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HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

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    1. मोटर यान अधिनियम के अन्तर्गत प्रतिकर के मामले में यदि मृतक की आयु न्यायदृष्टांत ***सरला वर्मा विरूद्ध दिल्ली ट्रान्सपोर्ट कारपोरेशन*** में दी गई तालिका के निरंतर दो आयु वर्ग के मध्य की हो, जैसे – 40 से 45 वर्ष आयु वर्ग और 46 से 50 वर्ष आयु वर्ग के मध्य अर्थात 45 वर्ष से अधिक किन्तु 46 वर्ष से कम है तब ऐसी दशा में गुणांक किस आयु वर्ग के आधार पर प्रयोज्य होगा?
    2. किसी गिरफ्तार अभियुक्त जिसे धारा 167 दं.प्र.सं. के अतंर्गत मजिस्ट्रेट द्वारा निरोध में भेजा गया है, को और आगे निरोध में रखे जाने के लिए अन्वेषण अभिकरण यथा पुलिस आदि की ओर से कोई आवेदन पत्र व केस डायरी प्रस्तुत नहीं किये जाने की दशा में भी क्या अभियुक्त को मजिस्ट्रेट द्वारा और आगे निरोध में प्राधिकृत किया जा सकता है?
    3. क्या धारा 439 द.प्र.सं. के अधीन जमानत हेतु प्रस्तुत आवेदन पत्र के समर्थन में शपथपत्र प्रस्तुत करना अनिवार्य है?
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EDITORIAL

Esteemed Readers,

This is my third consecutive jotting since the inception of this epidemic which environs us presently, denying of our hopes for a better tomorrow. But, this month of August, has significance for all Indians as 73 years ago, we attained our freedom from suffering under colonial oppression and wakened ourselves with the rising sun, that motivate us towards a new fight today. Despite the impending fear of a pandemic, we can carry out this process by remembering our past.

Furthermore, the day of remembrance of Independence led us to our functionary freedom. The juridical independence serves as a safeguard for the rights and privileges of the people and also as a foundation for the rule of law. But freedom is not the right to do as we please, just the opportunity to do what is right. We must remind our duty as "free judge" – free from fear and favour. Of course, any institution imparting judicial education needs to reverberate this freedom as the core quality of a judge. Judicial independence requires that the judiciary and judges are accountable for its competency. However, it is also said that "the relationship between judicial education and independence is critical to the process of professionalisation of the judiciary, having regard to the fundamental doctrinal importance of independence." Again, Sir Anthony Mason, the then Chief Justice of Supreme Court of Australia, noted that "the need for judicial independence is no argument against the desirability of judges becoming better informed." Hence, imparting of judicial education should not in any way affect the novelty of judiciary that is independence. We understand and aware of this challenge that is before us being an organisation for judicial education.

Since the beginning of this pandemic, we have effectively switched to online and other modes of telecommunication. The Academy has conducted, in all six programmes during the last couple of months *viz*. Final phase of Induction Training Course for the Civil Judges Class II (Entry Level) 2019 batch, Specialised Educational Programmes on – Cases relating to Cheque Dishonour and issues relating to Electronic Evidence for the Judicial Magistrates and programmes on Civil Appeals, Land Acquisition Laws and issues relating to cases under the Electricity Act for the District Judges throughout the State. In these programmes, approximately, 600 members of the District Judiciary have joined us and benefitted under this new method. The Induction Training of Civil

Judges was the highlight because this four weeks long course was conducted extensively through interactive modes with active participation at the other end.

Access to justice, expeditious adjudication and information technology are some of the issues of modern judicial concern. Hon'ble Supreme Court in *Anokhilal v. State of M.P.*, has considered the need of competent legal aid to the accused at State outgo and laid down certain principles which are to be followed by all Courts. *In Re: Assessment of the Criminal Justice System in response to Sexual Offences*, the Apex Court underlined the need of speedy trial of cases relating to sexual offences and protection of witness in these cases of sensitive nature. In *P. Gopalkrishnan @ Dileep v. State of Kerala*, the term "document" has defined with the inclusion of electronic devices such as memory card, pen drive etc. pertaining to the matters involving evidence in electronic form. These judgments find place in Part II of this issue.

We are of the view that apart from notes on various pronouncements, the inclusion of write-ups and articles can make this in-house publication more object-oriented. With this idea, we have taken some articles in the previous issue and continuing with this practice, in this issue also. The Academy is receiving an overwhelming response from the readers of this bi-monthly. We always strive to bring quality content to our vigilant readers and the only way we can remain consistent is with your valuable feedback.

I would like to conclude with the sharing of a joyful moment. The Academy had its memorable celebration of 74th Independence Day on 15th August this year. This was the first time, we had the honour and privilege to have our Patron, Hon'ble the Chief Justice along with all Hon'ble Judges of the High Court at Principal Seat with us for the flag hoisting ceremony in the Academy's premises. The National Flag was unfurled by Hon'ble the Chief Justice followed by the release of the Academy's brochure – "About Us". This maiden publication of booklet consists of a brief pictorial introduction to our Academy, the creation of which was in itself a matter of immense pride for everyone here at the Academy.

I wish all the esteemed readers a very happy and meaningful Independence Day.

Ramkumar Choubey
Director

GLIMPSES OF THE 74TH INDEPENDENCE DAY CELEBRATION AT MADHYA PRADESH STATE JUDICIAL ACADEMY

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice, High Court of Madhya Pradesh unfurling the National Flag

GLIMPSES OF RELEASE OF BROCHURE – 'ABOUT US' (15.08.2020)

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice, High Court of Madhya Pradesh alongwith Hon'ble Shri Justice Sanjay Yadav, Judge In-charge, Judicial Eduction and Hon'ble Shri Justice Sujoy Paul releasing the brochure in the presence of other Hon'ble Judges

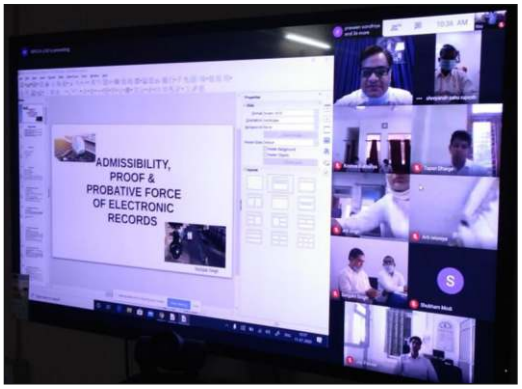
GLIMPSES OF THIRD PHASE INDUCTION COURSE (2019 BATCH) CONDUCTED ONLINE

Participants of Group-1 at different District Headquarters
(27.07.2020 to 21.08.2020)

Participants of Group-2 at different District Headquarters

GLIMPSES OF SPECIALISED EDUCATIONAL PROGRAMMES CONDUCTED ONLINE

Programme on Cheque Dishonour cases
(04.07.2020)



Programme on Electronic Evidence
(11.07.2020)

Programme on Civil Appeal
(18.07.2020)

Programme on Land Acquisition Laws
(25.07.2020)

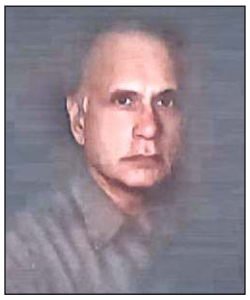
Programme on Electricity Act, 2003
(28.08.2020)

GLIMPSES OF ONLINE RELEASE OF BOOK 'JUDICIAL HISTORY & COURTS OF MADHYA PRADESH' (27.08.2020)

Hon'ble Mr. Justice Sharad A. Bobde, Chief Justice of India, Hon'ble Mr. Justice Arun Mishra, Hon'ble Mr. Justice A.M. Khanwilkar and Hon'ble Mr. Justice Hemant Gupta, Judges of the Supreme Court addressing on the occasion through video-conferencing from the Supreme Court of India

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice, High Court of Madhya Pradesh and Hon'ble Shri Justice Sanjay Yadav, Judge In-charge, Judicial Education participating in the release of book from the Auditorium of Madhya Pradesh State Judicial Academy

OBITUARY



Shri Prem Kant Dubey, the then Director of JOTI (as it was formerly known) was born on 10th October, 1944. He joined Judicial Services in Madhya Pradesh on 5th May, 1970. Was posted in various capacities at different places in the State. Was also posted as Addl. Welfare Commissioner, Bhopal Gas Victim, Registrar erstwhile SAT and Member Secretary, M.P. State Legal Services Authority. He served as District & Sessions Judge, Mandsaur in 1995. Was Director, JOTI from 09.08.2004 to 31.10.2004. We have reminisces about his short tenure in the Academy.

He breathed his last on 29th July, 2020.

We express our deepest condolences to the bereaved family and pray that the departed soul may rest in peace and tranquility.

•

A man who is really earnest must begin with himself, he must be passively aware of all his thoughts, feelings and action.

- Bhagvad Gita

PART - I

JURISDICTIONAL ISSUES OF FAMILY COURTS

Mohan P. Tiwari
Principal Judge
Family Court
Vidisha

Marriage is an institution which is considered to be sacred in India. But with the changing times, marriage has become a subject of great judicial scrutiny. Before 1984, all family matters were dealt by ordinary Civil Courts. After the recommendation of the Law Commission in its 59th Report, the Government of India, established Family Courts in the year 1984 by a Gazette notification of the Central Government. This Act is known as 'The Family Courts Act, 1984'.

The Family Courts Act has been enacted to provide for the establishment of Family Courts with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. From perusal of the Statement of Objects and Reasons, it appears that the said Act, *inter alia*, seeks to exclusively provide within the jurisdiction of the Family Courts the matters relating to the property of the spouses or either of them. Section 7 of the Act provides for jurisdiction of the Family Court in respect of suits and proceedings as referred to in the Explanation appended thereto.

The Civil Courts exercise jurisdiction as vested u/s 9 of the Civil Procedure Code whereas the Criminal Courts exercise power vested u/s 2(j) and Sections 177 to 189 (Chapter XIII) of the Criminal Procedure Code. The jurisdictional issue of the Family Courts has been dealt under Chapter III Sections 7 and 8 of the Family Courts Act, 1984. Similarly, u/s 19 of the Hindu Marriage Act, 1955, a petition under this Act can be presented in the District Court. In ***Arjun Singhal v. Pushpa Karwel, AIR 2003 MP 189***, it has been held that the words 'District Court' appearing in Section 19 of the Hindu Marriage Act shall be deemed to be substituted by the words 'Family Court'.

Sections 7 and 8 of the Family Courts Act read as under:

> **7. Jurisdiction.**— (1) Subject to the other provisions of this Act, a Family Court shall—
>
> a. have and exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and
>
> b. be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation — The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:

a. a suit or proceeding between the parties to a marriage for decree of a nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

b. a suit or proceeding for a declaration as to the validity of marriage or as to the matrimonial status of any person;

c. a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

d. a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

e. a suit or proceeding for a declaration as to the legitimacy of any person;

f. a suit or proceeding for maintenance;

g. a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise;

a. the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

b. such other jurisdiction as may be conferred on it by any other enactment.

8. Exclusion of jurisdiction and pending proceedings.— Where a Family Court has been established for any area:

a. no District Court or any subordinate Civil Court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

b. no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

c. every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)

(i) which is pending immediately before the establishment or such Family Court before District Court or Subordinate Court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act has come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established.

Situations under which the Presiding Judge needs legal assistance immediately to deal with:

Whether the Subordinate Court, was having jurisdiction to entertain and dispose of an application filed after the establishment of the Family Court for the purpose of setting aside the *ex-parte* decree passed in a suit prior to the establishment of the Family Court?

In ***Devaki v. Chandrika and anr., AIR 1998 Ker 190,*** a suit of the nature specified in Explanation to Section 7(1) of the Act was pending in the Subordinate Court. As such if the suit was pending on the date when Family Court was established, Subordinate Court, would not have jurisdiction to try and dispose of the suit and the same would have stood statutorily transferred to the Family Court under Section 8 of the Act. But in this case, since the suit was decreed *ex-parte* prior to the establishment of the Family Court, there was no question of statutory transfer of the suit as such to the Family Court. However, the relevant question to be considered is whether the Subordinate Court, was having jurisdiction to entertain and dispose of an application filed after the establishment of the Family Court for the purpose of setting aside the *ex parte* decree passed in a suit prior to the establishment of the Family Court or not?

Section 8 excludes the jurisdiction of all Civil Courts within the local jurisdiction of Family Court to deal with the categories of suits and proceedings enumerated in the Explanation to Section 7. All pending suits and proceedings of the categories mentioned in the Explanation get statutorily transferred to the Family Court on its establishment. Thus, the scheme of the Act is to exclude with reference to the date of establishment of Family Court all the Civil Courts from exercising all the jurisdictions they were having hither to in respect of the categories of suits and proceedings mentioned in the Explanation and to confer all such jurisdictions on the Family Court on its establishment in relation to the particular area for which the Family Court is established. The above legislative scheme will be evident from the provisions stipulated in Section 7(1)(a) and (b) of the Act.

It is significant to note that the jurisdiction conferred is the entirety of the jurisdiction exercised by all the Civil Courts in respect of the categories of the suits and proceedings mentioned in Explanation to Section 7 and that while exercising such jurisdiction, there is a statutory deeming that Family Court shall be deemed to be Civil Courts of different categories for the areas to which the jurisdiction of such Family Court extends. In the light of the above provision in Section 7, all jurisdiction which the Sub Court, had in respect of the suit and the *ex-parte* decree passed therein have stood vested or conferred statutorily on the Family Court.

Whether decree passed by Civil Court prior to establishment of Family Court can be executed by Family Court? Held, No.

Dinesh Sharma v. Jyoti Sharma, 2016 (1) MPLJ 465 – The Court which passed the decree has jurisdiction to execute it.

Whether Family Court can pass an order in relation to guardianship or custody of, or access to, any minor (Section 26 Hindu Marriage Act)?

In the case of ***Dhillan & anr. v. Preetpal Singh Chadda, ILR (2015) MP 1368,*** it has been held that the Family Court constituted for any place any suit or proceeding in relation to guardianship or custody of, or access to, any minor would be tried by the Family Court only. [section7(1)(g)]

Whether an application u/s 125 CrPC filed by a divorced Muslim woman is maintainable before the Family Court? Held, Yes [Section 7(2)(a)]

In ***Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705,*** Hon'ble Apex Court dealing with this issue observed in ***Shamim Bano v. Asraf Khan, (2014) 12 SCC 636*** referring the Constitution Bench judgment in ***Danial Latifi & anr. v. Union of India, (2001) 7 SCC 740*** and ***Khatoon Nisha v. State of U.P., (2014) 12 SCC 646*** had opined as under:

> The principle clearly lays down that even an application has been filed under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Magistrate under the Act has the power to grant maintenance in favour of a divorced Muslim woman and the parameters and the considerations are the same as stipulated in Section 125 of the Code. We may note that while taking note of the factual score to the effect that the plea of divorce was not accepted by the Magistrate which was upheld by the High Court, the Constitution Bench opined that as the Magistrate could exercise power under Section 125 of the Code for grant of maintenance in favour of a divorced Muslim woman under the Act, the order did not warrant any interference. Thus the, emphasis was laid on the retention of the power by the Magistrate under Section 125 of the Code and the effect of ultimate consequence.

Thus, Family Court has power to entertain such application.

Whether an application u/s 3 & 4 of Muslim Women (Protection on Divorce) Act 1986 can be entertained by the Family Court?

In the case of ***Karim Abdul Rehman Shaikh v. Shehnaz Karim Shaikh & ors, 2000 CrLJ 3560 (Bom) (FB)*** in para 57 it has been held that Section 7(1)(a) says that subject to the other provisions of the said Act, a Family Court shall have jurisdiction exercisable by any District Court or subordinate Civil Court under any law for the time being in force in respect of the suits and proceedings of the nature referred to in the explanation.

Section 7(1)(b) says that Family Court may be deemed for the purpose of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends. Explanation to this section contains the suits and proceedings which the Family Court is to deal with. All the proceedings set out in the said explanation pertain to disputes relating to marriage and family affairs. Section 7(2)(a) says that the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 shall be exercisable by a Family Court. Section 7(2)(b) says that the Family Court shall have such other jurisdiction as may be conferred on it by any other enactment.

There is no enactment containing an express provision that the Family Court shall have jurisdiction to deal with applications made by a divorced Muslim woman u/s 3 and 4 of the Muslim Women (Provision in Divorce) Act. On the contrary, the scheme of the Muslim Women (Protecton on Divorce) Act shows that such application can be made only to the Magistrate of First Class exercising jurisdiction under the Code.

The Family Courts Act is a prior enactment. Muslim Women (Protecton on Divorce) Act does not even refer to the Family Courts Act. If it was the intention of the Legislature to see that a Muslim woman can file application before a Family Court, an express provision to that effect would have been found in the Muslim Women (Protecton on Divorce) Act. On the contrary, under section 5 of the Muslim Women (Protecton on Divorce) Act, a divorced women and her former husband can declare that they prefer to be governed by sections 125 to 128 of the Cr.P.C. and then the Magistrate has to dispose of the application accordingly. Therefore, there is no provision under which a Muslim woman can prefer to go to a Family Court by making a joint declaration with her husband. Section 7 says that application by a divorced women u/s 125 or 127 of the Code pending before a Magistrate on the commencement of the Muslim Women (Protecton on Divorce) Act shall notwithstanding anything contained in that Code and subject to the provisions of section 5 of the Muslim Women (Protecton on Divorce) Act shall be disposed of by such Magistrate in accordance with the provisions of the Muslim Women (Protecton on Divorce) Act. This makes the legal provision very clear that it is only a Magistrate of the First Class exercising jurisdiction under

the Code, who can dispose of even the pending applications and that too in accordance with the provisions of the Muslim Women (Protecton on Divorce) Act.

Therefore, there is nothing in the provisions of the Muslim Women (Protecton on Divorce) Act to suggest that the Family Court has jurisdiction to entertain applications u/s 3 and 4 of the Muslim Women (Protecton on Divorce) Act. (See also: ***Mohd. Nadim v. Taliya Fatima, WP No. 12408 of 2010*** by Allahabad High Court judgment dated 06.07.2010)

What is the meaning of "a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them"? Does that expression includes a suit for partition in which apart from the parties to the marriage, other sharers are also parties? Does the expression "property of the parties" mean "property of the parties to the marriage" or the "property of the parties to the litigation"?

In ***Devaki Antharjanam v. Narayanan Namboodiri, AIR 2007 Ker 38***, a suit was filed in 2002, much after the Family Court was established in 1985, regarding the dispute of property between husband, wife and the daughter as well. Preliminary decree was passed in the year 2003 declaring their shares. The plaintiff subsequently filed an application before the Court for passing the final decree. A Commissioner was appointed. He submitted a plan, report and account. The Trial Court accepted the same and passed the final decree in the year 2004. The judgment was challenged before the District Court but the same was rejected. Being dissatisfied, second appeal was filed. The Hon'ble High Court interpreted section 7 of the Family Courts Act and was of the view that the present dispute does not fall under Explanation (c) to Sub-section (1) of section 7 of the Family Courts Act. It was held that it is not enough that the suit is in between the parties to the marriage; but the same should be with respect to the property of the parties or of either of them. Here, the subject-matter of the suit belongs not only to the parties to the marriage, but others also. In the context, simply because among the parties, husband and wife, daughter was also arrayed on rival side that cannot attract Clause (c) of Explanation to Section 7(1) of the Act.

Whether the Family Court has jurisdiction to entertain a suit filed by the wife against the husband and father-in-law for recovery of amounts given at the time of marriage?

In ***Shyni v. George and ors., AIR 1997 Ker 231,*** the Hon'ble Court considered the question whether the Family Court has jurisdiction to entertain a suit filed by the wife against the husband and father-in-law for recovery of amounts given at the time of marriage. In a case where the claims have to be combined or the same has to be made against both the husband and the father-in-law as in the present case, could it be said that the jurisdiction of the Family Court would stand ousted? The question was answered with an emphatic "No".

The suit will remain as a suit against the spouse for recovery of the property of the wife. No doubt, even at the time of the marriage, the property was handed over not only to the husband but also to the father-in-law. But that would not make the suit anything other than for recovery of the property of a party to the marriage from the other party to the marriage and persons connected with him or related to him.

Whether the Family Court has jurisdiction to adjudicate upon any question relating to the properties of divorced parties?

In ***K.A. Abdul Jaleel v. T.A. Shahida, AIR 2003 SC 2525*** (3-Judge Bench), the question to be considered was whether the Family Court has jurisdiction to adjudicate upon any question relating to the properties of divorced parties. After referring to the Statement of Objects and Reasons, it was held that the same clearly go to show that the jurisdiction of the Family Court extends *inter alia*, in relation to properties of spouse or of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of the other, irrespective of the claim whether property is claimed during the subsistence of a marriage or otherwise.

Whether Family Court has jurisdiction in a case when the suit relates to property dispute between two women claiming to be wives of the deceased person?

In ***Ammini v. Anees, 2014 (1) KLT 215,*** it has been held by the High Court of Kerala that when the suit relates to property dispute between two women claiming to be wives of the deceased person, only Family Court has jurisdiction to consider that aspect.

Question of validity of both marriage and matrimonial status of a person?

In the case of ***Balram Yadav v. Fulmaniya Yadav, AIR 2016 SC 2161***, it has been held that declaration regarding matrimonial status of any person has to be decided by the Family Court and not by a Civil court. U/s 7(1) Explanation-(b), a suit or proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of Family Court since section 8, all those jurisdictions covered u/s 7 are excluded from the purview of the jurisdiction of the Civil courts. Section 20 of the Act also endorses the said view since the Family Court Act, 1984 has an overriding effect on other laws.

Whether the Family Court has jurisdiction to deal with the matters under the Special Marriage Act?

In ***R. Sridharan v. The Presiding Officer, WP No. 34838/2004, decided on 18th August, 2008 (Madras High Court),*** the husband and wife both are Indian citizens, domiciled in India. However, they have performed their marriage according to Hindu rites on 19th July, 1998 in U.S.A. Held that since the parties are Indian citizens and domiciled in India, the Courts in India will have jurisdiction. The Family Court has jurisdiction to deal with the matters under the Special Marriage Act, 1954 and

equally under the Hindu Marriage Act, 1955. It has even jurisdiction to deal with matrimonial matters where the parties are Muslims, except, the Parsi Marriage and Divorce Act, 1936 for all other marriages, the Family Court is having jurisdiction.

In the present case, the uncontroverted fact is that the marriage between the parties was solemnized as per Hindu Rites and Customs and both the parties are Hindus. Though, the respondent has disputed the registration of marriage before the Marriage Officer in U.S.A., the form of marriage is admitted. It should be borne in mind that Hindu Marriage Act has extra-territorial jurisdiction to all Hindus, even if they reside outside the territories of India. The Hindu Marriage Act, in particular Section 2, does not stipulate any condition that both the parties should be domiciled in India at the time of presentation of the petition before the Family Court or any other Court of competent jurisdiction. Even as per the averments of the petitioner, the members of the family were known to each other before the marriage and they were neighbours residing next door. Admittedly, the petitioner domiciled in India before setting up his residence in U.S.A. Therefore, his domicile of origin is within the jurisdiction of Family Court, Chennai.

Whether the Family Court has jurisdiction u/s 9(4) of the Hindu Adoption and Maintenance Act, 1956 to entertain an application by a guardian for permission to give a child in adoption to himself?

In the case of ***Tarun Kadam and anr. v. State of M.P. and anr., 2014 (5) MPHT 310 (DB),*** the learned Additional Principal Judge, Family Court, Gwalior with the observations that ''Court'' in Rule 2(V) of Madhya Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2003 means Court of Principal Civil Court of the District, rejected the application stating that it has no jurisdiction to try the application. The appellant plaintiff moved an application u/s 7 r/w/s 9 (4) of Hindu Adoption and Maintenance Act, 1956 for adoption of an abandoned child who was in the custody of respondent No. 2, Balkalyan Samiti.

The Hon'ble High Court observed that as per Section 41 of the JJ Act, 'Court' implies a Civil Court, which has jurisdiction in matters of adoption and guardianship and may include the court of the District Judge, Family Court and City Civil Court. The intent of the legislation clearly shows that the Family Court has the same jurisdiction which is exercisable by any District Court or any subordinate Civil Courts. That being so, the dispute regarding the jurisdiction of Family Court is now very clear after the enactment of Juvenile Justice (Care and Protection of Children) Rules, 2007. We dissent with the view expressed by the learned Single Bench of Kerala High Court in the case of ***Andreq Mendez & ors. v. State of Kerala, 2008 (1) KarLJ 647 = 2008 (1) KLT 1000***. We, therefore, find it absolutely safe to come to a definite conclusion that Family Court can have jurisdiction to entertain the application u/s 41 (6) of Juvenile Justice (Care & Protection of Children) Act, 2007.

Whether the Family Court has jurisdiction u/s 7 (2)(b) of the Family Court Act to entertain a claim for appointment of guardian?

After exhausting the stipulations in Section 7(1) and 7(2)(a), a residuary

provision is enacted in Section 7(2)(b) to declare that the Family Court shall also have and exercise such other jurisdiction as may be conferred on it by any other enactment.

Section 41(6) does not certainly say that the Family Court shall be the court for the purpose of Section 41(6). If at all it can only be held that Rule 33(5) confers by implication jurisdiction on the Family Court. But can the rules promulgated u/s 68 of the Juvenile Justice Act be equated to an "enactment". That is the next question to be considered. The Family Courts Act does not give any guideline as to what is the "enactment" contemplated u/s 7(2)(b). Ordinarily and normally a statute enacted by the legislature is referred to as an enactment. So much appears to be evident from the general principles of law. The General Clauses Act, 1897 in Section 3(19) defines the expression in the following words.

Rule 33(5) appears in the Central Rules promulgated u/s 68 of the Juvenile Justice Act and in any view of the matter, the said rule cannot claim a status superior to 'rule' defined in Section 3(51) of the General Clauses Act. It cannot claim a status equal to regulation under Rule 3(50) or an enactment under Rule 3(19). It is therefore clear that Section 7(2)(b) of the Family Court Act cannot be pressed into service to sail to the conclusion that a Family Court has jurisdiction to entertain an application u/s 41(6).The Family Court cannot, hence be held to be the court u/s 41(6) which can entertain applications for adoption by a guardian.

Whether a child born out of illegal relationship with a married woman, can be granted to the family members of the biological father of the child?

In the case of ***Renubala Moharana and anr. v. Mina Mohanty and ors., 2004 AIR SCW 3059,*** there was a question for consideration that the child in question was child of petitioners deceased son born from extra-marital relationship of their son with a married woman. Admittedly their son was never married to that woman and the child can never be a legitimate child of their son and that woman. Such declaratory relief regarding illegitimacy of child cannot be granted by the Family Court.

U/s 7(1) of the Family Courts Act r/w Clause (e) of the Explanation, a suit or proceeding for a declaration "as to the legitimacy of any person" is within the jurisdiction of the Family Court. According to the petitioners, the child was born on account of extramarital relationship of a married woman with their deceased son. Accepting the case of the petitioners, the child cannot obviously be treated as a legitimate child of their son and that woman. The question of status of the child in relation to the parties to the petition can be incidentally gone into by the Family Court if necessary, while deciding the guardianship petition, that liberty has been granted to the Family Court. However, the declaratory relief as regard's the illegitimacy of the child cannot be granted.

Whether suit or proceeding for a declaration as to the legitimacy of any person can be resolved by Family Court?

It has been held in the case of ***Rajendra Narayan Santi v Bailochan Santi, W.P.***

(C) No. 10501/2007, decided on 23.09.2015 (2015 SCC OnLine Ori 362) by the Hon'ble Orissa High Court that this dispute can only be resolved by the Civil Court.

Whether the provisions of Family Courts Act 1984 are applicable in case of scheduled tribe?

In ***Sushma @ Sunita Devi v. Vivek Rai, ILR 2014 HP 819,*** it has been held that within the meaning of Clause 25 of Article 366 of the Constitution of India, both the parties are members of Scheduled Tribes as notified by the Constitution (Schedule Tribes) Order, 1950 as amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 63 of 1956, 108 of 1956, 18 of 1987 and 15 of 1990. Sub Section 2 of Section 2 of the Hindu Marriage Act reads thus:-

> (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

The aforesaid sub-section starts with the non-obstante clause and, therefore, has overriding effect overall the provisions of the Statute and it cannot be disputed that the judgment therefore rendered by the learned District Judge, Kullu is coram non-judice.

In the case of ***Surajmani Stella Kujur (Dr) v. Durga Charan Hansdah & anr., (2001) 3 SCC 13,*** it has been observed that the provisions of the Hindu Marriage Act are not applicable to members of scheduled tribes, in the absence of a notification, and that a valid custom may govern the field.

Protection of Women from Domestic Violence Act and jurisdiction of Family Court.

Section 26 of the Protection of Women from Domestic Violence Act, 2005 was added specially to ensure that women facing domestic violence could claim relief under the DV Act, not only before the jurisdictional Magistrate, but also in other courts such as the Family Courts or the Civil Courts where they may have other proceedings.

The Bombay High Court has also upheld this proposition in ***Pramodini Vijay Fernandes v. Vijay Fernandes, 2010 (4) MAH.LJ 341*** and ***Rajkumar Rampal Pandey v. Sarita Rajkumar Pandey, 2008 (6) Bom. CR 831*** stating that if a legal proceeding is already filed in a Civil or a Criminal Court affecting the aggrieved person and the Respondent, relief u/s 18, 19, 20, 21 and 22 could be granted by such Civil or Criminal Court. The Bombay High Court went as far as to hold that the Family Court could even take cognizance of breach of interim orders u/s 31 of the DV Act. The High Courts of Madras, Assam and Chhattisgarh have also similarly stated the law in this respect.

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RUMINATIONS OF A REFERRAL JUDGE

Giribala Singh
Member Secretary
MPSLSA

Life is a many splendoured journey. As we plod through uneven terrain, the travels and travails of the journey enable us to pick up new ideas, drop some old perceptions, and recreate space for further evolution of thoughts. If we were not programmed to do so, we would go through the motions of living but remain with fossilised and cluttered thoughts.

Our Academy at Jabalpur like most training Institutions, is a great place to learn and unlearn with changing times. Short training periods are always a welcome breeze. However in the year 2008, when directions from the High Court arrived for the forty hour training in Mediation, it brought with it a plethora of emotions. The joy of looking forward to sharpening skills and catching up with the gossip of old colleagues was sprinkled with morose thoughts of eight hours of sitting at a desk for five days, arranging the Board Diary for the period of absence from court and leaving hearth and home. Not to forget the travel over five hundred km from Gwalior to Jabalpur, on the banks of the serene Narmada. We were filled with trepidation and wondered what lay in the simple provisions of Section 89 CPC which called for the five day setup!

Soon we were face to face with our erudite trainers from Mediation & Conciliation Project Committee, a strange combination of self discipline, immaculate in the choice and timing of words and above all equipped with the fine quality of bringing out the best in each of us. As the saying goes, the *receptacle must always have space to toss in some new ideas* and the trainers sure enough deciphered that space.

On our return to the humdrum of existence and official duties, it seemed that the court and its entities had assumed different dimensions. Rather, the litigants seemed to have sprung alive from the parchment papers of the case record. The first instance of referral was truly remarkable. A partition suit between brothers had plodded on for many years, taking its toll on the time and the scarce resources of the litigants. I glanced cursorily from the file looking for "elements of settlement" so elaborately explained in the ***Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24***. The parties stood apart in painful silence in one corner of the court room, woebegone, brow beaten, avoiding the sharp eyes of the clerk sizing them up. The older had neither the style nor swagger so typical of the moustachioed, gun totting denizens of the Chambal ravines while the younger had an air of defiant non chalance; both seemed past the age reflected on the file, crushed under the weight of heaps of the case record. There can be no greater enemy than an estranged relative!

The matter had already traversed past the settling date and in fact was posted for defendent evidence. However fresh from the training, I went on to

start the preliminaries for referral. At this point, smelling something unusual, the court clerk sidled forward and whispered under his breath with concern “Ye to adalati parinde hai, inka kya! Aapko purane case ke disposal mein adhik unit milenge.” *(These parties are ‘court birds’ and are used to flocking the corridors!. You would be earning units for disposal of an old case!”)* His jaw fall open in disbelief as I quipped “sukoon se baithiye babuji, unit ka kya! Har mamale ka waqt hai aur inka shayad samay aa gaya hai.” *(Please rest, units are not an issue! Everything has a definite time and may be the time for the settlement of this dispute has arrived)*.

I sensed that moblising the parties would require all the skills of communication not just to motivate the parties to proceed for mediation but also to be there with an open mind and a firm belief that they themselves knew their best interests and could resolve their dispute without exchange of bad blood. The whole concept seemed alien to them. Never did the old adage *Perplexity is the beginning of knowledge* seem more profound than on that first occasion when the parties listened wide eyed as they tried to digest the full import of what was, meant by the words that ‘they themselves would be able to settle their dispute. Whatever residual reservations they had, melted the moment I dilated that they had nothing to lose and would probably end up by saving time and resources. A decade of their lives had been spent between court rooms. I think at that moment they were able to understand that in a life with finite time, it made sense to value it!. To wrap up, among other issues the confidentiality of the process, opportunity for generation & evaluation of options in the presence of a neutral third party were all laid threadbare.

In those early days, tackling the advocates when referring their parties for mediation was also a daunting task. They seemed to give the expression of one who is the victim of “cradle snatching”. The plaintiff advocate looked askance crowing with confidence that he smelt victory while this was nothing but a ploy arising from the defendant with a view to further stall the proceedings. To dispel the doubts of the advocates, a brief session was held separately with them wherein they were ensured that the result of the mediation would not adversely hamper anyone’s interest, least of all their own! They were reminded that as the parties repose much faith in them, they had a sacrosanct responsibility to encourage them. And finally I reminded them of Gandhi’s talisman ‘Whenever you are in doubt, or when the self becomes too much with you, ... ask yourself, if the step you contemplate is going to be of any use to him [her]. Will he [she] gain anything by it? Will it restore him [her] to a control over his [her] own life and destiny?” Like every human, advocates also have a philanthropic soul which sometimes need to be uncovered from the debris of litigative jargon.

The parties returned around 28 days after the referral. I could discern a remarkable change in each of them. The grey mane of the older party shone across his forehead like a silver lining and his hunchback seemed to have vanished. The result of the mediation was a package deal of three connected litigations and whole heartedly I credited the advocates without mincing words.

Another matter of distinct importance involved neighbours who were locked in a dispute arising from shifting of the manhole of the sewage pipeline and one of the parties was the Cantonment Board. The disputants had a long history of camaraderie but tempers were frayed simply because each thought that having a huge source of water on the 'Ishaan Kone' (North-east) forebode ill luck. At first sight, cases where the government is a party are not considered suitable for referral but this was not a matter where the suit had been filed for declaration of title against the government. The government official for Cantonment Board was forthright in requesting for a prompt resolution. Despite the litigation, the parties also wanted to settle soon as their "Over the wall" friendly chit-chat was hindered. In the course of the referral proceedings I reminded them that there cannot be a luckier charm than having a friendly neighbour. As friendship had the strength to dispel any prospective ill luck. Both parties immediately consented to proceed and get their matter settled through mediation.

It is mandatory for the courts to consider recourse to ADR process u/s 89 of the Code r/w Rule 1A Order X but actual reference to ADR in all cases is not mandatory. [Para 24 & 26 of the ***Afcons*** (supra)]. In light of several judicial pronouncements, a referral judge is not required to formulate the terms of settlement or to make them available to the parties for their observations. On the contrary the referral judge is required to acquaint himself with the facts of the case, nature of the dispute between the parties and to make an objective assessment to the suitability of the case for referral. The appropriate stage for considering reference to ADR processes in civil suits is after completion of pleadings and before framing issues. In the final analysis, the process of referral and mediation must never be compromised for statistics or shortage of time and having done so, the outcome be left in the hands of the parties.

Certain queries are often raised on the question of consent of all the parties. Here it would be apt to clarify that in order to refer cases for conciliation or for arbitration, the consent of the parties is mandatory whereas in terms of Section 89 CPC and the judicial pronouncements, consent of the parties is not mandatory for referring a case for Mediation, Lok Adalat or Judicial Settlement. In case of ***K. Sriniwas Rao v. D.A. Deepa, (2013) 5 SCC 226*** the concept of pre-litigative clinic and mediation centres has been conceived even in non-compoundable cases. Despite this, the parties still retain the freedom to agree or not to agree for settlement in mediation and the absence of consent does not affect the voluntary nature of mediation [relevant Para 36 of ***Afcons*** (supra)].

The cases found suitable for reference which draw strength from ***Afcons*** (supra) are those relating to trade, commerce and contracts, strained or soured relationships, need for continuation of the pre-existing relationship in spite of the disputes, tortuous liability, claims for compensation in motor accidents/other accidents and all consumer disputes. However experience reveals that the categorization of cases is not exhaustive or rigid and the referral judge must

independently consider the suitability of each case with reference to its facts and circumstances.

CHECK LIST FOR REFERRAL JUDGES

DO'S

- ✓ Select appropriate cases.
- ✓ Assess relevant facts of the case.
- ✓ Ensure parties/authorized persons presence at the time of referral.
- ✓ Interact and motivate the parties.
- ✓ Explain Role of Mediation & its benefits.
- ✓ Explain Right to Self Determination and Confidentiality.
- ✓ Encourage Advocates and Litigants to choose Mediation.
- ✓ Ensure Authority of Competent Officials.
- ✓ Pass appropriate Referral Order.
- ✓ Obtain signatures of parties/authorized persons on Referral Order.
- ✓ Fix date and time for appearance before Mediator.
- ✓ Fix date & time for return of matter.

DON'T

- ✗ Do not refer Ex-parte case.
- ✗ Do not refer cases involving complex legal issues, multiple parties, Constitutional matters, Public Policies, Serious criminal cases, Election disputes, cases involving Minors etc.
- ✗ No reference without objective assessment.
- ✗ No communication with Mediator other than written outcome.

Mediation is an idea whose time has come. I do foresee a day when people will flock to the court with a sense of positive hope and depart with a sense of satisfaction. In the final analysis, whether the outcome of the proceedings is successful or not, the process of referral and the process of mediation must always be carried out in true spirit of a sportsman.

For when the One Great Scorer comes to mark against your name,
He writes not that you won or lost, but how you played the game!

Grantland Rice

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TYPES & QUANTIFICATION OF LOSS OF CONSORTIUM

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The Motor Vehicles Act, 1988 is a beneficial and welfare legislation which has been framed with the object of providing relief to the victims or their families, in cases of genuine claims. The Court / Tribunal is duty bound to award "just compensation", irrespective of whether any plea in that behalf was raised by the claimant.

In the case of ***National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680,*** the Constitution Bench has held that Section 168 of the Motor Vehicles Act, 1988 deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standards because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The concept of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression "just compensation". It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum.

In ***Magma General Insurance Co. Ltd. v. Nanu Ram & ors., 2018 ACJ 2782*** it was held that compensation under different heads can be awarded in a death case and one of these heads is loss of consortium. It is already settled that this head is an integral part of just compensation in appropriate cases. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.

Loss of consortium, in legal parlance, was historically given a narrow meaning to be awarded only to the spouse i.e. the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads for awarding compensation in various jurisdictions such

as the United States of America, Australia, etc. English Courts have recognised the right of a spouse to get compensation even during the period of temporary disablement.

In the case of ***Sarla Verma and ors. v. Dehli Transport Corporation and ors., 2009 ACJ 1298,*** the Apex Court awarded an amount of ₹ 10,000/- (Rupees ten thousands only) to the widow of the deceased under the head of loss of spousal consortium whereas in the case of ***Rajesh and others v. Rajbir Singh and ors., 2013 ACJ 1403,*** a three-Judges Bench of the Apex Court enhanced the amount to ₹ 1,00,000/- (Rupees one lakh only) towards loss of spousal consortium. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited. On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium and it was held by the Court :

> "… In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

However, the Constitution Bench in the case of ***Pranay Sethi*** (supra), did not agree with the above view expressed in ***Rajesh*** (supra) and held:

> "the conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination

> of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figure on conventional heads loss of consortium should be ₹ 40,000/-. The principle of revisiting the said head is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years."

It is to be noted here that in all the above cases, only the concept of spousal consortium was considered but in the case of ***Magma General Insurance Company Ltd***. (supra), the scope of concept of loss of consortium was widened for the first time and held by the Supreme Court that "In legal parlance, "consortium" is a compendious term which encompasses **'spousal consortium' with 'parental consortium' and 'filial consortium' also.**"

It was held in the above case that **spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection and aid of the other in every conjugal relation." It has also been held in the above judgement that with respect to a spouse, it would also include sexual relations with the deceased spouse.

It was also held in the same case that **parental consortium** is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training" and **filial consortium** is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in case of the death of a child. Most jurisdictions therefore, permit parents to be

awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. It was also held that in case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium and the amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in ***Pranay Sethi*** (supra) and after discussing the various types of consortium, the Apex court awarded the father and the sister of the deceased, an amount of ₹ 40,000/- each for loss of filial consortium.

Recently, in the case of ***United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur and ors., Civil Appeal No. 2705/2020,*** dated 30.06.2020, a Three Judges Bench of the Apex Court endorsed the view taken in ***Magma General Insurance Company Ltd***. (supra) and awarded ₹ 40,000/- under the head of loss of spousal consortium to the widow of the deceased and ₹ 1,20,000/- under the head of loss of parental consortium to three children of the deceased and directed the Tribunals and High Court to award compensation for loss of consortium, which is a legitimate conventional head.

Hence, it is the duty of every Tribunal to award spousal / parental / filial consortium as the case may be.

CONCLUSION

1. The Motor Vehicles Act is beneficial and welfare legislation. The Court is duty bound to award "just compensation", irrespective of whether any plea in that behalf was raised by the claimant.
2. Compensation under different heads can be awarded in a death case, out of which one is loss of consortium.
3. Consortium is a compendious term which encompasses spousal consortium, parental consortium and filial consortium.
4. The amount for loss of each type of consortium will be ₹ 40,000/- as per the amount fixed in ***Pranay Sethi*** (supra) on 31.10.2017 which should be enhanced @ 10% every three years.
5. Husband / wife of the deceased is entitled to an amount of ₹ 40,000/- for loss of spousal consortium.
6. Parents of the deceased are entitled to an amount of ₹ 40,000/- each for loss of filial consortium if the deceased child was a minor or unmarried.
7. Children of the deceased are entitled to an amount of ₹ 40,000/- each for loss of parental consortium.

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रिसीवर की नियुक्तिः मार्गदर्शी विधिक सिद्धांत

जयंत शर्मा
संकाय सदस्य (कनिष्ठ)
मध्यप्रदेश राज्य न्यायिक अकादमी

वाद के लम्बित रहने के दौरान वाद की विषय–वस्तु के स्वरूप को वादारंभ अवस्था में यथावत् रखने और इसकी सुरक्षा व प्रबंध के प्रयोजन से दो प्रमुख प्रावधान सिविल प्रक्रिया संहिता, 1908 (संक्षेप में– ''सी.पी.सी.'') में किए गए हैं। आदेश 39 के अंतर्गत अस्थायी व्यादेश या निषेधाज्ञा और आदेश 40 के अंतर्गत रिसीवर (प्रापक) की नियुक्ति। दोनों ही प्रावधान न्यायालय को वाद के अंतिम निराकरण होने तक और कतिपय दशाओं में डिक्री पारित होने के उपरांत भी, अन्तर्वर्ती आदेश देने की विवेकाधीन शक्तियां प्रदान करते हैं। आदेश 39 के अंतर्गत जहां दो में किसी एक पक्ष को वादग्रस्त सम्पत्ति में हस्तक्षेप करने से रोकने के आशय से निषेधात्मक या कभी–कभी कुछ कार्य कराया जाना आवश्यक हो जाने से आज्ञापक प्रकृति के अंतरिम आदेश दिए जाते हैं वहीं आदेश 40 के अंतर्गत न्यायालय दोनों पक्षों से अलग एक तीसरे व्यक्ति का वादग्रस्त सम्पत्ति में हस्तक्षेप अनुज्ञात करता है। आदेश 39 के अधीन अस्थाई निषेधाज्ञा और आदेश 40 के अधीन रिसीवर की नियुक्ति के लिए मानक सिद्धांत अलग–अलग हैं। रिसीवर नियुक्ति के लिए प्रथम दृष्टया प्रकरण का बिन्दु अधिक कठोरता से विचार में लिया जायेगा। जैसा कि न्यायदृष्टांत ***कमल चौधरी व अन्य विरूद्ध राजेन्द्र चौधरी व अन्य, एआईआर 1976 पटना 366*** में प्रतिपादित किया गया है। आदेश 40 के अधीन रिसीवर नियुक्त करने की शक्तियों के प्रयोग के लिए अधिक सतर्कता व सावधानी की अपेक्षा की गयी है। अतः रिसीवर नियुक्ति विषयक विधिक सिद्धांतों को समझना आवश्यक है।

परिभाषा एवं उद्देश्य

धारा 51, 94(घ) एवं आदेश 40 सी.पी.सी. में रिसीवर की नियुक्ति विषयक प्रावधान हैं जो न्यायालय को किसी निष्पक्ष एवं सक्षम व्यक्ति को रिसीवर की नियुक्ति करने का विवेकाधिकार प्रदान करते हैं। सी.पी.सी. अथवा साधारण खण्ड अधिनियम में ''रिसीवर'' शब्द परिभाषित नहीं हैं। न्यायदृष्टांत ***टी. कृष्णास्वामी चेट्टी विरूद्ध सी. थांगवेल्लू चेट्टी, एआईआर 1955 मद्रास 430,*** में मद्रास उच्च न्यायालय ने "Kerr on the law and practice as to receivers appointed by the High Courts of Justice or Order of Court" (12th edition, Walton & Sarson) में रिसीवर के संबंध में दी गई परिभाषा को स्वीकार किया है, जिसके अनुसार–

''रिसीवर कार्यवाही के लम्बित रहने के दौरान भाटक (rent), भूमि से प्राप्त लाभ तथा पदार्थ या व्यक्तिगत सम्पत्ति को एकत्र एवं प्राप्त करने के लिए न्यायालय द्वारा नियुक्ति किया गया एक निष्पक्ष व्यक्ति है।''

साधारण शब्दों में यह कहा जा सकता है कि रिसीवर न्यायालय द्वारा नियुक्त ऐसा अधिकारी है जिसे किसी विवादग्रस्त सम्पत्ति की रक्षा के लिये नियुक्त किया जाता है।

रिसीवर की नियुक्ति से संबंधित दो वर्ग होते है–

1. सांविधियों के अधीन रिसीवर की नियुक्ति जैसे प्रांतीय दीवालिया अधिनियम, 1920, सम्पत्ति अंतरण अधिनियम, 1882 तथा भारतीय कंपनी अधिनियम, 2013 आदि रिसीवर की नियुक्ति के संबंध में प्रावधान करते है।
2. सी.पी.सी. की धारा 51, 94 तथा आदेश 40 एवं विनिर्दिष्ट अनुतोष अधिनियम, 1963 की धारा 44 के अधीन रिसीवर की नियुक्ति।

रिसीवर की नियुक्ति एक सुरक्षात्मक अनुतोष है। जिसका उद्देश्य वाद की लंबित अवधि में, पक्षकारों के अधिकारों के निर्धारण होने तक, वादग्रस्त सम्पत्ति की सुरक्षा करना, संरक्षण करना तथा सम्पत्ति को अपूर्णनीय हानि से बचाना है। न्याय दृष्टांत ***मेसर्स शेराली खान मो. मनेकिया विरूद्ध महाराष्ट्र राज्य व अन्य, एआईआर 2015 सुप्रीम कोर्ट 1394,*** में सर्वोच्च न्यायालय ने कहा है कि सम्पत्ति को आधिपत्य में लेकर अथवा अन्यथा उसकी सुरक्षा करने एवं लाभ और किराया आदि प्राप्त कर विवाद के अंतिम निराकरण तक न्यायालय में जमा करने की आवश्यकता रिसीवर नियुक्ति का मुख्य उद्देश्य है।

विवेकाधीन शक्ति

वाद का कोई भी पक्षकार रिसीवर की नियुक्ति हेतु पर्याप्त एवं समुचित आधारों पर न्यायालय के समक्ष आवेदन पत्र प्रस्तुत कर सकता है। रिसीवर की नियुक्ति की कार्यवाही अनुपूरक कार्यवाही होती है और केवल रिसीवर की नियुक्ति के लिये कोई वाद दायर नहीं किया जा सकता है। धारा 94 के अनुसार न्याय के उद्देश्य को पराजित होने से बचाने के लिये न्यायालय किसी संपत्ति का रिसीवर नियुक्त कर सकता है। आदेश 40 में, जहाँ न्यायालय को यह न्यायसंगत और सुविधापूर्ण प्रतीत होता हैं वहाँ न्यायालय आदेश द्वारा– (क) डिक्री के पूर्व या पश्चात् किसी वादग्रस्त सम्पत्ति का रिसीवर नियुक्त कर सकेगा। (ख) किसी सम्पत्ति से किसी व्यक्ति का कब्जा या अभिरक्षा हटा कर रिसीवर नियुक्त कर सकेगा। (ग) किसी सम्पत्ति को किसी रिसीवर के कब्जे में, अभिरक्षा में या प्रबंध में सुपुर्द कर सकेगा।

रिसीवर की नियुक्ति के संबंध में न्यायालय की विवेकाधीन शक्तियों का प्रयोग मनमाना एवं स्वेच्छाचारिता से नहीं किया जाना चाहिए बल्कि सावधानी से, न्यायिकतः एवं मामले की परिस्थितियों को ध्यान में रखते हुए बुद्धिमता पूर्ण तरीके से किया जाना चाहिए। इस संबंध में व्यवहार न्यायालय नियम, 1961 का नियम 276 रिसीवर की नियुक्ति के संबंध में न्यायालय के विवेकाधिकार के प्रयोग का मार्गदर्शन करता है। नियम 276 इस प्रकार है–

''आदेश 40, नियम 1 की ओर न्यायालयों का ध्यान आकृष्ट किया जाता है जिसमें डिक्री के पूर्व या पश्चात् उन्हें रिसीवर नियुक्त करने का विवेकाधिकार प्राप्त है। ऐसी शक्ति का प्रयोग वह डिक्री के प्रवर्तन में भी कर सकते हैं, जिस सम्पति के संबंध में रिसीवर नियुक्ति किया जाता है, इतनी बड़ी है कि रिसीवर की नियुक्ति उपयोगी होती हो। सामान्यतः छोटी सम्पत्तियों के संबंध में जिनकी आमदनी नियुक्ति के अतिरिक्त व्ययों को वहन करने के लिए पर्याप्त न हो रिसीवर नियुक्त नहीं किया जाना चाहिए।''

रिसीवर की नियुक्ति तब तक नहीं करनी चाहिए जब तक कि वादी प्रथम दृष्ट्या यह न सिद्ध कर दे कि वाद में उसकी सफलता के सर्वोत्तम अवसर है। रिसीवर की नियुक्ति बहुत सामान्य मामलों में नहीं की जानी चाहिए। सामान्यतः उस स्थिति में रिसीवर की नियुक्ति नहीं की जाएगी जहाँ ऐसी नियुक्ति किसी पक्ष को उसके स्पष्ट और व्यवस्थित कब्जे से वंचित करने का प्रभाव रखती हो। जैसा कि ***टी. कृणास्वामी चेट्टी*** (पूर्वोक्त) में प्रतिपादित किया गया है। किन्तु जहाँ सम्पत्ति किसी भी पक्ष के उपभोग में न हो वहाँ पक्षकारों के सामान्य हित में रिसीवर की नियुक्ति की जा सकती है। न्यायालय को रिसीवर की नियुक्ति हेतु आवेदन करने वाले पक्षकार के आचरण का भी ध्यान रखना चाहिए। किसी सम्पत्ति पर से किसी व्यक्ति को कब्जा या अभिरक्षा से न्यायालय तभी हटा सकती है जिसको हटाने का अधिकार पक्षकार को है। सामान्यतः रिसीवर की नियुक्ति एक सुरक्षात्मक, साम्यिक, कठोर उपचार एवं अंतवर्ती आदेश है। न्यायालय को यह देखना चाहिए कि, सम्पत्ति पर संकट इतना आसन्न है कि रिसीवर की नियुक्ति किये बिना पक्षकारों के हितों की रक्षा नहीं की जा सकती है। रिसीवर की नियुक्ति प्रकट क्षति या अपचार रोकने के लिए की जानी चाहिए। यदि कोई क्षति भविष्य में होने वाली है तब रिसीवर की नियुक्ति नहीं की जानी चाहिए। जहां सम्पत्ति वादी के कब्जे में हो और प्रतिवादी ने रिसीवर नियुक्ति के लिए आवेदन किया है वहां सामान्यतः रिसीवर की नियुक्ति नहीं की जा सकती है। सम्पत्ति को क्षति या नुकसान की आशंका की अत्यावश्यक परिस्थितियों में तुरंत कार्यवाही की जरूरत दर्शाये बिना, केवल पक्षकारों के मध्य सम्पत्ति पर एक दूसरे के प्रतिकूल और विरोधी दावे दर्शित होने से ही रिसीवर नियुक्ति की विवेकाधीन शक्तियों का प्रयोग नहीं किया जाना चाहिए। जैसा की न्यायदृष्टांत ***शिवनारायण महंत विरूद्ध रजिस्ट्रार, पब्लिक ट्रस्ट, आई.एल.आर. (2012) एम.पी. 70*** में प्रतिपादित किया गया है।

पंच सदाचार

न्यायदृष्टांत ***टी. कृष्णास्वामी चेट्टी*** (पूर्वोक्त) में मद्रास उच्च न्यायालय ने रिसीवर नियुक्ति के समय ध्यान में रखे जाने वाले 5 सिद्धान्त बताये हैं जिन्हें पंच सदाचार कहा गया है जो निम्नानुसार है–

1. रिसीवर नियुक्त करना न्यायालय के विवेकाधिकार का विषय है।
2. न्यायालय को रिसीवर नियुक्त नहीं करना चाहिए जब तक वादी (आवेदनकर्ता) यह स्थापित नहीं कर देता कि उसके प्रथम दृष्टया वाद में विजयी होने की प्रबल संभावना है।
3. वादी को यह स्थापित करना होता है कि सम्पत्ति को खतरा है या कुछ अत्यावश्यकता है जिस कारण रिसीवर नियुक्त करना आवश्यक है अन्यथा उसके अधिकार प्रभावित होंगे।
4. यदि प्रतिवादी वादग्रस्त सम्पत्ति के आधिपत्य में हो तब रिसीवर नियुक्त नहीं किया जाना चाहिए जब तक कि वादी यह न दर्शाए कि प्रतिवादी के आधिपत्य में सम्पत्ति रहने से अपूरणीय क्षति होगी।
5. न्यायालय पक्षकारों के आचरण को ध्यान में रखेगी और वादी का आचरण दोषरहित होना चाहिए।

इस संबंध में माननीय उच्च न्यायालय का निर्णय ***सत्यपाल आनंद विरूद्ध दि पंजाबी हाउसिंग कोआपरेटिव सोसाइटी, आई.एल.आर. (2011) एम.पी. 2983*** भी अवलोकनीय है।

किसे रिसीवर नियुक्त किया जा सकता है

रिसीवर नियुक्त होने के लिये कोई योग्यता निर्धारित नहीं है लेकिन वादग्रस्त सम्पत्ति की प्रकृति और उससे जुड़े कार्यों को देखते हुये एक स्वतंत्र व्यक्ति रिसीवर नियुक्त किया जा सकता है। प्रथम दृष्ट्या न्यायालय को यह निर्धारित करना होता है कि जिस व्यक्ति को रिसीवर नियुक्त किया जा रहा है वह जिम्मेदारी लेने एवं उत्तरदायित्व को पूरा करने में योग्य है अथवा नहीं। सामान्य रूप से जिस व्यक्ति का वादग्रस्त सम्पत्ति में कोई हित न हो उसे रिसीवर नियुक्त किया जा सकता है। ऐसे व्यक्ति को भी रिसीवर नियुक्त किया जा सकता है जो वादग्रस्त सम्पत्ति से जुड़ा हुआ हो और यदि न्यायालय का समाधान हो जाता है कि उस व्यक्ति की नियुक्ति से वादग्रस्त सम्पत्ति को लाभ होगा। न्यायदृष्टांत ***हिन्दुस्तान पेट्रोलियम कार्पोरेशन विरूद्ध मेसर्स रामचंद, ए.आई.आर. 1994 सुप्रीम कोर्ट 478,*** में अभिमत दिया गया है कि रिसीवर की नियुक्ति अधिरोपित नहीं की जा सकती है। अतः दोनों पक्षों से रिसीवरों के नाम पर सहमति भी ली जा सकती है और जिस व्यक्ति के नाम पर दोनों पक्ष सहमत है उसे भी रिसीवर नियुक्त किया जा सकता है। प्रकरण के तथ्य एवं परिस्थितियों के आलोक में यदि उचित प्रतीत होता है तो न्यायालय द्वारा किसी सक्षम अभिभाषक को भी रिसीवर नियुक्त किया जा सकता है। रिसीवर का नियुक्ति पत्र जारी किये जाने हेतु सी.पी.सी. के परिशिष्ट 'च' के संख्याक 9 के प्रारूप का अवलोकन किया जा सकता है।

संयुक्त हिन्दू परिवार से संबंधित प्रकरण में रिसीवर की नियुक्ति

संयुक्त हिन्दू परिवार की सम्पत्ति के संबंध में रिसीवर की नियुक्ति की जा सकती है यदि परिस्थितियों के अन्तर्गत ऐसा करना न्यायपूर्ण एवं युक्तियुक्त है किन्तु संयुक्त हिन्दू परिवार के सदस्यों के मध्य विशेषतः अचल सम्पत्ति के विभाजन के प्रकरण में सामान्य नियम की भांति न्यायालय को रिसीवर की नियुक्ति नहीं करनी चाहिए। रिसीवर नियुक्त करने के लिये प्रथम दृष्ट्या कर्ता द्वारा विवादित सम्पत्ति के प्रति घोर कदाचार किया जाना तथा इसी प्रकार की विशिष्ट परिस्थितियों को प्रमाणित किया जाना आवश्यक है। जैसा कि न्यायदृष्टांत ***सीताराम विरूद्ध पन्ना लाल, ए.आई.आर. 1957 नागपुर 1*** तथा न्यायदृष्टांत ***भुवनेश्वर प्रसाद विरूद्ध राजेशवर प्रसाद, ए.आई.आर. 1948 पटना 195*** में अभिमत दिया गया है।

धन संबंधी वाद में रिसीवर की नियुक्ति

न्यायालय को ऐसे धन संबंधी वाद में रिसीवर नियुक्त करने के लिए आदेश 40 नियम 1 सी.पी.सी. के अधीन शक्ति है? इस संबंध में न्यायादृष्टांत ***राजलक्ष्मी अम्मल बनाम मुथु स्वामी गौंडर ए.आई.आर. 1958 मद्रास 411*** में मद्रास उच्च न्यायालय ने निम्नलिखित मत व्यक्त किया है –''.. ... किन्तु ऐसी असाधारण अधिकारिता यह नही दर्शाएगी कि धन संबंधी वाद का विचारण करने वाले न्यायालय को रिसीवर नियुक्त करने की साधारण अधिकारिता है, जबकि वाद लंबित हो और डिक्री प्राप्त करने से पहले विशेषतः जब निर्णय से पूर्व कुर्की जैसे अन्य उपचार वादी के लिए खुले हों और वास्तव में ऐसे सामान्य उपचार करने की उससे आशा की जाती है....''।

दण्ड प्रक्रिया संहिता की धारा 145 के अधीन रिसीवर की नियुक्ति

जब सम्पत्ति संबंधी मामले में सिविल न्यायालय द्वारा एक रिसीवर नियुक्त कर दिया गया हो, तो कार्यपालक मजिस्ट्रेट धारा 145 दं.प्र.सं. के अधीन उसमें उस न्यायालय की स्वीकृति के बिना हस्तक्षेप नहीं कर सकता, क्योंकि वहाँ रिसीवर का कब्जा न्यायालय का कब्जा है। लेकिन जब एक कार्यपालक मजिस्ट्रेट द्वारा धारा 146(2) दं.प्र.सं. के अधीन रिसीवर नियुक्त किया जाता है, तब भी सिविल–न्यायालय को रिसीवर नियुक्त करने की शक्ति प्राप्त है। ऐसी दशा में कार्यपालक मजिस्ट्रेट सम्पत्ति का आधिपत्य सिविल न्यायालय द्वारा नियुक्त रिसीवर को सौंपने के लिए बाध्य होगा। जैसा कि न्यायदृष्टांत ***गोपाल दिगम्बर जैन विरूद्ध कस्तूरबा शिक्षा प्रसार समिति, 1992 एम.पी.एल. जे. 661*** में अवधारित किया गया है।

रिसीवर की शक्तियाँ एवं उन पर प्रतिबंध

रिसीवर वाद के किसी पक्षकार का अभिकर्ता नहीं होता वरन् न्यायालय का पदाधिकारी अथवा प्रतिनिधि माना जाता है। वह पक्षकारों के बीच एक निष्पक्ष व्यक्ति होता है। रिसीवर न्यायालय के निर्देशों के अधीन ही कार्य करता है। न्यायालय रिसीवर को निम्नलिखित शक्तियाँ प्रदान कर सकता है–

1. वाद को संस्थित करने तथा वाद में बचाव करने की शक्ति;
2. सम्पत्ति की वसूली, प्रबन्ध, सुरक्षा, संरक्षण तथा उसमें सुधार करने की शक्ति;
3. भाटक तथा लाभ को एकत्र करने, प्रयुक्त करने तथा निस्तारित करने का अधिकार;
4. दस्तावेजों का निष्पादित करने का अधिकार; तथा
5. ऐसी अन्य शक्तियाँ जो न्यायालय उचित समझे।

रिसीवर मात्र उन्हीं शक्तियों का प्रयोग कर सकता है जो उसे नियुक्ति आदेश द्वारा प्राप्त हुई है। रिसीवर से यह अपेक्षा की जाती है कि वह महत्वपूर्ण मामलों में कोई निर्णय लेने अथवा कार्यवाही करने से पूर्व न्यायालय का निर्देश प्राप्त करें। न्यायदृष्टांत ***एवरेस्ट कोल कम्पनी विरूद्ध बिहार राज्य, ए.आई.आर. 1977 सुप्रीम कोर्ट 2304*** में यह अवधारित किया गया है कि चूंकि रिसीवर न्यायालय का अधिकारी एवं उसका प्रतिनिधि होता है अतः रिसीवर के कार्यों में हस्तक्षेप न्यायिक कार्यवाही में बाधा मानी जाएगी। रिसीवर की स्थिति न्यास सदृश्य होती है। रिसीवर को अपने कर्तव्यों का निर्वहन स्वयं करना होता हैं अतः न्यासधारी की भाँति, वह अपने प्राधिकार का प्रत्यायोजन नहीं कर सकता।

न्यायालय का प्रतिनिधि होने के नाते रिसीवर केवल उतनी ही शक्तियों का प्रयोग कर सकता है जो उसे प्रदान की गई हैं। किसी विषय पर तथा यदि आवश्यक हो तो रिसीवर को न्यायालय से निर्देश लेना चाहिए। न्यायदृष्टांत ***शिवकुमार द्विवेदी विरूद्ध भोगीलाल शाह, 2011 (1) एम.पी.एच.टी. 356,*** में यह अभिमत दिया गया है कि न्यायालय की अनुमति के अभाव में रिसीवर न तो वाद संस्थित कर सकता है और न ही उसके विरूद्ध वाद प्रस्तुत किया जा सकता है। इस प्रकार यदि रिसीवर द्वारा कोई वाद संस्थित करना हो या प्रतिरक्षा करनी हो तब रिसीवर द्वारा न्यायालय की

अनुमति लेना अनिवार्य है यद्यपि न्यायालय द्वारा अनुमति देने से अस्वीकार करना एक अपवाद है। सी.पी.सी. की धारा 80 के अधीन सूचना दिये बिना, रिसीवर के विरुद्ध कोई वाद नहीं चलाया जा सकता है। न्यायालय की अनुमति के बिना रिसीवर के विरुद्ध कोई कार्यवाही नहीं की जा सकती है किन्तु ऐसा रिसीवर जिसने अपनी शक्तियों का दुरुपयोग करते हुए कार्य किया है तब न्यायालय की अनुमति के बिना भी उसे अभियोजित किया जा सकता है। रिसीवर, अपने कब्जे की सम्पत्ति को खरीद नहीं सकता है। जब सम्पत्ति रिसीवर के संरक्षण में है तब उसकी कुर्की नहीं की जा सकती है जब तक न्यायालय अनुमति न प्रदान कर दे।

रिसीवर को देय पारिश्रमिक

आदेश 40, नियम 2 के अनुसार न्यायालय, रिसीवर की सेवाओं हेतु पारिश्रमिक के रूप में देय धनराशि साधारण अथवा विशेष आदेश द्वारा नियमित कर सकेगा। पारिश्रमिक तय करने में न्यायालय को अपने समक्ष प्रस्तुत प्रकरण के तथ्य एवं परिस्थितियों को विचार में लेना चाहिए। ऐसा न हो कि जिस सम्पत्ति के संबंध में रिसीवर नियुक्त किया जा रहा है उस सम्पत्ति के प्रबंधन से होने वाली आय अथवा पक्षकारों की आय की तुलना में रिसीवर का पारिश्रमिक अधिक हो जाये। न्यायदृष्टांत ***दामोदर विरूद्ध राधाबाई, ए.आई.आर. 1939 बाम्बे 54*** में यह अभिमत दिया गया है कि रिसीवर अपने पारिश्रमिक की वसूली हेतु ऐसी किसी सम्पत्ति जो न्यायालय के कब्जे में न हो, पर कोई अधिकार या धारणाधिकार नहीं रखता है।

रिसीवर के कर्त्तव्य

आदेश 40, नियम 3 के अन्तर्गत रिसीवर पर निम्नलिखित कर्त्तव्य आरोपित किये गये हैं जिसके अनुसार –

1. रिसीवर जो कुछ सम्पत्ति के संबंध में प्राप्त करेगा उसका सम्यक् रूप से लेखा देगा तथा इस हेतु रिसीवर से ऐसी प्रतिभूति (यदि कोई हो) ली जावेगी जो न्यायालय ठीक समझे। रिसीवर नियुक्त किये जाने बावत् ली जाने वाली प्रतिभूति हेतु सी.पी.सी. के परिशिष्ट च के संख्याँक 10 के प्रारूप का अवलोकन किया जा सकता है,
2. वह न्यायालय के निर्देशानुसार उक्त अवधि में संपत्ति के आय–व्यय का लेखा–जोखा न्यायालय में प्रस्तुत करेगा,
3. जो रकम रिसीवर द्वारा चुकानी है उसे वह न्यायालय के निर्देशानुसार चुकायेगा, तथा;
4. रिसीवर अपने द्वारा जानबूझकर किए गए व्यतिक्रम या घोर उपेक्षा से सम्पत्ति को हुई किसी हानि के लिए उत्तरदायी होगा।

जो भी धन या संपदा रिसीवर के हाथ में होती है वह सदैव न्यायालय की अभिरक्षा में निक्षेपित मानी जाती है इसलिए रिसीवर का यह कर्त्तव्य है कि वह उनकी वस्तुस्थिति से न्यायालय को सदैव अवगत कराता रहे।

कर्त्तव्य पालन में रिसीवर की असफलता

आदेश 40 नियम 4 रिसीवर के कर्तव्यों का प्रवर्तन सुनिश्चित कराने हेतु आवश्यक विधिक बाध्यताओं का उपबन्ध करता है। निम्नलिखित परिस्थितियों में न्यायालय, दोषी पाये गये रिसीवर की सम्पत्ति की कुर्की एवं उसके विक्रय का आदेश दे सकेगा–

1. न्यायालय द्वारा निर्दिष्ट अवधियों एवं प्रारूपों में, अपने लेखाओं के प्रस्तुतीकरण में रिसीवर का विफल रहना;
2. न्यायालय के निर्देशानुसार, स्वयं से शोध्य धन–राशि के संदाय करने में रिसीवर का विफल रहना; तथा
3. रिसीवर द्वारा, जानबूझकर किये गये व्यतिक्रम अथवा स्वयं की घोर उपेक्षा से सम्पत्ति को क्षति पहुंचने देना।

रिसीवर की संपत्ति के विक्रय से प्राप्त आगम का उपयोजन, उससे शोध्य धनराशि या उसके द्वारा कारित क्षति की प्रतिपूर्ति में किया जा सकता है।

कलेक्टर रिसीवर कब नियुक्ति किया जा सकेगा

सामान्यतः निष्पक्ष तथा वादग्रस्त सम्पत्ति में अहितबद्ध व्यक्ति को ही रिसीवर के रूप में नियुक्त किया जाना चाहिए। आदेश 40, नियम 5 के अन्तर्गत निम्नलिखित सम्पत्तियों के संबंध में, न्यायालय, स्वविवेकानुसार, कलेक्टर की सहमति से उसे ऐसी सम्पत्ति का रिसीवर नियुक्ति कर सकता है–

(1) सरकार को राजस्व देने वाली भूमि; या (2) ऐसी भूमि जिसके राजस्व का समनुदेशन या मोचन कर दिया गया हो।

आदेश 40, नियम 5 के अन्तर्गत कलेक्टर की रिसीवर के रूप में नियुक्ति केवल तभी की जा सकती है जब न्यायालय का यह विचार हो कि कलेक्टर के प्रबन्धन द्वारा ही सम्बन्धित व्यक्तियों के हितों की अभिवृद्धि होगी।

रिसीवर का कार्यकाल एवं हटाया जाना

सी.पी.सी. में रिसीवर की पदावधि एवं पदावनति के बारे में कोई प्रावधान नहीं है। सामान्यतः रिसीवर की नियुक्ति एक निश्चित समय के लिए की जाती है जैसा कि अंतरिम आदेशों के मामलों में होता है जैसे ही उक्त समय सीमा समाप्त हो जाती है रिसीवर का कार्यकाल भी समाप्त हो जाता है। लेकिन यदि न्यायालय द्वारा उसकी नियुक्ति के लिए कोई समय सीमा तय नहीं की गई है तब उसकी नियुक्ति वाद के निर्णय तक या न्यायालय के आगामी आदेश तक के लिए हो सकती है तथा मामले का निर्णय हो जाने के बाद उसका अंत हो जाता है। न्यायालयों को रिसीवर के कार्यकाल के संबंध में आदेश में स्पष्ट उल्लेख कर देना चाहिए।

हीरालाल पालनी विरूद्ध लूनकरण सेठिया, ए.आई.आर. 1962 एस.सी. 21, के वाद में रिसीवर की पदावधि के बारे में निम्न सिद्धांत बनाये गये हैं–

(1) यदि रिसीवर वाद के निर्णय तक नियुक्त किया जाता है, तब उसकी नियुक्ति वाद के निर्णय के साथ ही समाप्त हो जाती है। यदि किसी निश्चित समय के लिए नियुक्ति किया जाता है, तब वहां अपने पद पर तब तक बना रहेगा जब तक कि हटा न दिया जाये।

(2) यद्यपि वाद के समाप्त होने के साथ ही रिसीवर का कार्यकाल भी समाप्त हो जाता है तथापि वह न्यायालय के प्रति तब तक उत्तरदायी होगा, जब तक कि उसे अन्तिम रूप से हटा न दिया जाये।

(3) न्यायालय डिक्री के पारित हो जाने के बाद भी रिसीवर को तब तक उस पद पर बनाये रख सकता है जब तक कि आवश्यकताओं के अनुसार ऐसा करना अपेक्षित हो।

न्यायालय रिसीवर को किसी भी समय हटा सकता है। रिसीवर को हटाने या बर्खास्त करने को उचित ठहराने वाली परिस्थितियों को साबित करने का भार उस पक्षकार पर होता है जो ऐसा आवेदन करता है। रिसीवर की मृत्यु होने की दशा में यदि सम्पत्ति से संबंधित आय–व्यय अथवा क्षति बाबत् कोई विवाद है तो रिसीवर के विधिक प्रतिनिधि के विरूद्ध ऐसी कमी या हानि के लिये पृथक वाद प्रस्तुत किया जा सकता है।

रिसीवर नियुक्त करने के आदेश की अपील

आदेश 40 नियम 1 या नियम 4 के अधीन पारित आदेश से अपील आदेश 43 नियम 1(ध) के अधीन की जा सकती है। आदेश 40 नियम 1 के अंतर्गत पारित किया गए आदेश के संबंध में यह देखना असंगत होगा कि क्या ऐसा आदेश अपूर्ण या अन्तर्वर्ती था अथवा अंतिम आदेश था। नियम 1 के अधीन रिसीवर के रूप में किसी व्यक्ति को नियुक्त करने के पश्चात उसके द्वारा प्रतिभूति दी जाएगी। नियम 3 में यह प्रावधान है कि इस प्रकार नियुक्त किया गया प्रत्येक रिसीवर ऐसी प्रतिभूति आदि देगा। नियम 1 के अधीन किए गए आदेश से अपील की जा सकेगी। अतः जैसे ही नियम 1 के अधीन आदेश किया जाता है इससे अपील की जा सकती है चाहे रिसीवर ने प्रतिभूति न दी हो।

यह न्यायालय का विवेकाधिकार है कि वह प्रकरण की परिस्थितियों के आलोक में यदि उचित समझे तो रिसीवर की नियुक्ति करे किन्तु ऐसे विवेकाधिकार का प्रयोग सम्पत्ति के संरक्षण हेतु ही किया जाना चाहिए। केवल संपत्ति पर उभय पक्ष द्वारा विपरीत एवं विरोधी दावे करना ही पर्याप्त नहीं है न्यायालय को तब तक विवेकाधिकार का प्रयोग नहीं करना चाहिये जब तक यह स्पष्ट दर्शित न हो कि संपत्ति के संबधं में आसन्न संकट विद्यमान है इस कारण तत्काल कार्यवाही की जाना आवश्यक है। यह भी ध्यान रखना आवश्यक है कि न्यायालय के आदेश का प्रभाव ऐसा न हो कि कोई पक्षकार असद्भाविक रूप से संपत्ति के आधिपत्य या उपभोग से वंचित हो जाये।

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PRODUCTION OF CHILD WHEN PRINCIPAL MAGISTRATE AND MEMBERS OF J.J. BOARD ARE NOT AVAILABLE

Anu Singh
O.S.D., MPSJA

Section 7(2) of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as 'JJ Act') and Rule 9(5) of Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred as 'JJ Rules') make provision that when the Board is not sitting then child in conflict with law (hereinafter referred as CCL) can be produced before single Member of the Board within 24 hours of apprehension. Rule 6(8) speaks about preparation of monthly roster for production of child before members and circulation of its copies in advance to all the police stations, the Chief Judicial Magistrate/Chief Metropolitan Magistrate, the District Judge, the District Magistrate, the Committees, the District Child Protection Unit and the Special Juvenile Police Unit.

There may occur circumstances when neither Principal Magistrate nor Members of the Board are available before whom a CCL is to be produced. This exigency occurs due to various reasons such as vacancy in the Board, expiration of term of office of the Members, transfer of the Principal Magistrate, his/her illness, other urgent work, etc. Then a question arises as to the appropriate authority before whom such CCL is to be produced.

When a child can be apprehended

It is pertinent to note here that Section 8 of JJ Act provides that it is not necessary to apprehend CCL in all circumstances. It is only where a heinous offence is alleged to have been committed or in other cases where apprehension is necessary in the interest of the CCL then only child shall be apprehended.

Procedure after apprehension

Section 10 of JJ Act deals with procedure after apprehension of the CCL, which reads as -

> **Section 10. Apprehension of child alleged to be in conflict with law-**
>
> (1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated Child Welfare Police Officer, who shall produce the child before the Board without any loss of time but **within a period of twenty-four hours** of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

> Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lock-up or lodged in a jail.
>
> (2) The State Government shall make rules consistent with this Act,—
>
> (i) to provide for persons through whom (including registered voluntary or non-governmental organisations) any child alleged to be in conflict with law may be produced before the Board;
>
> (ii) to provide for the manner in which the child alleged **to be in conflict with law may be sent to an observation home or place of safety,** as the case may be.

Authority of Officer in-charge of Police Station

It is explicit from Section 10(1) of JJ Act that CCL has to be produced before the board within a period of twenty-four hours of apprehending the CCL excluding the time necessary for the journey and there is no exception to this rule.

Further Section 12(2) of JJ Act says that —

> "When such person having been apprehended is not released on bail under sub-section (1) by the officer in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

Accordingly, **a child could be placed in Observation Home** by officer in-charge of the police station until the person can be brought before a Board and this power or authority of officer in-charge of the police station can be exercised **"in such manner as may be prescribed".**

Rule 8 (3) of the JJ Rules prescribe procedure in this regard, which reads as -

> The police officer apprehending a child alleged to be in conflict with law shall:
>
> (i) not send the child to a police lock-up and not delay the child being transferred to the Child Welfare Police Officer from the nearest police station. The police officer may under sub-section (2) of Section 12 of of JJ Act send the person apprehended to an observation home only for such period till he is produced before the Board i.e. within twenty-four hours of his being apprehended and appropriate orders are obtained as per Rule 9 of these rules.

Hence, officer in-charge of the police station can only send the CCL to Observation Home for not more than 24 hours.

Rule 9(6) empowers Child Welfare Police Officer to keep the CCL in Observation Home in accordance with Rule 69-D or in a fit facility.

Accordingly, in this situation also child has to be produced before the Board, within twenty-four hours of apprehending the child. Further Rule 69-D only talks about overnight protective stay, which can not be prior to 10.00 PM and not beyond 02:00 PM on the following day.

Production before other Boards

There is also a view that in case where Board is not sitting and neither Principal Magistrate nor Members of the Board are available then CCL may be produced before the Principal Magistrate or Members of Juvenile Justice Board of the adjoining District. But it is pertinent to note that Juvenile Justice Boards are constituted by notification of State Government to exercise powers and discharge functions for specified District or territory. They have a certain territorial jurisdiction. This point was discussed by Hon'ble the Madras High Court in case of ***Idukkan v. Inspector of Police, 2012 LawSuit (Mad) 2323*** wherein it was held that "Board cannot exercise functions for other areas".

Accordingly, Boards situated in other districts are not appropriate authority.

Production before Magistrate

Therefore, situation is that the child could not be produced before Juvenile Justice Board or Principal Magistrate or Members or other Boards and officer in-charge of the police station can also not send the child to Observation Home for more than 24 hours. In such premises only recourse available with the officer in-charge of the police station is to produce the child before the Duty Magistrate on holidays or before regular Magistrate on working days.

Section 9 of JJ Act provides the procedure to be adopted on production of the Child before the Magistrate who is not empowered to exercise the powers of the Board. It reads as under-

> **Section 9. Procedure to be followed by a Magistrate who has not been empowered under this Act —**
>
> (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.
>
> (2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person

> was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:
>
> Provided that such a claim may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

Accordingly, clause (1) deals with the cases when Magistrate is of the opinion that the person alleged to have committed the offence and brought before him is a child and clause (2) deals with circumstances when person alleged to have committed an offence claims that he is a child. Therefore, it is explicit that there may be cases when a person explicitly appears to be child can be produced before a Magistrate not empowered under the JJ Act.

Section 9(1) of JJ Act specifies that in such cases "Magistrate shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction." Although child is to be forwarded to the Board immediately but as the circumstances of non-availability of Board or any Member of Board for uncertain or specified period is on record, then in such cases date of their availability will be the date of production of child before that Board. As specified in Section 9(3) of JJ Act, all records will be send to the Board and officer in-charge of the police station will also be directed to produce all material before the concerning Board.

Where to keep the child in this intervening period

Next question comes as to place where child is to be kept during this intervening period. For this Section 9(4) of JJ Act states that -

> "(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

Therefore, interpreting this authority of placement of child in place of safety i.e. one of the Child Care Institutions, we can conclude that Magistrate who is not empowered to exercise the powers of the Board under the Act can also order for placement of the Child in the Child Care Institute. Provision as to Child Care Institution in which child can the placed are -

Home	Age group	Which category of child can be sent	Relevant Provisions
Special home	Any	Child in Conflict with Law (Hereinafter referred as 'CCL') **who are found to have committed** an offence and who are placed there by an order of the JJB made under section 18 of JJ Act. (i.e. **on the final disposition**).	Section 2(56) 18(1)(g), 48 of JJ Act
Place of safety	CCL above the age of 18 years CCL of the age of 16 to 18 years and is alleged to have committed or found to have committed a heinous offence.	**During the pendency** of inquiry and after final disposition.	Section 2(46), 6(2), 49 of JJ Act
Observation Home	CCL below the age of 18 years CCL of the age of 16 to 18 years and has not alleged to have committed a heinous offence.	For temporary reception, care and rehabilitation during the pendency of any inquiry.	Section 2(40), 47 of JJ Act

There are distinct child care institution for girls and boys.

List of different Observation Home, Place of Safety and Special Home established in the State of Madhya Pradesh along with their territorial jurisdiction is as below -

Observation Homes for Boys

No.	District	Related Districts	Contact Number
1	Bhopal	Bhopal, Vidisha, Rajgarh, Sehore, Raisen	0755-2559931
2	Betul	Betul, Hoshangabad	07141-230368
3	Morena	Morena, Bhind, Sheopur	07532-234803
4	Gwalior	Gwalior, Datia	0751-234609
5	Guna	Guna, Shivpuri, Ashoknagar	07542-268825
6	Indore	Indore	0731-2550670
7	Jhabua	Jhabua, Dhar, Alirajpur, Barwani	07392-244332

8	Khandwa	Khandwa, Harda, Burhanpur, Khargone	0733-2911001
9	Jabalpur	Jabalpur, Katni, Mandla, Dindori	0761-2331644
10	Narsinghpur	Narsinghpur, Chhindwara	07792-232308
11	Seoni	Seoni, Balaghat	07692-220254
12	Rewa	Rewa, Sidhi, Satna, Singrauli, Anuppur, Umaria, Shahdol	07662-230509
13	Sagar	Sagar, Damoh	07582-270534
14	Chhatarpur	Chhatarpur, Panna, Tikamgarh	07682-248168
15	Ujjain	Ujjain, Dewas, Shajapur, Agar	0734-2520219
16	Ratlam	Ratlam, Neemuch, Mandsaur	07412-264204

Observation Homes for Girls

No.	District	Related Districts	Contact Number
1	Shahdol	Rewa, Sagar, Shahdol and Districts of Jabalpur Zone	07652-248530
2	Vidisha	Bhopal, Indore, Gwalior, Narmadapuram, Ujjain and Districts of Chambal Zone	07592-235769

Special Homes for Boys

No.	District	Related Districts	Contact Number
1	Indore	Districts which are nearer to Indore	0731-2550024
2	Seoni	Districts which are nearer to Seoni	07692-220254

Special Home for Girls

No.	District	Related Districts from Observation Home	Contact Number
1	Indore	Whole State	0731-2903998

Places of Safety for Boys

No.	District	Related Districts from Observation Home	Contact Number
1	Indore	Districts which are nearer to Indore	07652-248530
2	Seoni	Districts which are nearer to Seoni	07592-235769

Place of Safety for Girls

No.	District	Related Districts from Observation Home	Contact Number
1	Indore	Whole State	0731-2903998

How and where these proceedings should be conducted

Next very important point which must be kept in mind while dealing cases of a child is Section 3 of the JJ Act which mandates that the Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the fundamental principles enshrined u/s 3 of the JJ Act.

According to these principles, the proceedings under JJ Act have to be conducted in child friendly atmosphere. What is 'child friendly' is defined in Section 2 (15) of JJ Act which reads as -

> "child friendly" means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child;"

Accordingly, the atmosphere has to be considerate and in the best interest of the child. No doubt Court is not the place where child should be produced and that too in custody and by the police/ CWPO. Therefore, these proceedings cannot be undertaken in the Court room. Now the question is at which place this proceedings should be held? Chamber of the Court? No. In the case of ***Idukkan*** (supra) it was also observed that chamber of a Court can not be said to be child friendly because after all Child is brought to the Court and there presence of police, advocates and other accused and all other incidental appearance will never provide opportunity to isolate that one room from rest of the establishment.

If neither Court and nor even Chamber then which place will be child friendly? Answer is – "place of sitting of the Board". Yes. Whenever any information as to non-availability of the Members is shared in advance then in such situation and in all other cases, standing directions must be issued to all Officers In-charge of all Police Station of the District to get telephonic directions from Duty Magistrates as to when and where to produce the CCL. Accordingly, on priority, cases of CCL must be attended by Duty Magistrate by visiting the Board itself.

At this juncture one should also have a look on duty of the Court enshrined in Section 3, when child is produced before the Magistrate. All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system. Adversarial or accusatory words are not to be used in the processes pertaining to a child. Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process. Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing.

To avoid uncertainty that before which Magistrate child is to be produced in the event of non-availability of the Board, Principal Magistrate and its Members, it would be appropriate if the Chief Judicial Magistrates while making

arrangement for work distribution amongst the Judicial Magistrates of the District u/s 15 of the CrPC make arrangement by nominating Judicial Magistrates who will discharge above mentioned duties in the case of non-sitting of Board or non-availability of the Principal Magistrate or Members of the Board. There may also be provision of second in-charge and third in-charge of such nominated Judicial Magistrate so that all further exigencies could be addressed. This order must be sent to Superintendent of Police and to all Police Stations for information in advance along with contact details of the Magistrates concerned for better coordination and direct contact.

Which Magistrates can be authorized to discharge the functions in the absence?

Answer to this question can again be gathered from the ***Idukkan*** (supra), wherein it was observed that in-charge who discharges functions under JJ Act or who deal with the child must be one who is specially trained for dealing with child or expert in child psychology. Hence, as directed by Hon'ble Madras High Court amongst the available Magistrates one who has ever discharged functions of Principal Magistrate at prior point of time or one who has been trained to deal with child must be given preference. Madhya Pradesh State Judicial Academy has included 'Juvenile Justice' in its Induction Training Programme since the year 2016. Accordingly, all the Judges who have undergone induction training from the year 2016 onwards are all specially trained to deal with child.

Bail

Next most important question which arose for consideration is that whether Magistrate can grant bail to the child in this intervening period or he can only forward the child to Juvenile Justice Board.

As discussed earlier that Magistrate is under an obligation to follow fundamental principles specified u/s 3 of the JJ Act. Amongst these principles, there are principles of 'institutionalization as a last resort' and 'best interest of child.' Accordingly, it would be in the best interest of the CCL if his bail application is considered. That application has to be considered in the light of the provisions of the Section 12 of the JJ Act. [For bail to Juvenile, only applicable provision is Section 12 of JJ Act, 2015. See **Order dated 20.03.2020 of Hon'ble the High Court of M.P. (Jabalpur) in *Y (Name of the Child is not published) v. State of M.P., MCRC No. 54552 of 2019***]

However, one has to keep in mind that this bail is only a provisional arrangement for placement of the child in the custody of his/her parents/guardian till the production of the child before the Juvenile Justice Board. In other words it could only be interim measure till production of the child before Juvenile Justice Board.

CONCLUSION

- When no Principal Magistrate or Member of the Board is available then child can be produced before any other Magistrate but at the place of sitting of the Board. Such Magistrate shall conduct the proceedings in child friendly manner and atmosphere and will take all possible recourse to ensure protection of child rights.
- In this intervening period child may be sent to concerning Child Care Institutions.
- After recording such opinion child should be forwarded to Board immediately i.e., earliest date when the Board or any of the Member or Principal Magistrate is available, along with the record of such proceedings.
- Concerned Magistrate may in light of Section 12 of the JJ Act, 2015 grant interim bail to the child till his/her production before the Juvenile Justice Board.
- Chief Judicial Magistrates while making arrangement for work distribution amongst the Judicial Magistrates of the District u/s 15 of the CrPC, may make arrangement by nominating Judicial Magistrates who will discharge above mentioned duties in the case of non sitting of Board and non-availability of the Principal Magistrate or Members of the Board.

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Interested Readers are requested:

- *To submit their desired content in the form of an article or write-up.*
- *The font of Hindi articles/write-ups should be in Kruti Dev 010 whereas the English articles/write-ups should be in Times New Roman.*
- *Articles/write-ups should be restricted to around 3000 words. Short articles are preferable.*
- *Articles on legal topics/issues should be well researched, unpublished and should be the original work of the author.*

- Editor

विधिक समस्याएँ 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। स्तंभ के लिये न्यायिक अधिकारी अपनी विधिक समस्याएँ अकादमी को भेज सकते हैं। चयनित समस्याओं के समाधान आगामी अंको में प्रकाशित किये जाएंगे।)

1. मोटर यान अधिनियम के अन्तर्गत प्रतिकर के मामले में यदि मृतक की आयु न्यायदृष्टांत *सरला वर्मा विरूद्ध दिल्ली ट्रान्सपोर्ट कारपोरेशन* में दी गई तालिका के निरंतर दो आयु वर्ग के मध्य की हो, जैसे – 40 से 45 वर्ष आयु वर्ग और 46 से 50 वर्ष आयु वर्ग के मध्य अर्थात 45 वर्ष से अधिक किन्तु 46 वर्ष से कम है तब ऐसी दशा में गुणांक किस आयु वर्ग के आधार पर प्रयोज्य होगा?

न्यायदृष्टांत ***सरला वर्मा*** के अनुसार गुणांक के चयन हेतु आयु के वर्ग निर्धारित किये गये हैं जैसे – 15 से 20 वर्ष, 21 से 25 वर्ष, 26 से 30 वर्ष आदि। भ्रम की स्थिति तब निर्मित होती है जब मृतक की आयु एक वर्ग के लिए अंतिम आयु सीमा और उससे निरंतर दूसरे वर्ग की आरंभिक आयु सीमा के मध्य की हो। जैसा कि समस्या में ही उदाहरण दिया गया है।

ऐसी परिस्थिति में गुणांक की प्रयोज्यता के लिए न्यायदृष्टांत ***शशिकला एवं अन्य विरूद्ध गंगा लक्ष्मा एवं अन्य, (2015) 9 एस.सी.सी. 150*** अवलोकनीय है। इस प्रकरण में ड्राईविंग लाईसेंस के अनुसार मृतक की जन्म तिथि 16.06.1961 थी, तथा मृतक की दुर्घटना दिनांक 14.12.2006 को आयु 45 वर्ष 5 माह और 28 दिवस थी, मोटर दुर्घटना दावा अधिकरण ने मृतक की आयु 46 वर्ष मानकर 13 का गुणांक प्रयोज्य किया था। उच्च न्यायालय ने मृतक की आयु 45 वर्ष मानकर 14 का गुणांक लागू किया था। माननीय सर्वोच्च न्यायालय द्वारा अभिमत दिया गया कि चूकि मृतक ने 45 वर्ष आयु ही पूर्ण की थी इसलिए उच्च न्यायालय द्वारा 45 वर्ष आयु मानकर 14 का गुणांक प्रयोज्य किया जाना सही है।

इस प्रकार न्यायदृष्टांत ***शशिकला*** (पूर्वोक्त) में दिये गये अभिमत अनुसार जब मृतक की आयु दो आयु वर्गों के मध्य हो तब गुणांक का चयन उस आयु वर्ग के आधार पर किया जाना चाहिए जिस वर्ग की आयु मृतक द्वारा पूर्ण की जा चुकी थी।

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2. किसी गिरफ्तार अभियुक्त जिसे धारा 167 दं.प्र.सं. के अतंर्गत मजिस्ट्रेट द्वारा निरोध में भेजा गया है, को और आगे निरोध में रखे जाने के लिए अन्वेषण अभिकरण यथा पुलिस आदि की ओर से कोई आवेदन पत्र व केस डायरी प्रस्तुत नहीं किये जाने की दशा में भी क्या अभियुक्त को मजिस्ट्रेट द्वारा और आगे निरोध में प्राधिकृत किया जा सकता है?

धारा 167 दं.प्र.सं. में यह उपबंध है कि जब कोई व्यक्ति गिरफ्तार किया गया है और चौबीस घंटे की अवधि में अन्वेषण पूरा नहीं किया जा सकता है वहाँ ऐसे अभियुक्त को केस डायरी के साथ मजिस्ट्रेट के पास भेजा जाएगा और तब मजिस्ट्रेट ऐसे अभियुक्त की अभिरक्षा (जो एक बार में 15 दिवस से अधिक की नहीं होगी) प्राधिकृत कर सकेगा। तब यह प्रश्न उत्पन्न होता है कि ऐसे प्रथम बार निरोध की प्राधिकृत अवधि व्यतीत होने पर अन्वेषण पूर्ण नहीं होने की दशा में पुनः आगे और निरोध प्राधिकृत करने के लिए क्या अन्वेषणकर्ता या थाना प्रभारी को इस हेतु आवेदन पत्र व केस डायरी संबंधित मजिस्ट्रेट के समक्ष प्रस्तुत करना आवश्यक होगा।

सामान्यतः अन्वेषण पूर्ण होने और अभियोग पत्र/अंतिम प्रतिवेदन प्रस्तुत होने तक अभियुक्त को निरोध में रखे जाने के लिए अन्वेषणकर्ता/थाना प्रभारी की ओर से केस डायरी सहित आवेदन पत्र प्रस्तुत किया जाता है। लेकिन यदि किसी मामले में और आगे निरोध की अवधि बढ़ाये जाने के लिए ऐसा आवेदन पत्र व केस डायरी प्रस्तुत नहीं किया गया है तब भी संबंधित मजिस्ट्रेट द्वारा स्वतः ही अभियुक्त को और आगे निरोध में रखा जाना प्राधिकृत किया जा सकता है। कारण यह कि मजिस्ट्रेट द्वारा अभियुक्त के विरूद्ध अभियोग/अपराध के आधार होने से ही प्रथम बार निरोध प्राधिकृत किया गया था। इसलिए और आगे निरोध प्राधिकृत करने के लिए आवेदन पत्र या केस डायरी प्रस्तुत नहीं किये जाने के आधार पर अभियुक्त को छोड़े जाने या उन्मोचित किये जाने का आदेश देना उचित नहीं होगा।

न्यायदृष्टांत ***रमेश कुमार रवि व अन्य विरूद्ध बिहार राज्य, एआईआर 1988 पटना 199*** (पूर्ण पीठ) में इस प्रश्न को विचार में लेते हुए अभिमत दिया गया कि मजिस्ट्रेट का यह क्षेत्राधिकार है कि वह पुलिस अथवा अभियोजन की ओर से अभिरक्षा अवधि को बढ़ाने हेतु किसी औपचारिक आवेदन प्रस्तुत किए बिना भी निरूद्ध अभियुक्त की अभिरक्षा की अवधि को बढ़ाने हेतु आदेश कर सकता हैं।

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3. क्या धारा 439 द.प्र.सं. के अधीन जमानत हेतु प्रस्तुत आवेदन पत्र के समर्थन में शपथपत्र प्रस्तुत करना अनिवार्य है?

न्यायदृष्टांत ***डैनी उर्फ राजू विरूद्ध मध्यप्रदेश राज्य, 1989 जेएलजे 323,*** में अभिमत दिया गया है किः–

"A bail application is expected to incorporate a statement as to all facts and circumstances considered relevant by the applicant in support of his prayer so that whatever is put forth before the court does not vanish in thin air, but is retained in the record, though there is no format prescribed for all bail applicants; if any statement likely to be controverted by the opposite party, the party would do well to support its statements by an affidavit or documents, as advised"

इस प्रकार जब भी जमानत के लिए आवेदन पत्र प्रस्तुत किया जाता है आवेदक से यह अपेक्षित है कि वह जमानत की प्रार्थना से संबंधित सभी तथ्यों एवं परिस्थितियों का अपने आवेदन पत्र में उल्लेख करते हुये न्यायालय के समक्ष स्पष्ट करे। ताकि न्यायालय यह निर्धारित कर सके कि आवेदक ने पूर्व में जमानत हेतु कोई आवेदन किया था अथवा नहीं तथा यह भी स्पष्ट हो सके कि क्या आवेदक द्वारा प्रस्तुत ऐसा कोई आवेदन पत्र किसी अन्य न्यायालय में लंबित है। आवेदन पत्र में उल्लेखित ऐसे सभी तथ्यों के समर्थन में शपथ पत्र प्रस्तुत किया जाना चाहिए।

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4. क्या भारतीय दण्ड संहिता की धारा 324 के अधीन अपराध अजमानतीय है?

इस संबंध में विधिक स्थिति स्पष्ट है फिर भी दण्ड प्रक्रिया संहिता (संशोधन) अधिनियम, 2005 के प्रावधानों को लागू किये जाने विषयक अधिसूचनाओं के ज्ञान में नहीं आ पाने से कतिपय अवसरों पर भ्रम उत्पन्न हुआ है।

दण्ड प्रक्रिया संहिता, 1973 की प्रथम अनुसूची में भारतीय दण्ड संहिता के अपराधों के जमानतीय अथवा अजमानतीय होने की प्रविष्टियाँ हैं। प्रथम अनुसूची के अनुसार भारतीय दण्ड संहिता की धारा 324 के अधीन अपराध ''जमानतीय'' उल्लेखित है। दण्ड प्रक्रिया संहिता (संशोधन) अधिनियम, 2005 की धारा 42 (एक) (iii) के द्वारा मूल संहिता की प्रथम अनुसूची में इस अपराध को ''जमानतीय'' से ''अजमानतीय'' बनाया गया है लेकिन उक्त संशोधन अधिनियम, 2005 के द्वारा किये गये विभिन्न संशोधित प्रावधान अधिसूचनाएँ जारी कर के प्रभावशील किये गये हैं। लेकिन दण्ड प्रक्रिया संहिता (संशोधन) अधिनियम, 2005 की धारा 42 (एक) (iii) जिसके द्वारा मूल संहिता की प्रथम अनुसूची में धारा 324 को ''जमानतीय'' से ''अजमानतीय'' बनाया गया है, अधिसूचित नहीं की गई है अर्थात् यह संशोधन अब तक प्रभावशील नहीं किया गया है इसलिए धारा 324 के अधीन अपराध ''जमानतीय'' ही है।

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PART - II

NOTES ON IMPORTANT JUDGMENTS

178. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 12 (1) (b) Eviction of tenant – Sub-tenancy – Burden of proof – When the eviction is sought on the ground of sub-letting, the onus to prove sub-letting is on the landlord – After the *prima facie* evidence of the landlord, the tenant has to rebut the same.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धारा 12 (1) (ख)

किराएदार का निष्कासन – उप–किरायेदारी – सबूत का भार – जब निष्कासन उप–किरायेदारी के आधार पर चाहा गया हो तब उप–किरायेदारी को साबित करने का भार भूस्वामी पर है – भूस्वामी की प्रथम दृष्टया साक्ष्य के पश्चात् किरायेदार को उसका खंडन करना होता है।

A. Mahalakshmi v. Bala Venkatram (dead) through Legal Representative and anr.

Judgment dated 07.01.2020 passed by the Supreme Court in Civil Appeal No. 9443 of 2019, reported in (2020) 2 SCC 531

Relevant extracts from the judgment:

Sub-letting means transfer of an exclusive right to enjoy the property in favour of the third party. To constitute a sub-letting, there must be a parting of legal possession, i.e., possession with the right to include and also right to exclude others. Sub-letting, assigning or otherwise parting with the possession of the whole or any part of the tenancy premises, without obtaining the consent in writing of the landlord, is not permitted and if done, the same provides a ground for eviction of the tenant by the landlord. When the eviction is sought on the ground of sub-letting, the onus to prove sub-letting is on the landlord. As held by this Court in the case of ***Associated Hotels of India Limited v. S.B. Sardar Ranjit Singh, AIR 1968 SC 933,*** if the landlord *prima facie* shows that the third party is in exclusive possession of the premises let out for valuable consideration, it would then be for the tenant to rebut the evidence. At the same time, as held by this Court in the case of ***G.K. Bhatnagar v. Abdul Alim, (2002) 9 SCC 516*** and ***Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri, (1987) 3 SCC 538,*** where a tenant becomes a partner of a partnership firm and allows the firm to carry on business in the premises while he himself retains the legal possession thereof, the act of the tenant does not amount to sub-letting. It is further observed and held that however inducting the partner in his business or profession by the tenant is permitted so long as such partnership is genuine. It is further observed that if the purpose of such partnership is ostensible in carrying on business or profession in a partnership but the real purpose in sub-letting such premises to such other person who is inducted ostensibly as a partner then the same shall be deemed to be an act of sub-letting.

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179. ARBITRATION AND CONCILIATION ACT, 1996 – Section 19 r/w/s 34

(i) Procedure – The rules of procedure to be followed by an Arbitral Tribunal are flexible and can be agreed upon by the parties.

(ii) Challenge to Award – Award can be challenged on the basis of non-compliance of agreed procedure by the Arbitrator as also denial of proper opportunity to parties.

माध्यस्थम् और सुलह अधिनियम, 1996 – धारा 19 सहपठित धारा 34

(i) प्रक्रिया – एक माध्यस्थम् अधिकरण द्वारा अनुसरित की जाने वाली प्रक्रिया लचीली है और पक्षकारों की सहमति से निर्धारित हो सकती है।

(ii) अधिनिर्णय को चुनौती – मध्यस्थ द्वारा करार की गई प्रक्रिया का अनुपालन नहीं करने और पक्षकारों को उचित अवसर प्राप्त नहीं होने के आधार पर अधिनिर्णय को चुनौती दी जा सकती है।

Jagjeet Singh Lyallpuri (dead) through Legal Representatives and ors. v. Unitop Apartments and Builders Limited

Judgment dated 03.12.2019 passed by the Supreme Court in Civil Appeal No. 692 of 2016, reported in (2020) 2 SCC 279 (Three-Judge Bench)

Relevant extracts from the judgment:

Since the learned single Judge has presently accepted the contention raised on behalf of the respondent herein that the procedure followed by the learned Arbitrator is contrary to law and has prejudiced the respondent herein since the witnesses were not cross¬examined, this aspect of the matter is required to be noticed at the outset. As rightly pointed out by the learned senior counsel for the appellant, the rules of procedure to be followed by an Arbitral Tribunal is flexible and can be agreed upon by the parties as provided under Section 19 of the Act, 1996 which reads as hereunder;

> 19. *Determination of rules of procedure* – (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
>
> (2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.
>
> (3) Failing any agreement referred to in sub¬section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.
>
> (4) The power of the arbitral tribunal under sub¬section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Further, keeping in view that the contention put forth before the High Court by the respondent herein to assail the award was in the manner as noticed above with regard to the appropriate procedure not being followed and there being denial of opportunity and in that view the respondent not being able to put forth the case appropriately before the learned Arbitrator, the effect of the same is required to be examined. When a challenge is raised on that ground, in our opinion it would at best fall under section 34 (2) (a) (iii).

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180. CIVIL PRACTICE:

Appeal – Question of law, meaning of – Stage at which may be considered – A pure question of law can be examined at any stage including before the Appellate Court.

सिविल प्रथाः

अपील – विधि का प्रश्न, तात्पर्य – किस स्तर पर विचार किया जा सकता है – पूर्णतः विधि संबंधी प्रश्न को किसी भी प्रक्रम पर परीक्षित किया जा सकता है जिसमें अपीलीय न्यायालय के समक्ष परीक्षित किया जाना भी शामिल है।

K. Lubna and ors. v. Beevi and ors.

Judgment dated 13.01.2020 passed by the Supreme Court in Civil Appeal No. 2442 of 2011, reported in (2020) 2 SCC 524

Relevant extracts from the judgment:

On the legal principle, it is trite to say that a pure question of law can be examined at any stage, including before this Court. If the factual foundation for a case has been laid and the legal consequences of the same have not been examined, the examination of such legal consequences would be a pure question of law (***Yaswant Deorao Deshmukh v. Walchand Ramchand Kothari, AIR 1951 SC 16***)

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181. CIVIL PROCEDURE CODE, 1908 – Section 96 (2) and Order 9 Rule 13

***Ex-parte* decree – Appeal filed after dismissal of application under Order 9 Rule 13 – Right to appeal u/s 96 (2) CPC challenging the original decree passed *ex-parte*, being a statutory right, the defendant cannot be deprived of the same merely on the ground that application filed under Order 9 Rule 13 CPC was dismissed earlier.**

सिविल प्रक्रिया संहिता, 1908 – धारा 96 (2) एवं आदेश 9 नियम 13

एकपक्षीय आज्ञप्ति – आदेश 9 नियम 13 के अंतर्गत प्रस्तुत आवेदन खारिज होने के उपरांत अपील प्रस्तुत की गई – धारा 96 (2) सि.प्र.सं. के अन्तर्गत एकपक्षीय रूप से पारित मूल आज्ञप्ति को चुनौती देते हुए अपील प्रस्तुत करने का अधिकार एक सांविधिक अधिकार है, प्रतिवादी को उसके इस सांविधिक अधिकार से केवल इस आधार पर वंचित नहीं किया जा सकता कि आदेश 9 नियम 13 के अंतर्गत प्रस्तुत आवेदन पहले खारिज हो चुका था।

N. Mohan v. R. Madhu

Judgment dated 21.11.2019 passed by the Supreme Court in Civil Appeal No. 8898 of 2019, reported in AIR 2020 SC 41(Three-Judge Bench)

Relevant extracts from the judgment:

The defendant against whom an *ex-parte* decree is passed, has two options. First option is to file an application under Order IX Rule 13 CPC and second option is to file an appeal under Section 96 (2) CPC. The question to be considered is whether the two options are to be exercised simultaneously or can also be exercised consecutively. An unscrupulous litigant may, of course, firstly file an application under Order IX Rule 13 CPC and carry the matter up to the highest forum; thereafter may opt to file appeal under Section 96 (2) CPC challenging the ex-parte decree. In that event, considerable time would be lost for the plaintiff. The question falling for consideration is that whether the remedies provided as simultaneous can be converted into consecutive remedies.

An appeal under Section 96 (2) CPC is a statutory right, the defendant cannot be deprived of the statutory right merely on the ground that earlier, the application filed under Order IX Rule 13 CPC was dismissed. Whether the defendant has adopted dilatory tactics or where there is a lack of bonafide in pursuing the remedy of appeal under Section 96 (2) of the Code, has to be considered depending upon the facts and circumstances of each case. In case the court is satisfied that the defendant has adopted dilatory tactics or where there is lack of bonafide, the court may decline to condone the delay in filing the first appeal under Section 96 (2) CPC. But where the defendant has been pursuing the remedy bonafide under Order IX Rule 13 CPC, if the court refuses to condone the delay in the time spent in pursuing the remedy under Order IX Rule 13 CPC, the defendant would be deprived of the statutory right of appeal. Whether the defendant has adopted dilatory tactics or where there is lack of bonafide in pursuing the remedy of appeal under Section 96 (2) of the code after the dismissal of the application under Order IX Rule 13 CPC, is a question of fact and the same has to be considered depending upon the facts and circumstances of each case.

When the defendant filed appeal under Section 96 (2) CPC against an ex-parte decree and if the said appeal has been dismissed, thereafter, the defendant cannot file an application under Order IX Rule 13 CPC. This is because after the appeal filed under Section 96 (2) of the Code has been dismissed, the original decree passed in the suit merges with the decree of the appellate court. Hence, after dismissal of the appeal filed under Section 96 (2) CPC, the appellant cannot fall back upon the remedy under Order IX Rule 13 CPC.

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***182. CIVIL PROCEDURE CODE, 1908 – Order 2 Rule 2 (3)**
SPECIFIC RELIEF ACT, 1963 – Section 20
Bar to second suit – Defendant entered into an agreement to sale in favour of plaintiff of the suit land for consideration of ₹ 1,80,000/- against which ₹ 150,000/- was paid in advance – Failure of defendant to execute sale deed – Plaintiff filed a suit for declaration of possession and permanent injunction against defendant – Suit dismissed in default – Subsequent suit filed for specific performance of contract against defendant without seeking leave of court under Order 2 Rule 2 (3) of CPC – In view of complete identity of cause of action between earlier and subsequent suits and also having omitted claim for relief without leave of Court, bar under Order 2 Rule 2 (3) attracted.

सिविल प्रक्रिया संहिता, 1908 – आदेश 2 नियम 2(3)
विनिर्दिष्ट आनुतोष अधिनियम, 1963 – धारा 20

द्वितीय वाद का वर्जन – प्रतिवादी ने वादी के पक्ष में विवादित भूमि को ₹180,000/– में विक्रय करने का करार किया – ₹ 150,000/– अग्रिम प्रदान किए गए – प्रतिवादी विक्रय पत्र निष्पादित करने में विफल रहा – वादी ने प्रतिवादी के विरूद्ध कब्जे की घोषणा तथा स्थाई निषेधाज्ञा का वाद प्रस्तुत किया – वाद व्यतिक्रम के कारण खारिज किया गया – सि.प्र.सं. के आदेश 2 नियम 2 (3) के अंतर्गत न्यायालय से अनुमति लिए बिना संविदा के विनिर्दिष्ट अनुपालन हेतु पश्चातवर्ती वाद प्रस्तुत किया गया। पूर्ववर्ती तथा पश्चातवर्ती वाद में वाद–हेतुक की पूर्णतः एकरूपता एवं न्यायालय की अनुमति के बिना अनुतोष के लिए दावे के लोप के आलोक में आदेश 2 नियम 2 (3) का वर्जन आकर्षित होता है।

Vurimi Pullarao v. Vemari Vyankata Radharani Dhankoteshwarrao and anr.
Judgment dated 27.11.2019 passed by the Supreme Court in Civil Appeal No. 9065 of 2019, reported in AIR 2020 SC 395

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183. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 6 and Order 47 Rule 1
LIMITATION ACT, 1963 – Section 19 r/w Article 113

(i) Limitation law – Exemption from – As long as ground mentioned in the plaint is not inconsistent with ground set out in plaint, exemption from law of limitation on any ground can be permitted.

(ii) Review – Scope of – Is limited and petitioner cannot be permitted to re-agitate and re-argue the question which have already been addressed and decided – Error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 6 एवं आदेश 47 नियम 1

परिसीमा अधिनियम, 1963 – धारा 19 सहपठित अनुच्छेद 113

(i) परिसीमा विधि से छूट– जहां तक वादपत्र में उल्लेखित आधार वादपत्र में उठाए गए आधारों के असंगत नहीं है, परिसीमा विधि से छूट किसी भी आधार पर प्रदान की जा सकती है।

(ii) पुनर्विलोकन का विस्तार सीमित है – अभिलेख में दृश्यमान किसी गलती या त्रुटि के बिना किसी निर्णय या आदेश का पुनर्विलोकन अनुज्ञेय नहीं है एवं ऐसी स्थिति में याचिकाकर्ता द्वारा पूर्व में निराकृत प्रश्नों को पुनः नहीं उठाया जा सकता और न ही पुनः तर्क प्रस्तुत किये जा सकते है।

Shanti Conductors Private Limited and ors. v. Assam State Electricity Board and ors.

Judgment dated 18.12.2019 passed by the Supreme Court in Review Petition (C) No. 786 of 2019, reported in (2020) 2 SCC 677 (Three-Judge Bench)

Relevant extracts from the judgment:

We need to notice as to whether the petitioners in plaint have pleaded any exclusion of time under Section 19 of the Act or not. The plaint is filed as Annexure P/2 in Civil Appeal Nos. 8442-8443 of 2016. A perusal of the plaint indicates that there is no pleading as to exception of limitation by running any fresh period of limitation as per section 19. In paragraph 10, the details of delivery challans have been given, last challan being dated 04.10.1993 has been mentioned by which supply was made. In paragraph 12, details of payments received have also been mentioned, in which last being made on 05.03.1994 has been mentioned, but for the last payment made on 05.03.1994, there was no pleading of an acknowledgment on the part of the respondents, which could result in start of fresh period of limitation. Further in paragraph 21, it has been further specifically pleaded that provisions of Limitation Act do not apply in view of the provisions contained in the 1993 Act as because the 1993 Act is having overriding effect over the Limitation Act and all other Acts. Paragraph 21 of the plaint is referred to for ready reference:-

> "21. That the transaction between the plaintiffs and the defendants are duly maintained by the plaintiffs in the Books of Accounts like ledger, Sale Register etc., which are kept in the usual course of the business of the plaintiffs and those accounts between the plaintiffs and the defendants are in continuity and the interest payable by the defendants to the plaintiffs are carried over till date. As such the suit of the plaintiffs is within time. Apart from that the provisions of the Limitation Act do not apply in view of the provisions contained in the Act, 1993 as because the Act of 1993 is

having overriding effect over the Limitation Act and all other Acts."

Insofar as other submissions of learned senior counsel appearing for the petitioner that 1993 Act is retroactive in nature and further amount due at the time of the commencement of the Act ought to attract interest of the 1993 Act, all these submissions have been elaborately considered in the judgment dated 23.01.2019, which have been considered on merits. The scope of review is limited and under the guise of review, petitioner cannot be permitted to re-agitate and re-argue the questions, which have already ben addressed and decided. The scope of review has been reiterated by this Court from time to time. It is sufficient to refer the judgment of this Court in ***Parsion Devi and ors. v. Sumitri Devi and ors., (1997) 8 SCC 715***, wherein in paragraph 9 following has been laid down:-

> "9. Under Order 47 Rule 1 CPC a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise"."

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184. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11 (d)

Rejection of plaint – Plaint cannot be rejected on issues of limitation and *res judicata* under provisions of Order 7 Rule 11 (d) because the above issues are mixed question of law as well as facts and are liable to be decided after framing issues and on the basis of evidence.

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

वादपत्र का अस्वीकार किया जाना – वादपत्र परिसीमा एवं पूर्वन्याय के विवाद्यकों पर आदेश 7 नियम 11 (घ) के प्रावधानों के अंतर्गत नामंजूर नहीं किया जा सकता क्योंकि उक्त विवाद्यक विधि और तथ्यों के मिश्रित प्रश्न हैं तथा विवाद्यकों की विरचना के उपरांत एवं साक्ष्य के आधार पर निर्धारित किये जाने योग्य हैं।

Surendra Kumar Bhagwanlal Solanki and anr. v. Rameshchandra Bhagwanlal Solanki and anr.

Order dated 18.12.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 331 of 2019, reported in AIR 2020 MP 42

Relevant extracts from the order:

In the case of ***Kamla v. K.T. Eshwara Sa, (2008) 12 SCC 661*** the Apex Court has held that Order 7 Rule 11 CPC has limited application. For its applicability it must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averment made in the plaint. What would be relevant for invoking Order 7 Rule 11 (d) CPC are the averment made in the plaint. For that purpose there cannot be any addition or subtraction. For the purpose of invoking the said provision, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the Court at that stage. The earlier suit was filed on a different cause of action and now the cause of action has changed. After the death of mother on 06.09.2016 the Will dated 06.04.2010 has come into force and the plaintiff is challenging the validity of the Will, therefore, for this relief also the suit is maintainable. The suit cannot be treated as time barred also at this stage because the issue of limitation is a mix question of law as well as fact which can be decided only after recording the evidence. The issue of *res judicata* is also liable to be decided after framing issue and on the basis of evidence. The application under Order 7 Rule 11 CPC is liable to be decided on the basis of averment in the plaint and not on the basis of the material produced by the defendants either in the written statement or on an application under Order 7 Rule 11 CPC, therefore, no case for interference is made out in this revision. The trial Court has not committed any jurisdictional error or illegality in passing the impugned order.

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185. CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 6-A

Counter-claim, permissibility of – Can be filed after filing of written statement and not mandatory to file with the written statement – Held, once issues have been framed court cannot entertain counter-claim after submission of writeen statement – Defendant has no absolute right to file counter-claim after substantive delay.

सिविल प्रक्रिया संहिता, 1908 – आदेश 8 नियम 6–क

प्रतिदावा, अनुज्ञेयता – लिखित कथन प्रस्तुत करने के बाद भी प्रस्तुत किया जा सकता है और लिखित कथन के साथ प्रस्तुत करना आज्ञापक नहीं है – अभिनिर्धारित, एक बार विवादक विरचित हो जाने के बाद लिखित कथन प्रस्तुति के पश्चात प्रस्तुत प्रतिदावे पर न्यायालय विचार नहीं कर सकता – प्रतिवादी को सारभूत विलंब के साथ प्रतिदावा प्रस्तुत करने का कोई असीमित अधिकार नहीं है।

Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and ors.

Judgment dated 19.11.2019 passed by the Supreme Court in SLP (C) No. 23599 of 2018, reported in (2020) 2 SCC 394 (Three-Judge Bench)

Relevant extracts from the judgment:

The whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6A in Order VIII of the CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counter-claim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counter-claim has to be filed along with the written statement and beyond that, the Court has no power. The Courts, taking into consideration the reasons stated in support of the counter-claim, should adopt a balanced approach keeping in mind the object behind the amendment and to sub-serve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counter-claim has to be filed, by curtailing the discretion conferred on the Courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counter-claim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counter-claim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to the CPC.

We sum up our findings that Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

i. Period of delay.

ii. Prescribed limitation period for the cause of action pleaded.

iii. Reason for the delay.

iv. Defendant's assertion of his right.

v. Similarity of cause of action between the main suit and the counter-claim.

vi. Cost of fresh litigation.

vii. Injustice and abuse of process.

viii. Prejudice to the opposite party.

ix. and facts and circumstances of each case.

x. In any case, not after framing of the issues.

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186. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 35 (3)

Delivery of possession – Use of police force – Executive authority cannot take police assistance without appropriate Court order for delivery of possession in pursuance of Court order.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 35 (3)

आधिपत्य का परिदान – पुलिस बल का उपयोग – निष्पादक प्राधिकारी न्यायालय के आदेश के अनुसरण में आधिपत्य के परिदान हेतु न्यायालय के उचित आदेश के बिना पुलिस की सहायता नहीं ले सकता है।

Om Prakash and anr. v. Amar Singh and anr.

Judgment dated 21.10.2019 passed by the Supreme Court in Civil Appeal No. 8175 of 2019, reported in (2019) 10 SCC 136

Relevant extracts from the judgment:

Order 21 Rule 25 of the CPC provides for endorsement by the officer entrusted with the execution that if he is unable to execute the process, the court shall examine the reasons for the alleged inability and pass appropriate orders. No report was submitted by the bailiff asking for police assistance in execution for reasons specified. Likewise, there is no report under Order 21 Rule 35(3) CPC requesting for police assistance for effectuating delivery of possession. There is no material if the application before the Tehsildar was made by the bailiff or the decree holder. Be that as it may, we are constrained to hold that the procedure adopted by the police with regard to the delivery of possession by resorting to a manner outside the procedure of the court, using the court orders as an umbrella was wholly unwarranted. The executive authorities were completely unjustified in their over enthusiasm without asking for proper court orders regarding police assistance despite the fact that they were fully aware that possession was to be delivered in pursuance of a court order. At this belated point of time, we are not inclined or persuaded to order further enquiry into that aspect of the matter. The anxiety expressed by the High Court cannot be said to be unfounded or without substance. We fully endorse the anguish of the High Court, but in the peculiar facts and circumstances of the present case, the apparent absence of the semblance of any right, title or interest in the judgment debtor to be on the lands in question, in exercise of our discretionary jurisdiction decline to interfere with the order dated 11.10.2013 recording delivery of possession. This order is being passed in the peculiar facts of the present case. We may not be understood to have pardoned or overlooked the executive authorities for the manner in which they have acted

and any misadventure in future without appropriate orders of a court will be obviously at their own risks, costs and consequences.

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187. CONSTITUTION OF INDIA – Article 39-A

CRIMINAL PROCEDURE CODE, 1973 – Sections 227 and 309

(i) Legal aid – Appointment of *Amicus Curiae* by Court – Right to free and competent legal service is an essential ingredient of reasonable, fair and just procedure – *Amicus Curiae* must be provided sufficient time to prepare case and represent the accused.

(ii) Criminal trial – Expeditious disposal of cases is desirable Sans the expense of fairness and opportunity to the accused.

(iii) Legal aid – Appointment of *Amicus Curiae* at the expenses of the State – Directions issued to ensure competent legal aid and fair trial.

भारत का संविधान – अनुच्छेद 39–क

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 227 एवं 309

(i) विधिक सहायता – न्यायालय द्वारा न्याय मित्र की नियुक्ति – निःशुल्क और सक्षम विधिक सेवा का अधिकार युक्तियुक्त, निष्पक्ष और न्यायपूर्ण प्रक्रिया का एक अनिवार्य घटक है – न्याय मित्र को बचाव तैयार करने और अभियुक्त का प्रतिनिधित्व करने के लिए पर्याप्त समय प्रदान किया जाना चाहिए।

(ii) आपराधिक विचारण – प्रकरणों का शीघ्र निराकरण वांछनीय है – परन्तु निष्पक्षता और अभियुक्त को अवसर के मूल्य पर नहीं।

(iii) विधिक सहायता – राज्य के व्यय पर न्याय मित्र की नियुक्ति – सक्षम विधिक सहायता और ऋजु विचारण सुनिश्चित करने के लिए दिशानिर्देश जारी किए गए।

Anokhilal v. State of M.P.

Judgment dated 18.12.2019 passed by the Supreme Court in Criminal Appeal No. 62 of 2014, reported in 2020 (1) Crimes 303 (SC) (Three-Judge Bench)

Relevant extracts from the judgment:

The following principles, emerge from the decisions referred to :—

a) Article 39-A inserted by the 42nd amendment to the Constitution, effected in the year 1977, provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The statutory regime put in place including the enactment of the Legal Services Authorities Act, 1987 is designed to achieve the mandate of Article 39-A.

b) It has been well accepted that Right to Free Legal Services is an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the right guaranteed by Article 21. The extract from the decision of this Court in ***Best Bakery case*** [***Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158***] [as quoted in the decision in ***Mohd. Hussain alias Julfikar Ali v. State (Govt. of NCT of Delhi), (2012) 9 SCC 408***] emphasizes that the object of criminal trial is to search for the truth and the trial is not about over technicalities and must be conducted in such manner as will protect the innocent and punish the guilty.

c) Even before insertion of Article 39-A in the Constitution, the decision of this Court in ***Bashira v. State of UP, AIR 1969 SC 1313*** put the matter beyond any doubt and held that the time granted to the *Amicus Curiae* in that matter to prepare for the defense was completely insufficient and that the award of sentence of death resulted in deprivation of the life of the accused and was in breach of the procedure established by law.

d) The portion quoted in ***Bashira*** (supra) from the judgment of the Madras High Court authored by Subba Rao, J., the then Chief Justice of the High Court, stated with clarity that mere formal compliance of the rule under which sufficient time had to be given to the counsel to prepare for the defense would not carry out the object underlying the rule. It was further stated that the opportunity must be real where the counsel is given sufficient and adequate time to prepare.

e) In ***Bashira*** (supra) as well as in ***Ambadas Laxman Shinde v. State of Maharashtra, (2018) 18 SCC 788,*** making substantial progress in the matter on the very day after a counsel was engaged as *Amicus Curiae*, was not accepted by this Court as compliance of 'sufficient opportunity' to the counsel.

In the present case, the *Amicus Curiae*, was appointed on 19.02.2013, and on the same date, the counsel was called upon to defend the accused at the stage of framing of charges. One can say with certainty that the *Amicus Curiae* did not have sufficient time to go through even the basic documents, nor the advantage of any discussion or interaction with the accused, and time to reflect over the matter. Thus, even before the *Amicus Curiae* could come to grips of the matter, the charges were framed.

The concerned provisions *viz.* Sections 227 and 228 of the Code contemplate framing of charge upon consideration of the record of the case and the documents submitted therewith, and after 'hearing the submissions of the accused and the prosecution in that behalf'. If the hearing for the purposes of these provisions is to be meaningful, and not just a routine affair, the right under the said provisions stood denied to the appellant.

In our considered view, the Trial Court on its own, ought to have adjourned the matter for some time so that the *Amicus Curiae* could have had the advantage of sufficient time to prepare the matter. The approach adopted by the Trial Court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was concluded within a fortnight thereafter. In the process, the assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful.

x x x

Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice.

x x x

All that we can say by way of caution is that in matters where death sentence could be one of the alternative punishments, the courts must be completely vigilant and see that full opportunity at every stage is afforded to the accused.

Before we part, we must lay down certain norms so that the infirmities that we have noticed in the present matter are not repeated:—

i) In all cases where there is a possibility of life sentence or death sentence, learned Advocates who have put in minimum of 10 years practice at the Bar alone be considered to be appointed as *Amicus Curiae* or through legal services to represent an accused.

ii) In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as *Amicus Curiae*.

iii) Whenever any learned counsel is appointed as *Amicus Curiae*, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.

iv) Any learned counsel, who is appointed as *Amicus Curiae* on behalf of the accused must normally be granted to have meetings and discussion with the concerned accused. Such interactions may prove to be helpful as was noticed in ***Imtiyaz Ramzan Khan v. State of Maharashtra, (2018) 9 SCC 160***.

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***188.CONTRACT ACT, 1872 – Sections 73 and 74**

Breach of contract; remedies for – Forfeiture of security deposit and detention of machinery, when available? Held, where termination of contract is justified and party not at fault incurred expenses under the contract, forfeiture of security deposit and detention of machinery are just remedies.

संविदा अधिनियम, 1872 – धाराएं 73 एवं 74

संविदा का उल्लंघन के लिए उपचार – सुरक्षा निधि का समपहरण एवं मशीनरी का परिरोध, कब उपलब्ध है? अभिनिर्धारित, जब संविदा का अवसान न्यायसंगत हो एवं ऐसे पक्षकार जिसकी त्रुटि नहीं है, का संविदा के अंतर्गत व्यय उपगत हुआ हो, तब सुरक्षा निधि का समपहरण एवं मशीनरी का परिरोध उचित उपचार है।

Vijay Trading and Transport Company v. Central Warehousing Corporation

Judgment dated 07.11.2019 passed by the Supreme Court in Civil Appeal No. 655 of 2016, reported in (2020) 3 SCC 147 (Three-Judge Bench)

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189. CRIMINAL PROCEDURE CODE, 1973 – Section 91

Summoning of electronic evidence – Application by accused to consider C.C.T.V. footage installed infront of his house – Accused charged with illegal possession of *ganja* – Plea taken by accused relates to plea of *alibi* – Accused has to prove such plea by adducing cogent evidence at stage of trial – Defence cannot be entertained at the stage of investigation – Order rejecting application, proper.

दण्ड प्रक्रिया संहिता, 1973 – धारा 91

इलेक्ट्रानिक साक्ष्य का समन किया जाना – अभियुक्त के निवास स्थान के सामने लगे सी.सी.टी.व्ही. फुटेज पर विचार करने के लिये उसके द्वारा आवेदन दिया गया – अभियुक्त पर गांजा के अवैध आधिपत्य का आरोप – अभियुक्त द्वारा लिया गया अभिवाक्, अन्यत्र उपस्थिति के अभिवाक् से संबंद्ध – ऐसा अभिवाक् अभियुक्त द्वारा विचारण के प्रक्रम पर ठोस साक्ष्य प्रस्तुत करते हुए साबित किया जाना है – अन्वेषण के प्रक्रम पर प्रतिरक्षा ग्रहण नहीं की जा सकती – आवेदन खारिज करने का आदेश, उचित।

Trilochan Khora v. State of Orissa

Judgment dated 17.06.2019 passed by the Orissa High Court in Criminal Miscellaneous case No. 2670 of 2018, reported in 2019 CriLJ 4988

Relevant extracts from the judgment:

In this case, the plea which has been taken in the petition filed under section 91 of Cr.P.C. by the petitioner is basically relates to plea of *alibi*. Law is well

settled that the accused has to prove such plea by adducing cogent and satisfactory evidence at the stage of trial and such a plea must be proved with absolute certainty so as to completely exclude the presence of the person concerned at the time when and the place where the incident took place. The accused cannot insist the prosecuting agency to collect materials for him to prove such plea.

Since the petitioner would get ample opportunity to adduce evidence in support the plea of *alibi* if taken during the stage of trial and the learned trial Court is expected to consider the same in accordance with law and there is lack of material to doubt the bonafide conduct of investigating officer in investigating the case, I find no illegality or impropriety in the impugned order passed by the learned Special Judge, Koraput, Jeypore.

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190. CRIMINAL PROCEDURE CODE, 1973 – Section 174

CRIMINAL TRIAL:

(i) Inquest Report – Purpose of Inquest Report u/s 174 is not to make an enquiry about identity of accused.

(ii) Standard of proof – In a criminal trial, prosecution can succeed only if the guilt of accused is brought home – Fact that accused may have committed offence is not sufficient – Case of prosecution must be established.

दण्ड प्रक्रिया संहिता, 1973 – धारा 174

आपराधिक विचारणः

(i) मृत्यु समीक्षा रिपोर्ट – धारा 174 के अंतर्गत मृत्यु समीक्षा रिपोर्ट का उद्देश्य अभियुक्त की पहचान के बारे में जांच करना नहीं है।

(ii) आपराधिक विचारण – प्रमाण का स्तर – आपराधिक विचारण में अभियोजन केवल तभी सफल हो सकता है जब अभियुक्त के अपराध को साबित किया जा सके – यह तथ्य कि अभियुक्त द्वारा अपराध किया जा सकता है, पर्याप्त नहीं है – अभियोजन का प्रकरण अवश्य ही स्थापित किया जाना चाहिए।

State of Uttarakhand v. Darshan Singh

Judgment dated 07.11.2019 passed by the Supreme Court in Criminal Appeal No. 1856 of 2013, reported in 2019 (4) Crimes 227 (SC)

Relevant extracts from the judgment:

It is true that this Court has repeatedly held that the purpose of inquest under Section 174 of the Cr.P.C., as contained in the said provision, the person holding the inquest, in short, is not to make an inquiry about who are the accused [See in this regard the judgment in ***Tehseen Poonawalla v. Union of India and another, (2018) 10 SCC 498***]. But is equally true that PW2 has not taken the names of any of the accused before the Investigating Officer contrary to his evidence as is proved by the evidence of the Officer.

The manner of effecting recovery has been described by PW5 in the following words:

> "In Ex. Ka 12 Darshan Singh and Pahalwan Singh told that we can given sword and pistol which has been kept hiding near the house of Pahalwan Singh. Accused moved ahead and went near to chhapper. Only one memo of recovery of Pahalwan Singh and Darshan Singh is there. Before preparing this memo, the statements of accused were not recorded on separate paper."
>
> In the same way memo of accused Resham Singh, Daleep Singh and Veer Singh also is one and not noted anywhere separately. But all the three said that we can give after going and all three accused moved ahead and carried at the place of recovery."

The finding in the FSL Report that the cartridge (apparently recovered from the site) has been fired from the 12-bore pistol no.1/69, would not be sufficient for us to hold that the prosecution version in this case stands established and that too in an appeal against the acquittal. In a criminal trial, the prosecution can succeed only if the guilt of the accused is brought home. That the accused may have done the crime barely suffices. The case of the prosecution as sought to be made out must be established.

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191. CRIMINAL PROCEDURE CODE, 1973 – Section 197
PREVENTION OF CORRUPTION ACT, 1988 – Sections 13 (1) (d) and 13(2) r/w/s 19
Protection under Section 197 of the Code is available to the public servant when an offence is said to have been committed "while acting or purporting to act in discharge of official duty" – Where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected – Whether the alleged act is intricately connected with the discharge of official function would get crystallized only after evidence is led and the issue of sanction can be agitated at a later stage.

दण्ड प्रक्रिया संहिता, 1973 – धारा 197
भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 13 (1) (घ) एवं 13(2) सहपठित धारा 19

धारा 197 का संरक्षण लोक सेवक को उस समय उपलब्ध होता है जबकि कोई अपराध पदीय कर्तव्यों के निर्वहन में कारित किया गया हो – जहां सदोष अभिलाभ प्राप्त करने के लिए कार्यालय का प्रयोग मात्र कृत्यों को कारित करने में किया जाए उन्हें संरक्षित नहीं किया जा सकता – क्या कारित कृत्य तथाकथित पदीय कर्तव्यों के

अनुक्रम में किए जाना जटिलता से परस्पर संबद्ध दर्शित होते हैं उन्हें साक्ष्य प्रस्तुत होने के उपरांत ही परीक्षित किया जा सकता है एवं स्वीकृति से संबंधित प्रश्न को पश्चात्वर्ती प्रक्रम पर भी चुनौती दी जा सकती है।

Station House Officer, CBI/ACB/Bangalore v. B.A. Srinivasan and anr.

Judgment dated 05.12.2019 passed by the Supreme Court in Criminal Appeal No. 1837 of 2019, reported in 2019 (4) Crimes 313 (SC) (Three-Judge Bench)

Relevant extracts from the judgment:

There was no occasion or reason to entertain any application seeking discharge in respect of offences punishable under the Act, on the ground of absence of any sanction under Section 19 of the Act. The High Court was also not justified in observing 'that the protection available to a public servant while in service, should also be available after his retirement'. That statement is completely inconsistent with the law laid down by this Court in connection with requirement of sanction under Section 19 of the Act. Again, it has consistently been laid down that the protection under Section 197 of the Code is available to the public servants when an offence is said to have been committed 'while acting or purporting to act in discharge of their official duty', but where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected. The statements of law in some of the earlier decisions were culled out by this Court in ***Inspector of Police and anr. v. Battenapatla Venkata Ratnam and anr., (2015) 13 SCC 87,*** as under:

> "No doubt, while the respondents indulged in the alleged criminal conduct, they had been working as public servants. The question is not whether they were in service or on duty or not but whether the alleged offences have been committed by them "while acting or purporting to act in discharge of their official duty". That question is no more res integra. In ***Shambhoo Nath Misra v. State of U.P., (1997) 5 SCC 326,*** at para 5, this Court held that:
>
> > "The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund, etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds, etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund, etc. It does not mean that it is integrally connected or

> inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained."

In ***Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1,*** at para 20 this Court held that:

> "The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity."

and thereafter, at para 38, it was further held that: (***Parkash Singh Badal case,*** (supra))

> "The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage."

In a recent decision in ***Rajib Ranjan v. R. Vijaykumar, (2015) 1 SCC 513,*** at para 18, this Court has taken the view that:

> "even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted."

It has also been observed by this Court that, at times, the issue whether the alleged act is intricately connected with the discharge of official functions and whether the matter would come within the expression 'while acting or purporting to act in discharge of their official duty', would get crystalized only after evidence is led and the issue of sanction can be agitated at a later stage as well.

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192. CRIMINAL PROCEDURE CODE, 1973 – Section 205

Personal appearance – Dispensing with – Application for dispensing with personal appearance rejected by the High Court – Considering the facts and circumstance of the case, held as applications for exemption of other co-accused on same grounds were allowed and accused never attempted to delay the trial, application for dispensing with personal attendance filed by the accused allowed with conditions.

दण्ड प्रक्रिया संहिता, 1973 – धारा 205

वैयक्तिक हाजिरी – अभिमुक्ति – वैयक्तिक हाजिरी से अभिमुक्ति से संबंधित आवेदन उच्च न्यायालय द्वारा निरस्त किया गया – प्रकरण के तथ्यों एवं परिस्थितियों को विचार में लेने के उपरांत ये अभिनिर्धारित किया गया कि चूंकि वैयक्तिक हाजिरी से अभिमुक्ति संबंधी अन्य अभियुक्त का आवेदन समान आधारों पर स्वीकार किया जा चुका है एवं अभियुक्त द्वारा विचारण में विलंब कारित करने का कभी प्रयास नहीं किया गया, अभियुक्त द्वारा प्रस्तुत अभिमुक्ति से संबंधित वैयक्तिक हाजिरी का आवेदन शर्तों के साथ स्वीकार किया गया।

Puneet Dalmia v. Central Bureau of Investigation, Hyderabad

Judgment dated 16.12.2019 passed by the Supreme Court in Criminal Appeal No. 1901 of 2019, reported in 2020 (1) Crimes 6 (SC)

Relevant extracts from the judgment:

Considering the facts and circumstances of the case, the present appeal is allowed. The impugned Judgment and order passed by the High Court as well as that of the learned Trial Court rejecting the application submitted by the appellant under Section 205 Cr.P.C. are hereby quashed and set aside and consequently the application submitted by the appellant to dispense with his appearance before the learned Trial Court on all dates of adjournments and permitting his counsel to appear on his behalf is hereby allowed on the following conditions:

(1) That the appellant shall give an undertaking to the learned Trial Court that he would not dispute his identity in the case and that the -advocate who is permitted to represent the appellant, would appear before the learned Trial Court on his behalf on each and every date of hearing and that he shall not object recording of the evidence in his absence and that no adjournment shall be asked for on behalf of the appellant and/or his advocate;

(2) That the appellant shall appear before the learned Trial Court for the purpose of framing of the charges and also on other hearing dates whenever the learned Trial Court insists for his appearance;

(3) If there is any failure on the part of the advocate, who is to represent the appellant, either to appear before the learned Trial Court on each adjournment and/or any adjournment is sought on behalf of the

appellant and/or if the learned Trial Court is of the opinion that the appellant and/or his advocate is trying to delay the trial, in that case, it would be open for the learned Trial Court to exercise its powers under Section 205 (2) Cr.P.C. and direct the appearance of the appellant on each and every date of adjournment.

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193. CRIMINAL PROCEDURE CODE, 1973 – Section 319
EVIDENCE ACT, 1872 – Section 114
Summoning of accused – Exercise of discretion – Incident took place at night within the confines of matrimonial home where only the second respondent (accused) and the deceased were residing – Order for summoning the accused passed by trial court was restored as it was passed after careful evaluation of evidentiary material and based on settled principles of law. [*Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 (Constitution Bench)* relied].

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

साक्ष्य अधिनियम, 1872 – धारा 114

अभियुक्त को समन – विवेकाधिकार का प्रयोग – घटना ससुराल में घर की चार दीवारी में रात्रि में घटित हुई जहां केवल द्वितीय प्रत्यर्थी (अभियुक्त) एवं मृतका निवास कर रहे थे – अभियुक्त को समन करने का विचारण न्यायालय द्वारा पारित आदेश साक्ष्यिक सामग्री का सावधानीपूर्ण मूल्यांकन एवं विधि के स्थापित सिद्धांतों पर आधारित है। **[*हरदीप सिंह विरुद्ध स्टेट ऑफ पंजाब, (2014) 3 एससीसी 92* (संवैधानिक पीठ) अवलंबित]**

Saeeda Khatoon Arshi v. State of U.P. and anr.
Judgment dated 10.12.2019 passed by the Supreme Court in Criminal Appeal No. 1815 of 2019, reported in 2019 (4) Crimes 530 (SC)

Relevant extracts from the judgment:

The order of the Additional Sessions Judge dated 29 January, 2019 for summoning the second respondent was on the basis of the evidence which emerged during the course of the trial. The order summoning the second respondent was on a careful evaluation of the evidentiary material and based on the principles laid down in the decision of the Constitution Bench in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***. The Additional Sessions Judge furnished reasons for relying on the provisions of Section 114 of the Evidence Act having due regard to the fact that the incident had taken place within the confines of the matrimonial home where only the second respondent and the deceased were residing on the night when the incident took place.

The order passed by the Additional Sessions Judge did not suffer from any infirmity. On the contrary, it was the High Court which interfered with the findings of the Trial Court on the specious ground that the trial was proceeding against

Manoj Shrivastav for an offence under Section 306 and that the Trial Court had merely engaged in an exercise of exploring the possibility as to the cause of death. Section 319 empowers the court to proceed against a person appearing to be guilty of an offence where, in the course of any enquiry into or trial of, an offence, it appears from the evidence that any person, not being the accused, has committed any offence for which such person could be tried together with the accused. The exercise of the discretion by the Additional Sessions Judge to summon the second respondent fulfilled the requirements of Section 319 and was consistent with the parameters laid down in the decisions of this Court in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92, Gajanan Dashrath Kharte v. State of Maharashtra, (2016) 4 SCC 604, Babubhai Bhimabhai Bokhiria v. State of Gujarat, (2014) 5 SCC 568, Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706, Rajesh v. State of Haryana, (2019) 6 SCC 368*** and ***S Mohammed Ispahani v. Yogendra Chandak, (2017) 16 SCC 226.*** The fact that a protest petition had not been filed by the appellant when the report was submitted under Section 173 did not render the court powerless to exercise its powers under Section 319 on the basis of the evidence which had emerged during the course of the trial. The evidence of PW-1 and PW-2 which has been adverted to above meets the threshold required to sustain an order for summoning under Section 319. The High Court has failed to analyse the basis on which the Additional Sessions Judge had proceeded to issue summons under Section 319 and in a brief set of observations covering a few sentences displaced a well-considered order of the Additional Sessions Judge in purported exercise of the jurisdiction under Section 482. The order passed by the High Court is unsustainable and would accordingly have to be set aside.

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***194. CRIMINAL PROCEDURE CODE, 1973 – Sections 437, 438 and 439**

Bail – Condition of cash deposit – Refund of such amount; entitlement of – Bail application was allowed on condition of depositing ₹ 1,50,000/- as FDR in name of complainant wife – Accused persons were discharged of the alleged offences – Held, deposit was made in pursuant of order of bail – Once discharged, accused persons are entitled to encash the FDR – Without any adjudication, complainant wife is not entitled to encash such FDR – She may approach appropriate Court to enforce her rights.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437, 438 एवं 439

जमानत – नगद जमा करने की शर्त – ऐसी राशि वापस प्राप्त करने का अधिकार – परिवादी पत्नी के नाम पर एफडीआर के रूप में ₹ 1,50,000/– जमा करने की शर्त पर जमानत आवेदन स्वीकार किया गया – अभियुक्तगण आरोपित अपराधों से उन्मोचित कर दिए गए – अभिनिर्धारित, जमानत आदेश के अनुपालन में राशि जमा की गई थी – एक बार उन्मोचित होने पर अभियुक्तगण सावधि जमा का नगदीकरण कराने के अधिकारी हैं – बिना किसी निर्णयन के परिवादी पत्नी को ऐसे सावधि जमा का

नगदीकरण कराने का अधिकार नहीं है – वह अपने अधिकारों के प्रवर्तन के लिए उपयुक्त न्यायालय जा सकती है।

Smt. Madhu Rani v. State (Govt. of NCT of Delhi) and anr.
Order dated 21.10.2019 passed by the Supreme Court in Criminal Appeal No. 1600 of 2019, reported in 2020 CriLJ 551

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195. CRIMINAL PROCEDURE CODE, 1973 – Section 439

Grant of interim bail – Economic offences having deep-rooted conspiracy and involving huge loss of investors' money – If the respondent continues on bail, there is little chance of realising any amount by selling the properties – Having regard to the material on record and huge amount of money belonging to investors, accused should not have been released on bail – Consequently, impugned order granting interim bail to respondent set aside.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439

अंतरिम जमानत प्रदान करना – आर्थिक अपराध जो षडयंत्र की गहरी जड़े एवं निवेशकों के धन के व्यापक नुकसान को समाहित करते हैं – यदि प्रत्यर्थी निरंतर प्रतिभूति पर रहता है तब संपत्ति के विक्रय द्वारा धनराशि प्राप्त करने की संभावना कम है – अभिलेख पर उपलब्ध विषय–वस्तु एवं निवेशकों की व्यापक धनराशि को ध्यान में रखते हुए अभियुक्त को जमानत पर रिहा नहीं किया जाना चाहिए था – परिणामस्वरूप अंतरिम जमानत देने संबंधी आक्षेपित आदेश को अपास्त किया गया।

Central Bureau of Investigation v. Ramendu Chattopadhyay
Judgment dated 19.11.2019 passed by the Supreme Court in Criminal Appeal No. 1711 of 2019, reported in 2019 (4) Crimes 295 (SC)

Relevant extracts from the judgment:

This Court is conscious of the need to view such economic offences having a deep-rooted conspiracy and involving a huge loss of investors' money seriously. Though further investigation is going on, as of now, the investigation discloses that the Respondent played a key role in the promotion of the chit fund scam, thereby cheating a large number of innocent depositors and misappropriating their hardearned money.

We are of the *prima facie* view that if the Respondent continues on bail, there is little chance of realising any amount by selling the properties of the Tower Group of companies, since he may use unlawful tactics to keep prospective buyers away. Moreover, it is relevant to note that the investigating agency has not yet assessed the exact total amount invested by the people of Orissa in the accused company, so as to find out the specific liability of the company in that regard. However, it is argued by both the Counsels that the amount may be about Rs. 350 Crores. Be that as it may, having regard to the material on record, and since a huge amount of money belonging to investors has been siphoned

off, as well as for the aforesaid reasons, the High Court, in our considered opinion, should not have released the respondent on bail.

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196. CRIMINAL PROCEDURE CODE, 1973 – Section 439 (2)

(i) Bail – Grant of – Power to grant bail u/s 439 of the Code is of wide amplitude – Factors to be considered – Determination of whether a case is fit for grant of bail involves balancing of numerous factors, amongst which nature of offence, severity of punishment and *prima facie* view of involvement of accused are important – No strait jacket formula exists for courts to assess an application for grant or rejection of bail.

(ii) Bail, determining factors – At the stage of assessing whether a case is fit for grant of bail, court is not required to enter into detailed analysis of evidence on record to establish beyond reasonable doubt commission of crime by accused.

(iii) Administration of justice – Grant or refusal of bail – Duty of Judge – Judges are duty bound to explain the basis on which they have arrived at a conclusion – Where order refusing or granting bail does not furnish reasons that inform the decision, there is presumption of non-application of mind which may require intervention of this Court – Where earlier application for bail has been rejected, there is a higher burden on Appellate Court to furnish specific reasons to grant bail.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439 (2)

(i) जमानत – प्रदान किया जाना – धारा 439 के अंतर्गत जमानत प्रदान किये जाने के विस्तृत आयाम हैं – विचार योग्य कारक – किसी प्रकरण का जमानत योग्य होना कई कारकों के संतुलन के आधार पर निर्धारित होता है जिसमें अपराध की प्रकृति, दण्ड की कठोरता और आरोपी की प्रथम दृष्टया संलिप्तता महत्वपूर्ण हैं – जमानत आवेदन स्वीकृत या अस्वीकृत किये जाने हेतु न्यायालयों के लिये कोई निश्चित समीकरण विद्यमान नहीं है।

(ii) जमानत निर्धारण के कारक – किसी प्रकरण के जमानत योग्य होने या नहीं होने के निर्धारण के स्तर पर न्यायालय को अभिलेख पर उपलब्ध साक्ष्य के विस्तृत विश्लेषण से आरोपी द्वारा संदेह से परे अपराध किये जाने के तथ्य को स्थापित किये जाने की आवश्यकता नहीं होती है।

(iii) न्यायिक प्रशासन – जमानत स्वीकार या अस्वीकार किया जाना – न्यायाधीश का कर्तव्य – न्यायाधीश यह स्पष्ट करने के लिये कर्तव्यबद्ध हैं कि वे किन करणों के आधार पर किसी निष्कर्ष तक पहुंचे हैं – जहां जमानत स्वीकृत या अस्वीकृत करने वाला आदेश निष्कर्ष तक पहुंचने वाले कारणों को प्रकट नहीं करता है वहां मस्तिष्क के अनुपयोग की उपधारणा उत्पन्न होती है और तब इस न्यायालय

के हस्तक्षेप की आवश्यकता हो सकती है – जहां जमानत का पूर्व आवेदन निरस्त कर दिया गया हो वहां अपीलीय न्यायालय पर उन विशिष्ट कारणों को स्पष्ट करने का और अधिक भार होता है कि जमानत क्यों प्रदान किया जाना चाहिए।

Mahipal v. Rajesh Kumar @ Polia and anr.

Judgment dated 05.12.2019, passed by the Supreme Court in Criminal Appeal No. 1843 of 2019, reported in 2019 (4) Crimes 321 (SC)

Relevant extracts from the judgment:

Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 of the CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598,*** Justice Umesh Banerjee, speaking for a two judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms:

> "3. Grant of bail though being a discretionary order – but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case.
>
> ... The nature of the offence is one of the basic considerations for the grant of bail & more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.
>
> 4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:
>
> (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
>
> (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a *prima facie* satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

The determination of whether a case is fit for grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a *prima facie* view of the involvement of the accused are important. No straight jacket formula exists for courts to assess an application for grant or rejection of bail. At the stage of assessing whether a case is fit for grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a *prima facie* or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a *prima facie* view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case by case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a *prima facie* or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

The decision of this Court in ***Prasanta kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496*** has been consistently followed by this Court in ***Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446, Ranjit Singh v. State of Madhya Pradesh, (2013) 16 SCC 797, Neeru Yadav v. State of U.P., (2014) 16 SCC 508, Virupakshappa Gouda v. State of Karnataka, (2017) 5 SCC 406 and State of Orissa v. Mahimananda Mishra, (2018) 10 SCC 516***.

In assessing the rival submissions, it is necessary to advert to the findings of the post-mortem report dated 3rd December 2018. On the basis of the injuries, the post-mortem report concluded:

> "All above mentioned injuries are *ante mortem* in nature. Duration within about 6 hrs prior to death.
>
> We the members of medical board are of the opinion that cause of death is coma brought about as a result of *ante mortem* head injuries mentioned in this PMR, sufficient to cause death in ordinary course of nature. However final opinion will be given after receiving FSL reports of above sent samples."

A total of twenty-seven *ante mortem* injuries were recorded of which seven were found to be inflicted on the head. This led the members of the medical board to conclude that the cause of death was coma brought about by the result of the head injuries. The learned counsel for the first respondent contended that the deceased fell from the bike and sustained injuries which led to his death. However, it is not for the court to assess in detail the evidence on record to come to a conclusive finding on a chain of causation. A court assessing a plea of bail is required to find a *prima facie* view of the possibility of the commission of the crime by the accused and not conclude that the alleged crime was in fact committed by the accused beyond reasonable doubt.

The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In ***Neeru Yadav*** (supra), the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Justice Dipak Misra (as the learned Chief Justice then was) held:

> "..It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself

> or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court. ..."

Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a *prima facie* view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a *prima facie* or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. The order of the High Court in the present case, in so far as it is relevant reads:

> "2. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.
>
> 3. Learned Public Prosecutor and counsel for the complainant have opposed the bail application.
>
> 4. Considering the contentions put-forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this court deems it just and proper to enlarge the petitioner on bail."

Merely recording "having perused the record" and "on the facts and circumstances of the case" does not sub-serve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the judge in the

rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty bound to explain the basis on which they have arrived at a conclusion.

Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court. Where an earlier application for bail has been rejected, there is a higher burden on the appellate court to furnish specific reasons as to why bail should be granted.

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197. CRIMINAL TRIAL:

Effect of pending criminal trial – Accused persons convicted for commission of offence punishable u/s 302/34 I.P.C. – Criminal appeal against conviction was filed – Trial Court while passing the judgment made certain adverse observations against investigation officer – On the basis of observations, complaint u/s 166, 167, 201 to 204 IPC was filed – As the matter is *sub judice*, the appellant is required to await the final outcome of criminal appeal.

आपराधिक विचारण:

आपराधिक विचारण लंबित रहने का प्रभाव – अभियुक्तगण को धारा 302 सहपठित धारा 34 भा.द.सं. के अंतर्गत दण्डनीय अपराध के लिए दोषसिद्ध किया गया – दोषसिद्धि के विरुद्ध अपील प्रस्तुत की गई – विचारण न्यायालय द्वारा निर्णय पारित करते समय अन्वेषण अधिकारी के विरुद्ध कुछ प्रतिकूल टिप्पणियाँ की – टिप्पणियों के आधार पर भा.द.सं. की धारा 166, 167, 201 से 204 के अन्तर्गत परिवाद प्रस्तुत किया गया – मामला विचाराधीन होने से अपीलार्थी के लिए यह आवश्यक है कि वह दाण्डिक अपील के अंतिम निराकरण तक प्रतीक्षा करे।

Shri Hanumant Dinkar Arjun v. Shri Suresh R. Andhare and anr.
Judgment dated 03.05.2019 passed by the Supreme Court in Criminal Appeal No. 25 of 2009, reported in 2019 (4) Crimes 330 (SC)

Relevant extracts from the judgment:

It is not disputed by the parties that the accused persons have filed criminal appeal in the High Court against the order dated 26.02.2003 and the same is pending in the High Court.

If that be so, then, in our opinion, the order dated 26.02.2003, which is the basis of the complaint in question, is *sub judice* in the criminal appeal.

In other words, when the order, which is the foundation for filing the complaint in question itself is *sub judice*, the appellant is required to await the final outcome of the criminal appeal filed by the accused persons.

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198. CRIMINAL TRIAL:

Inquest and post-mortem report – Prevalency – When there are some variations between inquest report and post mortem report, then it is the post mortem report which prevails over the inquest report because doctor knows exactly which are medical injuries.

आपराधिक विचारण:

मृत्यु समीक्षा एवं शव परीक्षण रिपोर्ट – अधिमानता – जब मृत्यु समीक्षा रिपोर्ट एवं शव परीक्षण रिपोर्ट में कुछ भिन्नता हों, तब शव परीक्षण रिपोर्ट मृत्यु समीक्षा रिपोर्ट पर अभिभावी होती है क्योंकि चिकित्सक ठीक–ठीक जानता है कि कौन से चिकित्सीय घाव हैं।

Javed Abdul Rajjaq Shaikh v. State of Maharashtra

Judgment dated 06.11.2019 passed by the Supreme Court in Criminal Appeal No. 1181 of 2011, reported in 2019 (4) Crimes 198 (SC)

Relevant extracts from the judgment:

As far as the injuries in the inquest report not being noticed in the post-mortem report is concerned, there can be no doubt that the medical doctor knows exactly what medical injuries are and ordinarily in case of inconsistency, the medical report of the doctor should prevail. Having regard to the post mortem and the evidence of P.W.1, the nature of injuries noticed as explained by the deposition of P.W.1 unerringly point to the death being caused by throttling as opined by the doctor. Much may not turn on the injuries which are alleged to have been noted in the Inquest not being noted in the post mortem note.

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199. CRIMINAL TRIAL:

(i) Sentence – Reduction – For reduction of sentence, detailed analysis of facts of the case, nature of injuries caused, weapons used, number of victims etc., have to be taken into consideration.

(ii) Tests of sentencing for crimes – Crime test, criminal test and comparative proportionality test – Explained.

आपराधिक विचारण:

(i) दण्डादेश – लघुकरण – दण्डादेश के लघुकरण के लिए प्रकरण के तथ्य, कारित उपहतियों की प्रकृति, प्रयुक्त आयुध, आहत की संख्या आदि के विस्तृत विश्लेषण को विचार में लिया जाना चाहिए।

(ii) अपराधों के लिये दण्डादेश की कसौटी – अपराध परीक्षण, अपराधी परीक्षण तथा तुलनात्मक समानुपातिक परीक्षण – समझाया गया।

State of Madhya Pradesh v. Udham and ors.

Judgment dated 22.10.2019 passed by the Supreme Court in Criminal Appeal No. 690 of 2014, reported in (2019) 10 SCC 300 (Three-Judge Bench)

Relevant extracts from the judgment:

Large number of cases are being filed before this Court, due to insufficient or wrong sentencing undertaken by the Courts below. We have time and again cautioned against the cavalier manner in which sentencing is dealt in certain cases. There is no gainsaying that the aspect of sentencing should not be taken for granted, as this part of Criminal Justice System has determinative impact on the society. In light of the same, we are of the opinion that we need to provide further clarity on the same.

Sentencing for crimes has to be analyzed on the touch stone of three tests viz., crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti¬social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).

Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach.

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200. EVIDENCE ACT, 1872 – Section 9

Test identification parade – Effect of non-holding – If the material on record sufficiently indicates that reasons for "gaining an enduring impression of the identity on the mind and memory of the witnesses" are available on record, the matter stands in a completely different perspective – In such cases, even non-holding of identification parade would not be fatal to the prosecution case.

साक्ष्य अधिनियम, 1872 – धारा 9

शिनाख्त परेड – नहीं कराए जाने का प्रभाव – यदि अभिलेख पर उपलब्ध सामग्री संतोषजनक रूप से इंगित करती है कि गवाहों के मन और मस्तिष्क पर शख्स की चिरस्थायी छबि विद्यमान होने का कारण अभिलेख पर उपलब्ध है तब मामला पूर्ण रूप

से भिन्न परिप्रेक्ष्य रखता है – ऐसे प्रकरण में शिनाख्त परेड का सम्पन्न नहीं किया जाना अभियोजन के मामले के लिए घातक नहीं है।

Raja v. State by Inspector of Police

Judgment dated 10.12.2019 passed by the Supreme Court in Criminal Appeal No.740 of 2018, reported in AIR 2020 SC 254

Relevant extracts from the judgment:

It is clear that if the material on record sufficiently indicates that reasons for "gaining an enduring impression of the identity on the mind and memory of the witnesses" are available on record, the matter stands in a completely different perspective. This Court also stated that in such cases even non-holding of identification parade would not be fatal to the case of the prosecution. Applying the tests so laid down to the present case, in view of the fact that each of the eyewitnesses had suffered number of injuries in the transaction, it can safely be inferred that every one of them had sufficient opportunity to observe the accused to have an enduring impression of the identity of the assailants. It is not as if the witnesses had seen the assailants, in a mob and from some distance. Going by the injuries, the contact with the accused must have been from a close distance.

As has been repeatedly laid down by this Court, what is important is the identification in Court and if such identification is otherwise found by the Court to be truthful and reliable, such substantive evidence can be relied upon by the Court. Considering the totality of circumstances on record, the presence and participation of the Accused Nos.1 to 6, in our view, stood proved through the eyewitness account. We do not find any infirmity in the evidence of identification by PWs 1 to 5.

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***201. EVIDENCE ACT, 1872 – Section 45**

APPRECIATION OF EVIDENCE:

Handwriting expert; opinion of – Evidentiary value – Conviction cannot be based solely on the opinion of handwriting expert – Court must seek corroboration from other evidence; direct or circumstantial – Oral testimony of complainant whose signature is alleged to be forged is sufficient corroboration.

साक्ष्य अधिनियम, 1872 – धारा 45

साक्ष्य का मूल्यांकनः

हस्तलिपि विशेषज्ञ का अभिमत – साक्ष्यिक मूल्य – मात्र हस्तलिपि विशेषज्ञ के अभिमत के आधार पर दोषसिद्धि नहीं हो सकती है – न्यायालय को अन्य प्रत्यक्ष अथवा परिस्थितिजन्य साक्ष्य से संपुष्टि की अपेक्षा करनी चाहिए – ऐसे परिवादी की मौखिक साक्ष्य पर्याप्त संपुष्टि होगी जिसके हस्ताक्षर की कूटरचना का आक्षेप है।

Padum Kumar v. State of Uttar Pradesh

Judgment dated 14.01.2020 passed by the Supreme Court in Criminal Appeal No. 87 of 2020, reported in (2020) 3 SCC 35

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202. EVIDENCE ACT, 1872 – Section 65-B

Production of electronic evidence – Any photograph, as an electronic evidence may be produced by the party during cross-examination without certificate u/s 65-B of the Evidence Act but admissibility of such evidence will be decided finally by the Trial Court.

साक्ष्य अधिनियम, 1872 – धारा 65–ख

इलेक्ट्रॉनिक साक्ष्य की प्रस्तुति – प्रतिपरीक्षण के दौरान किसी भी पक्ष द्वारा कोई भी छायाचित्र इलेक्ट्रॉनिक साक्ष्य के रूप में साक्ष्य अधिनियम की धारा 65–ख के प्रमाण पत्र के बिना भी प्रस्तुत किया जा सकता है किंतु ऐसे साक्ष्य की ग्राह्यता का निर्धारण अंतिम रूप से विचारण न्यायालय द्वारा किया जाएगा।

Yogendra Sangle v. State of M.P.

Judgment dated 18.09.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 4087 of 2019, reported in 2020 (1) MPLJ 84

Relevant extracts from the judgment:

It is submitted that if the opportunity of putting the other party to cross-examination as to whether such photograph showing presence of prosecutrix were actually taken in her presence or not, is not extended to the petitioner, then he will have to recall the witness in case this revision is allowed in future date by the Court and that will add to the cost and duration of the litigation. Learned counsel for the petitioner on his own submits that he be allowed to put these questions subject to the final decision by the trial Court as to the validity of production of such photographs.

In view of such innocuous prayer and looking to the judgment rendered by the Supreme Court in case of ***Shafi Mohammad v. State of Himachal Pradesh, (2018) 2 SCC 801,*** revision is allowed. Trial Court is directed to permit the petitioner to produce such photographs and cross-examine the prosecutrix in relation to such photographs. Afterwards final decision be taken by the trial Court as to the admissibility of such photographs & such cross-examination will be subject to such final decision.

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203. HINDU ADOPTION AND MAINTENANCE ACT, 1956 – Sections 20, 21, 22, 27 and 28

CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 30

(i) Maintenance of daughter – A Hindu minor daughter has a right of maintenance from her father unless she marries and heirs of the deceased Hindu are bound to maintain such daughter out of the estate inherited by them from the deceased.

(ii) Execution of money decree – Every decree for payment of money including a decree for maintenance amount may be executed by detention in civil prison of the Judgment debtor's property and attachment and sale of his property may be done even after death of judgment-debtor.

हिन्दू दत्तक तथा भरण–पोषण अधिनियम, 1956 – धाराएं 20, 21, 22, 27 एवं 28

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 30

(i) पुत्री का भरण–पोषण – एक हिन्दू अवयस्क बालिका को, जब तक वह विवाह नहीं करती, अपने पिता से भरण–पोषण पाने का अधिकार है और मृतक हिंदू के वारिस मृतक से विरासत में मिली संपदा में से ऐसी पुत्री का भरण–पोषण करने हेतु बाध्य हैं।

(ii) धन की डिक्री का निष्पादन – भरण–पोषण राशि की डिक्री सहित धन की अदायगी की प्रत्येक डिक्री का निष्पादन निर्णीतऋणी के सिविल कारागार में निरोध के द्वारा या उसकी संपत्ति की कुर्की और विक्रय द्वारा किया जा सकता है यहां तक कि उसकी संपत्ति की कुर्की निर्णीतऋणी की मृत्यु पश्चात् भी की जा सकती है।

Ku. Jhalak v. Rahul (deceased) through Smt. Seema

Order dated 20.11.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 2400 of 2019, reported in 2020 (1) MPLJ 600

Relevant extracts from the order:

As per Section 22(1), subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased. As per sub-section (2), where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled subject to the provisions of this Act, to maintenance from those who take the estate. Likewise, Section 26 provides that debts to have priority over the claims of dependant for maintenance under this Act. As per Section 27, the dependant's claim for maintenance shall not be a charge on

a estate of the deceased or portion thereof unless one has been created by the will of the deceased, by a decree of Court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

It is clear from sections 20 to 27 of the Act that the unmarried daughter is entitled to claim maintenance till her marriage. The heir of the deceased Hindu are bound to maintain the dependant of a Hindu out of the estate inherited by them from the deceased. The depenant's claim for maintenance under this Act shall be charged on the estate of the deceased if the charge is created by a Will of the deceased or by a decree of a Court. The dependant has a right to receive the maintenance out of the estate of the deceased.

Order 21 Rule 30 of C.P.C. provides execution of money decree and according to which, every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor or by the attachment and sale of his property, or by both. Therefore, even if the judgment-debtor has expired, the money decree is liable to be executed by attachment of his property.

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204. HINDU LAW:

HINDU MARRIAGE ACT, 1955 – Section 7

Marriage between persons of prohibited degree – In the absence of proof of custom and solemnization of marriage, judicial notice of custom cannot be taken.

हिन्दू विधिः

हिन्दू विवाह अधिनियम, 1955 – धारा 7

प्रतिषिद्ध डिग्री के व्यक्तियों के मध्य विवाह – प्रथा अथवा विवाह की सम्पन्नता के सबूत के अभाव में प्रथा के संबंध में न्यायिक अवेक्षा नहीं की जा सकती है।

Rathnamma and ors. v. Sujathamma and ors.

Judgment dated 15.11.2019 passed by the Supreme Court in Civil Appeal No. 3050 of 2010, reported in AIR 2020 SC 541

Short facts of the case:

Plaintiff claiming share in partition suit on the basis of her alleged marriage with dependents son, who is also brother of her mother. Plaintiff neither pleaded any custom permitting marriage within prohibited degree nor there proof of solemnization of marriage by customary ceremonies or rites. Judicial notice of custom recognizing such marriage cannot be taken in absence of proof of custom and solemnization of marriage, plaintiff cannot succeed the estate of deceased.

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205. INDIAN PENAL CODE, 1860 – Sections 161, 166, 420, 468 and 471 PREVENTION OF CORRUPTION ACT, 1947 – Sections 5(1)(d) and 5(2) Cheating and forgery – Conviction and sentence – Findings recorded in support of case of prosecution were in conformity with oral and documentary evidence on record – Appellant knowing fully well that (fake and fabricated) invoices/bills were presented on behalf of firm to the bank and thus, cheated the bank – Prosecution has proved guilt of appellant beyond reasonable doubt to record conviction of appellant – On mere allegation of appellant that *amicus curiae* appointed was earlier junior counsel of C.B.I. advocate, is no ground to interfere with impugned judgment.

भारतीय दण्ड संहिता, 1860 – धाराएं 161, 166, 420, 468 एवं 471 भ्रष्टाचार निवारण अधिनियम, 1947 – धाराएं 5(1)(घ) एवं 5(2)

छल एवं कूटरचना – दोषसिद्धि एवं दण्डादेश – अभियोजन के प्रकरण के समर्थन में अभिलिखित निष्कर्ष अभिलेख के मौखिक एवं दस्तावेजी साक्ष्य के अनुरूप थे – अपीलार्थी अच्छे से जानता था कि (नकली एवं मनगढ़ंत) बीजक और देयक फर्म की ओर से बैंक को प्रस्तुत किये गये थे और बैंक को छला गया था – अपीलार्थी की दोषसिद्धि को अभिलिखित करने के लिये अभियोजन ने युक्तियुक्त संदेह से परे अभियुक्त की दोषिता साबित की है – अपीलार्थी के इस आक्षेप मात्र पर कि नियुक्त किया न्यायालय मित्र पूर्व में केन्द्रीय अन्वेषण ब्यूरो के अधिवक्ता का कनिष्ठ अधिवक्ता था, आलोच्य निर्णय में हस्तक्षेप किये जाने का कोई आधार नहीं है।

Mayank N Shah v. State of Gujarat and anr.

Judgment dated 18.12.2019 passed by the Supreme Court in Criminal Appeal No. 2298 of 2010, reported in 2020 (1) Crimes 53 (SC) (Three-Judge Bench)

Relevant extracts from the judgment:

On appreciation of oral and documentary evidence on record, trial court/ Special Court has convicted the accused nos.1 to 4 and the High Court by the impugned judgment confirmed the conviction and sentence imposed on the appellant. When the advocate on record who filed the appeal was elevated to the Bench, it was for the appellant to make his own arrangement for appointing another advocate in the place of earlier advocate on record. Appellant did not take any steps in this regard. Even notice sent to the appellant was not received by him for want of correct address. As such there was no option except to proceed for disposal of the appeal filed by the appellant, by appointing amicus curiae. On the mere allegation of the appellant that the amicus curiae appointed was earlier junior counsel of C.B.I. advocate, is no ground to interfere with the impugned judgment. Having perused the findings recorded by the trial court/ Special Court and of the High Court, we are of the view that the findings recorded in support of the case of the prosecution were in conformity with the oral and

documentary evidence on record. We are satisfied from the findings recorded that the appellant knowing fully well that the invoices/bills were fake and fabricated, were presented on behalf of the firm to the bank and thus cheated the bank. The prosecution has proved the guilt of the appellant herein beyond reasonable doubt to record conviction of the appellant.

Having regard to totality of the facts and circumstances of the case and evidence on record, taking note of the fact that the appellant was working in the firm owned by the accused no. 2 and he was salaried employee, we deem it appropriate, it is a fit case to modify the sentence imposed on the appellant, while confirming the conviction. This Court, in ***State of Madhya Pradesh v. Udham and ors, 2019 SCC OnLine SC 1378,*** has clearly laid down guidelines for sentencing. In assessing the sentencing, the crime test requires us to evaluate and provide adequate deference to factors such as role of the accused and his position within the rank of conspirators, among other things. There is no dispute that, from the facts and circumstances, the appellant was working in the firm owned by accused no. 2 and he was relatively lower in the hierarchy. It needs to be highlighted that he was only a salaried employee. Accordingly, we modify the sentence of R.I. for a period of one year for the offence punishable under S.120B read with Sections 161, 166, 420, 471 of IPC and also r/w/s 5(1)(d) further r/w/s 5(2) of the Prevention of Corruption Act, 1947; R.I. for a period of one year and to pay fine of ₹ 5000/-, in default to suffer further R.I. for period of six months for the offence punishable under sections 420, 120B of IPC; R.I. for a period of one year and to pay a fine of ₹ 2000 /-, in default to suffer further R.I. for a period of three months for the offence punishable under S.471 r/w/s 468 of IPC in respect of the user of seven forged motor transport receipts; and further r/w/s 120B of IPC in respect of the user of the 11 Photostat copies of exhs. 942 to 952. We further order that all the sentences shall run concurrently.

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206. INDIAN PENAL CODE, 1860 – Section 302
CRIMINAL PROCEDURE CODE, 1973 – Section 313
Circumstantial evidence – Homicidal death – Explanation by accused – In a case of unnatural death inside a house, when prosecution establishes its case *prima facie*, then the accused is obliged to furnish some explanation u/s 313 Cr.P.C. with regard to the circumstances under which an unnatural death happened inside the house.

भारतीय दण्ड संहिता, 1860 – धारा 302
दण्ड प्रक्रिया संहिता, 1973 – धारा 313
परिस्थितिजन्य साक्ष्य – मानव वधात्मक मृत्यु – अभियुक्त द्वारा स्पष्टीकरण – घर के भीतर हुई एक अप्राकृतिक मृत्यु के मामले में, जब अभियोजन प्रथम दृष्टया अपने मामले को स्थापित कर देता है तब अभियुक्त दण्ड प्रक्रिया संहिता की धारा 313 के अंतर्गत उन परिस्थितियों के संबंध में कुछ स्पष्टीकरण देने हेतु बाध्य है, जिनके

अंतर्गत घर के भीतर अप्राकृतिक मृत्यु हुई थी।

Kalu alias Laxminarayan v. State of Madhya Pradesh
Judgment dated 07.11.2019 passed by the Supreme Court in Criminal Appeal No. 1677 of 2010, reported in 2019 (4) Crimes 194 (SC)

Relevant extracts from the judgment:

The prosecution has clearly established a *prima facie* case, the precedents [***Shambhu Nath Mishra v. The State of Ajmer, 1956 SCR 199, Sawal Das v. State of Bihar, (1974) 4 SCC 193*** and ***Jose v. The Sub-Inspector of Police, Koyilandy and ors., (2016) 10 SCC 519***] cited on behalf of the appellant are not considered relevant in the facts of the present case. Once the prosecution established a *prima facie* case, the appellant was obliged to furnish some explanation under Section 313 Cr.P.C. with regard to the circumstances under which the deceased met an unnatural death inside the house. His failure to offer any explanation whatsoever therefore leaves no doubt for the conclusion of his being the assailant of the deceased.

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207. INDIAN PENAL CODE, 1860 – Section 302

Murder of wife – Knowledge and intention – Accused in an inebriated state, poured kerosene on the deceased wife and set her ablaze when she was running to save herself while trying to open the latch of the door of the house – The accused was aware of the fact that such acts might cause injury and probably death of a person due to burns – Case would fall under Clause *fourthly* of Section 300 IPC and not under exception 4 to Section 300 IPC – Accused rightly convicted by the Trial Court and High Court for the offence punishable under Section 302 IPC.

भारतीय दण्ड संहिता, 1860 – धारा 302

पत्नी की हत्या – ज्ञान एवं आशय – अभियुक्त ने मत्तता की स्थिति में मृतका पत्नी के ऊपर घासलेट उड़ेला और उसे जलाया जबकि वह अपने आप को बचाने के लिए दौड़ते हुए मकान के दरवाजे की कुंडी को खोलने का प्रयास कर रही थी। अभियुक्त को इस तथ्य का ज्ञान था कि ऐसा कृत्य उपहति कारित कर सकता है एवं दहन के कारण व्यक्ति की मृत्यु भी कारित हो सकती है – प्रकरण भा.द.सं. की धारा 300 के चतुर्थ उपखण्ड के अन्तर्गत होगा न कि धारा 300 के चतुर्थ अपवाद के अन्तर्गत – विचारण न्यायालय और उच्च न्यायालय द्वारा अभियुक्त को धारा 302 भा.दं.सं. के अधीन अपराध के लिये दोषसिद्ध किया गया।

Suraj Jagannath Jadhav v. State of Maharashtra
Judgment dated 13.12.2019 passed by the Supreme Court in Criminal Appeal No. 1885 of 2019, reported in 2019 (4) Crimes 575 (SC)

Relevant extracts from the judgment:

After Applying the law laid down by this Court in the cases of ***Bhagwan***

Tukaram Dange v. State of Maharashtra, (2014) 4 SCC 270 and ***Santosh v. State of Maharashtra, (2015) 7 SCC 641*** to the facts of the case on hand and the manner in which the accused poured the kerosene on the deceased and thereafter when she was trying to run away from the room to save her, the accused came from behind and threw a match-stick and set her ablaze, we are of the opinion that the death of the deceased was a culpable homicide amounting to murder and Section 300 fourthly shall be applicable and not Exception 4 to Section 300 IPC as submitted on behalf of the accused. We are incomplete agreement with the view taken by the learned Trial Court as well as the High Court convicting the accused for the offence punishable under Section 302 of the IPC.

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208. INDIAN PENAL CODE, 1860 – Section 302 r/w/s 149

(i) Murder – Unlawful assembly – Cannot be laid down as a general preposition of law that unless an overt act is proved against a person who is to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly.

(ii) Common object – May be gathered from the course of conduct adopted by the members of the assembly, nature of the assembly, arms carried by members and behaviour of the members at or near the scene of incident – Sharing of common object is a mental attitude which is to be gathered from the act of a person and result thereof – Allowing the appeal, order of acquittal of the accused set aside by the Supreme Court.

भारतीय दण्ड संहिता, 1860 – धारा 302 सहपठित धारा 149

(i) हत्या – विधि विरुद्ध जमाव – विधि की सामान्य प्रतिपादना के रूप में यह मान्य नहीं किया जा सकता कि जब तक विधि विरुद्ध जमाव के सदस्य के विरुद्ध सक्रिय भागीदारी साबित नहीं कर दी जाती, यह नहीं कहा जा सकता कि वह विधि विरुद्ध जमाव का सदस्य है।

(ii) सामान्य उद्देश्य – जमाव के सदस्यों द्वारा किए गए आचरण, जमाव के स्वरूप, सदस्यों द्वारा धारित हथियार एवं घटना स्थल पर या उसके समीप सदस्यों द्वारा किए जा रहे व्यवहार के आधार पर गठित किया जा सकता है – सामान्य उद्देश्य की भागीदारी एक मानसिक रवैया है जिसे व्यक्ति के कार्य एवं उसके परिणाम के आधार पर गठित किया जा सकता है – अपील स्वीकृत करते हुए, उच्चतम न्यायालय ने अभियुक्त का दोषमुक्ति आवेदन अपास्त करने का आदेश दिया।

State of Uttar Pradesh v. Ravindra @ Babloo and ors.

Judgment dated 18.12.2019 passed by the Supreme Court in Criminal Appeal No. 1887 of 2019, reported in 2020 (1) Crimes 57 (SC)

Relevant extracts from the judgment:

The determinative factor is the assembly consisting of five or more persons

fully armed and who entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The respondents well understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141 IPC. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all.

The "common object" of an assembly is to be ascertained from the acts and language of the members comprising it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. Sharing of common object is a mental attitude which is to be gathered from the act of a person and result thereof. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful.

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209. INDIAN PENAL CODE, 1860 – Sections 302 and 498-A
EVIDENCE ACT, 1872 – Section 113-B

(i) Dowry death and cruelty – Existence of presumption – Statement of witnesses regarding demand of dowry and subjecting the deceased victim to cruelty – No major contradictions in cross-examination, established a link between such acts of accused and death of deceased victim – Once these factors are proved, presumption rests solely on the accused u/s 113-B of the Act. [*Rajinder Singh v. State of Maharashtra, (2015) 6 SCC 477* (Three Judge Bench) relied on].

(ii) Defence – Examination u/s 313 Cr.P.C – Accused attributed suicide of the victim to depression on account of death of several relatives within short spell of time – Though the factom of several deaths in her family has been established, there is no corroboration of such a depressive state of mind of the deceased.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 498–क
साक्ष्य अधिनियम, 1872 – धारा 113–ख

(i) दहेज मृत्यु और क्रूरता – उपधारणा का अस्तित्व – दहेज की मांग एवं मृतका के प्रति क्रूरता के संबंध में साक्षियों के कथन – प्रतिपरीक्षण में कोई तात्विक खण्डन न होना अभियुक्त के ऐसे कृत्य एवं मृतका के मृत्यु के संबंध में एक श्रृखंला निर्मित करते हैं – एक बार यह तथ्य प्रमाणित हो जावें, तब अधिनियम

की धारा 113–ख की उपधारणा अनन्य रूप से अभियुक्त पर होती है। [*राजिन्दर सिंह विरुद्ध स्टेट ऑफ महाराष्ट्र, (2015) 6 एस.सी.सी. 477* (तीन न्यायमूर्तिगण की पीठ) अवलंबित]

(ii) प्रतिरक्षा – परीक्षण अंतर्गत धारा 313 द.प्र.सं. – अभियुक्त ने पीड़िता द्वारा की गई आत्महत्या का कारण संक्षिप्त समय अंतराल में मृतका के कई संबंधियों की मृत्यु के कारण होने वाले अवसाद को माना – यद्यपि पीड़िता के परिवार में हुई कई मृत्यु के तथ्यों को स्थापित किया गया परंतु मन की अवसाद ग्रस्तता की स्थिति के संबंध में कोई संपुष्टि नहीं की गई।

Jatinder Kumar v. State of Haryana

Judgment dated 17.12.2019 passed by the Supreme Court in Criminal Appeal No. 1850 of 2010, reported in 2020 (1) Crimes 1 (SC)

Relevant extracts from the judgment:

So far as present appeal is concerned, the depositions of the prosecution witnesses about torture and demand for dowry made by the appellant have been believed by the Trial Court as also the High Court. Barring the stray remark by P.W.2, both P.W.1 and P.W.2 have narrated facts which would constitute demand for dowry as also inflicting cruelty and torture upon the deceased victim. Such consistent stand of these two witnesses cannot be said to have been overshadowed by the above-referred stray statement of P.W.2 which is not in tune with rest of his deposition. As regards the appellant, it is a finding on fact upon proper appreciation of evidence. We do not find any major contradiction in the statements made by P.W.1 and P.W.2 on demand for dowry and subjecting the deceased victim to cruelty. They stuck by their statements in cross-examination. From their depositions, a link can be established between such acts of the appellant and death of the deceased victim. Once these factors are proved, presumption rests on the accused under Section 113-B of the Indian Evidence Act, 1872.

The appellant in his statement made in response to his examination under Section 313 of the Code of Criminal Procedure, 1973 attributed suicide of the victim to depression on account of several of her relatives' deaths within a short spell of time. Though the factum of several deaths in her family has been established, there is no corroboration of such a depressive state of mind of the deceased. The other defence of the appellant is that she was a modern urban lady and could not adjust to the life style of Mullana, a small town where her matrimonial home was situated. But both the Trial Court and the High Court rejected this defence. We find no reason to reappreciate evidence on this aspect. Father of the deceased, as also P.W.2 have proved the demand for dowry. This version has run consistently from the statement forming the basis of F.I.R. to deposition stage and we do not think the Trial Court and High Court had come to such conclusion in a perverse manner.

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210. INDIAN PENAL CODE, 1860 – Sections 302 and 376 (2) (i) (As inserted by Amendment Act of 2013)
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 5(m) and 6
EVIDENCE ACT, 1872 – Sections 8, 11, 15 and 45

(i) Rape and murder – Subsequent conduct – Accused father allegedly committed rape upon minor daughter, murdered her and then hanged her from ceiling for extracting revenge from her mother – Accused did not want autopsy of deceased to be conducted – During investigation accused demolished structure of room where incident took place – Investigating Officer found debris of demolished room – No reason given by accused to demolish room in a hurry – Room demolished with intent to destroy cogent evidence – Actions of accused are relevant to connect him with crime – Conviction was held to be proper.

(ii) Rape and murder – Cause of death – Doctor who conducted post-mortem clearly opined that deceased died due to asphyxia as result of hanging – Deceased had more than ten abrasions, both large and small, on several parts of her body, showing that just before her death she was assaulted – Injuries also found over private parts of deceased including swellings, which established that just before her death, rape was committed with deceased – Deceased was only six years old and such type of injuries cannot be caused to her accidentally – Deceased being of tender age could not have committed suicide due to shame – Death of deceased proved to be homicidal.

(iii) Rape and murder – Expert evidence – DNA report – In FSL report of vaginal slide and swab, anal slide and swab along with clothes of deceased, human semen and sperm were found – FSL report duly corroborated by doctor who prepared it – DNA samples of accused and victim taken properly and kept in safe custody – When all samples reached Laboratory, seals were found to be intact – Genuineness of samples cannot be doubted – DNA report connecting accused with crime, reliable – Conviction, proper.

(iv) Rape and murder – Plea of *alibi* – Accused claimed that he was in his shop and not at his house at the relevant time – Testimony of elder daughter of accused, not reliable to prove his *alibi* as she admitted that at the time of incident, she was doing household chores, hence not aware if someone climbed up her house – Another defence witness admitted that he was not

present with accused and could not tell as to when he left his shop – Such type of evidence not sufficient to establish plea of *alibi* – Defence evidence not sufficient to discard proof against accused – Conviction, proper.

(v) Rape and murder of minor – Sentence – Accused committed rape upon his minor daughter and murdered her for extracting revenge from her mother – Aggravating circumstances included extremely brutal, diabolic and cruel act of accused, age of deceased being six years, no provocation by deceased due to dominating position of accused and grievous injuries with respect to sexual assault – Mitigating circumstances included lack of evidence that accused had propensity of committing further crimes causing continuous threat to society, possibility of reformation and rehabilitation of accused, accused not being professional killer or having criminal antecedent – Mitigating circumstances outweigh aggravating circumstances – Instead of death penalty, accused sentenced to undergo life imprisonment for a period of 30 years.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 376 (2) (i) (2013 के संशोधन अधिनियम द्वारा यथा अन्तः स्थापित)

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धाराएं 5 (ड) एवं 6

साक्ष्य अधिनियम, 1872 – धाराएं 8, 11, 15 एवं 45

(i) बलात्कार और हत्या – पश्चातवर्ती आचरण – अभियोक्त्री की माता से प्रतिशोध लेने के लिये अभियुक्त पिता ने अवयस्क पुत्री पर अभिकथित बलात्कार कारित किया, उसकी हत्या की और तत्पश्चात उसे छत से लटका दिया – अभियुक्त, मृतका का शव परीक्षण नहीं कराना चाहता था – अन्वेषण के दौरान जहाँ घटना घटित हुई थी उस कक्ष के ढांचे को अभियुक्त द्वारा नष्ट कर दिया गया था – अन्वेषण अधिकारी ने नष्ट किये गये कक्ष का मलबा प्राप्त किया था – शीघ्रता में कक्ष नष्ट किये जाने का कोई कारण अभियुक्त द्वारा नहीं दिया गया – ठोस साक्ष्य मिटाने के आशय से कक्ष को नष्ट किया गया – अपराध से संयोजित करने के लिये अभियुक्त के कार्य सुसंगत हैं – दोषसिद्धि उचित अभिनिर्धारित की गई।

(ii) बलात्कार और हत्या – मृत्यु का कारण – चिकित्सक, जिसने शव परीक्षण किया था ने स्पष्टतया अभिमत दिया कि लटकाने के परिणामस्वरूप उत्पन्न दम घुटने के कारण मृतका की मृत्यु हुई थी – मृतका के शरीर पर विभिन्न भागों में 10 बड़ी और छोटी खरोंचें दर्शित करती हैं कि उसकी मृत्यु के ठीक पूर्व वह आक्रमित हुई थी – मृतका के निजी अंगों पर सूजन के साथ उपहतियां भी पाई

गई थीं, जो स्थापित करती हैं कि उसकी मृत्यु के ठीक पूर्व मृतका के साथ बलात्कार किया गया था – मृतका मात्र 6 वर्ष की थी और इस प्रकार की उपहतियां उसे दुर्घटना में कारित नहीं हो सकती थीं – मृतका कम आयु की होने के कारण हुये शर्म से आत्महत्या कारित नहीं कर सकती थी – मृतका की मृत्यु मानववधात्मक साबित।

(iii) बलात्कार और हत्या – विशेषज्ञ साक्ष्य – डीएनए प्रतिवेदन – मृतका के वस्त्रों के साथ गुदा स्लाईड एवं स्वाब योनी स्लाईड एवं स्वाब के न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन में मानव वीर्य एवं शुक्राणु पाये गये थे – चिकित्सक द्वारा, जिसने उसे तैयार किया था, न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन सम्यक् रूप से संपोषित – अभियुक्त एवं पीड़िता का डीएनए नमूना सम्यक् रूप से लिया गया और सुरक्षित अभिरक्षा में रखा गया – जब सभी नमूने प्रयोगशाला में पहुंचे थे, मुहरें अविकल पायी गई थीं – नमूनों की असलियत पर संदेह नहीं किया जा सकता – अभियुक्त को अपराध के साथ जोड़ने वाला डीएनए प्रतिवेदन, विश्वसनीय है – दोषसिद्धि उचित।

(iv) बलात्कार और हत्या – अन्यत्र उपस्थिति का अभिवाक् – अभियुक्त ने दावा किया कि वह दुकान में था और सुसंगत समय पर घर पर नहीं था – अभियुक्त की बड़ी पुत्री की परिसाक्ष्य, उसके अन्यत्र उपस्थिति को साबित करने के लिये विश्वसनीय नहीं, जैसा कि उसने स्वीकार किया है कि घटना के समय वह गृहकार्य कर रही थी, अतः उसके घर पर यदि कोई चढ़ आया था तो वह सचेत नहीं थी – अन्य प्रतिरक्षा साक्षी ने स्वीकार किया है कि वह अभियुक्त के साथ चौबीसों घंटे नहीं रहता है और नहीं बता सकता कि अपीलार्थी ने दुकान कब छोड़ी थी – इस प्रकार की साक्ष्य अन्यत्र उपस्थिति के अभिवाक् को स्थापित करने के लिये पर्याप्त नहीं है – अभियुक्त के विरूद्ध सबूत को अस्वीकार करने के लिये प्रतिरक्षा साक्ष्य पर्याप्त नहीं – दोषसिद्धि उचित।

(v) अवयस्क का बलात्कार और हत्या – दण्डादेश – अभियुक्त ने अपनी अवयस्क पुत्री की माता से प्रतिशोध लेने के लिए अपनी अवयस्क पुत्री पर बलात्कार कारित किया और उसकी हत्या की – गुरूतरकारी परिस्थितियों में, अभियुक्त का अत्यंत क्रूर, पैशाचिक एवं निर्दयी कृत्य, मृतका की आयु छः वर्ष होना, अभियुक्त की प्रभुताकारी स्थिति के कारण मृतका द्वारा कोई प्रकोपन नहीं दिया जाना और लैंगिक हमले से संबंधित गम्भीर उपहतियां शामिल हैं – लघुतरकारी परिस्थितियों में अभियुक्त द्वारा अन्य अपराध कारित करके समाज को निरन्तर खतरा उत्पन्न करने संबंधी साक्ष्य का अभाव, अभियुक्त के सुधार एवं पुनर्वास की संभावना, अभियुक्त का पेशेवर हत्यारा नहीं होना या आपराधिक इतिहास नहीं होना शामिल है। लघुतरकारी परिस्थितियों का पलड़ा गुरूतरकारी परिस्थितियों से भारी है – मृत्युदण्ड के स्थान पर अभियुक्त को 30 वर्ष की अवधि के लिए आजीवन कारावास से दण्डित किया गया।

Afjal Khan v. State of Madhya Pradesh

Judgment dated 17.05.2019 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 458 of 2019, reported in 2019 CrLJ 5003 (DB)

Relevant extracts from the judgment:

It is a relevant issue, that what was the reason for the appellant to demolish the room in such a hurry, where the incident took place. It is a matter of investigation. Police may have got some clues about the possibility whether the deceased herself committed suicide or not, what was the height of the ceiling, whether it was possible for the deceased to climb on the heap of clothes chabutra to reach the ceiling and hang herself. Therefore, it is indicative of the fact that the room was demolished with intent to disappear the cogent evidence. We cannot ignore such material circumstance helpful in establishing the intention of the appellant to the place where offence was committed with the deceased.

The testimony of Dr. Geeta Rani Gupta (PW-2) clearly indicates that deceased died due to asphyxia as a result of hanging. The deceased had more than ten abrasions, of which some were large and some were small on several parts of her body, which shows that just before her death she was assaulted due to which she sustained those injuries. In addition to the aforesaid external injuries, there were injuries over her private parts. Swelling and the injuries were fresh which establish that just before her death, rape was committed with her. Her postmortem report (Ex. P/2) duly establish the commission of unnatural intercourse. Her anal part was badly affected. She was only six years old. Such type of injuries cannot be caused to her accidentally nor it can be imagined that she herself caused such type of injuries. We are not inclined to accept the contentions of learned counsel for the appellant that a minor girl of this age committed suicide due to shame. Her bodily injuries are sufficient to disagree with the contention of learned counsel.

In FSL report (Ex. P/22) of the vaginal slide, vaginal swab, anal slide and anal swab, clothes of the deceased (Article A) to (Article F) semen and human sperm were found. On the dupatta and bed sheet (Article G) and (Article H) particles of saliva were found, On the skirt (Article F), dupatta (Article G) and bed sheet (Article H) human blood was found. On the bed sheet (Article H) human blood of group-B was found. This FSL report is duly corroborated by the testimony of Dr. Geeta Rani Gupta (PW-2). DNA Report Ex.-P/25 established that the genetic marker Y chromosomes STR DNA taken from the source of the deceased (Ex.F) matched with the Y chromosomes STR DNA profile of of the appellant. Whereas, the DNA profile of other suspects Devendra Yadav, Sunil Gavli and Rajat Rajput did not tally with the DNA taken from the frock of the deceased.

We find that the DNA sample has been duly/properly and procedurally taken and kept in safe custody. The procedures were rightly followed as mentioned in (Ex. P/23), (P/24), (P/25). Learned counsel strongly contended to create suspicion about the procedure for obtaining DNA sampling. It is pertinent to

note that during cross-examination of Investigating Officer Anil Bajpai (PW-16) and expert Dr. Anil Kumar Singh (PW-18) and other concerned police personnel, no question has been asked by the counsel for the appellant about the safe custody of the samples and the procedure adopted by them. Such defence cannot be taken for the first time at this stage by the learned Senior counsel for the appellant without showing any cogent evidence to support the contention to create amaze. It was established by the prosecution that when all the sample reached FSL Sagar and RFSL, Bhopal for DNA profile test, they found that the seals were intact. No suggestion was made during cross-examination of Experts from FSL and Police Officials that seals of the package/containers were tampered with. Hence, in our view the genuineness of samples could not be doubted. It cannot be ignored that scientists are eminent persons and that the laboratory is an esteemed institution in the country. Hence, the trial Court has rightly accepted the DNA report. In case of ***Santosh Kumar Singh v. State, (2010) 9 SCC 747***, the Hon'ble Apex Court has held as under:

> "It is significant that not a single question was put to PW Dr. Lalji Singh as to the accuracy of the methodology or the procedure followed for the DNA profiling. The trial court has referred to a large number of textbooks and has given adverse findings on the accuracy of the tests carried out in the present case. We are unable to accept these conclusions as the court has substituted its own opinion ignoring the complexity of the issue on a highly technical subject, more particularly as the questions raised by the court had not been put to the expert witnesses. In ***Bhagwan Das & anr. v. State of Rajasthan, AIR 1957 SC 589*** it has been held that it would be a dangerous doctrine to lay down that the report of an expert witness could be brushed aside by making reference to some text on that subject without such text being put to the expert."

Learned Senior Counsel for the appellant further contented that the trial Court wrongly ignored the defence evidence which proves that without any cogent evidence the appellant has wrongly convicted by the trial Court. The defence witness Anay Khan (DW-1) daughter of the appellant, deposed that at the time of the incident, the appellant was not present at their house. In the last line of the cross-examination, she admitted that now she was residing with her grand-mother and not with her parents. From the memorandum of the appellant, it shows that the appellant hated his wife because he suspect on her character and due to this reason he committed crime with his own daughter-prosecutrix. He also suspected that the prosecutrix was not his daughter.

Looking to the aforesaid circumstances it seems that Anay Khan (DW-1) has given false evidence to save her father. Her testimony is not reliable. She also admitted that at the time she was doing household chores, therefore, she

would not be aware if someone climbed up her house. Similarly, other defence witnesses Emran (PW-2) admitted that he was not present with the appellant 24 hours. Neither he was aware as to when did the appellant left the shop, went anywhere and when did he returned back to his shop. Such type of evidence is not sufficient to establish the plea of alibi taken by the appellant.

In our opinion, the defence evidence is not sufficient to discard or disbelieve the DNA report Exhibit-P/25 which is against the appellant. The learned Trial Court rightly convicted the appellant under Sections 302, 201, 377, 376(2)(f), 376(2)(i) and 376(2)(n) of the IPC.

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211. INDIAN PENAL CODE, 1860 – Section 304 Part I

Culpable homicide not amounting to murder – Exception 4 to Section 300 IPC is attracted only when there is a fight or quarrel which requires mutual provocation and blows by both sides, in which the offenders does not take undue advantage because intention is a matter of inference and when death is a result of intentional firing, intention to cause death is patent and in such situation, conviction under Section 302 IPC is proper.

भारतीय दण्ड संहिता, 1860 – धारा 304 भाग 1

हत्या की कोटि में न आने वाला आपराधिक मानव वध – भारतीय दण्ड संहिता की धारा 300 का अपवाद 4 केवल तब प्रभावी होता है जब कोई लड़ाई या झगड़ा दोनों ही पक्षों के पारस्परिक प्रकोपन और आघातों से हुआ हो, जिसमें अपराधियों द्वारा कोई अनुचित लाभ नहीं उठाया गया है क्योंकि आशय अनुमान का विषय है और जब मृत्यु जानबूझकर की गई गोलीबारी का परिणाम है तब मृत्यु कारित करने का आशय प्रत्यक्ष है और ऐसी परिस्थिति में भारतीय दण्ड संहिता की धारा 302 के अंतर्गत दोषसिद्धि उचित है।

Awadhesh Kumar v. State of U.P. and anr.

Judgment dated 08.11.2019 passed by the Supreme Court in Criminal Appeal No. 1670 of 2019, reported in 2019 (4) Crimes 219 (SC) (Three-Judge Bench)

Relevant extracts from the judgment:

As observed by this Court in the case of ***State of Madhya Pradesh v. Shivshankar, (2014) 10 SCC 366,*** intention is a matter of inference and when death is as a result of intentional firing, intention to cause death is patent unless the case falls under any of the exceptions. It is further observed and held that Exception 4 to Section 300 IPC is attracted only when there is a fight or quarrel which requires mutual provocation and blows by both sides in which the offender does not take undue advantage.

In the case of ***Bhagwan Munjaji Pawade v. State of Maharashtra, (1978) 3 SCC 330***, in paragraph 6, this Court has observed and held as under:

> "6. ... It is true that some of the conditions for the applicability of Exception 4 to Section 300 exist here, but not all. The quarrel had broken out suddenly, but there was no sudden fight between the deceased and the appellant. 'Fight' postulates a bilateral transaction in which blows are exchanged. The deceased was unarmed. He did not cause any injury to the appellant or his companions.
>
> Furthermore, no less than three fatal injuries were inflicted by the appellant with an axe, which is a formidable weapon on the unarmed victim. Appellant is therefore, not entitled to the benefit of Exception 4, either."

The above observations fully support the view that the present case falls under Section 302 IPC.

In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court modifying the conviction for the offence punishable under Section 302 IPC to that of Section 304 Part I IPC is hereby quashed and set aside. The judgment passed by the learned Trial Court convicting the respondent No. 2 – original accused No. 1 for the offence punishable under Section 302 IPC is hereby restored. Now, respondent No. 2 – original accused No. 1 to surrender before the concerned Court to undergo the sentence as imposed by the learned Trial Court, within a period of three months from today.

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212. INDIAN PENAL CODE, 1860 – Section 307 r/w/s 149

Attempt to murder – Unlawful assembly – Determination of vicarious liability – Accused persons all in five, armed separately entered the house of the deceased – Merely because other three accused persons had not used their weapons does not absolve them from the responsibility and vicarious liability on which the very idea of charge u/s 149 is founded – Setting aside the acquittal as recorded by the High Court, the Apex Court restored the judgment and order of conviction passed by the Trial Court.

भारतीय दण्ड संहिता, 1860 – धारा 307 सहपठित धारा 149

हत्या का प्रयास – विधि विरुद्ध जमाव – प्रतिनिहित दायित्व का निर्धारण – अभियुक्तगण जो संख्या में कुल पांच थे, नेव पृथक–पृथक हथियारों से युक्त होकर मृतक के घर में प्रवेश किया – केवल इस कारण से कि अन्य तीन अभियुक्तगण द्वारा अपने हथियारों का उपयोग नहीं किया गया प्रतिनिहित दायित्व जो धारा 149 भारतीय दण्ड संहिता का आधार है, से मुक्ति प्रदान नहीं की जा सकती – उच्च न्यायालय द्वारा

अभिलिखित दोषमुक्ति के आदेश को अपास्त करते हुए विचारण न्यायालय द्वारा पारित दोषसिद्धि के आदेश को उच्चतम न्यायालय द्वारा स्थिर रखा गया।

State of Madhya Pradesh v. Killu @ Kailash and ors.
Judgment dated 19.11.2019 passed by the Supreme Court in Criminal Appeal No. 1709 of 2019, reported in 2020 (1) Crimes 47 (SC)

Relevant extracts from the judgment:

On the strength of the principles accepted and laid down in the cases ***Masalti v. State of U.P., (1964) 8 SCR 133, Baladin v. State of Uttar Pradesh, AIR 1956 SC 181, State of Maharashtra v. Ramlal Devappa Rathod and others, (2015) 15 SCC 77, State of U.P. v. Kishanpal, (2008) 16 SCC 73*** and ***Amerika Rai v. State of Bihar, (2011) 4 SCC 677***, their liability is fully established. Merely because the other three accused persons i.e. the present respondents had not used their weapons does not absolve them of the responsibility and vicarious liability on which the very idea of charge under Section 149 IPC is founded. For the application of the principle of vicarious liability under Section 149 IPC what is material to establish is that the persons concerned were members of an unlawful assembly, the common object of which was to commit a particular crime. The fact that five persons were separately armed and had entered the house of the deceased during night time is clearly indicative that each one of them was a member of that unlawful assembly, the object of which was to commit the crime with which they came to be charged in question. The High Court was not justified in granting benefit to those three accused.

The presence of the respondents in the house of the deceased; the fact that they were armed; the fact that all of them had entered the house around midnight and further fact that two out of those five accused used their deadly weapons to cause the death of the deceased was sufficient to attract the principles of vicarious liability under Section 149 IPC.

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213. INDIAN PENAL CODE, 1860 – Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB and 376E
CRIMINAL PROCEDURE CODE, 1973 – Sections 166-A and 357-A
EVIDENCE ACT, 1872 – Section 53-A
CRIME AGAINST WOMEN:

(i) Malady and remedy – Ever increasing menace of rape cases in India – In recent times, delay in such matters has, created agitation, anxiety and unrest in the minds of people – Nirbhaya case is not an isolated case where it has taken a long period to reach finality – Police is duty bound to register offence based upon information given by victim/informant in case of cognizable offence – In addition to this, statements of victim u/s 161 of the code are required to be recorded by a woman police

officer or any woman officer – Medical treatment and examination of victim is a very important aspect not only for immediate relief to victim but it also provides intrinsic evidences for trial – Manner in which medical report of victim is prepared is also a matter of concern – Previous sexual experience and in effect habituation to sexual intercourse is now irrelevant for the purpose of medical examination – Forensic examination and report play an important role during investigation as well as trial for linking culprit with crime – With advancement of DNA science and its accuracy, sampling for the purpose of forensic examination like forensic odontology and DNA test and expeditious reports after due examination are vital to just adjudication of case relating to rape.

(ii) Rape cases in India – Need for speedy trial of cases relating to offence of rape has been emphasized again and again by this Court – Protection of witness during investigation and trial is essential in cases of sensitive nature – Many a times, accused live in proximity of victim – Possibility of tampering with evidence and pressurizing witness, affects fair trial.

(iii) Sexual offences – Compensation to the victims – Section 357 A(2) CrPC provides for award of compensation to victims – District Legal Service Authority or State Legal Service Authority are bound to decide as to the quantum of compensation to victim on recommendation of Court.

भारतीय दण्ड संहिता, 1860 – धाराएं 376, 376–क, 376–कख, 376–ख, 376–ग, 376–घ, 376–घक, 376–घख एवं 376–ङ

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 166–क एवं 357–क

साक्ष्य अधिनियम, 1872 – धारा 53–क

महिलाओं के विरूद्ध अपराधः

(i) व्याधि एवं उपचार – भारत में बलात्संग के प्रकरणों का लगातार बढ़ता संकट – ऐसे मामलों में विलम्ब वर्तमान समय में लोगों के मस्तिष्क में व्याकुलता, व्याग्रता और अशांति सृजित करता है – निर्भया मामला एक अकेला मामला नहीं है जहाँ लंबे समय के पश्चात् अन्तिमता प्राप्त हुई है – संज्ञेय अपराध के मामले में पीड़ित/सूचनाकर्ता द्वारा दी गई सूचना के आधार पर अपराध पंजीबद्ध करने के लिये पुलिस कर्तव्यबद्ध है – इसके अतिरिक्त किसी महिला अधिकारी या एक महिला पुलिस अधिकारी के द्वारा दं.प्र.सं. की धारा 161 के अन्तर्गत पीड़िता का कथन अभिलिखित किया जाना अपेक्षित है – चिकित्सा उपचार और पीड़िता की परीक्षा न केवल पीड़िता की तत्काल सहायता के लिये एक महत्वपूर्ण पहलू है बल्कि विचारण के लिये तात्विक साक्ष्य भी उपलब्ध कराता है – पीड़िता की

चिकित्सा प्रतिवेदन तैयार करने की रीति भी चिन्ता का विषय है – पूर्व लैंगिक अनुभव एवं लैंगिक संभोग का आदतन होना अब चिकित्सा परीक्षण के प्रयोजन के लिये असंगत है – अपराध के साथ अपराधी को जोड़ने के लिये विचारण के साथ–साथ अन्वेषण के दौरान न्यायालयिक परीक्षा और प्रतिवेदन महत्वपूर्ण भूमिका निभाते हैं – डीएनए विज्ञान की प्रगति और उसकी सटीकता के साथ न्यायालयिक परीक्षण जैसे न्यायलयिक दन्त शास्त्र एवं डीएनए परीक्षण के प्रयोजन के लिये नमूना लेना और सम्यक् परीक्षण के पश्चात् शीघ्र प्रतिवेदन बलात्संग से संबंधित मामले के विनिश्चय के लिये महत्वपूर्ण हैं।

(ii) भारत में बलात्संग प्रकरण – इस न्यायालय द्वारा बारम्बार बलात्संग के अपराधों से संबंधित मामलों के शीघ्र विचारण की आवश्यकता पर बल दिया गया है – इस प्रकार के संवेदनशील प्रकृति के मामलों में अन्वेषण एवं विचारण के समय साक्षियों का संरक्षण आवश्यक है – बहुत बार अभियुक्त पीड़िता के निकट रहता है – साक्ष्य के साथ छेड़छाड़ की संभावना और साक्षियों पर दबाब ऋजु विचारण को प्रभावित करता है।

(iii) यौन अपराध पीड़िता को प्रतिकर – धारा 357–क (2) पीड़िता को प्रतिकर दिये जाने का प्रावधानित करती है – न्यायालय के अनुशंसा पर जिला विधिक सेवा प्राधिकरण या राज्य विधिक प्राधिकरण प्रतिकर की मात्रा निर्धारित करने के लिए आबद्ध है।

In Re : Assessment of the Criminal Justice System in response to Sexual Offences

Judgment dated 18.12.2019 passed by the Supreme Court in SMW (Crl.) No. 4 of 2019, reported in 2020 (1) Crimes 69 (SC) (Three-Judge Bench)

Relevant extracts from the judgment:

The delay in effective and speedy investigation of trial of sexual offences matters has, in recent times, created agitation, anxiety and unrest in the minds of the people. The Nirbhaya case is not an isolated case where it has taken so long to reach finality. In fact, it is said that it has been one of the cases where agencies have acted swiftly taking into account the public outrage.

As law laid down in the case of ***Lalita Kumari v. Government of U.P., (2014) 2 SCC 1,*** the police is duty bound to register the offence based upon the information given by the victim/informant in case of cognizable offence.

In addition to this, the statements of the victim under Section 161 are required to be recorded by a woman police officer or any woman officer.

Thus, we consider it appropriate to call for status report with regard to the following: -

(1) Whether all the Police Stations have a woman police officer or woman officer to record the information of the victim?

(2) In case, an information relating to offence of rape received at a Police Station, reveals that the place of commission of the offence is beyond its territorial jurisdiction, whether in such cases FIR without crime number are being recorded?

(3) Whether provisions are available for recording of first information by a woman police officer or a woman officer at the residence of the victim or any other place of choice of such person in case the victim is temporarily or permanently mentally or physically disabled?

(4) Whether all the District Police Units have the details of special educator or an interpreter in case of a mentally or physically disabled victim?

(5) Whether the police department of states or union territories have issued any circulars to make provision of videography of the recording of statements and depository of the same?

(6) Whether any State has published guidelines in the shape of Standard Operating Procedure (SOP) to be followed for responding after receipt of the information relating to case of rape and similar offences?

Medical treatment and examination of the victim is a very important aspect not only for the immediate relief to the victim but also provides intrinsic evidences for the trial. Amendments in this regard have been inserted by the Amendment Acts of 2013 and 2018, whereby the newly introduced Section 357C of Cr.P.C. has sought to fix liability on medical institutions, both public or private to provide medical treatment free of cost to the victims of such offences as prescribed, together with a duty to inform the police of such incident. Failure to comply with the above provision has also been made an offence punishable under Section 166B of IPC.

Thus, we consider it appropriate to call for status report with regard to the following:-

(1) Whether any advisory or guidelines have been issued by the authorities to all the hospitals and medical centres in this regard?

(2) Whether any case has been registered against any person under Section 166B of IPC?

The manner in which the medical report of the victim is prepared is also a matter of concern. The Amendment Act 6 of 2013 has inserted a new provision, i.e. Section 164A in this regard, which provides for the manner of medical examination as well as the guidelines for preparation of medical report. Other than the above information, many a times valuable information in consonance with the definition of rape as amended by the Act of 2013 are not supplied.

Also, vide the Amendment Act of 2013, Section 53A was inserted in the Evidence Act, 1872. It provides that the evidence of character of the victim and

of such person's previous sexual experience with any persons shall not be relevant on the issue of such consent or the quality of consent. The effect of above provision is that previous sexual experience and in effect the habituation to sexual intercourse is now irrelevant for the purpose medical examination. Still, we come across the medical opinion such as "the victim is habitual of sexual intercourse" and the opinion suggesting possibility of consent on the basis of her previous sexual exposure.

Forensic examination and report play an important role during the investigation as well as trial for linking the culprit with the crime. With the advancement of the DNA science and its accuracy, the sampling for the purpose of Forensic examination and expeditious reports after due examination are vital to the just adjudication of the case. The sampling for the purpose of DNA test as well other forensic tests like forensic odontology is essential in cases relating to rape.

The need for speedy trial of the cases relating to offence of rape has been emphasized again and again by this Court. The proviso to sub-Section (1) of Section 309 mandates that the inquiry of trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge-sheet.

Thus, we consider it appropriate to call for status report with regard to the following: -

(i) Whether trial of cases relating to rape are being conducted by Courts presided over by a woman?

(ii) Whether sufficient number of lady judges are available to preside over the Courts dealing with sexual offences and rape?

(iii) Whether all courts holding trial of cases relating to offence of rape have requisite infrastructure and are conducting in camera trial?

(iv) Whether the trial relating to cases of rape is being completed within a period of two months from the date of filing of charge-sheet, if not, the reasons for the delay?

(v) Whether sufficient number of special Courts have been established to deal exclusively with the cases of rape and other sexual offences?

The protection of witness during the investigation and trial is essential in cases of this sensitive nature. Many a times the accused live in proximity of the victim. The possibility of tampering with evidence and pressurizing the witness affects fair trial.

Thus, we consider it appropriate to call for status report with regard to the following:-

(i) Whether any policy of victim/witness protection in the cases relating to rape is framed and implemented?

(ii) Whether police protection is being provided to the victim during investigation and trial of the offence?

(iii) Whether there are special waiting room in the Court premises for victim/ witnesses of cases relating to offence rape?

(iv) Whether the trial Courts have taken appropriate measures to ensure that victim woman is not confronted by the accused during the trial as mandated by Section 273 Cr.P.C.?

Section 357A(2) Cr.P.C. provides for award of compensation to the victims. The District Legal Service Authority or the State Legal Service Authority are bound to decide as to the quantum of compensation to the victim on the recommendation of the Court. By the order of this Court in ***Nipun Saxena v. Union of India, W.P. (C) 565/2012*** the National Legal Services Authority, New Delhi had prepared a Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018. This scheme has been circulated among all states for necessary actions. The Scheme comprehensively provides for the rehabilitation and compensation for the victims of Rape.

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***214. INDIAN PENAL CODE, 1860 – Section 376 (1) (before 2013 Amendment) r/w/s 34**

EVIDENCE ACT, 1872 – Section 3

Rape – Appreciation of evidence – Accused persons allegedly gagged prosecutrix from behind while going at night to attend nature's call, took her to liquor shop and one of the accused persons committed rape on her while the other guarded the door of shop – Evidence showing age of prosecutrix between 16 to 18 years – Absence of evidence to prove consent of prosecutrix during incident – No delay in lodging FIR – Testimony of prosecutrix corroborated by testimony of her parents, medical evidence and FIR – No evidence to show enmity between parties – Plea of false implication of accused persons, not tenable – Contradictions and omissions in evidence of prosecutrix being trivial, not fatal – Evidence showing that rape was committed in furtherance of common intention – Both accused persons are equally liable for offence and were rightly convicted.

भारतीय दण्ड संहिता, 1860 – धारा 376(1) (2013 संशोधन के पूर्व) सहपठित धारा 34

साक्ष्य अधिनियम, 1872 – धारा 3

बलात्संग – साक्ष्य का मूल्यांकन – रात में जब अभियोक्त्री शौच के लिये जा रही थी तब पीछे से अभियुक्तगण ने अभियोक्त्री का मुंह दबा लिया और उसे शराब की दुकान

पर ले गये और एक अभियुक्त ने उस पर बलात्संग कारित किया जबकि दूसरे ने दुकान के दरवाजे पर खड़े होकर पहरा दिया – साक्ष्य दर्शित करती है कि, अभियोक्त्री की आयु 16 से 18 वर्ष के मध्य थी – घटना के दौरान अभियोक्त्री की सहमति को साबित करने की साक्ष्य का अभाव – प्रथम सूचना प्रतिवेदन संस्थापित करने में विलंब नहीं – अभियोक्त्री की साक्ष्य का संपोषण उसके माता–पिता की साक्ष्य, चिकित्सीय साक्ष्य और प्रथम सूचना प्रतिवेदन से होता है – पक्षकारों के बीच विद्वेष दर्शित करने की साक्ष्य नहीं – अभियुक्तगण के मिथ्या फंसाये जाने का बचाव पोषणीय नहीं है – अभियोक्त्री की साक्ष्य में विरोधाभास एवं लोप तुच्छ प्रकृति के हैं, घातक नहीं हैं – साक्ष्य दर्शित करती है कि सामान्य आशय के अनुसरण में बलात्संग कारित किया गया था – दोनों अभियुक्तगण अपराध के लिये समानतः उत्तरदायी हैं और उचित रूप से दोषसिद्ध किए गए।

State of M.P. v. Pakchi alias Virendra & Dharmendra

Judgment dated 17.05.2019 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 1599 of 1996, reported in 2019 CriLJ 4919 (DB)

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215. INFORMATION TECHNOLOGY ACT, 2000 – Section 2(1)(t)
INDIAN PENAL CODE, 1860 – Section 29
EVIDENCE ACT, 1872 – Sections 3 and 65-B
CRIMINAL PROCEDURE CODE, 1973 – Section 207

(i) Memory card/pen-drive – Nature of evidence – Video footage/ clipping contained in such memory card/pen-drive being an electronic record as envisaged by Section 2(1)(t) of the 2000 Act is a "document" and cannot be regarded as a material object – Definition of 'evidence' clearly takes within its fold documentary evidence to mean and include all documents including electronic records produced for inspection of Court.

(ii) Supply of electronic documents to accused – All documents including "electronic record" produced for inspection of Court along with police report and which prosecution proposes to use against accused must be furnished to accused as per mandate of Section 207 of CrPC – Court is obliged to evolve a mechanism to enable accused to reassure himself about genuineness and credibility of contents of memory card/pen-drive from an independent agency referred to above, so as to effectively defend himself during trial.

सूचना प्रौद्योगिकी अधिनियम, 2000 – धारा 2 (1) (न)
भारतीय दण्ड संहिता, 1860 – धारा 29
साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 65–ख
दण्ड प्रक्रिया संहिता, 1973 – धारा 207

(i) मेमोरी कार्ड/पेन–ड्राईव – साक्ष्य की प्रकृति – वीडियो फुटेज/क्लिपिंग एक इलेक्ट्रानिक अभिलेख होते हुए जैसा कि अधिनियम 2000 की धारा 2(1) (न) में परिकल्पित है, एक 'दस्तावेज' है और एक तात्विक वस्तु के रूप में नहीं लिया जा सकता – 'साक्ष्य' की परिभाषा स्पष्टतया अपने दायरे में दस्तावेजी साक्ष्य से अभिप्रेरित है एवं उसके अंतर्गत इलेक्ट्रानिक अभिलेख को समाविष्ट करते हुये न्यायालय के निरीक्षण के लिये प्रस्तुत किये गये समस्त दस्तावेज आते हैं।

(ii) अभियुक्त को इलेक्ट्रानिक दस्तावेज प्रदाय किया जाना – 'इलेक्ट्रानिक अभिलेख' को समाविष्ट करते हुये समस्त दस्तावेज जो पुलिस रिपोर्ट के साथ न्यायालय के निरीक्षण के लिये प्रस्तुत किये जाते हैं और जिन्हें अभियुक्त के विरूद्ध उपयोग करने के लिये अभियोजन प्रस्तावित करता है, दं.प्र.सं. की धारा 207 के उपबंधानुसार अभियुक्त को प्रदान किये जाने चाहिए – न्यायालय ऐसी कार्य पद्धति विकसित करने के लिये आबद्ध है जो अभियुक्त को समर्थ बनाए कि वह एक स्वतंत्र अभिकरण से उपरोक्त निर्दिष्ट मेमोरी कार्ड/पेन–ड्राईव की अन्तर्वस्तु की प्रामाणिकता एवं विश्वसनीयता के बारे में स्वयं को पुनः आश्वस्त कर सके जिससे कि वह विचारण के समय स्वयं की प्रभावी प्रतिरक्षा कर सके।

P. Gopalkrishnan @ Dileep v. State of Kerala and anr.
Judgment dated 29.11.2019 passed by the Supreme Court in Criminal Appeal No. 1794 of 2019, reported in 2020 (1) Crimes 21 (SC)

Relevant extracts from the judgment:

The respondents and intervenor would contend that the memory card is a material object and not a "document" as such. If the prosecution was to rely only on recovery of memory card and not upon its contents, there would be no difficulty in acceding to the argument of the respondent/intervenor that the memory card/ pen-drive is a material object. In this regard, we may refer to ***Phipson on Evidence 19th edition (2018), page 1450*** and particularly, the following paragraph(s):-

> "The purpose for which it is produced determines whether a document is to be regarded as documentary evidence. When adduced to prove its physical condition, for example, an alteration, presence of a signature, bloodstain or fingerprint, it is real evidence. So too, if its relevance lies in the simple fact that it exists or did once exist or its disposition or nature. In all these cases the content of the document, if

relevant at all, is only indirectly relevant, for example to establish that the document in question is a lease. When the relevance of a document depends on the meaning of its contents, it is considered documentary evidence."..."

Again at page 5 of the same book, the definition of "real evidence," is given as under:-

> "Material objects other than documents, produced for inspection of the court, are commonly called real evidence. This, when available, is probably the most satisfactory kind of all, since, save for identification or explanation, neither testimony nor inference is relied upon. Unless its genuineness is in dispute [See : ***Belt v. Lawes, The Times, 17 November 1882***], the thing speaks for itself. Unfortunately, however, the term "real evidence" is itself both indefinite and ambiguous, having been used in three divergent senses: (1) ...
>
> (2) Material objects produced for the inspection of the court. This is the second and most widely accepted meaning of "real evidence". It must be borne in mind that there is a distinction between a document used as a record of a transaction, such as a conveyance, and a document as a thing. It depends on the circumstances in which classification it falls. On a charge of stealing a document, for example, the document is a thing.
>
> (3) ... ...
>
> "A priori, we must hold that the video footage/clipping contained in such memory card/pen-drive being an electronic record as envisaged by Section 2(1)(t) of the 2000 Act, is a "document" and cannot be regarded as a material object."

On a bare reading of the definition of "evidence" in section 3 of the 1872 Act, it clearly takes within its fold documentary evidence to mean and include all documents including electronic records produced for the inspection of the Court. Although, we need not dilate on the question of admissibility of the contents of the memory card/pen-drive, the same will have to be answered on the basis of Section 65B of the 1872 Act.

This provision is reiteration of the legal position that any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a "document" and shall be admissible in evidence subject to satisfying other requirements of the said provision.

In conclusion, we hold that the contents of the memory card/pen-drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides.

Be that as it may, the Magistrate's duty under Section 207 at this stage is in the nature of administrative work, whereby he is required to ensure full compliance of the Section. We may usefully advert to the dictum in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***, wherein it was held that:-

> "Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court ..."

In yet another case of ***Tarun Tyagi v. CBI, (2017) 4 SCC 490,*** this Court considered the purport of Section 207 of the 1973 Code and observed as follows:-

> "Section 207 puts an obligation on the prosecution to furnish to the accused, free of cost, copies of the documents mentioned therein, without any delay. It includes, documents or the relevant extracts thereof which are forwarded by the police to the Magistrate with its report under Section 173(5) of the Code. Such a compliance has to be made on the first date when the accused appears or is brought before the Magistrate at the commencement of the trial inasmuch as Section 238 of the Code warrants the Magistrate to satisfy

himself that provisions of Section 207 have been complied with. Proviso to Section 207 states that if documents are voluminous, instead of furnishing the accused with the copy thereof, the Magistrate can allow the accused to inspect it either personally or through pleader in the Court."

Be that as it may, furnishing of documents to the accused under Section 207 of the 1973 Code is a facet of right of the accused to a fair trial enshrined in Article 21 of the Constitution. In ***Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1*** this Court expounded thus:-

> "The liberty of an accused cannot be interfered with except under due process of law. The expression "due process of law" shall deem to include fairness in trial. The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of faired is closure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bonafide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.
>
> The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as afore referred to. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first

information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub-section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression "documents on which the prosecution relies" are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely.

221. It will be difficult for the Court to say that the accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bonafide and has bearing on the case of the prosecution

and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially."

It is crystal clear that all documents including "electronic record" produced for the inspection of the Court along with the police report and which prosecution proposes to use against the accused must be furnished to the accused as per the mandate of Section 207 of the 1973 Code. The concomitant is that the contents of the memory card/pen-drive must be furnished to the accused, which can be done in the form of cloned copy of the memory card/pen-drive. It is cardinal that a person tried for such a serious offence should be furnished with all the material and evidence in advance, on which the prosecution proposes to rely against him during the trial. Any other view would not only impinge upon the statutory mandate contained in the 1973 Code, but also the right of an accused to a fair trial enshrined in Article 21 of the Constitution of India.

Nevertheless, the Court cannot be oblivious to the nature of offence and the principle underlying the amendment to Section 327 of the 1973 Code, in particular sub-Section (2) thereof and insertion of Section 228A of the 1860 Code, for securing the privacy of the victim and her identity. Thus understood, the Court is obliged to evolve a mechanism to enable the accused to reassure himself about the genuineness and credibility of the contents of the memory card/pen-drive from an independent agency referred to above, so as to effectively defend himself during the trial. Thus, balancing the rights of both parties is imperative, as has been held in ***Asha Ranjan v. State of Bihar, (2017) 4 SCC 397 and Mazdoor Kisan Shakti Sangathan v. Union of India, (2018) 17 SCC 324.*** The Court is duty bound to issue suitable directions. Even the High Court, in exercise of inherent power under Section 482 of the 1973 Code, is competent to issue suitable directions to meet the ends of justice.

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216. LEGAL SERVICES AUTHORITIES ACT, 1987

Award – Award by playing fraud – Any award of Lok Adalat which is obtained by playing fraud is void *ab intio* and parties must be penalized for their conduct.

विधिक सेवा प्राधिकरण अधिनियम, 1987

अधिनिर्णय – कपट से प्राप्त अधिनिर्णय – लोक अदालत द्वारा पारित कोई अधिनिर्णय जो कि कपटपूर्वक प्राप्त किया गया हो, वह आरंभतः शून्य है एवं पक्षकारों को उनके ऐसे आचरण के लिये अवश्य दंडित किया जाना चाहिए।

Purnima Parekh v. Ashok Kumar Shrivastava and ors.

Order dated 08.11.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 18032 of 2018, reported in 2020 (1) MPLJ 190

Relevant extracts from the order:

The Hon'ble Supreme Court in the case of ***Lachman Dass v. Jagat Ram and others, (2007) 10 SCC 448*** has held that the consent decree obtained by fraud or misrepresentation is void *ab initio*.

Accordingly, the present writ petition is hereby allowed with the cost of ₹ 1,00,000/- (₹ 50,000/- each on respondents No. 1 & 2) to be deposited by respondent No. 1 and 2 within a period of three months from the date of posting of the order. Out of which 25% is directed to be given to each of the petitioners and remaining is directed to be deposited in Legal Services Authority of Gwalior. Compliance report be filed before the Registry of this Court further fifteen days.

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***217. LIMITATION ACT, 1963 – Article 65**

Adverse possession – Defendants have not admitted vesting of suit property with current and previous owners and denied the title of both – Plea of defendants is one of continuous possession but there is no plea that such possession was hostile to the true owner of the suit property – Evidence of the defendants that continuous possession will not ripe into title as defendant never admitted plaintiff-appellant to be the owner – Held, defendants have not perfected their title by adverse possession.

परिसीमा अधिनियम, 1963 – अनुच्छेद 65

विरोधी आधिपत्य – प्रतिवादी ने विवादित सम्पत्ति वर्तमान तथा पूर्व स्वामी को निहित होने के तथ्य को स्वीकार नहीं किया – प्रतिवादी ने दोनों के स्वामित्व से इंकार किया – प्रतिवादी का अभिवचन निरन्तर आधिपत्य का था लेकिन ऐसा आधिपत्य विवादित सम्पत्ति के वास्तविक स्वामी के प्रतिकूल था ऐसा अभिवचन नहीं था – प्रतिवादी द्वारा प्रस्तुत निरन्तर आधिपत्य की साक्ष्य, वादी को स्वामी मानने से इंकार के कारण स्वत्व के रूप में परिपक्व नहीं होती है – प्रतिवादी द्वारा उसका स्वत्व विरोधी आधिपत्य के कारण परिपूर्ण नहीं किया गया है।

Shri Uttam Chand (D) through L.Rs v. Nathu Ram (D) through L.Rs and ors.

Judgment dated 15.01.2020 passed by the Supreme Court in Civil Appeal No. 190 of 2020, reported in AIR 2020 SC 461

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218. MOTOR VEHICLES ACT, 1988 – Section 166

Income tax return – Where income tax return is available, the determination of agricultural income must proceed on the basis of income tax return because it is a statutory document on which reliance may be placed to determine the annual income of the deceased.

मोटरयान अधिनियम, 1988 – धारा 166

आयकर रिटर्न – जहाँ आयकर रिटर्न उपलब्ध है, वहां कृषि आय का निर्धारण आयकर रिटर्न के आधार पर ही आंकलित किया जाना चाहिए क्योंकि यह एक कानूनी दस्तावेज है जिस पर मृतक की वार्षिक आय के निर्धारण हेतु निर्भर रहा जा सकता है।

Malarvizhi and ors. v. United India Insurance Co. Ltd. and anr.
Judgment dated 09.12.2019 passed by the Supreme Court in Civil Appeal No. 9196 of 2019, reported in 2020 ACJ 526

Relevant extracts from the judgment:

The Tribunal proceeded to determine the agricultural income arising from 36.76 acres of land on the basis of two judgments of the High Court. The Tribunal arrived at two different figures by applying the decisions and proceeded to determine the agricultural income on an average of the two amounts. The Tribunal superimposed a possible value of income from agricultural land despite a clear indication in the income tax returns of the income from agricultural land. The method adopted by the Tribunal is not sustainable in law. On the other hand, the High Court has proceeded on the basis of the income reflected in the income tax returns for the assessment year 1997-1998. The relevant portion of the return reads:

"Income from House property –	₹ 1,920
Business profit (other than 14.b) –	₹ 1,21,071
Net Agricultural income –	₹ 88,140"

The tax return indicates an annual income of ₹ 2,11,131/- in the relevant assessment year. The learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased.

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219. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168

Contributory negligence – Whether principle of contributory negligence is always applicable where two-wheeler vehicle is driven with more than permissible limits of pillion riders? Held, No – It is nothing more than violation of law (sections 128 and 194C) – There must be either a casual connection between the violation and the accident or between the violation and the impact of accident upon the victim, to invoke principle of contributory negligence.

मोटरयान अधिनियम, 1988 – धाराएं 166 एवं 168

अंशदायी उपेक्षा – क्या पिछली सीट पर अनुज्ञेय सीमा से अधिक सवारी होने पर अंशदायी उपेक्षा का सिद्धांत सदैव लागू होता है? अभिनिर्धारित, नहीं – यह विधि (धाराएं 128 एवं 194सी) के उल्लंघन से अधिक कुछ नहीं है – अंशदायी उपेक्षा के सिद्धांत को लागू करने के लिए उल्लंघन एवं दुर्घटना के मध्य अथवा उल्लंघन एवं दुर्घटना के पीड़ित पर पड़ने वाले प्रभाव के मध्य सामयिक संबंध होना आवश्यक है।

Mohammed Siddique and anr. v. National Insurance Company Limited and ors.

Judgment dated 08.01.2020 passed by the Supreme Court in Civil Appeal No. 79 of 2020, reported in (2020) 3 SCC 57

Relevant extracts from the judgment:

The fact that the deceased was riding on a motor cycle along with the driver and another, may not, by itself, without anything more, make him guilty of contributory negligence. At the most it would make him guilty of being a party to the violation of the law. Section 128 of the Motor Vehicles Act, 1988, imposes a restriction on the driver of a two-wheeled motor cycle, not to carry more than one person on the motor cycle. Section 194-C inserted by the Amendment Act 32 of 2019, prescribes a penalty for violation of safety measures for motor cycle drivers and pillion riders. Therefore, the fact that a person was a pillion rider on a motor cycle along with the driver and one more person on the pillion, may be a violation of the law. But such violation by itself, without anything more, cannot lead to a finding of contributory negligence, unless it is established that his very act of riding along with two others, contributed either to the accident or to the impact of the accident upon the victim. There must either be a causal connection between the violation and the accident or a causal connection between the violation and the impact of the accident upon the victim. It may so happen at times, that the accident could have been averted or the injuries sustained could have been of a lesser degree, if there had been no violation of the law by the victim. What could otherwise have resulted in a simple injury, might have resulted in a grievous injury or even death due to the violation of the law by the victim. It is in such cases, where, but for the violation of the law, either the accident could have been averted or the impact could have been minimized, that the principle of contributory negligence could be invoked. It is not the case of the insurer that

the accident itself occurred as a result of three persons riding on a motor cycle. It is not even the case of the insurer that the accident would have been averted, if three persons were not riding on the motor cycle. The fact that the motor cycle was hit by the car from behind, is admitted. Interestingly, the finding recorded by the Tribunal that the deceased was wearing a helmet and that the deceased was knocked down after the car hit the motor cycle from behind, are all not assailed. Therefore, the finding of the High Court that two persons on the pillion of the motor cycle, could have added to the imbalance, is nothing but presumptuous and is not based either upon pleading or upon the evidence on record. Nothing was extracted from PW-3 to the effect that two persons on the pillion added to the imbalance.

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220. N.D.P.S. ACT, 1985 – Section 50

(i) Personal search – The mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or container or premises.

(ii) The personal search of the accused did not result in recovery of any contraband – Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements – Contraband recovered pursuant thereto having been proved, merely because there was non-compliance of Section 50 of the Act as far as "personal search" was concerned, no benefit can be extended so as to invalidate the effect of recovery from search of vehicle.

(iii) Law laid down in *Dilip v. State of Madhya Pradesh, (2007) 1 SCC 450,* held as "not correct law".

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धारा 50

(i) व्यक्तिगत तलाशी – धारा 50 का आदेश व्यक्तिगत तलाशी तक सीमित है और यह किसी वाहन की अथवा पात्र अथवा प्रांगण की तलाशी पर लागू नहीं होते है।

(ii) मादक पदार्थ अभियुक्त की व्यक्तिगत तलाशी के परिणाम स्वरूप बरामद नहीं हुआ – यदि ऐसी बरामदगी होती भी तो उस पर आवश्यकताओं के अनुपालन की वांछा में भरोसा नहीं किया जा सकता किन्तु वाहन की तलाशी ली गई और उसके अनुसरण में मादक पदार्थ बरामद किया जाना प्रमाणित हुआ केवल यह कि ''व्यक्तिगत तलाशी'' में धारा 50 का पालन नहीं हुआ था इसका लाभ वाहन से बरामदगी के प्रभाव को अवैध बनाने तक विस्तारित नहीं किया जा सकता है।

(iii) *दिलीप विरूद्ध मध्यप्रदेश राज्य, (2007) 1 एसएससी 450* में प्रतिपादित विधि को ''उचित विधि नहीं'' ठहराया गया।

State of Punjab v. Baljinder Singh and anr.

Judgment dated 15.10.2019 passed by the Supreme Court in Criminal Appeal No. 1565 of 2019 reported in (2019) 10 SCC 473 (Three-Judge Bench)

Relevant extracts from the judgment:

As regards applicability of the requirements under Section 50 of the Act are concerned, it is well settled that the mandate of Section 50 of the Act is confined to "personal search" and not to search of a vehicle or a container or premises.

The conclusion (3) as recorded by the Constitution Bench in Para 57 of its judgment in ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172,*** clearly states that the conviction may not be based "only" on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act but if there be other evidence on record, such material can certainly be looked into.

In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as "personal search" was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.

The decision of this Court in ***Dilip v. State of Madhya Pradesh, (2007) 1 SCC 450,*** however, has not adverted to the distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in said judgment in ***Dilip*** (supra) case is not correct and is opposed to the law laid down by this Court in ***Baldev Singh*** (supra) and other judgments.

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221. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 r/w/s 118(a) and 139

CRIMINAL PROCEDURE CODE, 1973 – Section 313

(i) Initial burden – Once settlement of due amount is admitted, it is presumed that cheques in question were drawn for consideration and the holder of cheques received the same in discharge of an existing debt.

(ii) Discharge of onus – Onus to establish a probable defence shifts on the accused to rebut such presumption – Onus was not discharged by the accused – Allowing the appeal, accused held guilty for dishonour of cheque u/s 138 of the Act.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138 सहपठित धाराएं 118(क) एवं 139

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

(i) प्रारंभिक भार – जहां एक बार अवशेष राशि का व्यवस्थापन स्वीकृत कर लिया गया हो ऐसी उपधारणा है कि विवादित चैकों को प्रतिफल के एवज में जारी किया गया है एवं चैकों का धारक उन्हें अस्तित्वमान ऋण के उन्मोचन के रूप में धारित करता है।

(ii) दायित्व का उन्मोचन – ऐसी उपधारणा के खंडन हेतु अभियुक्त पर दायित्व अंतरित होता है कि वह अधिसंभाव्य प्रतिरक्षा स्थापित करे – अभियुक्त द्वारा दायित्व का उन्मोचन नहीं किया गया – परिणामस्वरूप अपील स्वीकार कर अभियुक्त को चैक अनादरण के लिए अधिनियम की धारा 138 के अंतर्गत दोषसिद्ध किया गया।

Uttam Ram v. Devinder Singh Hudan and anr.

Judgment dated 17.10.2019 passed by the Supreme Court in Criminal Appeal No. 1545 of 2019, reported in 2019 (4) Crimes 440 (SC)

Relevant extracts from the judgment:

In view of the judgments reported in ***Kishan Rao v. Shankargouda, (2018) 8 SCC 165, Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197, Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16, Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513, Rangappa v. Sri Mohan, (2010) 11 441*** and ***Rohitbhai Jivanlal Patel v. State of Gujarat and anr., AIR 2019 SC 1876*** we find that the respondent has not rebutted the presumption of consideration in issuing the cheque on 02.10.2011 inter alia for the following reasons:

1. Statement of the CW3, that he was not an agent of the respondent, has not been challenged by the respondent in the cross examination.
2. The statement of the appellant as CW2 that the cheque was handed over by the respondent personally remains unchallenged.
3. The respondent has not denied even in his statement that the cheque was not issued by him. The cross examination of the witnesses produced by the appellant also does not show that the signatures on the cheque by him have not been disputed.
4. The respondent relies upon entry recorded with the police on 09.09.2011 that the cheque book was lost. However, the respondent has not lodged any FIR in respect of loss of cheque, even after the notice of dishonour of cheque was received by him on 27.10.2011. The mere entry is not proof of loss of cheque as is found by the learned Trial Court itself as it is self-serving report to create evidence to avoid payment of cheque amount.

5. The respondent has not appeared as witness to prove the fact that the cheque book was lost or that cheque was not issued in discharge of any debt or liability.

6. The statement of accused under Section 313 of the Code is only to the effect that the cheque has been misused. There is no stand in the statement that the cheque book was stolen.

7. The statement of accused under Section 313 is not a substantive evidence of defence of the accused but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case of accused. Therefore, there is no evidence to rebut the presumption that the cheque was issued for consideration.

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222. PREVENTION OF CORRUPTION ACT, 1988 – Sections 7, 13, 17, 19 and 20

(i) Demand and acceptance of bribe money – In this type of cases, witnesses are not required to recollect and narrate the entire version with photographic memory after a time gap of some years and some variations do not in any way negate and contradict the main and core incriminating evidence of demand and acceptance of bribe money.

(ii) Investigation – Investigation under the Act not done by DSP – Just an irregularity and unless this irregularity results in causing prejudice to accused, conviction does not vitiate and not bad in law.

(iii) Sanction – An order of sanction should not be construed in a pedantic manner and there should not be a hyper technical approach to test its validity – Section 19 (1) of the Act is a matter of procedure and does not go to the root of the jurisdiction.

(iv) Presumption – Standard required for rebutting the presumption under Section 20 of the Act is tested on the anvil of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubt.

भष्टाचार निवारण अधिनियम, 1988 – धाराएं 7, 13, 17, 19 एवं 20

(i) रिश्वत राशि की मांग एवं स्वीकृति – इस प्रकार के प्रकरणों में कुछ वर्षों के समयांतराल पश्चात् साक्षियों को सारी घटना को पुनः याद करके जैसा का तैसा वर्णित करने की आवश्यकता नहीं होती है तथा साक्ष्य में थोड़ा बहुत परिवर्तन किसी भी तरह रिश्वत राशि की मांग एवं स्वीकृति की मुख्य साक्ष्य को खंडित या अर्थहीन नहीं करता है।

(ii) अन्वेषण – अधिनियम के अंतर्गत उप पुलिस अधीक्षक द्वारा अन्वेषण नहीं किया जाना केवल एक अनियमितता मात्र है एवं जब तक इस अनियमितता का परिणाम अभियुक्त के प्रति पूर्वाग्रह उत्पन्न नहीं करता तब तक दोषसिद्धि, दूषित एवं विधि की दृष्टि से दोषपूर्ण नहीं है।

(iii) मंजूरी – मंजूरी के किसी आदेश का अर्थ विशेषज्ञ के ढंग से नहीं लगाना चाहिए और उसकी वैधता की जांच हेतु उच्च तकनीकी दृष्टिकोण नहीं अपनाना चाहिए। अधिनियम की धारा 19 (1) प्रक्रिया की बात है और यह क्षेत्राधिकार के मूल में नहीं जाती।

(iv) उपधारणा – अधिनियम की धारा 20 के अंतर्गत उपधारणा खंडित करने के लिये आवश्यक मानक संभावनाओं की प्रबलता की निहाई पर जाँच हुई है जो कि संदेह से परे साबित करने से निम्नतर श्रेणी का प्रवेश द्वार है।

Vinod Kumar Garg v. State (Government of National Capital Territory of Delhi)

Judgment dated 27.11.2019 passed by the Supreme Court in Criminal Appeal No. 1781 of 2009, reported in (2020) 2 SCC 88

Relevant extracts from the judgment:

The contradictions that have crept in the testimonies of Nand Lal (PW-2) and Hemant Kumar (PW-3) noticed above and on the question of the total amount demanded or whether Nand Lal (PW-2) had earlier paid Rs. 500/- are immaterial and inconsequential as it is indisputable that the bribe was demanded and taken by the appellant on 03.08.1994 at about 10:30 a.m. The variations as highlighted lose significance in view of the proven facts on the recovery of bribe money from the pant pocket of the appellant, on which depositions of Nand Lal (PW-2), Hemant Kumar (PW-3) and Rohtash Singh (PW-5) are identical and not at variance. The money recovered was the currency notes that were treated and noted in the pre-raid proceedings vide Exhibit PW-2/G. The aspect of demand and payment of the bribe has been examined and dealt with above. The contradictions as pointed out to us and noted are insignificant when juxtaposed with the vivid and eloquent narration of incriminating facts proved and established beyond doubt and debate. It would be sound to be cognitive of the time gap between the date of occurrence, 03.08.1994, and the dates when the testimony of Nand Lal (PW-2) was recorded, 09.07.1999 and 14.09.1999, and that Hemant Kumar's (PW-3) testimony was recorded on 18.12.2000 and 30.01.2001. Given the time gap of five to six years, minor contradictions on some details are bound to occur and are natural. The witnesses are not required to recollect and narrate the entire version with photographic memory notwithstanding the hiatus and passage of time. Picayune variations do not in any way negate and contradict the main and core incriminatory evidence of the demand of bribe, reason why the bribe was demanded and the actual taking of the bribe that was paid, which are the ingredients of the offence under Sections 7 and 13 of the Act, that as noticed above and hereinafter, have been proved and established beyond reasonable doubt. Documents prepared contemporaneously noticed above affirm the primary and ocular evidence. We, therefore, find no good ground and reason to upset and set aside the findings recorded by the trial court that have been upheld by the High Court. Relevant in this context would be to refer to the judgment of this Court in ***State of U.P. v. Dr. G.K. Ghosh, (1984) 1 SCC 254*** wherein it

was held that in a case involving an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, it may be safe to accept the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and inconsistent with his innocence, there should be no difficulty in upholding the conviction.

The last contention of the appellant is predicated on Section 17 of the Act and the fact that the investigation in the present case was not conducted by the police officer by the rank and status of the Deputy Superintendent of Police or equal, but by Inspector Rohtash Singh (PW-5) and Inspector Shobhan Singh (PW-7). The contention has to be rejected for the reason that while this lapse would be an irregularity and unless the irregularity has resulted in causing prejudice, the conviction will not be vitiated and bad in law. The appellant has not alleged or even argued that any prejudice was caused and suffered because the investigation was conducted by the police officer of the rank of Inspector, namely Rohtash Singh (PW-5) and Shobhan Singh (PW-7).

On the said aspect, the later decision of this Court in ***State of Maharashtra v. Mahesh G. Jain, (2013) 8 SCC 119*** has referred to several decisions to expound on the following principles of law governing the validity of sanction:

> "14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
>
> 14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.
>
> 14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.
>
> 14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.
>
> 14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.
>
> 14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

> 14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity."

The contention of the appellant, therefore, fails and is rejected.

This Court in ***Ashok Tshering Bhutia v. State of Sikkim, (2011) 4 SCC 402*** referring to the earlier precedents has observed that a defect or irregularity in investigation however serious, would have no direct bearing on the competence or procedure relating to cognizance or trial. Where the cognizance of the case has already been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless a miscarriage of justice has been caused thereby. Similar is the position with regard to the validity of the sanction. A mere error, omission or irregularity in sanction is not considered to be fatal unless it has resulted in a failure of justice or has been occasioned thereby. Section 19(1) of the Act is matter of procedure and does not go to the root of the jurisdiction and once the cognizance has been taken by the court under the Code, it cannot be said that an invalid police report is the foundation of jurisdiction of the court to take cognizance and for that matter the trial.

On the said aspect, we would now refer to Section 20 of the Act which reads as under:

> "20. *Presumption where public servant accepts gratification other than legal remuneration*. – (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) or sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.
>
> (2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or

offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

The statutory presumption under Section 20 of the Act can be confuted by bringing on record some evidence, either direct or circumstantial, that the money was accepted other than for the motive or the reward under Section 7 of the Act. The standard required for rebutting the presumption is tested on the anvil of preponderance of probabilities which is a threshold of a lower degree than proof beyond all reasonable doubt.

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223. PREVENTION OF CORRUPTION ACT,1988 – Sections 13(2) r/w/s 13(1)(e), 17 and 19

CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 197

(i) Acquisition of disproportionate assets – FIR – Scope and ambit of preliminary inquiry being a necessity before lodging an FIR would depend upon facts of each case – There is no set format or manner in which a preliminary inquiry is to be conducted – Objective of same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint – Once, Officer recording FIR is satisfied with such disclosure, he can proceed against accused even without conducting any inquiry or by any other manner on the basis of credible information received by him.

(ii) Sanction for prosecution – Sanction can be produced by prosecution during course of trial and same may not be necessary after retirement of accused officer – Question as to whether a sanction is necessary to prosecute accused Officer, a retired public servant, can be examined during course of trial – Lack of sanction was rightly found not to be a ground for quashing of proceeding.

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 13(2) सहपठित 13(1)(ङ), 17 एवं 19

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154 एवं 197

(i) अनुपातहीन सम्पत्ति का अर्जन – प्रथम सूचना प्रतिवेदन – प्रथम सूचना प्रतिवेदन लेखबद्ध किए जाने के पूर्व प्रारंभिक जांच की आवश्यकता की परिधि एवं सीमा प्रत्येक प्रकरण के तथ्यों पर निर्भर होती है – प्रारम्भिक जांच के संचालन हेतु कोई निश्चित प्रकार या प्रक्रिया नहीं है – इसका उद्देश्य मात्र यह सुनिश्चित करना है कि एक दाण्डिक अन्वेषण प्रक्रिया किसी तुच्छ या अपोषणीय परिवाद पर प्रारम्भ न हो – जहां प्रथम सूचना प्रतिवेदन लेखबद्ध करने वाला अधिकारी ऐसे प्रकटीकरण से संतुष्ट हो जाता है, वह अभियुक्त के विरूद्ध प्रारंभिक जांच संचालित किए बिना कार्यवाही करने के लिये अग्रसर हो सकता है या उसके द्वारा प्राप्त सूचना की विश्वसनीयता के आधार पर किसी अन्य प्रक्रिया के द्वारा ऐसा कर सकता है।

(ii) अभियोजन के लिये स्वीकृति – अभियोजन द्वारा विचारण के समय भी स्वीकृति प्रस्तुत की जा सकती है और यह अभियुक्त अधिकारी की सेवानिवृत्ति पश्चात् आवश्यक नहीं हो सकती है – यह प्रश्न कि क्या अभियुक्त अधिकारी, जो एक सेवानिवृत्त लोकसेवक है, के अभियोजन के लिये स्वीकृति आवश्यक है, विचारण के दौरान परीक्षित किया जा सकता है – स्वीकृति का अभाव निश्चित रूप से कार्यवाही अपास्त करने का सही आधार नहीं होना पाया जाना उचित है।

The State of Telangana v. Sri Managipet @ Mangipet Sarveshwar Reddy

Judgment dated 06.12.2019 passed by the Supreme Court in Criminal Appeal No 1662 of 2019, reported in 2020 (1) Crimes 81 (SC)

Relevant extracts from the judgment:

In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the Accused Officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of *prima facie* allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court reported as ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335,*** wherein, this Court held *inter alia* that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Therefore, we hold that the preliminary inquiry warranted in ***Lalita Kumari v. Government of Uttar Pradesh & ors., (2014) 2 SCC 1*** is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.

We also do not find any merit in the argument that there has been no sanction before the filing of the report. The sanction can be produced by the prosecution during the course of trial, so the same may not be necessary after retirement of the Accused Officer. This Court in ***K. Kalimuthu v. State by DSP, (2005) 4 SCC 512,*** held as under:

> "The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage…"

The High Court has rightly held that no ground is made out for quashing of the proceedings for the reason that the investigating agency intentionally waited till the retirement of the Accused Officer. The question as to whether a sanction is necessary to prosecute the Accused Officer, a retired public servant, is a question which can be examined during the course of the trial as held by this Court in ***K. Kalimuthu*** (supra). In fact, in a recent judgment in ***Vinod Kumar Garg v. State (Government of National Capital Territory of Delhi), Criminal Appeal No. 1781 of 2009*** decided on 27th November, 2019, this Court has held that if an investigation was not conducted by a police officer of the requisite rank and status required under Section 17 of the Act, such lapse would be an irregularity, however unless such irregularity results in causing prejudice, conviction will not be vitiated or be bad in law. Therefore, the lack of sanction was rightly found not to be a ground for quashing of the proceedings.

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224. PROBATION OF OFFENDERS ACT, 1958 – Section 4

Benefit of probation – After final disposal of main case, Court cannot grant benefit of probation to any accused and any order of probation cannot be granted without obtaining report of Probation Officer.

अपराधी परिवीक्षा अधिनियम, 1958 – धारा 4

परिवीक्षा का लाभ – मुख्य प्रकरण के अंतिम निपटारे के पश्चात्, न्यायालय किसी अभियुक्त को परिवीक्षा का लाभ नहीं दे सकता है तथा परिवीक्षा अधिकारी से रिपोर्ट प्राप्त किये बिना परिवीक्षा का कोई आदेश प्रदान नहीं किया जा सकता है।

State of Madhya Pradesh v. Man Singh

Judgment dated 04.11.2019 passed by the Supreme Court in Criminal Appeal No. 410 of 2011, reported in 2019 (4) Crimes 243 (SC)

Relevant extracts from the judgment:

We have, no doubt in our mind that the High Court had no power to entertain the petition under Section 482 CrPC and alter the sentence imposed by it. We may also add that the manner in which the probation has been granted is not at all legal. The trial court had given reasons for not giving benefit of probation. When the High Court was deciding the revision petition against the order of conviction, it could have, after calling for a report of the Probation Officer in terms of Section 4 of the Act, granted probation. Even in such a case it had to give reasons why it disagreed with the trial court and the first appellate court on the issue of sentence. The High Court, in fact, reduced the sentence to the period already undergone meaning thereby that the conviction was upheld and sentence was imposed. After sentence had been imposed and served and fine paid, there was no question of granting probation.

Another error is that the order quoted hereinabove has been passed in violation of the provisions of Section 4 of the Act which mandates that before releasing any offender on probation of good conduct, the Court must obtain a report from the Probation Officer and can then order his release on his entering bonds with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, or as the Court may direct, and in the meantime to keep peace and good behaviour. The proviso to sub-section (1) of Section 4 clearly provides that Court cannot order release of such an offender unless it is satisfied that the offender or his surety has a fixed place of abode or regular occupation in the place over which the Court can exercise jurisdiction. Sub-section (2) lays down that before making any order under sub-section (1), the Court shall take into consideration the report of the Probation Officer. This Court in a number of judgments has held that before passing an order of probation, it is essential to obtain the report of the Probation Officer concerned. Reference in this behalf may be made to ***M.C.D. v. State of Delhi & anr., AIR 2005 SC 2658***.

In the present case the accused obtained a job on the basis of forged documents. Even if he was to be given benefit of the Act, then also he could not retain his job because the job was obtained on the basis of forged documents. We are constrained to observe that the High Court passed the order in a mechanical and pedantic manner without considering what are the legal issues involved.

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225. PROHIBITION OF CHILD MARRIAGE ACT, 2006 – Sections 3 and 9
Marriage of a male aged between eighteen & twenty one years and adult female – Male cannot be punished under Section 9 of the Act.

बाल विवाह प्रतिषेध अधिनियम, 2006 – धाराएं 3 एवं 9

18 वर्ष से 21 वर्ष के बीच की आयु के पुरूष तथा वयस्क महिला के मध्य विवाह – पुरूष को धारा 9 के अन्तर्गत दण्डित नहीं किया जा सकता।

Hardev Singh v. Harpreet Kaur and ors.

Judgment dated 07.11.2019 passed by the Supreme Court in Criminal Appeal No. 1331 of 2013, reported in AIR 2020 SC 37

Relevant extracts from the judgment:

Section 9 of the 2006 Act must be viewed in the backdrop of this gender dimension to the practice of child marriage. Thus, it can be inferred that the intention behind punishing only male adults contracting child marriages is to protect minor young girls from the negative consequences thereof by creating a deterrent effect for prospective grooms who, by virtue of being above eighteen years of age are deemed to have the capacity to opt out of such marriages. Nowhere from the discussion above can it be gleaned that the legislators sought to punish a male between the age of eighteen and twenty one years who contracts into a marriage with a female adult. Instead, the 2006 Act affords such a male, who is a child for the purposes of the Act, the remedy of getting the marriage annulled by proceeding under Section 3 of the 2006 Act. Hence, male adults between the age of eighteen and twenty one years of age, who marry female adults cannot be brought under the ambit of Section 9, as this is not the mischief that the provision seeks to remedy.

Our views are supported by the marginal note of Section 9, which reads "Punishment for male adult marrying a child". It is well settled that where any ambiguity exists with regard to the interpretation of a legislative provision, the marginal note can be used in aid of construction, having regard to the object of the legislation and the mischief it seeks to remedy. In view of the above, the words "male adult above eighteen years of age, contracts a child marriage" in Section 9 of the 2006 Act should be read as "male adult above eighteen years of age marries a child".

Having regard to the above discussion, Section 9 of the 2006 Act does not apply to the present case at all. By way of abundant caution, we wish to clarify that we are not commenting on the validity of marriages entered into by a man aged between eighteen and twenty one years and an adult woman. In such cases, the man may have the option to get his marriage annulled under Section 3 of the 2006 Act, subject to the conditions prescribed therein.

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226. STAMP ACT, 1899 – Section 35

A person who after receiving full consideration, executed a sale deed, cannot seek impounding of agreement to sale in a later legal proceeding for non-payment of stamp duty.

स्टाम्प अधिनियम, 1899 – धारा 35

एक व्यक्ति जो पूर्ण प्रतिफल प्राप्त करने के बाद एक विक्रय विलेख निष्पादित करता है, पश्चातवर्ती न्यायिक प्रक्रिया में स्टाम्प शुल्क के अभाव में उसी विक्रय विलेख से संबंधित पूर्व विक्रय अनुबंध को परिबद्ध करने की मांग नहीं कर सकता।

Terai Tea Company Limited v. Kumkum Mittal and ors.

Judgment dated 22.10.2019 passed by the Supreme Court in Civil Appeal No. 8198 of 2019, reported in (2019) 10 SCC 142

Relevant extracts from the judgment:

In the facts and circumstances, it will not give any cause of action to the respondent to raise an objection for impounding of the document invoking Section 35 of the Indian Stamp Act, 1899 more so when the appellant had paid the stamp duty of ₹ 1,85,000/- and is entitled for refund which indisputedly was never claimed. In our considered view, in the facts and circumstances of the case, it was not open for the Division Bench under the impugned judgment to set aside the order of the Single Judge which was one of the possible view in the peculiar facts and circumstances of the case.

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227. THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 – Section 24 (2)

CONSTITUTION OF INDIA – Article 141

Sale of land involved in acquisition proceedings after issuance of notification u/s 4 of the Land Acquisition Act, 1894 – Validity and effect of – Such sale after issuance of notification u/s 4 of the Act is void – It does not give any right to subsequent purchasers to invoke provisions of Section 24 (2) of the 2013 Act.

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013 – धारा 24 (2)

भारत का संविधान – अनुच्छेद 141

अधिनियम की धारा 4 के अधीन अधिसूचना जारी होने के उपरांत अधिग्रहण की कार्यवाही के अध्यधीन सम्पत्ति का विक्रय – वैधता एवं प्रभाव – अधिनियम की धारा 4 के अधीन अधिसूचना जारी होने के उपरांत ऐसा विक्रय शून्य है – यह पश्चातवर्ती क्रेता को 2013 के अधिनियम की धारा 24 (2) के प्रावधानों का अवलम्ब लेने का कोई अधिकार नहीं देता है।

Shiv Kumar and anr. v. Union of India and ors.

Judgment dated 14.10.2019 passed by the Supreme Court in Civil Appeal No. 8003 of 2019, reported in (2019) 10 SCC 229 (Three-Judge Bench)

Relevant extracts from the judgment:

It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is *ab initio* void and has no right to claim land under the Policy.

Given that, the transaction of sale, effected after section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim 'possession' and challenge the acquisition as having lapsed under section 24 by questioning the legality or regularity of proceedings of taking over of possession under the Act of 1894. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the Act of 2013. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.

Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 cannot be made, based on a void transaction nor declaration can be sought under section 24 (2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the Act of 2013 is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be a acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 does not confer any right on purchaser whose sale is *ab initio* void. Such void transactions are not validated under the Act of 2013. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

We hold that Division Bench in ***State (NCT of Delhi) v. Manav Dharam Trust, (2017) 6 SCC 751***, does not lay down the law correctly. Given the several binding precedents which are available and the provisions of the Act of 2013, we cannot follow the decision in ***Manav Dharam Trust*** (supra) and overrule it.

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PART - II A

GUIDELINES ISSUED BY HON'BLE THE HIGH COURT OF MADHYA PRADESH TO BE FOLLOWED WHILE DECIDING BAIL APPLICATIONS

Pre-trial and in-trial incarceration has always been viewed seriously by the Constitutional Courts of our country. There are numerous guidelines and directions issued by the Apex Court as well as High Courts to ensure the expeditious trial of undertrial prisoners. Way back in 1984, Hon'ble the Supreme Court in ***Rudal Shah v. State of Bihar, (1983) 4 SCC 141*** had awarded compensation to prisoners who were kept in custody without any reasonable cause.

The same apathy was again expressed by Hon'ble the High Court of Madhya Pradesh recently in the case of ***Hayat Mohd. Shoukat v. State of M.P., MCRC No. 13123 of 2020,*** Order dated 07.08.2020.

Hon'ble the High Court of M.P. while hearing the bail application of accused who was in judicial custody since 18.07.2016, termed the custody of such accused beyond one half of the maximum sentence that could be awarded for the offence as "insensitivity of the criminal justice administration in our State".

Hon'ble High Court while allowing the bail application has issued certain guidelines to be followed by all Courts while dealing with bail applications of undertrial prisoners. Special emphasis has been laid on the duty of the Magistrates u/s 167 and 436-A of CrPC. The guidelines are as follows:-

1) Where the investigation of an offence does not conclude within the time stipulated in Section 167(2) CrPC and the accused becomes eligible to statutory bail, it shall be the duty of the State to inform the Magistrate about the same and also it shall be the duty of the Magistrate to bring it to the notice of the undertrial that he has a right to statutory bail provided he can furnish the bail bonds.
2) In the event the undertrial on account of his indigency or financial backwardness is unable to provide for bail bonds, it shall be the duty of the Magistrate to bring the same to the notice of the District Legal Services Authority, who shall take the assistance of Non-Governmental Organizations (NGO's) where available, in assisting the undertrial to secure statutory bail. The financial backwardness or indigency of the undertrial must not come in the way of him securing a statutory bail.
3) When bail applications are moved before the learned Court below, be it u/s 437 or 439 CrPC, it shall be the solemn duty of the Court to examine in each and every case whether the provision of Section 436A CrPC, even if not raised by the accused, would apply in a given case. Where it becomes evident to the Court that the right u/s 436A CrPC had accrued to the undertrial, it shall release the undertrial on his personal bond with or without sureties as provided u/s 436A CrPC unless, for compelling reasons to be recorded by the learned Court below, the period of incarceration is to be extended beyond one half of the total sentence which could be imposed upon the undertrial for the commission of the said offence.

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PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 15.07.2020 OF MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION (DEPARTMENT OF CONSUMER AFFAIRS), NEW DELHI REGARDING ENFORCEMENT OF CERTAIN PROVISIONS OF CONSUMER PROTECTION ACT, 2019

S.O. 2351(E). – In exercise of the powers conferred by sub-section (3) of section 1 of the Consumer Protection Act, 2019 (35 of 2019), the Central Government hereby appoints the 20th day of July, 2020 as the date on which the following provisions of the said Act shall come into force, namely:-

Chapter	Section
I	Section 2 [Except clauses (4), (13), (14), (16), (40)]
II	Section 3 to 9 (both inclusive);
IV	Sections 28 to 73 (both inclusive); [Except sub-clause (iv) of clause (a) of sub-section (1) of section 58.]
V	Sections 74 to 81 (both inclusive);
VI	Sections 82 to 87 (both inclusive);
VII	Section 90 and 91; [Except sections 88,89,92 & 93]
VIII	-Sections 95, 98, 100 -Section 101 [Except clauses (f) to (m) and clauses (zg), (zh) and (zi) of sub-section 2]. -Sections 102, 103, 105, 106, 107 [Except sections 94, 96, 97, 99, 104]

[F. No. J-9/1/2020-CPU]

Amit Mehta, Jt. Secretary

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय (उपभोक्ता मामले विभाग), नई दिल्ली की उपभोक्ता संरक्षण अधिनियम, 2019 के कतिपय प्रावधानों के प्रवर्तन संबंधी अधिसूचना दिनांक 15 जुलाई, 2020

का.आ. 2351(अ). – केन्द्रीय सरकार, उपभोक्ता संरक्षण अधिनियम, 2019 (2019 का 35) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 20 जुलाई, 2020 को उस तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के निम्नलिखित उपबंध प्रवृत्त होंगे, अर्थात्:–

अध्याय	धारा
I	धारा 2 {खंड(4), खंड(13), खंड(14), खंड(16), खंड(40) के सिवाय}
II	धारा 3 से 9 (दोनों धाराएं सम्मिलित);
IV	धारा 28 से 73 (दोनों धाराएं सम्मिलित); {धारा 58 की उप–धारा (1) के खंड के उपखंड– (IV) के सिवाय}
V	धारा 74 से 81 (दोनों धाराएं सम्मिलित);
VI	धारा 82 से 87 (दोनों धाराएं सम्मिलित);
VII	धारा 90 और 91; {धारा 88, धारा 89, धारा 92 और धारा 93 के सिवाय}
VIII	– धारा 95, धारा 98, धारा 100, – धारा 101 {उप–धारा 2 के खंड (च) से (ड) तथा खंड (यछ), (यज) और (यझ) के सिवाय} – धारा 102, धारा 103, धारा 105, धारा 106, धारा 107 {धारा 94, धारा 96, धारा 97, धारा 99, धारा 104 के सिवाय}

[फा.सं. जे–9/1/2020–सीपीयू]
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