly constituted Medical Board, which will declare the age of the Juvenile or Child. Thus, where the birth certificate from the school is available then, the ossification test report cannot be looked into.

Under these circumstances, this Court is of the considered opinion that the Ossification Test Report (Exhibit-P/11) is not material piece of evidence for proper determination of the age of the prosecutrix. Even otherwise, according to the Ossification Test Report (Exhibit-P/11), the age of the prosecutrix was between 16 to 18 years but there is no straight jacket formula to the effect that in every case the margin of error of two years has to be taken in favour of the accused irrespective of the surrounding circumstances. If the surrounding circumstances indicate the margin of error in favour of the prosecution then there is no bar under the law in considering the same against the accused. In that view of the matter, this Court is of the considered opinion that the Trial Court did not commit any mistake by holding that the prosecutrix was minor on the date of the incident.

As this Court has already come to a conclusion that the prosecutrix was minor on the date of the incident, therefore, under such circumstances, her consent is immaterial. The prosecutrix has specifically stated in her evidence that she was raped by the appellant. Even in the FSL report, human sperms were found. Even otherwise it is well established principle of law that if the evidence of the prosecutrix is reliable & trustworthy then looking for corroborative evidence is nothing but adding a pinch of salt to her injury.

Under these circumstances, this Court is of the considered opinion that if a minor girl leaves her house on the enticement by the accused then it cannot be

said that the prosecutrix has left her house on her own volition. Thus, it is held that the appellant is also guilty of kidnapping the prosecutrix as well as guilty of procuration of minor girl under Section 366A of the Indian Penal Code.

In the year 2014, the maximum sentence for the offence under Section 4 of the POCSO Act was seven years whereas the maximum sentence for the offence under Section 376 of the Indian Penal Code was ten years. However, this anomaly was also rectified by the legislation by amending the POCSO Act, 2012 by Amendment Act No. 25/2019 and the minimum sentence for the offence under Section 4 of POCSO Act 2012 has been enhanced to rigorous imprisonment for ten years. Since the appellant has been held guilty for the offence under Section 376(1) of the Indian Penal Code as well as for the offence under Section 4 of POCSO Act, 2012 and at the relevant point of time, the sentence provided for offence under Section 376(1) of the Indian Penal Code was greater in degree, therefore, this Court is of the considered opinion that it was not necessary for the Trial Court to award a separate sentence for offence under Section 4 of POCSO Act, 2012. The sentences awarded for offence under Sections 363, 366-A and 376(1) of I.P.C. are hereby affirmed. No separate sentence is awarded for offence under Section 4 of POCSO

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307. INDIAN PENAL CODE, 1860 – Sections 201 and 302
EVIDENCE ACT, 1872 – Section 3
Culpable homicide when amount to murder – The manner in which deceased was taken behind the hutment and then strangulated and dragged shows intention to cause death which attracts the provisions of section 300 firstly of IPC – There are no circumstances, which may give benefit of any of the exception u/s 300 of IPC to the appellants in view of the manner in which offence was committed – Consequently, conviction u/s 302 and 201 of IPC recorded by the trial Court against both the appellants affirmed.

भारतीय दण्ड संहिता, 1860 – धाराएं 201 एवं 302
साक्ष्य अधिनियम, 1872 – धारा 3
आपराधिक मानव वध कब हत्या है – जिस तरीके से मृतक को झोपड़ी के पीछे ले जाया गया और उसके बाद गला घोटकर घसीटा गया, मृत्यु कारित करने का आशय दर्शित करता है जो भा.दं.सं. की धारा 300 के प्रथम भाग को आकर्षित करता है – जिस तरह से अपराध कारित किया गया उन्हें दृष्टिगत रखते हुए यहाँ ऐसी कोई परिस्थिति नहीं है जो धारा 300 भा.दं.सं. के अंतर्गत किसी भी अपवाद का लाभ अभियुक्त को प्रदान करती हो – परिणामस्वरूप, दोनों अभियुक्तगण के विरुद्ध भा.दं.सं. की धारा 302 एवं 201 के अंतर्गत विचारण न्यायालय द्वारा अभिलिखित दोषसिद्धि की पुष्टि की गई।

Fakhruddin Ismail Mansori and ors. v. State of M.P.

Judgment dated 22.07.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 1303 of 2007, reported in 2021 CriLJ 4319 (DB)

Relevant extracts from the judgment:

The evidence shows that the death of Kailash was result of culpable homicide and the manner in which deceased was taken behind the hutment and then strangulated and dragged shows intention to cause death which attracts the provisions of Section 300 firstly of IPC. There are no circumstances, which may give benefit of any of the exception under Section 300 of IPC to the appellants in view of the manner in which offence was committed.

Consequently, we find no ground to set aside the finding of conviction under Section 302 and 201 of IPC recorded by the trial Court against both the appellants. Their conviction stands affirmed. The sentence imposed upon both the appellants also stands affirmed and this appeal is dismissed.

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***308. INDIAN PENAL CODE, 1860 – Sections 279 and 338**

CRIMINAL PRACTICE:

Punishment – Offence of rash and negligent driving – Sentence of imprisonment may be substituted by sentence of fine for the ends of justice in suitable cases especially if considerable time has elapsed after the incident.

भारतीय दण्ड संहिता, 1860 – धाराएं 279 एवं 338

आपराधिक प्रथाः

दण्ड – उतावलेपन से व उपेक्षापूर्वक वाहन चालने का अपराध – उचित प्रकरणों में कारावास का दण्डादेश न्याय हित में अर्थदण्ड के दण्डादेश से प्रतिस्थापित किया जा सकता है विशेषतः यदि घटना दिनांक से एक बहुत लंबा समय बीत चुका है।

Surendran v. Sub-Inspector of Police

Judgment dated 30.06.2021 passed by the Supreme Court in Criminal Appeal No. 536 of 2021, reported in 2021 (3) Crimes 19 (SC) (Three Judge bench)

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309. INDIAN PENAL CODE, 1860 – Section 302

EVIDENCE ACT, 1872 – Section 3

APPRECIATION OF EVIDENCE:

(i) Murder trial – Capacity of witnesses to identify accused in night – Held, criminal jurisprudence developed in India recognizes that the eye sight capacity of those living in rural areas is far

better than compared to the town folks – Further, identification at night between known persons is possible by voice, silhouette, shadow and gait.

(ii) Medical and ocular evidence; appreciation of – Ocular evidence is considered the best evidence – It is only in case of gross contradiction between medical and ocular evidence making ocular evidence improbable and ruling out its being true, the ocular evidence may be disbelieved.

भारतीय दण्ड संहिता, 1860 – धारा 302

साक्ष्य अधिनियम, 1872 – धारा 3

साक्ष्य का मूल्यांकनः

(i) हत्या के अपराध का विचारण – साक्षियों की रात्रि में अभियुक्त को पहचानने की क्षमता – अभिनिर्धारित, भारत में विकसित आपराधिक न्यायशास्त्र यह मान्य करता है कि ग्रामीण क्षेत्रों में रहने वालों की दृष्टि क्षमता शहरी लोगों की तुलना में कहीं बेहतर होती है – इसके अतिरिक्त, पूर्व परिचित व्यक्तियों की रात्रि में पहचान आवाज, छाया, परछाईं और चाल से संभव है।

(ii) चिकित्सीय एवं मौखिक साक्ष्य का मूल्यांकन – मौखिक साक्ष्य को सर्वोत्तम साक्ष्य माना गया है – मात्र उन मामलों में जहाँ चिकित्सीय साक्ष्य और मौखिक साक्ष्य में घोर विरोधाभास मौखिक साक्ष्य को असंभाव्य बना देता है और उसकी सत्यता को असंभव कर देती है वहां मौखिक साक्ष्य को अस्वीकार किया जा सकता है।

Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala and ors.
Judgment dated 26.07.2021 passed by the Supreme Court in Criminal Appeal No. 177 of 2014, reported in 2021 (3) Crimes 93 (SC)

Relevant extracts from the judgment:

There is evidence about the availability of light near the place of occurrence. Even otherwise, that there may not have been any source of light is hardly considered relevant in view of the fact that the parties were known to each other from earlier. The criminal jurisprudence developed in this country recognizes that the eye sight capacity of those who live in rural areas is far better than compared to the town folks. Identification at night between known persons is acknowledged to be possible by voice, silhouette, shadow, and gait also. Therefore, we do not find much substance in the submission of the respondents that identification was not possible in the night to give them the benefit of doubt.

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

may be disbelieved. In the present case, we find no inconsistency between the ocular and medical evidence. The High Court grossly erred in appreciation of evidence by holding that muddamal no.5 was a simple iron rod without noticing the evidence that it had a sharp turn edge.

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310. INDIAN PENAL CODE, 1860 – Section 302
CRIMINAL PROCEDURE CODE, 1973 – Section 157
EVIDENCE ACT, 1872 – Section 106
APPRECIATION OF EVIDENCE:

(i) Circumstantial evidence – Last seen theory – Accused and deceased were locked in the office alone – When the door was opened accused tried to escape but was caught at the spot – Held, under these circumstances, it was for the accused to explain under what circumstances deceased was dead – Accused failed to lead any explanation – Conviction upheld.

(ii) Investigation – Failure to show crime scene in rough sketch; effect of – Held, it is mere irregularity on the part of investigation officer.

भारतीय दण्ड संहिता, 1860 – धारा 302

दण्ड प्रक्रिया संहिता, 1973 – धारा 157

साक्ष्य अधिनियम, 1872 – धारा 106

साक्ष्य का मूल्यांकनः

(i) परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखे जाने का सिद्धांत – एक मात्र अभियुक्त और मृतक ही कार्यालय में बंद थे – जब दरवाजा खोला गया तो अभियुक्त ने भागने की कोशिश की, परन्तु मौके पर पकड़ा गया – अवधारित, इन परिस्थितियों में अभियुक्त को स्पष्ट करना था कि मृतक की मृत्यु किन परिस्थितियों में हुई – अभियुक्त कोई भी स्पष्टीकरण देने में विफल रहा – दोषसिद्धि उचित अभिनिर्धारित।

(ii) अन्वेषण – कच्चे मानचित्र में घटनास्थल को दर्शाने में विफलता का प्रभाव – अवधारित, यह अनुसंधान अधिकारी द्वारा की गई अनियमितता मात्र है।

Shanmugam v. State by Inspector of Police, Tamil Nadu
Judgment dated 06.04.2021 passed by the Supreme Court in Criminal Appeal No. 900 of 2010, reported in (2021) 5 SCC 810 (Three Judge Bench)

Relevant extracts from the judgment:

It is not in dispute that the appellant-accused was arrested by the then Sub-Inspector of Police (PW 1), Video Piracy Cell, at 7.30 p.m. on 09-09-2005

and at that time the deceased was with him. The evidence of PW 1 discloses that at the relevant point of time, the deceased did not have any residence. Therefore, he requested PW 1 to permit him to stay in the office (Video Piracy Cell) along with the accused where the accused was brought. PW 6 has stated that till 2.00 a.m. on 10-09-2005, PW 1 was in the office and later on left the office leaving the deceased Constable and the accused inside the office by locking the door from outside as per the request of the deceased. This version of PW 1 has not been challenged in the cross-examination.

Since the office premises were not shown in the rough sketch (Ext. P-22), the evidence of PW 6 was also questioned. However, this is nothing but an irregularity on the part of the IO. PW 6 has categorically stated that he did not have residence in the nearby place. Therefore, he remained at the office to finish his pending work. Keeping in mind the above situation, we are of the view that the evidence of PW 6 cannot be doubted and if the same is accepted, the story concocted by the accused that the deceased was murdered by PW 1 is only to falsely implicate PW 1.

The evidence adduced by PW 1 was also corroborated by the evidence of the Head Constable (PW 2) who was accompanying PW 1 at around 7.30 a.m. on 10-09-2005. It is clear from the evidence of PW 2 that when PW 1 opened the locked door, the accused tried to escape but was caught at the spot. This deposition has also remained unchallenged in the cross-examination.

Perusal of the evidence in its entirety clearly shows that the offence had taken place at 2.00 a.m. by which time PW 1 had already left the place of occurrence and at the relevant point of time the accused and the deceased were alone inside the premises of the office of the Video Piracy Cell. Under the above circumstance, it was for the accused to explain under what circumstances the deceased was dead. In our view, the accused has failed to offer any cogent explanation in this regard. We are of the view that the chain of circumstances has been completely proved and established beyond reasonable doubt. Therefore, we find no reason to interfere with the concurrent findings of the courts below.

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311. INDIAN PENAL CODE, 1860 – Sections 302 and 304 Part-II
EVIDENCE ACT, 1872 – Section 3
Murder or Culpable homicide – Determination of – The appellant definitely had the knowledge that his act of throwing the stone at the deceased may injure her and that injury may also lead to her death. The spontaneity with which the incident had taken place, only gives credence to the fact that the appellant did not have any intention of committing the murder of his wife and that his action was provoked by an impression borne in his mind that his wife was

having an extra-marital affair. Therefore, conviction converted from section 302 IPC to section 304 (Part II) IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 304 भाग–2

साक्ष्य अधिनियम, 1872 – धारा 3

हत्या या आपराधिक मानव वध – अभिनिर्धारण – अपीलार्थी को निश्चित रूप से यह ज्ञान था कि मृतिका के ऊपर पत्थर फेंकने के कृत्य से उसे क्षति कारित हो सकती है और ऐसी क्षति मृत्यु भी कारित कर सकती है। जिस स्वतः प्रवृत्ति से घटना घटित हुई केवल इस तथ्य को विश्वसनीयता प्रदान करती है कि अपीलार्थी का अपनी पत्नी की मृत्यु कारित का कोई आशय नहीं था और ऐसा कृत्य मस्तिष्क में आए इस प्रभाव से कि उसकी पत्नी का विवाहेतर–संबंध है, के प्रकोपन में हुआ – इस कारण से दण्डादेश भा.दं.सं. की धारा 302 से धारा 304 (भाग 2) में परिवर्तित किया गया।

Ratilal v. State of Madhya Pradesh

Order dated 15.07.2021 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 1952 of 2008, reported in 2021 CriLJ 4299 (DB)

Relevant extracts from the order:

In this particular case, the fact that the appellant had acted without premeditation is extremely probable from the evidence of the prosecution itself. It is not a case of the prosecution that before embarking upon the journey, the appellant was carrying the stone used in the offence with an intention of throwing it at the deceased during the course of journey. Under the circumstances, the only probable inference can be drawn in this case is that the stone was picked up by the appellant immediately before the incident, which he threw at the deceased. Stone cannot be said to be a dangerous weapon. However, it can be a dangerous means by which death could be caused. The appellant definitely had the knowledge that his act of throwing the stone at the deceased may injure her and that injury may also lead to her death. However, the provocation for action on the part of the appellant can be reasonably inferred, was the belief that the deceased was having an extramarital affair. The spontaneity with which the incident had taken place, which is corroborated by the statement of P.W. 15 Shiv Kumar, only gives credence to the fact that there was no premeditation on the part of the appellant and that the act was sudden, borne out of anger at her alleged extramarital affair.

In view of what we have discussed herein above, we are of the view that the appellant did not have any intention of committing the murder of his wife and that his action was provoked by an impression borne in his mind that his wife was having an extra-marital affair. Therefore, we partially allow this appeal and convert his conviction from Section 302 IPC to Section 304 Part-II IPC. The appellant has completed more than thirteen years of incarceration as a convict.

We reduce his sentence to the period already undergone by him and direct that he be released from jail forthwith, if not wanted in any other case.

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312. INDIAN PENAL CODE, 1860 – Sections 306 and 498-A
EVIDENCE ACT, 1872 – Sections 3 and 113-A
APPRECIATION OF EVIDENCE:

(i) Abetment of suicide and cruelty – Defence that deceased was suffering from mental disease and was under treatment – No evidence in support of this defence adduced, nor anything about her illness or medication was stated in examination u/s 313 – Held, deceased lived in matrimonial home for eight months after marriage, if she was undergoing any prolonged treatment; it was not possible for accused to be unaware of.

(ii) Abetment of suicide and cruelty – Independent witness; availability of – Held, such offence is committed within the boundaries of the house which diminishes the chances of availability of any independent witness – Victim of domestic cruelty naturally shares her trauma with her parents and close relatives – Thus, evidentiary value of close relatives is not liable to be rejected on the ground of being relative – Further held, law does not disqualify the relatives to be produces as witnesses though they may be interested.

(iii) Independent witness; availability of – Held, normally no independent or unconnected person would prefer to become a witness for a number of reasons – Thus, availability of independent witness and his willingness to be a witness is always a big question.

(iv) Interested witness; appreciation of – Evidence of interested witness requires scruiting with utmost care and caution – Court should address itself whether there are any infirmities in his evidence, whether evidence is reliable, trustworthy and inspires confidence and whether the genesis of crime unfolded by such evidence is probable or not – If evidence of interested witness passes the above tests, the same may be relied upon by the Court.

भारतीय दण्ड संहिता, 1860 – धाराएं 306 एवं 498–क
साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 113–क
साक्ष्य का मूल्यांकनः

(i) आत्महत्या का दुष्प्रेरण और क्रूरता – यह बचाव कि मृतक मानसिक बीमारी से पीड़ित थी और उसका इलाज चल रहा था – इस बचाव के समर्थन में कोई

साक्ष्य नहीं दी गई, न ही उसकी बीमारी या दवाओं के बारे में कुछ भी धारा 313 के अंतर्गत किए गए परीक्षण में प्रकट किया गया – अभिनिर्धारित, मृतक विवाह के बाद आठ माह तक ससुराल में रही, यदि उसका कोई लंबा इलाज चल रहा होता, तो अभियुक्त का उससे अनजान होना संभव नहीं था।

(ii) आत्महत्या का दुष्प्रेरण और क्रूरता – स्वतंत्र साक्षी की उपलब्धता – अभिनिर्धारित, ऐसा अपराध घर की सीमाओं के भीतर किया जाता है जिससे किसी भी स्वतंत्र साक्षी की उपलब्धता की संभावना कम हो जाती है – घरेलू क्रूरता से पीड़ित स्त्री स्वाभाविक रूप से अपने माता–पिता और निकट संबंधियों से अपना दुःख साझा करती है – इस प्रकार, निकट संबंधियों का साक्ष्यिक मूल्य मात्र संबंधी होने के आधार पर खारिज नहीं किया जा सकता है – इसके अतिरिक्त, विधि में रिश्तेदारों को साक्षी के रूप में प्रस्तुत करने के लिए कोई निर्योग्यता नहीं है, यद्यपि वे हितबद्ध हो सकते हैं।

(iii) स्वतंत्र साक्षी की उपलब्धता – अवधारित, सामान्यतया कोई भी स्वतंत्र या असंबद्ध व्यक्ति कई कारणों से साक्षी बनना पसंद नहीं करता है – अतः, स्वतंत्र साक्षी की उपलब्धता और साक्षी बनने की उसकी इच्छा सदैव एक बड़ा प्रश्न होता है।

(iv) हितबद्ध साक्षी का मूल्यांकन – हितबद्ध साक्षी की साक्ष्य का परीक्षण अत्यधिक सावधानी और सतर्कता से किया जाना आवश्यक है – न्यायालय को स्वयं विचार करना चाहिए कि क्या उसकी साक्ष्य में कोई कमियां हैं, क्या साक्ष्य विश्वसनीय, दृढ़ है एवं विश्वास को प्रेरित करती है और क्या ऐसी साक्ष्य द्वारा प्रकट अपराध संभावित है अथवा नहीं – यदि हितबद्ध साक्षी की साक्ष्य उपरोक्त परीक्षणों को पार करती हो, तो उस पर न्यायालय द्वारा विश्वास किया जा सकता है।

Gumansinh alias Lalo alias Raju Bhikhabhai Chauhan and anr. v. State of Gujarat

Judgment dated 03.09.2021 passed by the Supreme Court in Criminal Appeal No. 940 of 2021, reported in AIR 2021 SC 4174

Relevant extracts from the judgment:

It is pertinent to mention that much emphasis has been laid by learned counsel for the appellants on the cross-examination of PW-1, wherein he stated that even before marriage the deceased was undergoing treatment and medication. Learned counsel for the appellants vehemently contended that the deceased was suffering from some mental disease and was undergoing treatment and her mental instability might have resulted in suicide. The argument is not liable to be accepted inasmuch as neither any evidence was produced by the defence in this regard nor anything about the illness or medication was stated by them in their statement u/s 313. The deceased lived in her matrimonial home with the appellants for about eight months after marriage and if she was

undergoing any prolonged treatment, it was not possible for the appellants not to have acquired knowledge of the said facts.

x x x

Most often the offence of subjecting the married woman to cruelty is committed within the boundaries of the house which in itself diminishes the chances of availability of any independent witness and even if an independent witness is available whether he or she would be willing to be a witness in the case is also a big question because normally no independent or unconnected person would prefer to become a witness for a number of reasons. There is nothing unnatural for a victim of domestic cruelty to share her trauma with her parents, brothers and sisters and other such close relatives. The evidentiary value of the close relatives/interested witness is not liable to be rejected on the ground of being a relative of the deceased. Law does not disqualify the relatives to be produced as a witness though they may be interested witness.

x x x

However, when the Court has to appreciate the evidence of any interested witness it has to be very cautious in weighing their evidence or in other words, the evidence of an interested witness requires a scrutiny with utmost care and caution. The Court is required to address itself whether there are any infirmities in the evidence of such a witness; whether the evidence is reliable, trustworthy and inspires the confidence of the Court. Another important aspect to be considered while analyzing the evidence of interested witness is whether the genesis of the crime unfolded by such evidence is probable or not. If the evidence of any interested witness/relative on a careful scrutiny by the Court is found to be consistent and trustworthy, free from infirmities or any embellishment that inspires the confidence of the Court, there is no reason not to place reliance on the same.

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313. INDIAN PENAL CODE, 1860 – Section 323

CRIMINAL PRACTICE:

Hurt – A case for offence of Section 323 IPC can be established without production of an injury report.

भारतीय दण्ड संहिता, 1860 – धारा 323

आपराधिक प्रथा:

उपहति – धारा 323 भा.दं.सं. के अपराध से संबंधित प्रकरण को आहत की चोट संबंधी प्रतिवेदन प्रस्तुत किये बिना भी स्थापित किया जा सकता है।

Lakshman Singh v. State of Bihar (Now Jharkhand)

Judgment dated 23.07.2021 passed by the Supreme Court in Criminal Appeal No. 606 of 2021, reported in 2021 (3) Crimes 98 (SC)

Relevant extracts from the judgment:

Production of an injury report for the offence under Section 323 IPC is not a *sine qua non* for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. "Hurt" is defined under Section 319 IPC. As per Section 319 IPC, whoever causes bodily pain, disease or infirmity to any person is said to cause "hurt".

●

314. INDIAN PENAL CODE, 1860 – Sections 392 and 397
DAKAITI AUR VYAPHARAN PRABHAVIT KSHETRA ADHINIYAM, 1981 (M.P.) – Sections 11 and 13
Robbery – Question of identity – Names of the accused or marks of identification were not spelt out in the First Information Report – No other evidence regarding identification of the appellant – Admission given by the concerned witness in the cross-examination raises considerable doubts regarding capacity of the witness to sufficiently identify the appellant – Mere factum of recovery of some money from the house of the appellant by itself, would not be sufficient to sustain the order of conviction for robbery.

भारतीय दण्ड संहिता, 1860 – धाराएं 392 एवं 397
डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, 1981 (म.प्र.) – धाराएं 11 एवं 13
लूट – पहचान का प्रश्न – अभियुक्तगण के नामों अथवा पहचान–चिन्हों का प्रथम सूचना रिपोर्ट में प्रकटन नहीं किया गया – अपीलार्थी की पहचान के संबंध में अन्य कोई साक्ष्य नहीं – संबंधित साक्षी द्वारा प्रतिपरीक्षण में की गई स्वीकृति अपीलार्थी की पर्याप्त पहचान को लेकर साक्षी की सक्षमता के संबंध में तात्विक संदेह उत्पन्न करती है – अपीलार्थी के मकान से कुछ धनराशि बरामद होने का तथ्य मात्र अपने आप में, पर्याप्त नहीं होगा कि लूट के लिए दोषसिद्धि के आदेश को स्थिर रखा जाए।

Rajjan Khan v. State of Madhya Pradesh
Judgment dated 09.07.2021 passed by the Supreme Court in Criminal Appeal No. 579 of 2021, reported in AIR 2021 SC 3598

Relevant extracts from the judgment:

It must be stated here that the names of the accused or marks of identification were not spelt out in the First Information Report. The informant, who was examined as PW-1 admitted in his cross examination as under:

> "17. On the day of the incident I was not knowing the name of Rajjan. It is true that the day on which the sub inspector had taken my statement, on that day he had not told the name of Rajjan. When last time I had come to give

statement, on that day I knew the name of the accused, since the accused had covered his face therefore I had not taken his name. The accused had covered his face on that day therefore I could not recognize him, my wish was to give statement after identifying him in front of him. Since on that day the time of the court got finished therefore I was not able to say my matter."

It is accepted fairly by the learned counsel for the respondent that apart from the evidence of the informant, who was examined as PW-1, there is no other evidence regarding identification of the appellant. The admission given by the concerned witness in the cross examination raises considerable doubts about the capacity of the witness to sufficiently identify the appellant.

However, considering the entirety of the material on record, mere factum of recovery of some money from the house of the appellant by itself, in our view, would not be sufficient to sustain the order of conviction and sentence recorded against the appellant. We, therefore, allow this appeal giving benefit of doubt to the appellant and acquit him of all the charges leveled against him.

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315. INDIAN PENAL CODE, 1860 – Section 498-A
EVIDENCE ACT, 1872 – Section 3
APPRECIATION OF EVIDENCE:
Cruelty; determination of – Allegation against accuseds were generalized in nature – Trial court concluded that acts of accused persons were normal wear and tear of married life and that they probably added fuel to the fire – Held, in absence of direct evidence, conviction cannot be maintained on probability.

भारतीय दण्ड संहिता, 1860 – धारा 498–क

साक्ष्य अधिनियम, 1872 – धारा 3

साक्ष्य का मूल्यांकनः

क्रूरता का निर्धारण – अभियुक्तगण के विरुद्ध आक्षेप सामान्य प्रकृति के थे – विचारण न्यायालय ने निष्कर्ष दिया कि अभियुक्तगण के कृत्य वैवाहिक जीवन के सामान्य उतार–चढ़ाव थे और उन्होंने संभवतः आग में ईंधन का कार्य किया – अभिनिर्धारित, प्रत्यक्ष साक्ष्य के अभाव में मात्र संभावना के आधार पर दोषसिद्धि स्थिर नहीं रखी जा सकती है।

R. Natarajan and anr. v. The State of Tamil Nadu
Order dated 01.07.2021 passed by the Supreme Court in Criminal Appeal No. 540 of 2021, reported in 2021 (3) Crimes 1 (SC)

Relevant extracts from the order:

The allegations against the appellants are generalised in nature. The Trial Court, therefore, came to the conclusion that though they were living in a separate portion of the house, but their conduct amounted to indirect harassment of the deceased. While discussing that the appellants allegedly fed the ears of their son against the deceased, the conclusion was that these were normal wear and tear of married life and that they probably (emphasis) added fuel to the fire.

The High Court has not even bothered to discuss the nature of evidence available against the appellants and the reasoning of the Trial Court for conviction. We are of the considered opinion that conviction of the appellants was not maintainable on a probability in absence of direct evidence. The benefit of doubt ought to have been given to the appellants.

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316. INSECTICIDES ACT, 1968 – Sections 29 and 33
CRIMINAL PROCEDURE CODE, 1973 – Sections 190, 468 and 469
Limitation and cognizance – Limitation for taking cognizance for the offence u/s 17, 18 and 33 punishable u/s 29 of the Insecticides Act, 1968 will start from the date of receiving report from Insecticide Testing Laboratory and not from the date of receiving report from Central Insecticide Testing Laboratory.

कीटनाशी अधिनियम, 1968 – धाराएं 29 एवं 33

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 190, 468 एवं 469

परिसीमा एवं संज्ञान – कीटनाशी अधिनियम, 1968 की धारा 17, 18 एवं 33 के अपराध जो इस अधिनियम की धारा 29 के अंतर्गत दण्डनीय हैं, के संज्ञान लेने की परिसीमा कीटनाशी परीक्षण प्रयोगशाला से प्रतिवेदन प्राप्त होने के दिनांक से प्रारम्भ होगी न कि केन्द्रीय कीटनाशी परीक्षण प्रयोगशाला से प्रतिवेदन प्राप्ति के दिनांक से।

M/s. Cheminova India Ltd. and anr. v. State of Punjab and anr.
Judgment dated 04.08.2021 passed by the Supreme Court in Criminal Appeal No. 749 of 2021, reported in 2021 (3) Crimes 186 (SC)

Relevant extracts from the judgment:

It is a case of 'misbranding' within the meaning of Section 3(k)(i) of the Act and selling of such misbranded item is in violation of Sections 17, 18, and 33 punishable under Section 29 of the Act. From a reading of Section 29, it is clear that the maximum punishment for such offence, if it is first offence, is imprisonment for a term which may extend to two years or with fine which shall not be less than ten thousand rupees which may extend to fifty thousand rupees, or with both. For a second and subsequent offence, the punishment is imprisonment for a term which may extend to three years or with fine which shall not be less than

fifteen thousand rupees which may extend to seventy-five thousand rupees, or with both. Section 468 of CrPC prohibits taking cognizance of an offence after the lapse of period of limitation. As per sub-section (2)(c) thereof, the period of limitation is three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Section 469 of CrPC deals with the 'commencement of the period of limitation'. As per the said provision, the period of limitation, in relation to an offender, shall commence on the date of offence or where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier.

As per the procedure prescribed under the Statute, i.e., Insecticide Act, 1968 and the rules made thereunder, the Insecticide Testing Laboratory, Ludhiana was the competent authority to which the sample was sent on 17.02.2011, after drawing on 10.02.2011, and the report of analysis was received on 14.03.2011, as such the said date is said to be the crucial date for commencement of period of limitation.

Merely because a further request is made for sending the sample to the Central Insecticide Testing Laboratory, as contemplated under Section 24(4) of the Act, which report was received on 09.12.2011, receipt of such analysis report on 09.12.2011 cannot be the basis for commencement of limitation.

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317. INSECTICIDES ACT, 1968 – Sections 29 and 33

CRIMINAL TRIAL:

Offences by Companies – When any company commits an offence under the Act, every person responsible for the conduct of the business of the company on date of offence should be prosecuted with the company – However, if any particular officer is appointed for quality control, under such a case, the Managing Director of the company should not be prosecuted for offence of inferior quality under the Act although he may be responsible for overall affairs of the company.

कीटनाशी अधिनियम, 1968 – धाराएं 29 एवं 33

आपराधिक विचारणः

कंपनियों द्वारा किए गए अपराध – इस अधिनियम के अंतर्गत जब कंपनी द्वारा कोई अपराध किया जाता है तो घटना दिनांक को कंपनी का व्यवसाय संचालित करने वाले हर जिम्मेदार व्यक्ति को कंपनी के साथ अभियोजित किया जाना चाहिए – किंतु यदि गुणवत्ता नियंत्रण हेतु किसी अधिकारी विशेष को नियुक्त किया जा चुका है तो ऐसी स्थिति में इस अधिनियम कें अंतर्गत प्रबंध निर्देशक को अवर गुणवत्ता के अपराध के

लिए अभियोजित नहीं किया जाना चाहिए यद्यपि वह कंपनी के समस्त कार्यो के लिये उत्तरदायी होता है।

M/s. Cheminova India Ltd. and anr. v. State of Punjab and anr.
Judgment dated 04.08.2021 passed by the Supreme Court in Criminal Appeal No. 750 of 2021, reported in 2021 (3) Crimes 182 (SC)

Relevant extracts from the judgment:

Section 33 of the Act deals with 'offences by companies'. A reading of Section 33(1) of the Act, makes it clear that whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, or was responsible to the company for the conduct of the business of, the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

In the instant case, the Company has passed a resolution, fixing responsibility of one of the Managers namely Mr. Madhukar R. Gite by way of a resolution and the same was furnished to the respondents by the 2nd Appellant in shape of an undertaking on 22.01.2013. When furnishing of such undertaking fixing the responsibility of the quality control of the products is not in dispute, there is no reason or justification for prosecuting the 2nd Appellant – Managing Director, on the vague and spacious plea that he was the Managing Director of the Company at the relevant time. A reading of Section 33 of the Act also makes it clear that only responsible person of the Company, as well as the Company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against. Though, the Managing Director is overall in-charge of the affairs of the company, whether such officer is to be prosecuted or not, depends on the facts and circumstances of each case and the relevant provisions of law.

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318. LAND REVENUE CODE, 1959 (M.P.) – Sections 108, 109, 110 and 158(1)(b)
MADHYA BHARAT LAND REVENUE AND TENANCY ACT, 1950 – Section 2

(i) Property belonging to temple – Whether priest can be treated as Inamdar or Muafidar under the Act of 1950 so as to become Bhumiswami under the Code of 1959? Held, no – Muafi was granted to temple not priest – Inam granted to priest was only to manage the property of temple and not to confer ownership right – Thus, priest cannot be treated as Bhumiswami and is not entitled to any protection under the Code of 1959.

(ii) Entry in revenue records – Whether State Government by way of executive instructions can order the deletion of name of priest from revenue records? Held, yes – Deity is the owner

and occupier of property through servants or managers on its behalf – Therefore, name of priest is not required in column of ownership and occupier – However, name of priest may be recorded in the remarks column so far as he is performing his duties properly.

(iii) Entry in revenue records – Whether State Government by way of executive instructions can order to insert the name of Collector as manager of temple in revenue records? Held, yes – However, it will be applicable only to public temples vested in State.

भू–राजस्व संहिता, 1959 (म.प्र.) – धाराएं 108, 109, 110 एवं 158(1)(ख) मध्य भारत भू–राजस्व एवं काश्तकारी अधिनियम, 1950 – धारा 2

(i) मंदिर की संपत्ति – क्या 1950 के अधिनियम के अधीन पुजारी को इनामदार या मुआफीदार माना जा सकता है जो 1959 की संहिता के अंतर्गत भूमिस्वामी बन सके? अभिनिर्धारित, नहीं – मुआफी मंदिर को दी गई थी, पुजारी को नहीं – पुजारी को दिया गया इनाम मात्र मंदिर की संपत्ति का प्रबंधन करने के लिए था न कि स्वत्वाधिकार प्रदान करने के लिए – इस प्रकार, पुजारी को भूमिस्वामी नहीं माना जा सकता है और वह 1959 की संहिता के अधीन किसी भी प्रकार की सुरक्षा का अधिकारी नहीं है।

(ii) राजस्व अभिलेखों की प्रविष्टि – क्या राज्य सरकार कार्यकारी निर्देशों के द्वारा पुजारी के नाम को राजस्व अभिलेखों से हटाने का आदेश दे सकती है? अवधारित, हाँ – देवता संपत्ति के स्वामी हैं और अपनी ओर से कर्मकार या प्रबंधक के माध्यम से संपत्ति का आधिपत्य रखते हैं – इसलिए, स्वामित्व और आधिपत्य के खण्ड में पुजारी के नाम की आवश्यकता नहीं है – तथापि, पुजारी का नाम टिप्पणी के खण्ड में दर्ज किया जा सकता है जब तक वह अपने कर्तव्यों का उचित रूप से निर्वहन कर रहा हो।

(iii) राजस्व अभिलेखों की प्रविष्टि – क्या राज्य सरकार कार्यकारी निर्देशों के माध्यम से राजस्व अभिलेखों में मंदिर के प्रबंधक के रूप में कलेक्टर का नाम सम्मिलित करने का आदेश दे सकती है? अवधारित, हाँ – यद्यपि, यह मात्र राज्य में निहित सार्वजनिक मंदिरों पर लागू होगा।

State of Madhya Pradesh and ors. v. Pujari Utthan Avam Kalyan Samiti and anr.

Judgment dated 06.09.2021 passed by the Supreme Court in Civil Appeal No. 4850 of 2021, reported in AIR 2021 SC 4245

Relevant extracts from the judgment:

The ancillary question which arises is whether the priest is Inamdar or Maufidar within the meaning of Section 158(1)(b) of the Code. Such provision contemplates that the rights of every person in respect of land held by him in the Madhya Bharat region i.e. area of erstwhile Gwalior and Holkar as a Pakka tenant or as a Muafidar, Inamdar or concessional holder shall be protected as Bhumiswami. The priest does not fall in any of the clauses as mentioned in Section 158(1)(b) of the Code. The maufi was granted to the property of temples from payment of land revenue. Such maufi was not granted to a manager. Even Inam granted by the Jagirdar or the ruler to a priest is only to manage the property of the temple and not confer ownership right on the priest. Therefore, in view of the judgment in ***Pancham Singh v. Ramkishandas Guru Ramdas and ors., AIR 1972 MP 14*** and also of this Court in ***Mst. Kanchaniya and ors. v. Shiv Ram and ors., AIR 1992 SC 1239***, the priest cannot be treated to be either a Muafidar or Inamdar in terms of Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (Act No. 66 of 1950) or in terms of Gwalior Act. Since the priest cannot be treated to be Bhumiswami, they have no right which could be protected under any of the provisions of the Code.

x x x

Another question which arises is whether the State Government by way of executive instructions can order the deletion of name of Pujari from the revenue record and/or to insert the name of a Collector as manager of the temple.

In the ownership column, the name of the deity alone is required to be mentioned, as the deity being a juristic person is the owner of the land. The occupation of the land is also by the deity which is carried out by the servant or the managers on behalf of the deity. Therefore, the name of the manager or that of the priest is not required to be mentioned in the column of occupier as well. In ***State of M.P. v. Ghanshyamdas, 1999 RN 25***, it was held that if the name of the Pujari is recorded in the column No. 12 i.e. column of remarks, it will not affect the rights of the Pujari so long as he is performing his functions properly and cultivating the land or getting the land cultivated through servants. Therefore, the name of the Pujari cannot be mandated to be recorded either in the column of ownership or occupancy but may be recorded in the remark's column.

No rule has been brought to the notice that the name of the manager has to be recorded in the land records. In the absence of any prohibition either in the statute or in the rules, the executive instruction can be issued to supplement the statute and the Rules framed thereunder. Such instructions do not contravene any of the provisions of the Code or the rules. Therefore, they cannot be said to be illegal or in excess of the authority vested in the State Government.

However, we find that the name of the Collector as manager cannot be recorded in respect of property vested in the deity as the Collector cannot be a manager of all temples unless it is a temple vested with the State.

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319. LIMITATION ACT, 1963 – Section 18

Acknowledgment of liability in writing – Whether entries made in statutory compulsion such as balance sheet would amount to acknowledgment of liability? Held, it is a question of fact to be determined in each case – Further, acknowledgment need not be made to creditor, nor document needs to be addressed to the creditor.

परिसीमा अधिनियम, 1963 – धारा 18

दायित्व की लिखित अभिस्वीकृति – क्या सांविधिक बाध्यता जैसे कि वित्तीय स्थिति विवरण में की गई प्रविष्टियां दायित्व की अभिस्वीकृति मानी जाएगी? अभिनिर्धारित, यह तथ्य का प्रश्न है जो प्रत्येक मामले में निर्धारित किया जाना होगा – यह भी कि, अभिस्वीकृति ऋणदाता को करने की आवश्यकता नहीं है, न ही दस्तावेज़ ऋणदाता को संबोधित करना आवश्यक है।

Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal and anr.

Judgment dated 15.04.2021 passed by the Supreme Court in Civil Appeal No. 323 of 2021, reported in (2021) 6 SCC 366 (Three Judge Bench)

Relevant extracts from the judgment:

The question that this Court must address is as to whether an entry made in a balance sheet of a corporate debtor would amount to an acknowledgment of liability under Section 18 of the Limitation Act.

Several judgments of this Court have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act. Thus, in ***Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402***, this Court held :

> "12. The entries in the books of accounts of the appellant would amount to an acknowledgment of the liability to M/s Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of the liability as debt."

Likewise, in a case concerning the dishonour of a cheque under Section 138 of the Negotiable Instruments Act, 1881, this Court in ***A.V. Murthy v. B.S. Nagabasavanna, (2002) 2 SCC 642***, held:

> "5. … It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Moreover, in the instant case, the appellant has submitted before us that the respondent, in his balance sheet prepared for every year subsequent to the loan advanced by the appellant, had shown the amount as deposits from friends. A copy of the balance sheet as on 31-03-1997 is also produced before us. If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgment was made. However, we do not express any final opinion on all these aspects, as these are matters to be agitated before the Magistrate by way of defence of the respondent."

The judgment in ***A.V. Murthy v. B.S. Nagabasavanna, (2002) 2 SCC 642*** was followed in ***S. Natarajan v. Sama Dharman, (2021) 6 SCC 413*** as follows:

> "8. In this connection, we may usefully refer to a judgment of this Court in ***A.V. Murthy*** (supra) where the accused had alleged that the cheque issued by him in favour of the complainant in respect of sum advanced to the accused by the complainant four years ago was dishonoured by the bank for the reasons "account closed". The Magistrate had issued summons to the accused. The Sessions Court quashed the proceedings on the ground that the alleged debt was barred by limitation at the time of issuance of cheque and, therefore, there was no legally enforceable debt or liability against the accused under the Explanation to Section 138 of the NI Act and, therefore, the complaint was not maintainable. While dealing with the challenge to this order, this Court observed that under Section 118 of the NI Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. This Court further observed that Section 139 of the NI Act specifically notes that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of the NI Act for discharge, in whole or in part, of any debt or other liability. This Court further observed that under

sub-section (3) of Section 25 of the Contract Act, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Referring to the facts before it, this Court observed that the complainant therein had submitted his balance sheet, prepared for every year subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends. This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the accused therein is shown in the balance sheet, it may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgment was made."

A perusal of the aforesaid sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgments made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in ***Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, AIR 1962*** Cal 115, that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.

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320. MOTOR VEHICLES ACT, 1988 – Sections 147 (1) r/w/s 2 (30) and 157 Whether insurance company would be liable in case of an accident involving a vehicle hired by State Corporation under an agreement? Held, yes – If control of the vehicle is with the hirer.

मोटरयान अधिनियम, 1988 – धाराएं 147 (1) सहपठित धारा 2 (30) एवं 157

क्या ऐसे वाहन से होने वाली दुर्घटना के मामले में बीमा कम्पनी दायित्वाधीन होगी जो एक अनुबंध के तहत राज्य निगम द्वारा किराये पर लिया गया है अभिनिर्धारित, हाँ – यदि वाहन का नियन्त्रण भाड़ेदार (अवत्रेता) को सौंपा गया है।

U.P. State Road Trans. Corpn.v. National Insurance Co. Ltd. and ors.

Judgment dated 14.07.2021 passed by the Supreme Court in Civil Appeal No. 18490 of 2017, reported in 2021 ACJ 2282

Relevant extracts from the judgment:

The question that falls for our consideration in the instant appeal is: if an insured vehicle is plying under an agreement with the Corporation on the route as per permit granted in favour of the Corporation and in case of any accident during that period, whether the insurance company would be liable to pay compensation or would it be the responsibility of the Corporation or the owner?

This question has been answered by this court in ***U.P. State Road Trans. Corpn. v. Kulsum, 2011 ACJ 2145 (SC)***, which is an identical case where the Supreme Court examined the agreement entered into between the Corporation and the owner of the vehicle. The court has come to the conclusion that when the effective control and command of the bus is with the Corporation, the Corporation becomes the owner of the vehicle for the specified period. It was further held that when the actual possession of the vehicle is with the Corporation, the vehicle, the driver and the conductor were under the direct control and supervision of the Corporation. Therefore, through the definition of 'vicarious liability' it can be inferred that the person supervising the driver is liable to pay the compensation to the victim. During such time, however, it will be deemed that vehicle was transferred along with the insurance policy, even if it were insured at the instance of the original owner. Thus, the insurance company would not be able to escape its liability to pay the amount of compensation.

Having regard to the above, we are of the view that the High Court was not justified in fastening the liability upon the appellant Corporation. Thus, the appeals succeed and are accordingly allowed. The impugned judgments of the High Court are hereby set aside and the judgment of the trial court is restored.

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321. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation; determination of – Permanent disability – Whether MACT can give direction for continued maintenance of prosthetic limbs of the claimant in perpetuity? Held, no – The determination of compensation must take place at once – Appropriate amount may be quantified in such cases.

मोटरयान अधिनियम, 1988 – धारा 166

प्रतिकर का निर्धारण – स्थायी निर्योग्यता – क्या मोटरयान दुर्घटना दावा अधिकरण दावाकर्ता के प्रोस्थेटिक अंगों के निरंतर रखरखाव के लिए निर्देश दे सकता है? अभिनिर्धारित, नहीं – प्रतिकर का निर्धारण एक ही बार में होना चाहिए – ऐसे मामलों में उचित राशि का निर्धारण किया जा सकता है।

HDFC Ergo General Insurance Co. Ltd. v. Mukesh Kumar and ors.

Judgment dated 03.08.2021 passed by the Supreme Court in Civil Appeal No. 4576 of 2021, reported in AIR 2021 SC 4010

Relevant extracts from the judgment:

The sole question which arises for determination in this appeal filed by the Insurance Company is whether directions can be passed by the Court while determining compensation under the Motor Vehicles Act, 1988 (hereinafter referred to as "the said Act") in the manner of a direction in perpetuity for continued maintenance of a prosthetic limb for the injured claimant.

In our view, the process of determination of such compensation cannot be by a continuing mandamus, in a colloquial sense, and the determination must take place at one go.

The aforesaid principle is not even disagreed to or contested by the respondents but what is submitted is that there must be a provision made fixing a lump sum amount for maintenance/replacement of the prosthetic limb, if necessary. We agree with the submission and in a larger canvas consider it appropriate to direct that in such kind of cases of providing facility of prosthetic limb, appropriate amount may be quantified towards such maintenance.

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322. MOTOR VEHICLES ACT, 1988 – Sections 166 (1) (a), (b) and 168

(i) Claim for personal injuries – Right of legal representative after death of claimant – While the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.

(ii) Just Compensation – Considerable factor – Under the Act, all factors including possibilities have to be kept in mind of injured for rendering advisory and other work coupled with movement on a wheel chair with the aid of an attendant could still facilitate a reduced earning capacity – The loss of income to the injured in the facts of the present case has to be assessed at 75% – However, compensation under the head pain and suffering, being personal injuries, is held to be unsustainable and is disallowed.

मोटरयान अधिनियम, 1988 – धाराएं 166(1)(क), (ख) एवं 168

(i) व्यक्तिगत क्षतिपूर्ति का दावा – दावाकर्ता की मृत्यु के उपरांत विधिक प्रतिनिधियों का अधिकार – दुर्घटना या क्षति से संबंधित व्यक्तिगत क्षतिपूर्ति के

लिए किये गए दावे में पीड़ित व्यक्ति की अपील के लंबित रहने के दौरान मृत्यु के पश्चात् व्यक्तिगत क्षतिपूर्ति का दावा बचा नहीं रहता है, परन्तु संपदा की हानि कारित होने से संबंधित दावा उपलब्ध होगा और अपील में मृतक के विधिक प्रतिनिधियों द्वारा जारी रखा जा सकेगा।

(ii) युक्तियुक्त प्रतिकर – विचार योग्य कारक – अधिनियम के अंतर्गत संभावनाओं को शामिल करते हुए सभी तथ्यों को ध्यान में रखा जाना चाहिए – वर्तमान प्रकरण में तथ्यों के अनुसार पीड़ित की आय अर्जन क्षमता की हानि 75 प्रतिशत निर्धारित की गई – यद्यपि, व्यक्तिगत क्षति होने से पीड़ा एवं कष्ट के अंतर्गत प्रतिकर स्थिर रखे जाने योग्य नहीं होने से अस्वीकार किया गया।

Oriental Insurance Company Limited v. Kahlon alias Jasmail Singh Kahlon (deceased) Through His Legal Representative Narinder Kahlon Gosakan and anr.

Judgment dated 16.08.2021 passed by the Supreme Court in Civil Appeal No. 4800 of 2021, reported in AIR 2021 SC 3913

Relevant extracts from the judgment:

The injuries suffered by the deceased in the accident required prolonged hospitalization for six months. The extent of disability suffered was assessed on 16.06.2000 as 100%. The extent of disability, pursuant to physiotherapy was reassessed as 75% on 08.08.2002. In the interregnum, the injured resigned his job on 30.09.2001 at the age of 53 years as he found movement difficult and inconvenient without an attendant as distinct from complete immobility. The injured was possessing professional qualifications in labour laws and Industrial relations along with a Diploma in Personnel Management. He may have had to suffer some handicap in also practicing before the labour court, but cannot be held to have suffered 100% physical disability as his capacity for rendering advisory and other work coupled with movement on a wheel chair with the aid of an attendant could still facilitate a reduced earning capacity. It cannot be held that the injured was completely left with no source of livelihood except to deplete his estate. In assessing, what has been described as a 'Just Compensation' under the Act, all factors including possibilities have to be kept in mind.

The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted a measly compensation of Rupees one lakh only by a cryptic order. We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.

In ***Parminder Singh v. New India Assurance Co. Ltd. and ors., (2019)7 SCC 217*** compensation on the basis of complete loss of income, the percentage of disability, future prospects were granted applying the relevant multiplier. ***Kajal v. Jagdish Chand & ors., (2020) 4 SCC 413*** the injured was assessed as 100 per cent disabled, considering all of which compensation was awarded on the notional future prospects along with relevant multiplier. The loss of income to the injured in the facts of the present case has to be assessed at 75%. In view of ***Raj Kumar v. Ajay Kumar and anr., 2011(1) SCC 343*** there shall be no deduction towards personal expenses.

However, the compensation under the head pain and suffering being personal injuries is held to be unsustainable and is disallowed. The High Court has not awarded anything towards medical expenses despite hospitalisation for six months being an admitted fact. We therefore award a sum of ₹ 1,00,000/- towards medical expenses. Hence, the reassessed total compensation would be ₹ 28,42,175/, calculated hereunder.

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323. N.D.P.S. ACT, 1985 – Sections 20(b) and 35

Presumption of culpable mental state – Determination of conscious possession – 3322 kg of ganja was seized from truck – Accused was conductor in truck – Truck was full of ganja and camouflaged with only few bags of onions at top – Held, it cannot be accepted that conductor of truck was not aware that ganja was being carried.

स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 20(ख) एवं 35

आपराधिक मनः स्थिति की उपधारणा – सजग आधिपत्य का निर्धारण – ट्रक से 3322 कि.ग्रा. गांजा जप्त किया गया – अभियुक्त ट्रक में कंडक्टर था – ट्रक गांजा से भरा था और ऊपर से प्याज के कुछ बैग रखकर छलावरण किया गया था – अवधारित, यह स्वीकार नहीं किया जा सकता है कि ट्रक के कंडक्टर को पता नहीं था कि उसमें गांजा ले जाया जा रहा है।

M. Sampat v. State of Chhattisgarh

Judgment dated 05.04.2021 passed by the Supreme Court in Criminal Appeal No. 378 of 2021, reported in (2021) 6 SCC 201

Relevant extracts from the judgment:

The prosecution has successfully established that over 3300 kg of "ganja", that is, cannabis, a narcotic drug was illegally being transported in the aforesaid truck bearing No. 38 L 999. The appellant was in the vehicle when the said vehicle was intercepted by the police.

Ms Priyanjali Singh strenuously argued that the appellant, who was not the owner of the truck, but only a poor conductor, 22/23 years of age at the time of the incident, could not possibly have committed the offence alleged. He was not even aware of the fact that "ganja" was being carried in the truck in question.

Under Section 20(b) whoever produces, manufactures, possesses, sells, purchases or even transports cannabis (including "ganja") is punishable with imprisonment for a term which may not be less than ten years, but might extend to twenty years, and fine in addition to imprisonment, which shall not be less than one lakh rupees but might extend to two lakh rupees.

Having regard to the huge quantity (3332 kg) of "ganja" (cannabis) carried on the truck, it is difficult to accept Ms Priyanjali Singh's argument that the appellant, an employee of the truck, described as a conductor, but actually a helper, was not even aware of the fact that "ganja" was being carried in the truck. The truck was almost full of "ganja" camouflaged with only a few bags of onions at the top.

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324. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Sections 18 and 18 A

A pre-arrest bail may be directed by the Court under its inherent power in cases where no *prima facie* material exists for arresting a person under the Act – In the absence of *prima facie* case, bar created by section 18 and 18A (i) shall not be applicable.

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धाराएं 18 एवं 18ए

इस अधिनियम के अंतर्गत जहां किसी व्यक्ति की गिरफ्तारी हेतु प्रथम दृष्टया तथ्य विद्यमान नहीं होते हैं वहां न्यायालय द्वारा अपनी अंतर्निहित शक्तियों के अंतर्गत गिरफ्तारी पूर्व जमानत निर्देशित की जा सकती है – प्रथम दृष्टया प्रकरण नहीं होने की स्थिति में अधिनियम की धारा 18 एवं 18ए (i) के प्रतिबंध लागू नहीं होते हैं।

Prathvi Raj Chauhan v. Union of India and ors.

Judgment dated 10.02.2020 passed by the Supreme Court in Writ Petition (c) No. 1015 of 2018, reported in 2021(3) Crimes 28 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

Concerning the applicability of provisions of section 438 CrPC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.

The court can, in exceptional cases, exercise power under section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.

●

325. SPECIFIC RELIEF ACT, 1963 – Section 10

Specific performance of contract – Nature of relief – Held, after the amendment of 2018, the Court is obliged to enforce the specific performance of a contract, subject to the provisions of sub-section (2) of section 11, sections 14 and 16 of the Act of 1963 – Relief of specific performance of a contract is no longer discretionary.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 10

संविदा का विनिर्दिष्ट अनुपालन – अनुतोष की प्रकृति – अभिनिर्धारित, 2018 के संशोधन के उपरांत न्यायालय, 1963 के अधिनियम की धारा 11 की उप–धारा (2), धारा 14 और धारा 16 के प्रावधानों के अध्यधीन रहते हुए संविदा का विनिर्दिष्ट अनुपालन कराने के लिए बाध्य है – संविदा के विनिर्दिष्ट अनुपालन का अनुतोष अब विवेकाधीन नहीं है।

B. Santoshamma v. D. Sarala

Judgment dated 18.09.2020 passed by the Supreme Court in Civil Appeal No. 3574 of 2009, reported in 2020 SCC OnLine SC 756

Relevant extracts from the judgment:

After amendment with affect from 1.10.2018, Section 10 of the S.R.A. provides:

> **10. Specific performance in respect of contracts.**- The Specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16.

After the amendment of Section 10 of the S.R.A., the words "specific performance of any contract may, in the discretion of the Court, be enforced" have been substituted with the words "specific performance of a contract shall be enforced subject to …". The Court is, now obliged to enforce the specific performance of a contract, subject to the provisions of sub-section (2) of Section 11, Section 14 and Section 16 of the S.R.A. Relief of specific performance of a contract is no longer discretionary, after the amendment.

●

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

Suit for injunction simpliciter; maintainability of – Where matter involves complicated question of fact and law relating to title, suit for injunction simpliciter is not maintainable – Instantly, plaintiff

sought injunction claiming title by sale deed of 1992 and continuous possession – Defendant claimed his title on the basis of sale deed of 1984 – Held, there is clear cloud on plaintiff's title over suit property – Thus, suit for injunction simpliciter is not maintainable.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 34 एवं 38

मात्र व्यादेश के वाद की पोषणीयता – जहां मामले में स्वत्व से संबंधित तथ्य और विधि के जटिल प्रश्न अंतर्वलित हों, वहां मात्र व्यादेश का वाद पोषणीय नहीं होगा – हस्तगत मामले में वादी ने 1992 के विक्रय विलेख द्वारा स्वत्व एवं निरंतर आधिपत्य का दावा करते हुए व्यादेश की मांग की – प्रतिवादी ने 1984 के विक्रय विलेख के आधार पर अपने स्वत्व का दावा किया – अभिनिर्धारित, वादग्रस्त संपत्ति पर वादी का स्वत्व होने पर स्पष्ट संदेह है – अतः, मात्र व्यादेश का वाद पोषणीय नहीं है।

T.V. Ramakrishna Reddy v. M. Mallappa and anr.

Judgment dated 07.09.2021 passed by the Supreme Court in Civil Appeal No. 5577 of 2021, reported in AIR 2021 SC 4293

Relevant extracts from the judgment:

It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.

The plaintiff-appellant claims to be the owner of the suit property on the basis of a sale-deed executed by one K.P. Govinda Reddy in his favour on 13.04.1992. In turn, according to him, the said property was sold by one Smt. Varalakshmamma in favour of his vendor K.P. Govinda Reddy on 26.03.1971. He claims that he had mortgaged the suit property for taking loan from one financial institution. He further claimed that an endorsement was also issued by the Corporation of City of Bangalore that Khata regarding the suit property is transferred to the appellant. According to the plaintiff-appellant, when the Bangalore Mahanagar Palike withdrew the Khata in his favour, he went to the High Court and succeeded therein.

Per contra, the defendant No. 2 (respondent No. 1 herein) is specifically denying the title of the plaintiff-appellant. He claims to be the owner of the suit property on the basis of a sale-deed dated 5.04.1984 from one M. Shivalingaiah. He also claims to be in peaceful possession and enjoyment of the same on the basis of the said sale-deed. It is his case that K.P. Govinda Reddy got the title set up falsely and created fabricated documents with regard to possession. It is also his case that compound wall was constructed by him and not by the plaintiff, as claimed.

It could thus clearly be seen that this is not a case where the plaintiff-appellant can be said to have a clear title over the suit property or that there is no cloud on plaintiff-appellant's title over the suit property. The question involved is one which requires adjudication after the evidence is led and questions of fact and law are decided.

●

327. TRANSFER OF PROPERTY ACT, 1882 – Sections 58(c) and 63-A Proviso (as inserted by Act 20 of 1920)

Mortgage by conditional sale – Claim for redemption – The document was executed for the reason that the plaintiff has borrowed a sum of Rs. 3,000 for his household expenses and the defendant is bound to retransfer the land if the amount is paid within one year – The advance of loan and return thereof are part of the same document which creates a relationship of debtor and creditor – On payment of money the suit for redemption can be filed within 30 years from the date fixed for redemption.

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 58(ग) एवं 63–क परन्तुक (1920 के अधिनियम क्रमांक 20 के द्वारा यथा अन्तःस्थापित)

सशर्त विक्रय द्वारा बंधक – मोचन के लिए दावा – वादी द्वारा घरेलू खर्च के लिए 3,000 रुपये उधार लेने के कारण दस्तावेज निष्पादित किया गया था और प्रतिवादी भूमि के पुनः अंतरण हेतु बाध्य था यदि एक वर्ष की समयावधि में राशि अदा कर दी जाए – इस प्रकार ऋण देना और वापस किया जाना एक ही दस्तावेज के भाग होने के कारण देनदार और लेनदार के संबंध सृजित करते हैं – राशि की अदायगी पर मोचन के लिए वाद, मोचन के लिए निर्धारित की गई तिथि से 30 वर्ष की समयावधि में प्रस्तुत किया जा सकता है।

Bhimrao Ramchandra Khalate (Deceased) through L.Rs. v. Nana Dinkar Yadav (Tanpura) and anr.

Judgment dated 13.08.2021 passed by the Supreme Court in Civil Appeal No. 10197 of 2010, reported in AIR 2021 SC 3939

Relevant extracts from the judgment:

A reading of the document would show that the document was executed for the reason that the Plaintiff has borrowed a sum of Rs. 3,000 for his household expenses and the defendant is bound to retransfer the land if the amount is paid within one year. The advance of loan and return thereof are part of the same document which creates a relationship of debtor and creditor. Thus, it would be covered by proviso in Section 58(c) of the Act. Now, some of the later judgments of this Court interpreting the proviso in Section 58(c) of the Act need to be considered.

The argument that Plaintiff has filed suit for redemption after 20 years of execution of the document is not tenable as the suit for redemption can be filed within 30 years from the date fixed for redemption. The period of 30 years would commence on 22.02.1969 and the suit was filed in the year 1989, which is within the period of limitation.

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"It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. The judicial opinion is to be written in such a way that it elucidates in a convincing manner and proves the fact that the verdict is righteous and judicious. What the court says, and how it says it, is equally important as what the court decides. A judgment should be coherent, systematic and logically organised. It should enable the reader to trace the fact to a logical conclusion on the basis of legal principles."

M.R. Shah, J.

in ***Shakuntala Shukla v. State of Uttar Pradesh, 2021 SCC OnLine SC 672***

PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 21.10.2021 OF THE LAW AND LEGISLATIVE AFFAIRS DEPARTMENT, GOVERNMENT OF MADHYA PRADESH AMENDING MADHYA PRADESH FAMILY COURT RULES, 2002

F.No.3919-XXI-B(One)-2021.- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Madhya Pradesh, hereby, makes the following amendments in the Madhya Pradesh Family Court Rules, 2002, namely:-

AMENDMENT

In the said rules, in rule 8, in sub-rule (1), in third proviso the words and figures "and is below 60 years of age" shall be deleted".

फा.क्र.39198–इक्कीस–ब(एक)–2021.– भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, मध्यप्रदेश के राज्यपाल, एतद् द्वारा मध्यप्रदेश कुटुम्ब न्यायालय नियम, 2002 में निम्नलिखित संशोधन करते हैं, अर्थात्:–

संशोधन

उक्त नियमों में, नियम 8 में, उप–नियम (1) में, तीसरे परन्तुक में, शब्द और अंक ''और 60 वर्ष से कम आयु है,'' विलोपित किए जाए।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
गोपाल श्रीवास्तव,
प्रमुख सचिव,
मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

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"The holder of public office holds a trust for public good and therefore his actions should all be above board."
G.B. Pattanaik, J.
in ***Padma v. Hiralal Motilal Desarda, (2002) 7 SCC 564***

NOTIFICATION DATED 30.11.2021 OF THE LAW AND LEGISLATIVE AFFAIRS DEPARTMENT, GOVERNMENT OF MADHYA PRADESH AMENDING MADHYA PRADESH JUDICIAL SERVICE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 1994

F.No.3645-XXI-B(One)-2021.- In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Madhya Pradesh, hereby makes the following amendments in the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994, namely:-

AMENDMENT

In the said rules,-

1. Except Rule 3(2) and Rule 16(a) throughout in the Madhya Pradesh Judicial Service (Recruitment and Conditions of service) Rules, 1994,-
   (i) For the words "Civil Judge" wherever they occur, the words "Civil Judge, Junior Division" shall be substituted.
   (ii) For the words "Senior Civil Judge, wherever they occur, the words "Civil Judge, Senior Division" Shall be substituted."

फा.क्र.4384—इक्कीस—ब(एक)—2021.— भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, मध्यप्रदेश के राज्यपाल, एतद् द्वारा मध्यप्रदेश न्यायिक सेवा (भर्ती तथा सेवा की शर्तें) नियम, 1994 में निम्नलिखित संशोधन करते हैं, अर्थात् —

संशोधन

उक्त नियमों में,—

1. नियम 3(2) एवं नियम 16 (क) को छोड़कर मध्यप्रदेश न्यायिक सेवा (भर्ती तथा सेवा की शर्तें) नियम, 1994 में सभी जगह,—
   (i) शब्द ''व्यवहार न्यायाधीश'', जहां कहीं वे आएं हो, के स्थान पर, शब्द ''व्यवहार न्यायाधीश, कनिष्ठ खंड'', स्थापित किए जाएं।
   (ii) शब्द ''वरिष्ठ व्यवहार न्यायाधीश'', जहां कहीं वे आएं हो, के स्थान पर, शब्द ''व्यवहार न्यायाधीश, वरिष्ठ खंड'', स्थापित किए जाएं।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
गोपाल श्रीवास्तव,
प्रमुख सचिव,
मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

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PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) RULES, 2021

(Notification dated 12.10.2021 of Ministry of Health and Family Welfare)

G.S.R 730(E). — In exercise of the powers conferred by section 6 of the Medical Termination of Pregnancy Act, 1971 (34 of 1971), the Central Government hereby makes the following rules to amend the Medical Termination of Pregnancy Rules, 2003, namely:-

1. (1) These rules may be called the Medical Termination of Pregnancy (Amendment) Rules, 2021.

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

2. In the Medical Termination of Pregnancy Rules, 2003(hereinafter referred to as the said rules),in rule2, after sub-rule(e), the following sub-rule shall be inserted, namely:-

   '(f) **"Medical Board"** means the Medical Board constituted under sub-section (2C) of Section 3 of the Act.'

3. After rule 3 of the said rules, the following rules shall be inserted, namely:-

   "**3A.Powersand functions of Medical Board.**— For the purposes of section 3,—

   (a) the powers of the Medical Board shall be the following, namely:-

      (i) to allow or deny termination of pregnancy beyond twenty-four weeks of gestation period under sub-section (2B) of the said section only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped;

      (ii) co-opt other specialists in the Board and ask for any additional investigations if required, for deciding on the termination of pregnancy;

   (b) the functions of the Medical Board shall be the following, namely:-

      (i) to examine the woman and her reports, who may approach for medical termination of pregnancy under sub-section (2B) of section 3;

      (ii) provide the opinion of Medical Board in Form D with regard to the termination of pregnancy or rejection of request for termination within three days of receiving the request for medical termination of pregnancy under sub-section (2B) of Section 3;

(iii) to ensure that the termination procedure, when advised by the Medical Board, is carried out with all safety precautions along with appropriate counselling within five days of the receipt of the request for medical termination of pregnancy under sub-section(2B) of Section 3.

3B. Women eligible for termination of pregnancy up to twenty-four weeks.—

The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of sub-section (2) Section3 of the Act, for a period of up to twenty-four weeks, namely:-

(a) survivors of sexual assault or rape or incest;

(b) minors;

(c) change of marital status during the ongoing pregnancy (widowhood and divorce);

(d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)];

(e) mentally ill women including mental retardation;

(f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and

(g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government." .

4. In rule 4 of the said rules,—

(a) in clause (c), in sub-clause (ii), for the words "twenty- weeks", the words "twenty – four weeks" shall be substituted;

(b) after clause (c), the following clause shall be inserted, namely:-

"(ca) A Registered Medical Practitioner shall have the following experience and training for conducting termination of pregnancy up to nine weeks of gestation period by medical methods of abortion, namely:-

(i) experience at any hospital for a period of not less than three months in the practice of obstetrics and gynaecology; or

(ii) has independently performed ten cases of pregnancy termination by medical methods of abortion under the supervision of a Registered Medical Practitioner in a hospital established or maintained, or a training institute approved for this purpose, by the Government.".

5. After rule 4 of the said rules, the following rule shall be inserted, namely:-

"4A. (1) For the purposes of sub-section (2A) of Section 3 of the Act, the opinion of Registered Medical Practitioner which is required for termination of pregnancy at different gestation ages shall be the following, namely:-

(a) till nine weeks of gestation period, by Medical Methods of Abortion: Registered Medical Practitioner eligible under clauses (a), (b), (c), (ca) and (d) of rule 4;

(b) till twelve weeks of gestation period, by surgical method: Registered Medical Practitioner eligible under clauses (a), (b), (c) and (d) of rule 4;

(c) beyond twelve weeks till twenty weeks of gestation period: Registered Medical Practitioner eligible under clauses (a), (b) and (d) of rule 4;

(2) For the purposes of sub-section (2A) of section 3 of the Act, the opinion of two Registered Medical Practitioners eligible under clauses (a), (b) and (d) of rule 4, which is required for termination of pregnancy beyond twenty weeks till twenty-four weeks of gestation period, shall be in Form E.

(3) For the purposes of sub-section (2B) of Section 3, the opinion for medical termination of pregnancy beyond twenty-four weeks gestation period: Shall be given by a Medical Board duly constituted by the respective State Government or Union territory Administration at approved facilities and two Registered Medical Practitioners eligible under clauses (a), (b) and (d) of rule 4, shall perform the termination of pregnancy based on the decision of such Medical Board.".

6. In rule5 of the said rules, in sub-rule(1), in clause (ii),—

(A) for the figures and word "20weeks",the words "twenty-four weeks" shall be substituted;

(B) for the words "for transportation; and", the words "for transportation;" shall be substituted;

(C) for the words "Government for India from time to time.", the words "the Central Government from time to time; and" shall be substituted;

(D) after sub-clause(c), the following shall be inserted, namely:-

"in case of termination beyond twenty-four weeks of pregnancy:-

(a) an operation table and instruments for performing abdominal or gynaecological surgery;

(b) anaesthetic equipment, resuscitation equipment and sterilization equipment;

(c) availability of drugs, parental fluids and blood for emergency use, as may be notified by the Central Government from time to time; and

(d) facilities for procedure under ultra sound guidance.".

(E) in the Explanation, for the words "seven weeks", the words "nine weeks" shall be substituted.

7. For Form A of the said rules, the following Form shall be substituted, namely:-

"FORM A

(See sub-rule (2) of rule 5)

FORM OF APPLICATION FOR THE APPROVAL OF A PLACE UNDER CLAUSE (B) OF SECTION 4 OF THE ACT

Category of approved place:

(A) Pregnancy can be terminated upto twelve weeks

(B) Pregnancy can be terminated upto twenty-four weeks

(i) Name of the place (in capital letters):

(ii) Address in full:

(iii) Non-Government or Private or Nursing Home or Other Institutions:

(iv) State, if the following facilities are available at the place:

CATEGORY A

(i) Gynaecological examination or labour table.

(ii) Resuscitation equipment.

(iii) Sterilisation equipment.

(iv) Facilities for treatment of shock, including emergency drugs.

(v) Facilities for transportations, if required.

CATEGORY B

(i) An operation table and instruments for performing abdominal or gynaecological surgery.

(ii) Drugs and parental fluids insufficient supply for emergency cases.

(iii) Anaesthetic equipment, resuscitation equipment and sterilization equipment.

Place:

Date: Signature of the owner for the place.".

8. After Form C of the said rule, the following Forms shall be inserted, namely:-

●

FORM D

(See sub-clause (ii) of clause (b) of rule 3A)

Report of the Medical Board for Pregnancy Termination Beyond 24 weeks

Details of the woman seeking termination of pregnancy:

1. Name of the woman:
2. Age:
3. Registration/Case Number:
4. Available reports and investigations:

S. No.	Report	Opinion on the findings

5. Additional Investigations (if done):

S. No.	Investigations done	Key findings

6 Opinion by Medical Board for termination of pregnancy:

a) Allowed

b) Denied

Justification for the decision:

7. Physical fitness of the woman for the termination of pregnancy:

a. Yes

b. No

Members of the Medical Board who reviewed the case:

S. No.	Name	Signature

Date and Time:.....

●

FORM E

Opinion Form of Registered Medical Practitioners

(For gestation age beyond twenty weeks till twenty-four weeks)

[See sub-rule (2) of rule 4A]

I _____

(Name and qualifications of the Registered Medical Practitioner in block letters)

_____

(Full address of the Registered Medical Practitioner)

I_____

(Name and qualifications of the Registered Medical Practitioner in block letters)

(Full address of the Registered Medical Practitioner)

hereby certify that we are of opinion, formed in good faith, that it is necessary to terminate the pregnancy of

(Full name of pregnant woman in block letters)

Resident of _____

(Full address of pregnant woman in block letters)

Which is beyond twenty weeks but till twenty-four weeks under special circumstances as given below*.

*Specify the circumstance(s) from (a) to (g) appropriate for termination of pregnancy beyond twenty weeks till twenty-four weeks:

(a) Survivors of sexual assault or rape or incest.

(b) Minors.

(c) Change of marital status during the ongoing pregnancy (widowhood and divorce).

(d) Women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016)].

(e) Mentally ill women including mental retardation.

(f) The foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped.

(g) Women with pregnancy in humanitarian settings or disaster or emergency situations as declared by Government.

We hereby give intimation that we terminated the pregnancy of the woman referred to above who bears the Serial No. _____in the Admission Register of the hospital/approved place.

Place: Signature of the Registered Medical Practitioner

Date:

Note: Account may be taken of the pregnant woman's actual or reasonably foreseeable environment in determining whether the continuance of her pregnancy would involve a grave injury to her physical or mental health."

[F. No. M-12015/16/2021-MCH]

Dr. Patibandla Ashok Babu, Jt. Secy.

Note: The Medical Termination of Pregnancy Rules, 2003 were published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide notification number G.S.R. 485(E), dated the

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर

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