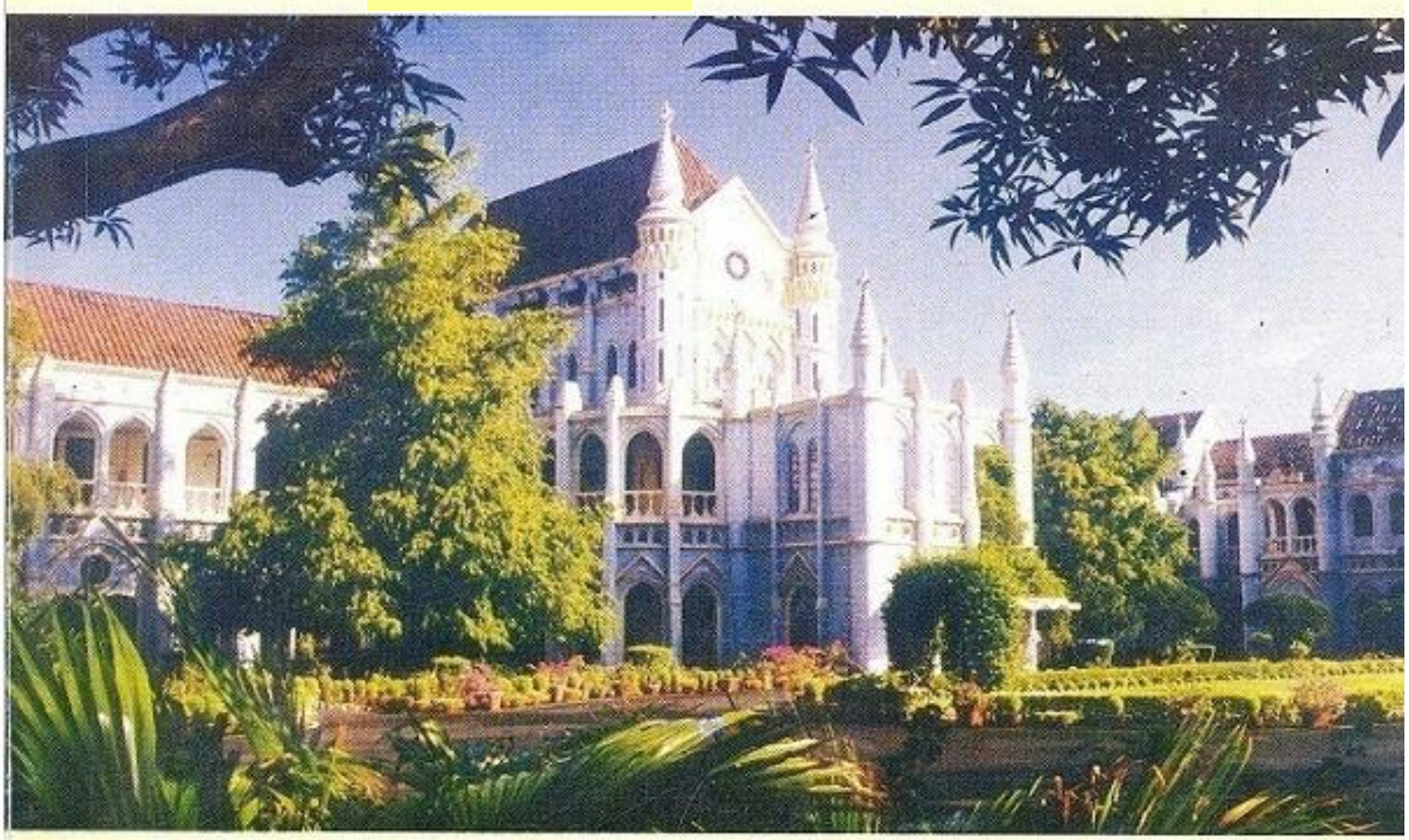
JOTI JOURNAL

APRIL 2015 (BI-MONTHLY)



मध्य प्रदेश राज्य न्यायिक अकादमी

मध्य प्रदेश उच्च न्यायालय, जबलपुर – 482 007

MADHYA PRADESH STATE JUDICIAL ACADEMY

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

JOTI JOURNAL APRIL - 2015

SUBJECT- INDEX

PART-I
(ARTICLES & MISC.)

PART-II

(NOTES ON IMPORTANT JUDGMENTS)

गया था जिसमें एक न्यासी के अलावा सभी उपस्थित थे और उन्होंने प्रस्ताव पर हस्ताक्षर किये थे – अभिलेख पर ऐसा कुछ नहीं था जो यह इंगित करता हो कि जिस न्यासी के प्रस्ताव पर हस्ताक्षर नहीं है उसकी असहमति थी। **62*** **131**

ARBITRATION AND CONCILIATION ACT, 1996
माध्यस्थ और सुलह अधिनियम, 1996

Sections 2 (1) (e), 11, 34 and 42 – Which Court will have the jurisdiction to entertain and decide an application under section 34 of the Act, 1996?

The reference is answered as follows:-

(a) Section 2 (1) (e) contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part-I of the Arbitration Act, 1996.

(b) The expression "with respect to an arbitration agreement" makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an Award is pronounced under Part-I of the 1996 Act.

(c) However, Section 42 only applies to applications made under Part-I if they are made to a court as defined – Since applications made under Section 8 are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.

(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(e) In no circumstances can the Supreme Court be "court" for the purposes of Section 2 (1) (e), and whether the Supreme Court does or does not retain seisin after appointing an Arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil court having original jurisdiction in the district as the case may be.

(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I,

(g) If a first application is made to a court which is neither a Principal Court of original jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject matter jurisdiction would be outside Section 42.

धारा 2 (1) (इ), 11, 34 और 42 – धारा 34 माध्यस्थ और सुलह अधिनियम, 1996 का आवेदन ग्रहण करने व निराकृत करने की अधिकारिता किस न्यायालय को होगी? इस रिफरेंस का तीन न्यायमूर्तिगण की पीठ द्वारा उत्तर देकर न्यायालय कौन सी होगी यह स्पष्ट किया गया।

63* **131**

Sections 7 and 8 – (i) Non-arbitrable dispute referred to arbitrator – Effect – Even if an issue is framed by the Arbitrator in relation to such a dispute, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the arbitrator.
(ii) Contract with regard to arbitration – Should be in writing – It cannot be presumed.

धारा 7 और 8 – (i) माध्यस्थ द्वारा निपटारा योग्य न होने वाला विवाद माध्यस्थ को निर्देशित – प्रभाव – माध्यस्थ द्वारा ऐसे विवाद के बारे में यदि विवाद्यक भी विरचित कर दिया गया हो तब भी ऐसी कोई उपधारणा नहीं की जा सकती या इस आशय का निष्कर्ष नहीं निकाला जा सकता की पक्षकार उस विवाद को माध्यस्थ को निर्देशित करने में सहमत थे।

(ii) माध्यस्थ के बारे में संविदा – लिखित में होना चाहिए – इसकी (माध्यस्थ अनुबंध की) उपधारणा नहीं की जा सकती । **64 132**

Sections 16, 34 (2) (b) and 34 (2) (b) (ii) – (i) Objection on jurisdiction of the tribunal – Taking after submission of the statement of defence – "The subject-matter of the dispute is not capable of settlement by arbitration" whether it is an objection on jurisdiction? Held, No – It is related to section 34 (2) (b) of the Act, 1996 and not to section 16 of the Act of 1996.
(ii) Challenging the award on the ground that it is in conflict with public policy of India as provided under section 34 (2) (b) (ii) – It cannot be equated with the contention that tribunal under the Central Act does not have jurisdiction whereas the tribunal under the State Act has jurisdiction to decide the dispute – Public policy of India is referable to public policy of Union of India and not of an individual State.

धारा 16, 34 (2) (बी) और धारा 34 (2) (बी) (ii) – (i) अधिकरण के क्षेत्राधिकार की आपत्ति – प्रतिरक्षा का कथन प्रस्तुत कर देने के बाद ऐसी आपत्ति लेना – ''विवाद की विषय वस्तु, माध्यस्थ द्वारा निपटाये जाने के योग्य नहीं है'' क्या यह क्षेत्राधिकार की आपत्ति है ? अभिनिर्धारित किया गया, नहीं यह धारा 34 (2) (बी) अधिनियम, 1996 से संबंधित है धारा 16 अधिनियम, 1996 से संबंधित नहीं है।

(ii) अवार्ड को भारत की लोकनीति के विरूद्ध होने के आधार पर चुनौती देना जो की धारा 34 (2) (बी) (ii) के अधीन है – यह इस दावे के समतुल्य नही है कि केन्द्रीय अधिनियम के तहत गठित अधिकरण को विवाद के निराकरण का क्षेत्राधिकार नहीं है बल्कि राज्य अधिनियम के अधीन गठित अधिकरण में क्षेत्राधिकार है – भारत की लोकनीति का तात्पर्य भारत संघ की लोकनीति से है न की किसी राज्य की लोकनीति से। **65**

Sections 31 (7) (a) and 37(1) (b) – Word "sum" used in section 31 (7) (a) and 31 (7) (b) – As per section 31 (7)(a), an award for payment of money may be inclusive of interest and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period – As per section 31 (7)(b), the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period at which stage the amount would be the sum arrived at after the merging of interest with the principal ; the two components having lost their separate identities.

धारा 31 (7) (ए) और 31 (7) (बी) – शब्द ''राशि'' जो की धारा 31 (7) (ए) और धारा 31 (7) (बी) में प्रयुक्त हुआ है – धारा 31 (7) (ए) के अनुसार अवार्ड में जो धन के भुगतान के लिये हो ब्याज शामिल हो सकता है, ''राशि'' में मूल धन राशि + ब्याज अदा करने का निर्देश माध्यस्थ अधिकरण दे सकती है जो कि अवार्ड के पूर्व की अवधि से संबंधित है – धारा 31 (7)(बी) के अनुसार माध्यस्थ अधिकरण ऐसी ''राशि'' पर अवार्ड के अवधि का ब्याज देने का निर्देश दे सकती है – उस प्रक्रम पर मूलधन में ब्याज मर्ज हो जाता है – दोनों शब्द अर्थात मूलधन और ब्याज अपनी प्रत्यक्ष पहचान उस स्टेज पर खो देते है। **66** **136**

CIVIL PROCEDURE CODE, 1908
सिविल प्रक्रिया संहिता, 1908

Section 9 – Maintainability of suit for recovery of money against sick company – The suit could lie and proceeded with only after express consent of the BIFR (Board for Industrial and Financial Reconstruction).

धारा 9 – सिक या बीमार कंपनी के विरूद्ध धन वसूली के वाद की पोषणीयता – ऐसा वाद बोर्ड की अभिव्यक्त अनुमति से ही लाया जा सकता है। **67 (i)** **137**

Section 149 and Order 41 Rule 3-A – (i) Effect of non-filing of application under Order 41 Rule 3-A CPC for condonation of delay along with memorandum of appeal – The defect can be rectified – It can happen due to some mistake or lapse as the appellant may omit to file the application under Order 41 Rule 3A CPC alongwith the appeal.

(ii) Appeal filed without any payment of court fees – The required court fees was duly paid later on or at the time of refiling – It should be construed that such payment of court fees was deemed to have been paid on the date on which the appeal was originally presented by virtue of the implication of Section 149 CPC.

(iii) Principles that should be kept in mind while condoning delay – Explained in para 23.

धारा 149 और आदेश 41 नियम 3-ए – (i) अपील के ज्ञापन के साथ आदेश 41 नियम 3-ए सी.पी.सी. का आवेदन विलंब क्षमा करने के लिये प्रस्तुत न करने का प्रभाव – ऐसी त्रुटि सुधारी जा सकती है – क्योंकि ऐसा हो सकता है कि किसी त्रुटि या चुक के कारण अपीलार्थी अपील के साथ आदेश 41 नियम 3-ए सी.पी.सी. का आवेदन प्रस्तुत करने से चूक गया हो।

(ii) अपील बिना किसी न्यायालय शुल्क के भुगतान के प्रस्तुत की गई – आवश्यक न्यायालय शुल्क बाद में या अपील के पुनः फाईल करते समय भुगतान कर दी गई – यह माना जाना चाहिये की मूलतः अपील जब प्रस्तुत की गई थी उसी दिनांक से धारा 149 सी.पी.सी. के प्रकाश में न्यायालय शुल्क का भुगतान कर दिया गया था।

(iii) विलंब को क्षमा करते समय मस्तिष्क में रखे जाने वाले सिद्धांत – पैरा 23 में बतलाये गये।

68 **140**

Section 152 – (i)Scope of Section 152 of CPC – Only accidental omissions or mistakes may be corrected – Not all omissions and mistakes – The omission or mistake which goes to the merits of the case is beyond the scope of Section 152 – Clerical or arithmetical mistakes in judgments, decrees or orders may be corrected.

(ii) In this case, High Court has allowed the application under Section 152 CPC and directed that preliminary decree be amended – In the light of Order 20 Rule 18 (2) CPC in preliminary decree, not only the right of the plaintiff but also the rights and interests of others can also be declared – The Apex Court held High Court had not committed any mistake of law.

धारा 152 – (i) धारा 152 सी.पी.सी. का विस्तार – केवल आकस्मिक भूल या त्रुटि सुधारी जा सकती है – सभी भूल और त्रुटियाँ नहीं – ऐसी भूल या त्रुटि जो प्रकरण के गुणदोष तक जाती है वह धारा 152 के विस्तार से बाहर है – लिपिकीय या गणितीय त्रुटियाँ जो कि किसी निर्णय, डिक्री या आदेश में हुई हो वे सुधारी जा सकती है।

(ii) इस मामले में उच्च न्यायालय ने धारा 152 सी.पी.सी. का आवेदन स्वीकार किया और ये निर्देश दिये कि प्रारंभिक आज्ञप्ति में संशोधन किया जाये। आदेश 20 नियम 18 (2) सी.पी.सी. के प्रकाश में प्रारंभिक डिक्री में न केवल वादी के अधिकार बल्कि अन्य पक्षकारों के अधिकार और हित भी घोषित किये जा सकते है – सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया की उच्च न्यायालय ने ऐसा करके कोई विधि की त्रुटि नहीं की है।

69 143

Order 16 Rule 2 – Plaintiff claimed mesne profit – He wants to prove the prevalent market rate of the properties in the locality – Filed application under Order 16 Rule 2 CPC – Trial court rejected the same on the ground that under Section 10 of M.P. Accommodation Control Act, 1961 the plaintiff has remedy to approach RCA for fixation of standard rent – Held, the trial court has lost sight of the fact that section 10 of the Act has no application to the facts of the case as the plaintiff is not claiming standard rent – Order of trial court reversed.

आदेश 16 नियम 2 – वादी ने अंतर्वती लाभ का दावा किया – वह उस क्षेत्र में संपत्तियों की प्रचलित बाजार दर प्रमाणित करना चाहता है – उसने आदेश 16 नियम 2 सी.पी.सी. का आवेदन दिया – विचारण न्यायालय ने आवेदन इस आधार पर निरस्त किया की वादी को धारा 10 म.प्र. स्थान नियंत्रण अधिनियम, 1961 के तहत मानक किराया निर्धारित करवाने के लिये आर.सी.ए. के पास जाने का उपचार उपलब्ध है – अभिनिर्धारित किया गया, विचारण न्यायालय ने इस तथ्य को ध्यान में नहीं रखा है कि प्रकरण के तथ्यों में धारा 10 अधिनियम लागू नहीं होती है क्योंकि वादी ने मानक किराये का दावा नहीं किया है – विचारण न्यायालय का आदेश उलट दिया गया। **70 145**

Order 22 Rules 4 and 5 – Defendant died during pendency of appeal – Appellate court allowed the application under Order 22 Rule 4 CPC without proper inquiry – Hon'ble the Apex Court held that after following proper procedure prescribed in Order 22 Rule 5 CPC, the appellate court should have decided, who are the LRs of deceased and under

what capacity – Before deciding this material question the appellate court cannot proceed to decide the appeal on merits – It may take recourse to proviso of Order 22 Rule 5 CPC.

आदेश 22 नियम 4 और 5 – अपील के लंबित रहने के दौरान प्रतिवादी की मृत्यु हुई – अपील न्यायालय में आदेश 22 नियम 4 सी.पी.सी. का आवेदन उचित जाँच के बिना स्वीकार कर लिया – सर्वोच्च न्यायालय ने अभिनिर्धारित किया की अपील न्यायालय को आदेश 22 नियम 5 सी.पी.सी. में विहित प्रक्रिया का अनुपालन करके यह निर्धारित करना चाहिये की कौन मृतक का विधिक प्रतिनिधि है और किस हैसियत से है – इस तात्विक प्रश्न के निराकरण के पूर्व अपील न्यायालय अपील में आगे कार्यवाही नहीं कर सकती और अपील को गुणदोष पर निराकृत नहीं कर सकती – वह आदेश 22 नियम 5 सी.पी.सी. के परंतुक का सहारा भी ले सकती है।

71 (i) 146

Order 23 Rule 3-A – Can the validity of a decree passed on a compromise be challenged in a separate suit? Held, No – When a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of such agreement or compromise, it is that court alone which can decide the question –The court cannot direct the parties to file a separate suit – Such suit will not be maintainable in the light of Order 23 Rule 3-A CPC.

आदेश 23 नियम 3-ए – क्या एक समझौते के आधार पर पारित आज्ञप्ति की वैधानिकता को एक पृथक वाद द्वारा चुनौती दी जा सकती है ? अभिनिर्धारित किया गया, नहीं – जब एक अनुबंध या समझौते की वैधानिकता से संबंधित प्रश्न किसी न्यायालय के समक्ष जिसने उस समझौते या अनुबंध के आधार पर आज्ञप्ति पारित की थी उत्पन्न होता है – केवल वही न्यायालय उस प्रश्न को निराकृत कर सकती है – वह न्यायालय पक्षकारों को पृथक वाद प्रस्तुत करने का निर्देश नहीं दे सकती है – ऐसा वाद आदेश 23 नियम 3ए सी.पी.सी. के प्रकाश में चलने योग्य नहीं होता। **72 149**

Order 30 Rule 10 – What is sole proprietorship concern? When an individual uses a fictional trade name in place of his own name is called sole proprietorship concern as provided under Order 30 Rule 10 CPC.

आदेश 30 नियम 10 – एक सोल प्रोपराइटरशिप कनसर्न क्या है ? जब एक व्यक्ति एक काल्पनिक व्यापारिक नाम उसके स्वयं के नाम के स्थान पर उपयोग करता है तो इसे सोल प्रोपराइटरशिप कनसर्न कहा जाता है – जैसा की आदेश 30 नियम 10 सी.पी.सी. में प्रावधान है।

73* 150

CONSTITUTION OF INDIA
भारत का संविधान

Articles 14, 15 and 39 (d) – See Rules 9 and 11-A of the Judicial Service Pay Revision, Pension And Other Retirement Benefits Rules, 2003.

अनुच्छेद 14, 15 और 39 (डी) – देखें न्यायिक सेवा वेतन पुनरीक्षण, पेंशन और अन्य सेवानिवृत्ति लाभ नियम 2003 का नियम 9 और 11ए **98*** **189**

CRIMINAL PROCEDURE CODE, 1973
दण्ड प्रक्रिया संहिता, 1973

Section 31 – How to run sentences where there is one trial and the accused is convicted in two or more offences? Held, section 31 Cr. P.C. gives full discretion to the court to order sentence for two or more offences in one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances – The discretion has to be exercised along the judicial lines and not mechanically – It is not a normal rule to order the sentences to be consecutive and exception is to make the sentences concurrent.

धारा 31 – जहां एक विचारण में अभियुक्त को दो या दो से अधिक अपराधों में दोषसिद्ध किया जाता है – दण्ड कैसे चलेंगे (भुगताए जाएंगे) – अभिनिर्धारित किया, धारा 31 द.प्र.सं. न्यायालय को पूर्ण विवेकाधिकार देती है कि न्यायालय अपराधों की प्रकृति, गंभीर या अल्पीकरण की परिस्थितियों को देखते हुए एक विचारण में दो या अधिक अपराधों का दण्ड साथ–साथ चलने का निर्देश दे सकती है। विवेकाधिकार न्यायिक दिशा में उपयोग करना होता है न कि यांत्रिक तरीके से। ऐसा कोई सामान्य नियम नहीं है की दण्ड एक के बाद एक भुगताए जाते हैं व दण्ड साथ–साथ भुगताना एक अपवाद होता है। **74** **150**

Section 53-A – Medical examination of accused during investigation – Prosecution filed application under section 53-A Cr.P.C. opposed by accused – According to prosecution, earlier examination was conducted to find out whether there is any mark of violence on the accused – Held, it is the prime duty of the accused to co-operate with the investigating agency – The ground of delayed medical examination can be raised at the time of trial.

धारा 53-ए – अनुसंधान के दौरान अभियुक्त का चिकित्सा परीक्षण – अभियोजन ने धारा 53 ए द.प्र.सं. के अधीन आवेदन प्रस्तुत किया – अभियुक्त ने उसका विरोध किया – अभियोजन के अनुसार पूर्व में अभियुक्त का परीक्षण यह ज्ञात करने के लिये करवाया गया था कि अभियुक्त पर हिंसा के कोई चिन्ह तो नहीं है – अभिनिर्धारित किया गया, यह अभियुक्त का सर्वोच कर्तव्य है कि वह अनुसंधान एजेंसी के साथ सहयोग करे, विलंबित चिकित्सा परीक्षण का आधार विचारण के समय उठाया जा सकता है। **97*** **188**

Sections 125 and 354 – Grant of maintenance – Section 125 (2) Cr.P.C. impliedly requires the court to consider making the order for maintenance effective from either of the two dates i.e. from the date of order or from the date of application, having regard to the relevant facts – The court should record reasons in support of the order passed by it in both eventualities as provided under section 354 (6) of the Cr.P.C.

धारा 125 और 354 – भरण पोषण मंजूर करना – धारा 125 (2) द.प्र.सं. परोक्ष रूप से न्यायालय से यह अपेक्षा करती है कि वह भरण पोषण का आदेश दो में से किसी तारीख से, सुसंगत तथ्यों

के प्रकाश में, प्रभावी बनावे अर्थात आदेश की तारीख से या आवेदन की तारीख से। न्यायालय को उसके आदेश के समर्थन में दोनों ही दशाओं में कारण अभिलिखित करना चाहिये जैसा की धारा 354 (6) द.प्र.सं. में प्रावधान है। **75 152**

Sections 164 and 439 – Statements of two prosecutrix recorded under section 164 Cr.P.C. for bail, use of –There are contradictions in the statements of both the prosecutrix regarding the place of occurrence – It can be used only for corroboration or contradiction purpose during trial – Application under section 439 Cr.P.C. rejected.

धारा 164 और 439 – दो अभियोक्त्रियों के धारा 164 दण्ड प्रक्रिया संहिता के अंतर्गत अभिलिखित कथनों का जमानत के लिये उपयोग – दोनों अभियोक्त्रियों के कथनों में घटना के स्थान के बारे में विरोधाभास है – इसे (धारा 164 द.प्र.सं. के कथन) पुष्टि या खण्डन के उद्देश्य से विचारण के समय उपयोग में लाया जा सकता है – धारा 439 द.प्र.सं. का आवेदन खारिज किया। **95* 185**

Sections 190 and 204 – (i) Magistrate is empowered to issue process against a person who has not been charge-sheeted provided sufficient material is available in the police report showing his involvement in the crime – He is also empowered to ignore the conclusion arrived at by the I.O. and apply his mind independently on the facts emerging from the investigation and take cognizance of the case.

(ii) Principle of "alter ego" when applied – Explained in para 39.

धारा 190 और 204 – (i) मजिस्ट्रेट ऐसे व्यक्ति के विरूद्ध जिसे पुलिस ने अपने अभियोग पत्र में अभियुक्त नहीं बनाया है आदेशिका जारी करने के लिए सशक्त है, किन्तु उस व्यक्ति के विरूद्ध पुलिस प्रतिवेदन में उसके अपराध में शामिल होना दर्शाने के लिए पर्याप्त सामग्री होना चाहिये – वह (मजिस्ट्रेट) अनुसंधान अधिकारी द्वारा निकाले गये निष्कर्ष को अनदेखा करने के लिए सशक्त है और मामले के तथ्यों जो की अनुसंधान से स्पष्ट होते है उन पर स्वतंत्र मस्तिष्क लगा सकता है और प्रकरण में संज्ञान ले सकता है।

(ii) ''आल्टर इगो'' का सिद्धांत कब लागू होता है – पैरा 39 में समझाया गया।

88 171

Sections 197 and 482 – (i) Sanction for prosecution – Necessity – During discharging 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 – No sanction for prosecution is necessary.

(ii) After losing battle in civil proceeding – Filing of complaint – Attempt to convert a case of civil nature into a criminal prosecution by the respondent – Amounts to abuse of process of law.

धारा 197 और 482 – (i) अभियोजन चलाने की अनुमति – आवश्यकता – यदि एक लोक सेवक अपने कार्यालयीन कर्त्तव्यों के निर्वहन के दौरान आपराधिक षड़यंत्र या आपराधिक दुराचरण में शामिल होता है तो उसके ऐसे आपराधिक कृत्यों को कार्यालयीन कर्त्तव्यों का निर्वहन नहीं माना जा सकता है और ऐसे में धारा 197 आकर्षित नहीं होती है – अभियोजन चलाने की अनुमति की आवश्यकता नहीं होती।

(ii) सिविल कार्यवाही में पराजित हो जाने के बाद – परिवाद प्रस्तुत करना – एक सिविल प्रकृति के मामले को दांडिक मामले में परिवर्तित करने का प्रत्यार्थी द्वारा प्रयत्न किया गया – यह विधि की प्रक्रिया के दुरूपयोग के समान है। **76 153**

Sections 200 and 204 – See Sections 138, 142 and 145 of the Negotiable Instruments Act, 1881

धारा 200 और 204 – देखें परक्राम्य लिखत अधिनियम, 1881 की धारा 138, 142 और 145

109 203

Sections 235 and 248 (2) – Hearing on a sentence to accused by the appellate court – Where there is minimum sentence prescribed and same has been awarded by the appellate court and no prejudice is caused to the accused, it is not necessary to follow the procedure under section 235 Cr.P.C.

धारा 235 और 248 (2) – अपील न्यायालय द्वारा अभियुक्त को दण्ड के प्रश्न पर सुना जाना – जहां न्यूनतम दण्ड विहित है और वही अपील न्यायालय द्वारा दिया जा रहा है और उससे अभियुक्त के हितों पर कोई प्रतिकूल असर नहीं गिरता है – यह आवश्यक नहीं है कि धारा 235 दं.प्र.सं. में बतलाई प्रक्रिया का पालन किया जाये। **77 (ii) 155**

Section 309 – Unnecessary adjournments – Duty of Court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded – Cross-examination of a witness should not be deferred unless there are special reasons for grant of time and that too has to be recorded.

धारा 309 – अनावश्यक स्थगन – न्यायालय का यह कर्त्तव्य है कि वह यह देखे कि न केवल विधि अनुसार अभियुक्त के हितों की सुरक्षा की जाये बल्कि समाज और सामूहिक हित की सुरक्षा भी की जाये – एक गवाह का प्रतिपरीक्षण नहीं रोकना चाहिये जब तब की समय देने के लिये विशेष कारण न हो और ऐसे कारण लेखबद्ध करना चाहिये। **78 157**

Section 313 – (i) Effect of non-compliance of mandatory provision of Section 313 Cr.P.C. – The accused would not be entitled for acquittal on the ground of such non-compliance.

(ii) If such non-compliance caused material prejudice to the accused, the appellate Court is empowered to remand the case to examine the accused again under section 313 Cr. P.C. and may direct for re-trial of the case from the stage of recording of statement under section 313 Cr.P.C. – It cannot be said to be amounting to filling up of lacuna in the prosecution case.

धारा 313 – (i) धारा 313 दं.प्र.सं. के आज्ञापक प्रावधान का अनुपालन न करने का प्रभाव – अभियुक्त ऐसा अनुपालन न करने के आधार पर दोषमुक्ति का हकदार नहीं होगा।

(ii) यदि ऐसा अनुपालन न करना अभियुक्त पर तात्विक रूप से प्रतिकूल प्रभाव डालता है तब अपील न्यायालय प्रकरण को प्रतिप्रेषित करने के लिए सशक्त होती है और यह निर्देश दे सकती है कि धारा 313 द.प्र.सं. के कथन अभिलिखित करने के प्रक्रम से मामले का पुनः विचारण किया जाये। इसे अभियोजन के प्रकरण की कमी पूरा करने के समान नहीं कहा जा सकता।

79 159

Section 357-A – Duty of the court to grant compensation to the victim – Explained in para 14.

धारा 357–ए – आहत् को प्रतिकर देने का न्यायालय का कर्तव्य – निर्णय चरण 14 में स्पष्ट किया।

80 (iii) 161

Section 366 – See Sections 3 and 27 of Evidence Act, 1872 & Sections 302 and 376 (2) (f) of the Indian Penal Code, 1860

धारा 366 – देखें साक्ष्य अधिनियम, 1872 की धारा 3 और 27 एवं भारतीय दण्ड संहिता, 1860 की धारा 302 और 376 (2) (एफ) **92* 181**

Sections 438 and 439 (2) – When an order for cancellation of bail can be passed? Held, it may be passed on the following grounds:-

(a) When the accused is found tampering with the evidence during the investigation or during trial;

(b) When the person on bail commits similar offences or any heinous offence during the period of bail;

(c) When the accused has absconded and trial of the case gets delayed on that account;

(d) When the offence so committed by the accused had created serious law and order problem in the society and accused had become a hazard on the peaceful living of the people;

(e) If the High Court finds that the Lower Court granting bail has exercised its judicial power wrongly;

(f) If the High Court or the Sessions Court finds that the accused has misused the privilege of bail;

(g) If the life of the accused itself be in danger;

धारा 438 और 439 (2) – कब जमानत निरस्ती का आदेश पारित किया जा सकता है? अभिनिर्धारित किया गया, यह आदेश निम्न आधारों पर पारित किया जा सकता है :–

(a) जब अभियुक्त अनुसंधान या विचारण के दौरान गवाहों को प्रभावित करते हुये पाया जाये।

(b) जब अभियुक्त जमानत पर रहते हुये समान अपराध या कोई गंभीर अपराध कारित करता है।

(c) जब अभियुक्त फरार हो जाता है और इस कारण प्रकरण का विचारण विलंबित होता है।

(d) जब अभियुक्त द्वारा कारित अपराध समाज में गंभीर कानून और व्यवस्था की स्थिति उत्पन्न कर दे और अभियुक्त शांति पूर्ण जीवन जी रहे लोगों के लिये एक संकट बन जाये।

(e) यदि उच्च न्यायालय यह पाती है कि अधीनस्थ न्यायालय ने जमानत देते समय अपने न्यायिक शक्तियों का गलत तरीके से प्रयोग किया है।

(f) यदि उच्च न्यायालय या सेशन न्यायालय यह पाते है कि अभियुक्त ने जमानत के विशेषाधिकार का दुरूपयोग किया है।

(g) यदि अभियुक्त स्वयं का जीवन खतरे में हो। **81*** **163**

Sections 457 and 482 – Transportation of coal – Seizure of vehicle, release of – Law explained.

धारा 457 और 482 – खनिज (अवैध खनन, परिवहन और संग्रहण का संरक्षण) नियम, 2006 – नियम 18 (4) कोयले का परिवहन – जब्त वाहन का छोड़ा जाना – विधि समझाई गई।

82* **164**

EVIDENCE ACT, 1872

साक्ष्य अधिनियम, 1872

Sections 3 and 27 – (I) Circumstantial evidence, tests thereof:

(a) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(b) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(c) the circumstances, taken cumulatively, should form a complete chain so there is no escape from the conclusion that the crime was committed by the accused and none else.

(ii) Circumstantial evidence – Cautious approach, necessity of – Where the entire prosecution case hinges on circumstantial evidence, the Court must adopt cautious approach for basing the conviction on circumstantial evidence and unless the prosecution evidence points irresistibly to the guilt of the accused, it would not be sound and safe to base the conviction.

धारा 3 और 27 – (i) परिस्थिति जन्य साक्ष्य का परीक्षण कैसे किया जाये स्पष्ट किया गया।

(ii) परिस्थिति जन्य साक्ष्य के बारे में सावधानी पूर्ण रूख की आवश्यकता बतलाई गई।

92 (i) & (ii)* **181**

Sections 3, 32 – Section 302 of the Indian Penal Code, 1860

धारा 3 और 32 – देखें भारतीय दण्ड संहिता, 1860 की धारा 302 **90** **179**

Sections 3 and 134 – ***A. Appreciation of evidence :***

(i) Interested/related witnesses – Evidence of interested witness cannot be disbelieved on the ground that they are related or interested witness – Close relationship on the contrary guarantees that they would be most reluctant to spare the real culprits and falsely implicate innocent ones.

(ii) Minor discrepancies on trivial matters, Effect of – The witnesses are not expected to describe the incident in graphic detail and with such precision as to state which member and in what manner participated in the commission of offence – Discrepancies which are not major and significant, do not dilute credibility of such witnesses.

(iii) Examination of all the eye witnesses, whether necessary – There exists no law that the prosecution must examine all the eye witnesses – It is for the prosecution to decide as to how many and who should be examined as their witnesses for proving a case.

धारा 3 और 134 – ए. साक्ष्य का मूल्यांकन

(i) हितबद्ध /रिश्तेदार गवाह – किसी साक्षी के साक्ष्य पर उसके रिश्तेदार या हितबद्ध गवाह होने के आधार पर अविश्वास नहीं किया जा सकता – इसके विपरीत निकट का रिश्तेदार वास्तविक अपराधी को बचाने और किसी निर्दोष को लिप्त करने में अनिच्छुक होता है।

(ii) तुच्छ बातों के बारे में छोटे विरोधाभाषों का प्रभाव – विरोधाभाष जो बड़े न हो और महत्वपूर्ण न हो वे गवाह की विश्वसनीयता तो कम नहीं करते।

(iii) सभी प्रत्यक्ष साक्षीगण का परीक्षण करवाने की आवश्यकता न होना – ऐसा कोई कानून नहीं है कि अभियोजन को सभी प्रत्यक्ष साक्षीगण का परीक्षण करवाना चाहिये – यह अभियोजन पर है कि वह यह निश्चित करे की कितने और कौन से गवाह अपना प्रकरण प्रमाणित करने के लिए करवाना है।

93* 182

Section 8 – See Sections 190 and 204 of the Criminal Procedure Code, 973.

धारा 8 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 190 और 204। **88 171**

Sections 27 and 106 – When section 106 of the Evidence Act, 1872 is attracted? Held, the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused.

धारा 27 और 106 – धारा 106 भारतीय साक्ष्य अधिनियम, 1872 कब आकर्षित होती है ? अभिनिर्धारित किया गया, यह प्रावधान तब आकर्षित होता है जब अभियोजन के लिए वे तथ्य स्थापित करना असंभव या आनुपातिक रूप से कठिन होता है जो तथ्य विशेषतः अभियुक्त के ज्ञान है। **80 (i) 161**

Sections 45 and 114 – (i) Divorce on the ground of adulterous life style of the wife – Husband moved an application for DNA test of himself and the male child born to the wife – It would be most possible method for husband to establish and confirm the allegations levelled by him against his wife – As DNA Testing is the most legitimate and scientifically perfect method, application is allowed.

(ii) If wife declines for DNA test, the allegation would be determined by the court, by drawing a presumption provided under Section 114 (h) of the Evidence Act.

धारा 45 और 114 – (i) पत्नी की जारतापूर्ण जीवनशैली के आधार पर विवाह विच्छेद – पति ने एक आवेदन उसके और उसकी पत्नी से उत्पन्न बच्चे के डी.एन.ए. परिक्षण के लिये लगाया – पति द्वारा पत्नी के विरूद्ध लगाये गये अभियोगों को स्थापित करने और उसकी पुष्टि के लिये यह सबसे संभाव्य विधि होगी – क्योंकि डी.एन.ए. परीक्षण सबसे तर्क संगत और वैज्ञानिक रूप से सही विधि है – आवेदन स्वीकार किया गया।

(ii) यदि पत्नी डी.एन.ए. परीक्षण से इंकार करती है तब न्यायालय द्वारा अभियोगों को धारा 114 (एच) साक्ष्य अधिनियम में उपलब्ध उपधारणा लेते हुये निर्धारित किया जा सकता है।

84 167

Sections 63, 65, 65-A and 65-B – Generalia specialibus non derogant means special law will always prevail over the general law – Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act – Sections 59, 65-A and 65-B of the Evidence Act are complete Code in itself – Being a special law, the general law under Sections 63 and 65 Evidence Act has to yield. An electronic record by way of secondary Evidence shall not be admitted in evidence unless the requirements under section 65-B are satisfied – So, in the case of CD, VCD, chip etc. same shall be accompanied by the certificate in terms of section 65-B obtained at the time of taking the document, without which, the secondary evidence regarding that electronic record is inadmissible.

[***State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru AIR 2005 SC 3820*** overruled]

धारा 63, 65, 65-ए और 65.बी – जनरलिया स्पेशिलिबस नान डेरोगेट अर्थात विशेष विधि हमेशा सामान्य विधि पर अभिभावी होगी। इलेक्ट्रोनिक अभिलेख को प्रमाणित करना एक विशेष प्रावधान है जो सूचना और प्रौधोगिक अधिनियम द्वारा साक्ष्य अधिनियम के विभिन्न प्रावधानों में संशोधन द्वारा लाया गया है। धारा 59, 65ए, 65बी साक्ष्य अधिनियम अपने आप में एक पूर्ण संहिता है। एक विशेष विधि होने के कारण धारा 63 व 65 साक्ष्य अधिनियम की सामान्य विधि को झुका देते है (या उन पर अभिभावी होते है) जब तक धारा 65बी की अनिवार्यता पूर्ण नहीं होती एक इलेक्ट्रानिक अभिलेख को द्वितीयक साक्ष्य द्वारा ग्राह्य नहीं किया जा सकता अतः सी.डी., व्ही.सी.डी. चिप आदि के मामले में उनके साथ धारा 65बी साक्ष्य अधिनियम के अनुसार प्रमाण पत्र लगा होना चाहिए जो दस्तावेज लेते समय प्राप्त किया जाता है – उसके बिना इलेक्ट्रोनिक अभिलेख के बारे में द्वितीयक साक्ष्य ग्राह्य नहीं होती है।

स्टेट (एन.सी.टी. देहली) विरूद्ध नवजोत संधु उर्फ अफसान गुरू, ए.आई.आर. 2005 एस.सी. 3820 को ओवर रूल्ड किया गया) **83 166**

Sections 63, 65 and 66 – Xerox copy of power-of-attorney produced by the plaintiff in evidence – Signature and contents of the said document were admitted by the defendant – A certified copy of that document is also on record – There is no question of proving the said document as required under the Evidence Act.

Discretionary relief for specific performance – Depends upon the conduct of the parties – Where the defendant does not come with clean hands and suppresses material facts and evidence and mislead the court, equitable discretion should be exercised against him.

धारा 63, 65 और 66 – वादी द्वारा साक्ष्य में मुखतियार नामा की फोटो प्रति प्रस्तुत की गई – इस दस्तावेज की अंतरवस्तु और उस पर हस्ताक्षर होना प्रतिवादी ने स्वीकार किया था – दस्तावेज की एक प्रमाणित प्रतिलिपि भी अभिलेख पर है – इस दस्तावेज को साक्ष्य अधिनियम के अनुसार प्रमाणित करने की कोई आवश्यकता नहीं है।

विनिर्दिष्ट पालन का विवेकीय अनुतोष – पक्षकारों के आचरण पर निर्भर रहता है – जहां प्रतिवादी स्वच्छ हाथों से न्यायालय में नहीं आता है और तात्विक तथ्य और साक्ष्य छिपाता है तथा न्यायालय को भ्रमित करने का प्रयास करता है – साम्यपूर्ण विवेकाधिकार उसके विरूद्ध प्रयुक्त करना चाहिये।**115 (i) 211 & (ii)**

Section 113-B – Dowry death within one year of marriage – Appreciation of evidence – Mentioning in suicide note that 'nobody be held responsible' but also stating that all the doors were closed for her – She had no other way available (expect to leave the world) – When a young married girl finds herself in helpless situation and decides to end her life, in absence of any other circumstance, it is natural to infer that she was unhappy in her matrimonial home – A suicide note cannot be treated as conclusive of there being no one responsible for the situation when evidence on record categorically points to harassment for dowry.

धारा 113-बी – विवाह के एक वर्ष के भीतर दहेज मृत्यु – साक्ष्य का मूल्यांकन – आत्महत्या के लेख में ''किसी को उत्तरदायी नहीं माना जाये'' दर्ज था – किन्तु उसने यह भी लिखा था कि उसके लिये सभी दरवाजे बंद हो चुके थे – उसके पास अन्य कोई रास्ता (केवल संसार को छोड़ने के अलावा) उपलब्ध नहीं था – जब एक युवा विवाहित लड़की अपने आपको असाहय स्थिति में पाती है और अपना जीवन समाप्त करने का निर्णय करती है, किसी अन्य परिस्थिति के अभाव में, यह स्वाभाविक रूप से अनुमान लगाया जा सकता है कि वह उसके ससुराल में नाखुश थी। एक आत्महत्या का लेख निश्चियक साक्ष्य नहीं माना जा सकता क्योंकि उसमें किसी को भी उत्तरदायी न मानने का तथ्य लिखा है जहां दहेज के लिये उसे तंग करने के बिन्दु पर सुस्पष्ट साक्ष्य हो। **94 (i) 184**

Sections 137 and 138 – See Section 309 of Criminal Procedure Code, 1973

धारा 137 और 138 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 309 **78 157**

HINDU MARRIAGE ACT, 1955

हिन्दू विवाह अधिनियम, 1955

Section 5 – Presumption of marriage – When can be drawn? When a man and woman have cohabited continuously for a number of years like a spouse – The court can draw such presumption.

धारा 5 – विवाह की उपधारणा – कब की जा सकती है – जब एक पुरूष और एक महिला लगातार कई वर्षों से स्पाउस के रूप में रहते है – तब न्यायालय ऐसी उपधारणा कर सकता हैं। **71 (ii) 146**

Section 13 – Divorce on the ground of mental cruelty – Whether refusal to have sexual intercourse for a long time without sufficient reason itself amounts to mental cruelty? Held, Yes [***Samar Gosh v. Jaya Gosh, (2007) 4 SCC 511*** (3-Judge Bench) followed].

धारा 13 – मानसिक क्रूरता के आधार पर विवाह विच्छेद की आज्ञप्ति – क्या लंबे समय तक लैंगिक सहवास से, बिना पर्याप्त करण के, इंकार करना अपने आप में मानसिक क्रूरता के समान है ? अभिनिर्धारित किया गया, हाँ, समीर घोष विरूद्ध जया घोष (2007) 4 एस.सी.सी. 511 तीन न्यायमूर्तिगण की पीठ का अनुसरण किया गया,। **85 169**

Section 13 – See Sections 45 and 114 of the Evidence Act, 1872

धारा 13 – देखें साक्ष्य अधिनियम, 1872 की धारा 45 और 114 **84 167**

HINDU SUCCESSION ACT, 1955

हिन्दू उत्तराधिकारी अधिनियम, 1955

Sections 4, 6 and 8 – Suit for partition by grandson – After coming into force of the Hindu Succession Act, 1956 grandson has no birth right in the properties of grandfather and he cannot claim partition during the life time of his father.

धारा 4, 6, और 8 – पोते द्वारा विभाजन का वाद – हिन्दू उत्तराधिकारी अधिनियम, 1956 के प्रभाव में आने के बाद पोते को उसके दादा की संपत्ति में जन्म से कोई अधिकार नहीं होता है और वह उसके पिता के जीवन काल में विभाजन का दावा नहीं कर सकता। **86* 170**

INDIAN PENAL CODE, 1860

भारतीय दण्ड संहिता, 1860

Sections 53, 279, 337 and 304-A – (i) By driving the jeep on the public road in a rash and negligent manner, the accused had endangered the life of one victim who died and another who got injured – Trial court found him guilty for offences punishable under Section 279, 337, 304-A IPC and sentenced him to undergo six months and two years R.I. with fine of Rs. 2,500 – ASJ, in appeal, upheld the order of trial court – High Court, in revision, reduced the sentences to period already undergone – The Apex Court set aside the order of the High Court and restored the sentence imposed by the Trial Court.

(ii) Duty of court to award adequate sentence – Reiterated.

धारा 53, 279, 337 और 304-ए – (i) अभियुक्त ने लोकमार्ग पर जीप को उतावलेपन और उपेक्षा से चलाकर एक आहत् का जीवन खतरे में डाला जिसकी मृत्यु हो गई और दूसरा आहत् घायल हुआ – विचारण न्यायालय ने उसे अपराध धारा 279, 337, 304ए भा.द.सं. में दोषी पाया और उसे 6 माह और 2 वर्ष का दण्ड और रूपये 2500/– अर्थदण्ड किया – अपर सत्र न्यायाधीश ने अपील में विचारण न्यायालय के आदेश को कायम रखा – उच्च न्यायालय ने पुनरीक्षण में दण्ड को अभिरक्षा में गुजारी गई अवधि तक कम किया – सर्वोच्च न्यायालय ने उच्च न्यायालय के आदेश को अपास्त किया और विचारण न्यायालय द्वारा अधिरोपित दण्ड को पुनः कायम किया।

(ii) न्यायालय के युक्तियुक्त दण्ड को देने के कर्त्तव्य को पुनः बतलाया गया।

87 170

Section 120-B – See Sections 190 and 204 of the Criminal Procedure Code, 973

धारा 120-बी – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 190 और 204 **88 171**

Sections 120-B, 420 and 468 – See Sections 197 and 482 of The Criminal Procedure Code, 1973

धारा 120-बी, 420 और 468 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 197 और 482

76 153

Section 300 Exception 1 and Section 302 – (i) When exception 1 of Section 300 IPC is attracted? Held, where the following ingredients of exception 1 are satisfied then the same is attracted:

a. The deceased must have given provocation to the accused;

b. The provocation so given must have been grave;

c. The provocation given by the deceased must have been sudden;

d. The offender by reason of such grave and sudden provocation must have been deprived of his power of self-control; and

e. The offender must have killed the deceased or any other person by mistake or accident during the continuance of the deprivation of the power of self-control.

(ii) Grave provocation within the meaning of Exception 1 of Section 300 IPC is a provocation where judgment and reason take leave of the offender and violent passion takes over – "Provocation" has been defined by Oxford Dictionary, as an action, insult, etc. that is likely to provoke physical retaliation – The term "grave" only adds an element of virulent intensity to what is otherwise likely to provoke retaliation.

धारा 300 अपवाद एक और धारा 302 – (i) धारा 300 का अपवाद एक कब आकर्षित होता है ? अभिनिर्धारित किया गया, जब अपवाद एक के निम्नलिखित घटक संतुष्ट होते है तब वह आकर्षित होता है :

ए. मृतक द्वारा अभियुक्त को प्रकोपन दिया जाना चाहिए।

बी. दिया गया प्रकोपन गंभीर होना चाहिए।

सी. मृतक द्वारा दिया गया प्रकोपन अचानक होना चाहिए।

डी. ऐसे गंभीर और अचानक प्रकोपन द्वारा अभियुक्त उसके स्वयं नियंत्रण की शक्ति से वंचित हो चुका हो, और

इ. अभियुक्त द्वारा आहत् को या किसी अन्य व्यक्ति को त्रुटिवश या दुर्घटनावश मार दिया जाना चाहिए जो कि लगातार उसके स्वयं नियंत्रण की शक्ति से वंचित होने के कारण किया जाना चाहिए।

(ii) धारा 300 के अपवाद एक के अर्थ में गंभीर प्रकोपन ऐसा प्रकोपन होता है जहां अभियुक्त की निर्णय और तर्क या विवेक बुद्धि समाप्त हो जाती है और धैर्य समाप्त हो जाता है। ''प्रकोपन'' को ऑक्सफोर्ड डिक्शनरी में एक क्रिया, अपमान आदि के रूप में परिभाषित किया गया है। प्रकोपन शारीरिक प्रतिशोध के समान है। शब्द गंभीर केवल कटुता के तत्व की तीव्रता को बढ़ा देता है। **89 177**

Section 302 – (i) Death – Suicide or homicide – Burn injury case – Injuries found on neck and below the body upto legs – If one is to pour kerosene on oneself, it is normal human conduct to pour it over the head and in any case, not on the face by sparing the head – Theory of suicide unacceptable.

(ii) Setting afire another person after pouring kerosene – It is an act which is likely to cause death of such person – Offence of murder is complete – Conviction held, proper.

धारा 302 – (i) मृत्यु – आत्महत्या या मानव वध – जलने से आयी चोट का प्रकरण – चोटे गर्दन और शरीर के निचले भाग में टांगो तक पाई गई – यदि कोई स्वयं पर केरोसिन उड़ेलता है तो यह सामान्य मानवीय आचरण है वह सिर से उड़ेलता और किसी भी दशा में सिर को बचाते हुये चेहरे पर या शरीर के अन्य भाग पर नहीं उड़ेलता है – आत्महत्या की कहानी स्वीकार योग्य नहीं पाई गई।

(ii) अन्य व्यक्ति पर केरोसिन उड़ेलने के बाद आग लगाना – यह ऐसा कृत्य है जिससे उस व्यक्ति की मृत्यु कारित होगी – हत्या का अपराध पूर्ण हो जाता है – दोषसिद्धि उचित पाई गई।

90 179

Section 302 – Murder trial – Circumstantial evidence – Theory of last seen together – Deceased was last seen with the accused – His dead body was found soon thereafter – Certain articles belonging to the deceased were recovered from the custody of accused and his uncle at their instance – Conviction held proper.

धारा 302 – हत्या का विचारण – परिस्थिति जन्य साक्ष्य – अंतिम बार साथ देखे जाने का सिद्धांत – मृतक अभियुक्त के साथ अंतिम बार देखा गया – उसके ठीक पश्चात् उसका मृत शरीर पाया गया – मृतक से संबंधित कुछ वस्तुएँ अभियुक्त और उसके चाचा से उनकी निशादेही से बरामद हुई – दोषसिद्धि उचित पायी गई। **91* 180**

Section 302 r/w/s 147, 148 and 149 – ***B.Unlawful assembly*** – Necessity for constitutionof – Some overt act on the part of each member, exception of – Observation made in the case of ***Baladin and others v. State of Uttar Pradesh, AIR 1956 SC 181*** (4-Judge Bench) that mere presence in an assembly does not make a person, who is present as a member of the unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of any unlawful assembly or unless the case falls under section 142 IPC, cannot be treated as laying down an unqualified proposition of law – Knowing that an assembly is an unlawful assembly if a person continues to remain present there, not because of idle curiosity but continues to stay there in prosecution of common object of the unlawful assembly, he is vicariously liable for the acts committed by the unlawful assembly.

धारा 302 सहपठित धारा 147, 148 और 149 – बी. अवैध सभी – प्रत्येक सदस्य का कुछ कृत्य होने की आवश्यकता का अपवाद – समझाया गया। **93* 182**

Sections 302, 304-B and 498-A – When charge under section 302 IPC shall be framed along with section 304-B IPC? Held, where there is evidence, either direct or circumstantial, to show that the offence falls under section 302 IPC, the trial court should frame the charge under section 302 IPC even if the police has not expressed any opinion in that regard in the report under section 173 (2) of Cr. P. C.

धारा 302, 304-बी और 498-ए – कब धारा 304 बी भा.द.सं. के आरोप के साथ धारा 302 भा.द.सं. का आरोप विरचित किया जायेगा ? अभिनिर्धारित किया गया, जहां ऐसी प्रत्यक्ष या परिस्थिति जन्य साक्ष्य हो जो यह दर्शाती हो की अपराध धारा 302 भा.द.सं. में आता है, विचारण न्यायालय को धारा 302 भा.द.सं. का आरोप विरचित करना चाहिये चाहे पुलिस ने उसके प्रतिवेदन धारा 173 (2) दण्ड प्रक्रिया संहिता में अपने प्रतिवेदन में इस संबंध में कोई राय नहीं दी।

77 (i) 155

Sections 302 and 364-A – Recovery of dead body from covered gutters and personal belongings of the deceased from other places disclosed by the accused stood fully proved – It casts a duty on the accused to give proper explanation – If accused failed to give an explanation, it provides an additional circumstance against the accused.

धारा 302 और 364-ए – एक ढकी हुई नाली से मृत शरीर और मृतक के व्यक्तिगत सामान अन्य स्थान से अभियुक्त की सूचना पर बरामद होना पूर्णतः प्रमाणित हुआ – यह अभियुक्त पर कर्तव्य अधिरोपित करता है कि वह उसका उचित स्पष्टीकरण दे – यदि अभियुक्त स्पष्टीकरण देने में असफल रहता है तो यह अभियुक्त के विरूद्ध एक अतिरिक्त परिस्थिति होती है। **80 (ii) 161**

Sections 302 and 376 (2) (f) – (iii) Gang rape and murder – Circumstantial evidence, appreciation of.

धारा 302 और 376 (2) (एफ) – (iii) सामूहिक बलात्संग और हत्या – परिस्थिति जन्य साक्ष्य का मूल्यांकन मृत्यु दण्ड संबंधित परिस्थितियाँ बतलाई गई। **92 (iii)* 181**

Sections 304-B, 306 and 498-A – Mother and brother were acquitted by the High Court – Claim for parity by husband – The husband is not only primarily responsible for safety of his wife, he is expected to be conversant with her state of mind more than any other relative – If the wife commits suicide by setting herself on fire, preceded by dissatisfaction of the husband and his family with dowry, the inference of harassment against the husband may be patent – Responsibility of the husband towards his wife is qualitatively different and higher as against his other relatives – So the case of the husband stands on a different footing.

धारा 304–बी, 306 और 498–ए – उच्च न्यायालय द्वारा माता और भाई को दोषमुक्त किया गया है – पति द्वारा समानता का दावा – पति प्राथमिक रूप से न केवल उसकी पत्नी की सुरक्षा के लिये उत्तरदायी होता है बल्कि उससे यह आशा की जाती है कि वह पत्नी की मानसिक दशा से अन्य रिश्तेदारों की तुलना में अधिक परिचित होता है – यदि पत्नी स्वयं को आग लगाकर आत्महत्या करती है, जो की पति और उसके परिवार के सदस्यों के दहेज के कारण असंतुष्ट होने से किया जाता है ऐसे में पति के विरूद्ध तंग करने का अनुमान स्पष्ट होता है – पति का उसकी पत्नी के प्रति दायित्व गुणात्मक रूप से अन्य रिश्तेदारों की तुलना में अधिक होता है – अतः पति का मामला भिन्न स्तर का होता है। **94 (ii) 184**

Sections 363 and 376 – See Sections 164 and 439 of the Criminal Procedure Code, 1973.

धारा 363 और 376 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 164 और 439।

95* 185

Section 376 – (i) Directions issued in ***Delhi Domestic Working Women's Forum v. Union of India and others, (1995) 1 SCC 14*** reiterated.

(ii) Sexual assault cases, how to be dealt with? Hon'ble the Apex Court made some important observations – The victim of rape should generally be examined by a female doctor – She should be provided the help of a psychiatrist – Medical report should be prepared expeditiously and the doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angles e.g. opinion regarding the age taking into consideration the number of teeth, secondary sex characters and radiological test, etc. – The Investigating Officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer – The victim should be sent for medical examination at the earliest and her statement should be recorded by the I.O. in the presence of her family members making the victim comfortable except in incest cases – Investigation should be completed at the earliest to avoid the bail to the accused on technicalities as provided under Section 167 Cr.P.C. and final report should be submitted under Section 173 Cr.P.C. at the earliest.

धारा 376 – (i) न्याय दृष्टांत देहली डोमेस्टिक वर्किंग विमेन्स फोरम विरूद्ध यूनियन ऑफ इंडिया और अन्य, (1995) 1 एस.सी.सी. 14 में दिये गये निर्देश पुनः बतलाये गये।

(ii) लैंगिक हमले के मामलों को किस तरह लिया जाये – माननीय सर्वोच्च न्यायालय ने कुछ महत्वपूर्ण टिप्पणियाँ की – बलात्कार की पीड़ित का परीक्षण सामान्यतः महिला चिकित्सक द्वारा किया जाना चाहिये – उसे किसी मनोवैज्ञानिक की सहायता उपलब्ध कराना चाहिये – चिकित्सा प्रतिवेदन शीघ्र तैयार करना चाहिए और डॉक्टर को आहत् का विस्तार से परीक्षण करने के बाद अपनी राय देना चाहिए और सभी दृष्टिकोण से राय देना चाहिए जैसे उम्र के बारे में राय, दांतों की संख्या, द्वितीयक लैंगिक विशिष्टियाँ और रेडियो लॉजिंकल परीक्षण आदि; अनुसंधान अधिकारी को यह सुनिश्चित करना चाहिये की बलात्कार से पीड़ित महिला के साथ सावधानी पूर्वक एक महिला पुलिस अधिकारी द्वारा हेंडल करना चाहिए, यदि महिला पुलिस अधिकारी उपलब्ध हो। आहत को शीघ्रता से मेडिकल परीक्षण के लिये भेजना चाहिए और उसके कथन अन्वेषण अधिकारी द्वारा उसके परिवार के सदस्यों की उपस्थिति में लेना चाहिए। अनुसंधान शीघ्रता से पूर्ण कर लेना चाहिए ताकि अभियुक्त को तकनीकी आधारों पर धारा 167 द.प्र.सं. की तहत जमानत न मिल जाये अंतिम प्रतिवेदन में शीघ्र प्रस्तुत करना चाहिए। **96 186**

Sections 376, 377, 417 and 420 – See Section 53-A of Indian Penal Code, 1860.

धारा 376, 377, 417 और 420 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 53–ए। **97* 181**

Sections 498-A and 306 – See Section 31 of the Criminal Procedure Code, 1973

धारा 498-ए और 306 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 31 **74 150**

JUDICIAL SERVICE PAY REVISION, PENSION AND OTHER RETIREMENT BENEFITS RULES, 2003

न्यायिक सेवा वेतन पुनरीक्षण, पेंशन और अन्य सेवानिवृत्ति लाभ नियम 2003

Rules 9 and 11-A – (i) Labour judiciary – Salary and dearness allowance, payment of – Presiding Officers of the Labour Court and the Judges of the Industrial Court are entitled to the pay scale at par with the Civil Judges and District Judges as well as in the matter of pay fixation also – Further held, members of the Labour Judiciary are entitled to dearness allowance at the same rate as that of serving judicial officer.

(ii) Petrol allowance and other benefits, payment of – Held, these benefits are given to a judicial officer not on the basis of statutory rules but based on executive instructions and as this was a decision based on the policy of executive discretion of the State Government, parity in this regard cannot be extended to the members of the Labour Judiciary.

नियम 9 और 11-ए – (i) श्रम न्याय पालिका – वेतन और मंहगाई भत्ता का भुगतान – श्रम न्यायालय के पीठासीन अधिकारी और औद्योगिक न्यायालय के न्यायाधीश भी सिविल जज और जिला जज के समान वेतन पाने के अधिकारी है और उसी अनुसार उनका वेतन निर्धारण करवाने के अधिकारी है श्रम न्याय पालिका के सदस्य भी मंहगाई भत्ता अन्य न्यायिक अधिकारियों के समान पाने के अधिकारी है।

(ii) पेट्रोल एलाउंस और अन्य सुविधाओं का भुगतान किया जाना – अभिनिर्धारित किया गया, ये लाभ न्यायिक अधिकारी को वैधानिक नियमों के आधार पर नहीं दिये जाते हैं बल्कि प्रशासकीय निर्देश के आधार पर दिये जाते हैं इनके संबंध में श्रम न्याय पालिका के सदस्यों को समानता के आधार पर भुगतान नहीं किया जा सकता है। **98* 189**

LAND ACQUISITION ACT, 1894

भूमि अधिग्रहण अधिनियम, 1894

Section 23 – (i) Assessment of compensation – Deductions for development of land – It can sway back and forth – Can only be determined after carefully considering factors such as size of land, nearness to developed area, etc.

(ii) Determination of market value of land – Comparative sale method – Sale instances in relation to small piece of land situated near the acquired land can be considered, subject to:-

(a) Reasonable deductions for developmental costs that will be incurred in the future and,

(b) The evidence that these lands can be compared to the acquired land in terms of its vicinity and the comparable benefits and advantages.

(iii) In this case sixty percent deduction on market value of acquired land for development expenses allowed.

धारा 23 – (i) प्रतिकर निर्धारण – भूमि के विकास के लिये कटौतियाँ – इनका निर्धारण कुछ कारकों जैसे भूमि का आकार – विकसित क्षेत्र से समीपता आदि पर सावधानी पूर्वक विचार करके किया जा सकता है।

(ii) भूमि का बाजार मूल्य निर्धारित करना – तुलनात्मक विक्रय विधि – अधिग्रहित भूमि के पास की कम आकार की भूमि के विक्रय उदाहरण भी विचार में लिये जा सकते हैं लेकिन :–

(ए) भविष्य में लगने वाला विकास खर्च के लिये युक्तियुक्त कटौती,

(बी) ऐसा साक्ष्य होना चाहिए की उस भूमि की तुलना अधिग्रहित भूमि से की जा सकती है क्योंकि वह अधिग्रहित भूमि से निकट है और उसके लाभ अधिग्रहित भूमि के समान है इसलिये तुलना के योग्य है।

(iii) इस मामले में अधिग्रहित भूमि के बाजार मूल्य में 60 प्रतिशत कटौती विकास खर्च के लिये मानी गई।

99 190

MINERALS (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, 2006

खनिज (अवैध खनन, परिवहन और संग्रहण का संरक्षण) नियम, 2006

Rule 18 (4), Proviso – See Sections 457 and 482 of Criminal Procedure Code, 1973.

नियम 18 (4), परंतुक – देखें दण्ड प्रक्रिया संहिता की धारा 457 और 482। **82 164**

MOTOR VEHICLES ACT, 1988

मोटरयान अधिनियम, 1988

Sections 2 (30), 50 (1) (a) (i) and 168 – Who is owner for the purpose of Section 168 M.V. Act, 1988? Held, a person who is the registered owner of a motor vehicle can be termed as 'owner' for the purpose of section 168 of the M.V. Act unless the other party is in a position to establish that it is a case of hire-purchase agreement, lease agreement or hypothecation agreement and in that case, the person in possession of vehicle may also be called as 'owner'.

धारा 2 (30), 50 (1) (ए) (प) और 168 – धारा 168 मोटरयान अधिनियम, 1988 के उद्देश्य से वाहन स्वामी कौन है ? अभिनिर्धारित किया गया, एक व्यक्ति जो वाहन का पंजीकृत स्वामी या रजिस्टर्ड ओनर है उसे धारा 168 मोटरयान अधिनियम के उद्देश्य से स्वामी कहा जाता है जब तक की दूसरा पक्ष इस स्थिति में न हो की वह यह स्थापित कर दे की यह हायर परचेस अनुबंध, लीज अनुबंध या हाइपोथिकेशन अनुबंध का मामला है और उस दशा में वह व्यक्ति जो वाहन के आधिपत्य में है वह भी स्वामी कहलाता है।

100 193

Sections 2 (30) and 168 – (i) Who is the owner of a motor vehicle especially in case of hire-purchase agreement? Held, a person in whose name a motor vehicle stands registered is the owner of the vehicle and in case of hire-purchase agreement or an agreement of hypothecation, the person in possession of the vehicle under the agreement is the owner.

(ii) Who is liable to pay compensation where vehicle is subject to hire-purchase agreement? If the vehicle is insured, the insurer is liable to pay compensation otherwise the person in possession of the vehicle under such agreement is liable to pay compensation.

धारा 2 (30) और 168 – (i) एक वाहन स्वामी कौन है विशेषतः हायर परचेस अनुबंध के मामले में ? अभिनिर्धारित किया गया, एक व्यक्ति जिसके नाम से वाहन पंजीकृत या रजिस्टर्ड होता है वह वाहन स्वामी है और हायर परचेस अनुबंध या हाइपोथिकेशन अनुबंध के मामलों में वह व्यक्ति जिसके आधिपत्य में वाहन होता है वह स्वामी होता है।

(ii) जहां वाहन हायर परचेस अनुबंध के अधीन हो प्रतिकर के लिए कौन उत्तरदायी होता है ? यदि वाहन बीमित है तो बीमा करने वाला (बीमा कंपनी) प्रतिकर के लिए उत्तरदायी होती है अन्यथा वह व्यक्ति जिसके आधिपत्य में अनुबंध के अधीन वाहन होता है वह प्रतिकर के लिए उत्तरदायी होता है।

101 194

Section 166 – Assessment of compensation in death cases – Income of house wife, assessment of – It is difficult to monetize the domestic work done by a house wife – Looking to the domestic services and contribution made by her to the house, is reasonable to fix her income at Rs. 3,000/- per month.

धारा 166 – मृत्यु प्रकरणों में प्रतिकर का निर्धारण – गृह स्वामिनी या हाउस वाईफ की आय – एक गृह स्वामिनी द्वारा किये गये गृह कार्यों की कीमत निकालना कठिन है – उसके द्वारा की गई घरेलू सेवाओं और घर में किये गये योगदान को देखते हुये यह युक्तियुक्त होगा की उसकी आमदानी 3000/– रूपये प्रतिमाह नियत की जाये। **102 195**

Section 166 – Whether deduction of *ex gratia* payment from compensation is permissible? Held, No – The State Government, Union of India and their undertakings which include bank has issued a policy specifying the fact on an application filed by the family members, if compassionate appointment was not made then *ex gratia* is payable to such family – So *ex gratia* payment cannot be deducted from compensation.

धारा 166 – क्या प्रतिकर में से एक्सग्रेसिया का भुगतान कम किया जाना (अर्थात काटा जाना) अनुमत है ? अभिनिर्धारित किया गया, नहीं। राज्य सरकार व भारत संघ और उसके अधीन उद्यम जिसमें बैंक भी शामिल है, उन्होंने एक नीति जारी की है की यदि परिवार के सदस्य द्वारा अनुकंपा नियुक्ति का आवेदन किया जाता है व अनुकंपा नियुक्ति नहीं दी जाती है तब परिवार को एक्सग्रेसिया राशि भुगतान की जायेगी अतः यह राशि प्रतिकर में से नहीं काटी जा सकती।

103 196

Section 168 – (i) Assessment of compensation in death case – Future prospects for bank manager aged 27 years – 50 % of annual income to be added under the head of future prospects.

(ii) Assessment of compensation in death case – Claimants are parents – What is appropriate multiplier? Appropriate multiplier is 11 as per the age of the parents.

(iii) Rs. 25,000 was awarded as funeral expenses according to the principles laid down by the Apex Court in ***Rajesh v. Rajbir Singh, 2013 ACJ 1403***.

धारा 168 – (i) मृत्यु प्रकरण में प्रतिकर निर्धारण – 27 वर्षीय बैंक मैनेजर के लिए भविष्य की संभावनाएँ – वार्षिक आय का 50 प्रतिशत भविष्य की संभावना के शीर्ष में जोड़ा जाये।

(ii) मृत्यु प्रकरण में प्रतिकर का निर्धारण – आवेदकगण माता–पिता – उचित गुणांक क्या है – माता–पिता की उम्र से 11 का गुणांक उचित गुणांक है।

(iii) दाह संस्कार खर्च 25000/– रूपये माननीय सर्वोच्च न्यायालय द्वारा न्याय दृष्टांत राजेश विरूद्ध राजबीर सिंह, 2013 ए.सी.जे. 1403 में प्रतिपादित सिद्धांत के अनुसार अवार्ड किये गये।

104 **197**

MOTOR VEHICLES RULES, 1989 (CENTRAL)
केन्द्रीय मोटरयान नियम, 1989

Rule 55 – See Sections 2 (30), 50 (1) (a) (i) and 168 of the Motor Vehicle Act, 1988

नियम 55 – देखें मोटरयान अधिनियम, 1988 की धारा 2 (30), 50 (1) (ए) (i) और 168

100 **193**

MUSLIM LAW:
मुस्लिम विधिः

Prompt Dower – Suit for declaration and permanent injunction filed by plaintiff/wife against defendant/husband alleging that the suit plot was given to the plaintiff on account of Prompt Dower by the defendant – *Nikahnama* contains recitals of suit plot – Defendant objected the admissibility of that document for want of stamp duty – Held, suit plot was assigned by the defendant to plaintiff in lieu of *Mahr* at the time of marriage – The document is Marriage Certificate and simple *Hiba* – Document does not attract any stamp duty – Admissible in evidence.

मेहर–ए–मुसज्जल – वादी /पत्नी द्वारा प्रतिवादी/पति के विरूद्ध घोषणा और स्थायी निषेधाज्ञा के लिये वाद पेश किया गया – यह अभिवचन किया गया कि वादग्रस्त प्लाट वादी को प्रतिवादी द्वारा मेहर–ए– मुसज्जल के कारण दिया गया – निकाह नामे में वादग्रस्त प्लाट देने के तथ्य समाविष्ट थे – प्रतिवादी ने इस दस्तावेज को स्टाम्प ड्यूटी के अभाव के कारण साक्ष्य में ग्राह्य होने के बारे में आपत्ति की – अभिनिर्धारित किया गया, वादग्रस्त प्लाट प्रतिवादी द्वारा वादी को विवाह के समय मेहर के एवज में दिया गया – यह दस्तावेज विवाह का प्रमाण है और साधारण हिबा है – दस्तावेज पर कोई स्टाम्प ड्यूटी आकर्षित नहीं होती है – यह साक्ष्य में ग्राह्य है।

105 **199**

NEGOTIABLE INSTRUMENTS ACT, 1881
परक्राम्य लिखत अधिनियम, 1881

Section 138 – Territorial jurisdiction for complaint under section 138 N.I. Act – Issuance of demand notice from place 'D' or deposit of the cheque in place 'D' bank by the payee or receipt of the notice by the accused demanding payment in place 'D' will not confer jurisdiction upon the Courts in place 'D' – Place where the drawee bank which dishonoured the cheque is situated has jurisdiction to entertain the complaint and take cognizance of the offence under section 138 N.I. Act – ***Dashrath Rupsingh Rathod v. State of Maharashtra, AIR 2014 SC 3519*** followed.

धारा 138 – धारा 138 एन.आई. एक्ट के परिवाद के लिये प्रादेशिक क्षेत्राधिकार – स्थान 'डी' से मांग सूचना पत्र जारी करना या स्थान 'डी' के बैंक में पेयी द्वारा चैक जमा करना या अभियुक्त को स्थान 'डी' में भुगतान करने का सूचना पत्र प्राप्त होना स्थान 'डी' के न्यायालयों को कोई क्षेत्राधिकार नहीं देगा – स्थान जहां चैक जारी करने वाले का वह बैंक जिसने चैक अनादरित किया स्थित है वही धारा 138 एन.आई. एक्ट के अपराध का परिवाद ग्रहण करने और संज्ञान लेने का क्षेत्राधिकार होगा – ***दशरथ रूपसिंह राठौर विरूद्ध स्टेट ऑफ महाराष्ट्र, ए.आई.आर. 2014 एस.सी. 3519*** का अनुसरण किया गया। **106 200**

Section 138 – Though "stop payment" instructions have been given by drawer to the bank, offence punishable under section 138 N.I. Act is made out – Complainant had failed to discharge his obligations as per agreement by not repairing/replacing the damaged USP system or contents of the reply sent by the accused were not disclosed in the complaint-these facts are matter of evidence.

धारा 138 – यद्यपि ''भुगतान रोके'' या स्टाप पेमेन्ट के निर्देश बैंक को चैक जारी करने वाले ने दिये थे, धारा 138 एन.आई. एक्ट के अधीन दण्डनीय अपराध बनता है – परिवादी अनुबंध के अधीन क्षतिग्रस्त यूएसपी सिस्टम को सुधारने /रिप्लेस करने में असफल रहा या उसने अभियुक्त के जवाब के तथ्यों को परिवाद में प्रगट नहीं किया – ये तथ्य साक्ष्य की विषयवस्तु हैं।

107 201

Sections 138 and 141 – (i) Vicarious liability of Director of Company – There must be specific averments against the Director showing as to how and in what manner he was responsible for the conduct of the business of the Company.

(ii) Dishonoured Cheques were issued by virtue of Letter of Guarantee as per complainant – Letter of Guarantee gives way to civil liability – Complainant can always pursue the remedy before appropriate Court – Such Dishonour of Cheques would not make alleged Director of Company liable under section 138 of the N.I. Act.

धारा 138 और 141 – (i) कंपनी के साथ उसके संचालक का संयुक्त दायित्व – संचालक के विरूद्ध विशिष्ट अभिकथन होना चाहिये जो यह दर्शाते हो की संचालक कैसे और किस तरीके से कंपनी के कार्य और व्यापार के लिये उत्तरदायी है।

(ii) परिवादी के अनुसार अनादरित चैक लेटर ऑफ ग्यारन्टी की वजह से जारी किये गये थे – लेटर ऑफ ग्यारन्टी सिविल दायित्व प्रदान करती है – परिवादी उचित न्यायालय के समक्ष उपचार ले सकता है – ऐसे अनादरित चैक कंपनी के संचालक को धारा 138 एन.आई. एक्ट के अधीन दायी नहीं बनाते है।

108 202

Sections 138, 142 and 145 – (i) Can complaint be filed by a power-of-attorney holder? Held, Yes – Filing of complaint under Section 138 NI Act through power-of-attorney is perfectly legal and competent – ***A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790*** (3-Judge Bench) relied on.

(ii) If power-of-attorney holder has possessed personal knowledge of the transactions, he can depose and verify the contents of the complaint.

(iii) Where the complainant herself has come in the witness box, no need to examine power-of-attorney holder as a witness.

धारा 138, 142 और 145 – (i) क्या परिवाद मुखतियार द्वारा प्रस्तुत किया जा सकता है ? अभिनिर्धारित, हाँ धारा 138 एन.आई. एक्ट का परिवाद मुखतियार द्वारा प्रस्तुत करना पूरी तरह वैधानिक और सक्षम है – न्याय दृष्टांत ***ए.सी. नारायण विरूद्ध स्टेट ऑफ महाराष्ट्र, (2014) 11 एस.सी.सी. 790*** (तीन न्यायमूर्तिगण की पीठ) पर विश्वास किया गया।

(ii) यदि मुखतियार नामा धारक को संव्यवहार का व्यक्तिगत ज्ञान हो तो वह कथन दे सकता है और परिवाद की अंतरवस्तु को सत्यापति कर सकता है।

(iii) जहां परिवादी स्वयं साक्ष्य कक्ष में आ गई हो – वहां मुखतियार नामा धारक को साक्षी के रूप में परिक्षित करवाना आवश्यक नहीं था। **109 203**

PREVENTION OF CORRUPTION ACT, 1988
भ्रष्टाचार निवारण अधिनियम, 1988

Sections 7 and 13 (1) (d) r/w/s 13 (2) – (i) Mutation work – Illegal gratification – Incompetency of the accused, non-effect of – The accused Patwari allegedly received illegal gratification for mutation work in Revenue Department – It was pleaded on his behalf that he was not competent in mutation and regarding issuance of *Rin Pustika* – Therefore, had no occasion to demand bribe – Held, the fact that the Patwari was a key person to initiate the proceedings, was sufficient to give an impression to the complainant that the accused would be helpful in the process of mutation and preparation of *Rin Pustika* – Therefore, it does not make any difference if the accused Patwari is not competent to make mutation.

(ii) Demand and acceptance of illegal gratification – Is *sine qua non* – Law reiterated.

(iii) Evidence of Police Officer, appreciation of – Police Officer cannot be disbelieved merely on the basis that he is a Police Officer.

धारा 7 और 13 (1) (डी) सहपठित धारा 13 (2) – (i) नामांतरण का कार्य – अवैध परितोषण – अभियुक्त के अक्षम (उक्त कार्य करने में) होने का प्रभाव न होना – राजस्व विभाग में नामांतरण के कार्य के लिये अभियुक्त पटवारी द्वारा अभिकथित रूप से अवैध परितोषण प्राप्त किया – अभियुक्त की ओर से यह बचाव लिया गया की वह नामांतरण करने और ऋण पुस्तिका जारी करने में सक्षम नहीं था – अतः रिश्वत की मांग का अवसर ही नहीं था – अभिनिर्धारित किया गया यह तथ्य कि पटवारी कार्यवाही प्रारंभ करने में एक महत्वपूर्ण व्यक्ति था यह परिवादी को यह आभास करवाने के लिये पर्याप्त था कि अभियुक्त नामांतरण की कार्यवाही में और ऋण पुस्तिका बनवाने में उसके लिये सहायक होगा – अतः इससे कोई फर्क नहीं पड़ता कि पटवारी अभियुक्त नामांतरण कार्य करने में सक्षम नहीं था।

(ii) अवैध परितोषण की मांग और उसे स्वीकार किया जाना – एक अनिवार्य शर्त है – विधि पुनः बतलाई गई।

(iii) पुलिस अधिकारी की साक्ष्य का मूल्यांकन – पुलिस अधिकारी की साक्ष्य पर उसके पुलिस अधिकारी होने के आधार पर अविश्वास नहीं किया जा सकता। **110 206**

Sections 13 (1) (c), (d) and 15 – For framing of charge under section 15 of PC Act against an accused, whether it is necessary that he must also be charged either under section 13 (1)(c) or 13(1)(d) of the PC Act ? Held, No.

धारा 13 (1) (सी), (डी) और 15 – क्या एक अभियुक्त के विरूद्ध धारा 15 भ्रष्टाचार निवारण अधिनियम के अधीन आरोप विरचित करने के लिये यह आवश्यक है की उस पर या तो धारा 13 (1) (सी) या धारा 13(1) (डी) भ्रष्टाचार निवारण अधिनियम का आरोप होना चाहिये? अभिनिर्धारित किया गया, नहीं। यह विधि की आवश्यकता नहीं है कि एक अभियुक्त के विरूद्ध धारा 15 भ्रष्टाचार निवारण अधिनियम का आरोप विरचित करने के लिये उस पर या तो धारा 13 (1) (सी) या धारा 13 (1) (डी) भ्रष्टाचार निवारण अधिनियम का आरोप होना चाहिये।

111 208

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012
लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012

Section 6 & 17 – See Sections 164 and 439 of the Criminal Procedure Code, 1973

धारा 6 और 17 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 164 और 439

95* 185

PROTECTION OF HUMAN RIGHTS ACT, 1994
मानवाधिकार संरक्षण अधिनियम, 1994

Section 12 – Jurisdiction of Human Rights Commission – It does not have any jurisdiction to deal with disputed questions of title and possession of the property.

धारा 12 – मानवाधिकार आयोग का क्षेत्राधिकार – आयोग को संपत्ति के स्वत्व और आधिपत्य के विवादित प्रश्नों को निपटाने का क्षेत्राधिकार नहीं होता है। **112* 208**

REGISTRATION ACT, 1908
पंजीकरण अधिनियम, 1908

Sections 17(1) (a) and 17 (2) (vi) – Consent decree passed by the court for disputed property – In subsequent suit it was found that some property was joint Hindu family property and some was self-acquired – Property related to joint Hindu family did not require compulsory registration in view of section 17 (2) (vi) of the Registration Act – Property which was self-acquired and gifted did require compulsory registration in view of section 17 (1) (a) of Registration Act.

धारा 17 (1) (ए) और धारा 17 (2) (vi) – विवादग्रस्त संपत्ति के लिये न्यायालय द्वारा सहमति अज्ञाप्ति या कंसेन्ट डिक्री पारित की गई – पश्चातवर्ती वाद में यह पाया गया कुछ संपत्ति संयुक्त हिन्दू परिवार की संपत्ति है और कुछ स्वअर्जित संपत्ति है – संपत्ति जो संयुक्त हिन्दू परिवार से संबंधित है उसके लिये अनिवार्य पंजीकरण धारा 17 (2) (vi) पंजीकरण अधिनियम के तहत आवश्यक नहीं है – संपत्ति जो स्व–अर्जित हो और दान की गई हो उसके बारे में धारा 17 (1) (ए) पंजीकरण अधिनियम के तहत पंजीकरण अनिवार्य है।

113 209

SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1986
बीमार औद्योगिक कंपनियाँ (विशेष प्रावधान) अधिनियम, 1986

Sections 22 and 26 – Maintainability of suit for declaration and injunction against sick company –The suit for seeking declaration that the company was no longer a sick company within the meaning of the SICA Act, 1986 was not competent and maintainable – The Civil Court was not right and justified in issuing injunction also.

धारा 22 और 26 – सिक कंपनी के विरूद्ध घोषणा और स्थायी निषेधाज्ञा के वाद की पोषणीयता – ऐसी घोषणा का वाद कि कंपनी अब अधिनियम, 1986 के अर्थों में सिक या बीमार कंपनी नहीं है, ऐसा वाद सक्षम और प्रचलन योग्य नहीं था। व्यवहार न्यायालय निषेधाज्ञा जारी करने में सही और न्याय संगत भी नहीं था।

67 (ii) 137

SPECIFIC RELIEF ACT, 1963
विनिर्दिष्ट अनुतोष अधिनियम, 1963

Section 20 – (i) Subsequent rice in price of property – Will not be treated as a hardship entailing refusal of the decree for specific performance – The court may take notice of the above fact.

(ii) Looking to all the facts and circumstances of the case, the Court may impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree for specific performance.

धारा 20 – (i) संपत्ति की कीमत बाद में बढ़ गई – इसे ऐसा तकलीफदेह (या अपरिहार्य) नहीं समझा जाएगा कि इसके कारण विनिर्दिष्ट अनुपालन की आज्ञप्ति देने से इंकार कर दिया जाए। न्यायालय उक्त तथ्य को ध्यान में रख सकती है।

(ii) मामले के समस्त तथ्यों और परिस्थितियों को देखते हुए न्यायालय कोई युक्तियुक्त शर्त अधिरोपित कर सकती है जिसमें अतिरिक्त राशि एक पक्षकार द्वारा दूसरे पक्षकार को, विनिर्दिष्ट अनुपालन की आज्ञप्ति देते समय या उससे इंकार करते समय, देने की शर्त शामिल है।

114 210

Section 20 – Plaintiff should not be denied specific performance only on account of phenomenal increase in price during the pendency of litigation – The court may impose reasonable conditions including payment of additional amount to the vendor.

धारा 20 – वादी विनिर्दिष्ट अनुपालन से केवल इस कारण इंकार नहीं कर सकता कि विवाद लंबित रहने के दौरान संपत्ति की कीमतों में वृद्धि हुई है – न्यायालय क्रेता पर युक्तियुक्त शर्ते लगा सकती है जिसमें अतिरिक्त भुगतान की शर्त भी हो सकती है। **115 (iii) 211**

SUCCESSION ACT, 1925

उत्तराधिकार अधिनियम, 1925

Section 63 – (i) Execution of Will – Suspicious and unnatural circumstances – How to appreciate? All the suspicious and unnatural circumstances put together and on the basis of their consideration and close scrutiny, the cumulative effect would be weighed by court and thereafter reach on a judicial verdict.

(ii) Exclusion of sons from Will – Discrepancy with regard to the place of execution of the Will – Prominent part played by the plaintiff in execution and registration of Will, lack of knowledge of English of the testator, non production of original Will, were considered by Hon'ble the Apex Court and the Will was found to be properly executed.

धारा 63 – (i) विल का निष्पादन – संदेहास्पद व अस्वाभाविक परिस्थितियाँ – कैसे मूल्यांकन किया जाये – सभी संदेहास्पद और अस्वाभाविक परिस्थितियों को एक साथ रख कर और उन पर विचार व सूक्ष्म छानबीन करके उनके संचयी प्रभाव को तौलना होगा और फिर एक न्यायिक अभिमत पर पहुंचना होगा।

(ii) विल में पुत्रों को बाहर रखना, विल के निष्पादन के स्थान के बारे में विरोधाभा – वादी का विल के निष्पादन और पंजीकरण में महत्वपूर्ण भूमिका अदा करना, निष्पादनकर्ता को अंग्रेजी का ज्ञान न होना, मूल विल पेश न करना जैसी परिस्थितियों पर विचार करके माननीय उच्चतम न्यायालय ने विल को उचित रीति से निष्पादित होना पाया। **116 213**

PART-III

(CIRCULARS/NOTIFICATIONS)

•

सम्पादकीय

प्रदीप कुमार व्यास
प्रभारी संचालक

सम्माननीय पाठक गण,

यह मेरे लिये अत्यंत हर्ष का विषय है कि इस द्विमासिक पत्रिका के माध्यम से आपके सामने अपने विचार रखने का एक अवसर मुझे पुनः प्राप्त हुआ है।

संस्थान से मार्च, 2015 में श्री शैलेन्द्र शुक्ला साहब, संचालक एवं श्री गजेन्द्र सिंह साहब, संकाय सदस्य का स्थानांतरण जबलपुर में अन्य पदों पर हो चुका है दोनों ने दिनांक 31 मार्च 2015 को इस संस्थान से पदभार सौंप दिया है। श्री शुक्ला साहब ने साढ़े तीन माह में संस्थान में कार्य करते हुये 13वें वित्त आयोग के अवशेष कार्यों को अतिरिक्त समय में बैठकर भी पूर्ण किया उनका अमूल्य योगदान हम सबके लिये अनुकरणीय है वहीं श्री गजेन्द्र सिंह साहब ने शारीरिक चुनौतियों के बावजूद विगत सवा दो वर्षों में अभिभाषकगण की कार्यशाला, विद्युत अधिनियम पर कार्यशाला, महिलाओं और बच्चों के विरूद्ध लैंगिक अपराध पर कार्यशाला तथा अनुसंधान या रिसर्च के क्षेत्र में योगदान दिया है जो अनुकरणीय है।

28 फरवरी 2015 को 13वें वित्त आयोग से संबंधित प्रशिक्षण कार्यक्रम एवं कार्यशालाएँ पूर्ण हुई।

दिनांक 9 मार्च 2014 से 4 अप्रैल 2014 तक वर्ष 2014 के बैच के सिविल जज वर्ग–2 के प्रशिक्षण का प्रथम चरण पूर्ण हुआ साथ ही एक कार्यशाला महिलाओं और बच्चों के विरूद्ध लैंगिक अपराध के बारे में 25 एवं 26 अप्रैल 2015 को जबलपुर में रखी गई है।

इस अंक में एक न्याय दृष्टांत अनवर पी. व्ही. विरूद्ध पी.के. बसीर, ए.आई.आर. 2015 एस.सी. 180 तीन न्यायमूर्तिगण की पीठ का शामिल किया गया है जिसके अनुसार इलेक्ट्रोनिक अभिलेख जैसे सी.डी., वी.सी.डी., चिप आदि के साथ धारा 65–बी भारतीय साक्ष्य अधिनियम के अनुसार प्रमाण पत्र होना चाहिये तभी इन अभिलेखों को साक्ष्य में ग्राह्य किया जा सकेगा और इसके अभाव में इनके बारे में द्वितीयक साक्ष्य ग्राह्य नहीं होगा इस मामले में पूर्व न्याय दृष्टांत ***स्टेट विरूद्ध नवजोत संधु*** को ओवर रूल्ड कर दिया गया है। एक अन्य न्याय दृष्टांत ***विनोद कुमार विरूद्ध स्टेट ऑफ पंजाब (2015) 3 एस.सी.सी. 230*** भी लिया गया है जिसमें यह प्रतिपादित किया गया है कि एक साक्षी का प्रतिपरीक्षण विशेष कारणों के बिना स्थगित नहीं करना चाहिये इस मामले में अनावश्यक स्थगन को रोकने पर बल दिया गया है ये दोनों विधिक स्थितियाँ पालनीय है।

इस अंक में माननीय सर्वोच्च न्यायालय के न्यायमूर्ति श्री दीपक मिश्रा साहब द्वारा 16 अगस्त 2014 को जबलपुर में ''दण्ड प्रक्रिया संहिता की पवित्रता बनाये रखने में न्यायालय का कर्तव्य'' विषय पर दिये गये व्याख्यान को शामिल किया गया है ताकि मध्यप्रदेश न्याय पालिका के हमारे सभी सदस्यगण माननीय न्यायमूर्ति के विचारों से लाभांवित हो सके और उन्हें न्यायदान में सहायता प्राप्त हो सके।

यह अंक हमारे कई सदस्यों को उनकी नई पदस्थापना पर प्राप्त होगा उन सब सम्मानीय न्यायाधीशगण को नवीन पदस्थापना के लिये शुभकामनाएँ।

पत्रिका के बारे में आपके अमूल्य सुझाव सादर आमंत्रित है।

आपका
प्रदीप कुमार व्यास

यदि आप नियमों से कार्य करते हैं तो नियम भी काम करते है।

– एक विद्वान

MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGH COURT OF M.P., JABALPUR

Regional Workshop on – ***Family Laws*** held in the Academy

(31.01.2015 & 01.02.2015)

MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGH COURT OF M.P., JABALPUR

First Phase Induction Course for the newly appointed Civil Judges Class II of 2014 Batch

(09.03.2015 & 04.04.2015)

DUTY OF THE COURT IN SUSTAINING THE SANCTITY OF THE CODE OF CRIMINAL PROCEDURE*

*(*Lecture delivered by Hon'ble Mr. Justice Dipak Misra, Judge, Supreme Court of India in the programme organised by Madhya Pradesh State Judicial Academy, High Court of M.P., Jabalpur on 16.08.2014 at Jabalpur.)*

Dispensation of justice as requisite in law is an essential constitutional value and judiciary at all levels is wedded to the same. Therefore, there has to be a pledge, a sacred one, to live upto the challenges living with solidity and never having to bow down. The Judiciary has to play a vital and important role, not only in preventing and remedying abuse and misuse of power, but also in eliminating exploitation and injustice. The Judiciary has to be keenly alive to its social responsibility and accountability to the people of the country. It is required to dispense justice not only between one person and another, but also between the State and the citizens. Thus, the duty is onerous but all of you have joined this institution to live upto the solemn pledge. Your duty is called divine but that should not make anyone feel exalted, because there is a "hidden warning" behind the said divine sanctity. That is the warning of law. That divine duty bestowed on all of us, I would humbly put, is ingrained in the essential serviceability of the institution.

Having placed justice on a high pedestal and its dispensation as a part of divine duty with the appendage of warning, I may pave the already travelled path by many and pose a question, how would one understand the word "justice"? "Justice" is called mother of all virtues and queen of all values. It does not tolerate individual prejudices, notions, fancies, ideas or, for that matter, idiosyncrasies. It does not perceive any kind of misplaced sympathy. "Justice", one can humbly announce, is the filament of any civilized society. In this regard, one may appreciably reproduce what ***Daniel Webster***[1] said:-

> "Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honoured, there is a foundation for social security, general happiness, and the improvement, and progress of our race."

Justice has been, if not the only, at least one of the foremost goals of human endeavour from the earliest times. It may have been pursued with greater

[1] *WEBSTER, Daniel, in Life and Letters of Joseph Story (William W. Story, ed., Boston: Charles C. Little and James Brown, 1851), Volume II p. 624.*

scientific vigour and intensity in some societies than the others, but societies all over the world have strived for it in some form or the other. India, which is one of the most ancient surviving society, has through the ages developed its own conceptions of justice which were conceived and formulated by those who led our struggle for freedom from the British rule. These conceptions of justice have crystallized into constitutional principles that are the guiding light for the laws and their implementation in the civil and criminal justice system. My focus would be on criminal justice system, especially on the sanctity of the Code of Criminal Procedure.

A criminal trial has its own significance. A trial has to be fair as well as speedy because that is the imperative of the dispensation of justice. In ***Mohd. Hussain***[2] it has been observed that in every criminal trial, the procedure prescribed in the Code has to be followed, the laws of evidence have to be adhered to and an effective opportunity to the accused to defend himself must be given.

In ***Manu Sharma***[3], the Court has opined that in Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence, an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate.

Thus, we perceive that there is emphasis on speedy and fair trial. The effort must be to scan the provisions in the Code of Criminal Procedure which empower the trial Judge to exercise the power in an apposite manner in order to show respect to the constitutional mandate as interpreted by the Apex Court. From the said perspective, Section 309 of the Code of Criminal Procedure is extremely important. It reads thus:-

> "**309. Power to postpone or adjourn proceedings.-** (1) In every inquiry or trial the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in

[2] *Mohd. Hussain @ Julfikar Ali v. State (Government of NCT of Delhi) (2012) 9 SCC 408*
[3] *Manu Sharma vs. State (NCT of Delhi), (2010) 5 SCC 1*

attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under sections 376 to 376 D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.

(2) If the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that –

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be."

I must clarify that the last two provisos have been inserted by Act 5 of 2009 with effect from 01.11.2010. Even prior to the amendment, as per the statutory command, there is a requirement that the trial should be held as expeditiously as possible and when the examination of witnesses has begun it is to be continued from day to day until all the witnesses in attendance have been examined. Of course, the power also rests with the Court to adjourn beyond the following day by recording reasons. Almost five and a half decades back, a three-Judge Bench in ***Talab Haji Hussain***[4], speaking about criminal trial, had said thus:-

> ".....a fair trial has naturally two objects in view; it must be fair to the accused and must also be fair to the prosecution. The test of fairness in a criminal trial must be judged from this dual point of view. It is therefore of the utmost importance that, in a criminal trial, witnesses should be able to give evidence without any inducement or threat either from the prosecution or the defence. A criminal trial must never be so conducted by the prosecution as would lead to the conviction of an innocent person; similarly the progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty offender. The acquittal of the innocent and the conviction of the guilty are the objects of a criminal trial and so there can be no possible doubt that, if any conduct on the part of an accused person is likely to obstruct a fair trial, there is occasion for the exercise of the inherent power of the High Courts to secure the ends of justice."

Thereafter, their Lordships proceeded to state that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction.

In ***Krishnan and another***[5], though in a different context, the Court has observed that the object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out, but the recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. The Court further observed that these malpractices need to be curbed and public justice can be ensured only when the trial is conducted expeditiously.

In ***Swaran Singh***[6], the Court expressed its anguish and stated:-

---

[4] *Talab Haji Hussain vs. Madhukar Purshottam Mondkar and another, AIR 1958 SC 376*
[5] *Krishnan and another vs. Krishnaveni and another, (1997) 4 SCC 241*
[6] *Swaran Singh vs. State of Punjab, (2000) 5 SCC 668*

> "36..... it has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice."

In ***Ambika Prasad***[7], while commenting on the threat meted out to the informant in that case and adjournment sought by the counsel for the defence to cross-examine the said witness, the Court was compelled to say:-

> *"11.... At this stage, we would observe that the Sessions Judge ought to have followed the mandate of Section 309 CrPC of completing the trial by examining the witnesses from day to day and not giving a chance to the accused to threaten or win over the witnesses so that they may not support the prosecution."*

In ***Shambhu Nath Singh***[8], while deprecating the practice of a Sessions Court adjourning the case inspite of the presence of the witnesses willing to be examined fully, the Court ruled thus:-

> "11. The first sub-section mandates on the trial courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the sub-section sounded for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage, the statutory command is that such examination "shall be continued from day to day until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the court that reasons for the same

[7] *Ambika Prasad vs. State (Delhi Admn.), (2000) 2 SCC 646*
[8] *State of U.P. vs. Shambhu Nath Singh, (2001) 4 SCC 667*

> should be recorded. Even this dilution has been taken away when witnesses are in attendance before the court. In such situation the court is not given any power to adjourn the case except in the extreme contingency for which the second proviso to sub-section (2) has imposed another condition, namely,
>
> "provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, *except for special reasons to be recorded in writing*".
>
> (emphasis supplied)
>
> 12. Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court."

In ***Mohd. Khalid***[9], the Court, while not approving the determent of the cross-examination of witness for a long time and deprecating the said practice, observed that grant of unnecessary and long adjournment lack the spirit of Section 309 of the Code of Criminal Procedure. When a witness is available and his examination is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking.

Recently, in ***Gurnaib Singh***[10], a two-Judge Bench was compelled to observed that on a perusal of the dates of examination-in-chief and cross-examination and the adjournments granted, it does not require Solomon's wisdom to perceive that the trial was conducted in an absolute piecemeal manner as if the entire trial was required to be held at the mercy of the counsel. This was least expected of the learned trial Judge. The criminal dispensation system casts a heavy burden on the trial Judge to have control over the proceedings. The criminal justice system has to be placed on a proper pedestal and it cannot be left to the whims and fancies of the parties or their counsel. A trial Judge cannot be a mute spectator to the trial being controlled by the parties, for it is his primary duty to monitor the trial and such monitoring has to be in consonance with the Code of Criminal Procedure. Eventually, the Court was constrained to say thus:-

---

[9] *Mohd. Khalid vs. State of West Bengal, (2002) 7 SCC 334*
[10] *Gurnaid Singh vs. State of Punjab (2013) 7 SCC 108*

> "We have expressed our anguish, agony and concern about the manner in which the trial has been conducted. We hope and trust that the trial courts shall keep in mind the statutory provisions and the interpretation placed by this Court and not be guided by their own thinking or should not become mute spectators when a trial is being conducted by allowing the control to the counsel for the parties. They have their roles to perform. They are required to monitor. They cannot abandon their responsibility. It should be borne in mind that the whole dispensation of criminal justice at the ground level rests on how a trial is conducted. It needs no special emphasis to state that dispensation of criminal justice is not only a concern of the Bench but has to be the concern of the Bar. The administration of justice reflects its purity when the Bench and the Bar perform their duties with utmost sincerity. An advocate cannot afford to bring any kind of disrespect to fairness of trial by taking recourse to subterfuges for procrastinating the same."

I have deliberately quoted in extenso from number of authorities as the recent trends of conducting trial had pained many. When there is violation of Section 309 of the Code, as is perceptible, it hampers two concepts; namely, speedy and fair trial. Thus, it is not merely a statutory violation but also offends the constitutional value. I have been told that there are difficulties, but when law forbids certain things or grants very little room, difficulties should be ignored. Remember, there is the fate of the accused on one hand and the hope of the victim or his/her family members on the other and above all the cry of the collective for justice. And never forget, your reputation which is the greatest treasure possessed by man this side of the grave rests on one hand the difficulties projected by parties on the other. I can only repeat that you are required to be guided by constitutional conscience, nothing more, nothing less.

FAIR TRIAL

In ***Best Bakery case***[11], considering the jurisprudence of fair trial, the Court opined that in a criminal case, the fair trial is the triangulation of interest of the accused, the victim and the society. The learned Judge further ruled that "interests of the society are not to be treated completely with disdain and as persona non grata". The said decision was explained in ***Satyajit Banerjee***[12], wherein it was held that the law laid down in Best Bakery case in the aforesaid extraordinary circumstances cannot be applied to all cases against the

[11] *Zahira Habibulla H. Sheikh vs. State of Gujarat, (2004) 4 SCC 158*
[12] *Satyajit Banerjee vs. State of W.B., (2005) 1 SCC 115*

established principles of criminal jurisprudence. Direction for retrial should not be made in every case where acquittal of accused is for want of adequate or reliable evidence. In ***Best Bakery case***, the first trial was found to be a farce and is described as 'mock trial'. Therefore, the direction for retrial, was in fact, for a real trial. Such extraordinary situation alone can justify the directions as made by the Court in ***Best Bakery case***.

In ***Mangal Singh***[13], while determining various aspects of speedy trial, the Court observed that it cannot be solely and exclusively meant for the accused. The victim also has a right. The Court observed:-

> "14.... Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides of the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore, no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence."

In ***Himanshu Singh Sabharwal***[14], it was observed that the principles of rule of law and due process are closely linked with human rights protection. Such right can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. There has to be fairness of approach to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm.

In ***Rattiram***[15], while giving emphasis on fair trial, it has been held that decidedly, there has to be a fair trial and no miscarriage of justice and under no circumstances, prejudice should be caused to the accused but every procedural lapse or every interdict that has been acceded to and not objected at the appropriate stage would not get the trial dented or make it unfair.

---

[13] *Mangal Singh vs. Kishan Singh, (2009) 17 SCC 303*
[14] *Himanshu Singh Sabharwal vs. State of M.P. & Ors, AIR 2008 SC 1943*
[15] *Rattiram vs. State of M.P., (2012) 4 SCC 516*

My singular purpose of highlighting the distinction is that trial Judges have to remain alert and alive to the right of the accused as well as to the right of the victim and that alertness has to be judicially manifest and must get reflected from the procedure adopted and the ultimate determination. That demonstration is the litmus test.

LEGAL AID

Presently, I shall focus on the facet of legal aid. The right to legal aid is statutorily ensured under **Section 304** of the Code and under Articles 21, 22 and 39 A of the Constitution. Right to legal aid in criminal proceedings is absolute and a trial and conviction in which the accused is not represented by a lawyer is unconstitutional and liable to be set aside as was held in ***Khatri (III v. State of Bihar***[16]***, Suk Das v. Union Territory of Arunachal Pradesh***[17]***; Mohd. Ajmal Amir Kasab v. Maharashtra***[18] ***and Rajoo v. M.P***.[19]

The Court in ***Mohd Hussain***[20] held that in a trial before the Court of Sessions, if the accused is not represented by a pleader and does not have sufficient means, the court shall assign a pleader for his defence at the expense of the State. The entitlement to free legal aid is not dependent on the accused making an application to that effect, in fact, the court is obliged to inform the accused of his right to obtain free legal aid and provide him with the same. The right of a person charged with crime to have the services of a lawyer is fundamental and essential to fair trial. The right to be defended by a legal practitioner, flowing from Article 22(1) of the Constitution, has further been fortified by the introduction of the Directive Principles of State Policy embodied in Article 39A of the Constitution by the 42nd Amendment Act of 1976 and Sub-Section (1) of Section 304 of the Code of Criminal Procedure. Legal assistance to a needy person facing trial whose life and personal liberty is in jeopardy is mandated not only by the Constitution and the Code of Criminal Procedure but also by International Covenants and Human Rights Declarations. If an accused, being poor to afford a lawyer, is to go through the trial without legal assistance, such a trial cannot be regarded as reasonable, fair and just. The right to be heard in criminal trial would be inconsequential and of no avail if within itself it does not include the right to be heard through Counsel.

In ***Hussainara Khatoon***[21], the Court observed that it is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation. The Court further observed as under:-

---

[16] *(1981) 1 SCC 635*
[17] *(1986)2 SCC 401*
[18] *(2012) 9 SCC 1*
[19] *(2012) 8 SCC 553*
[20] *AIR 2012 SC 750*
[21] *Hussainara Khatoon and ors. vs. Home Secretary, State of Bihar, Patna, (1980) 1 SCC 108*

> "Legal aid is in fact the delivery system of social justice. It is intended to reach justice to the common man who, as the poet sang:
> "Bowed by the weight of centuries he leans
> Upon his hoe and gazes on the ground,
> The emptiness of ages on his face,
> And on his back the burden of the world."

In ***Mohd. Ajmal Amir Kasab***[22], the Court observed that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a Magistrate. It is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22 (1) of the Constitution and needs to be strictly enforced. Thereafter, the Court directed:-

> "We, accordingly, direct of all the Magistrate in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings."

In ***Mohd. Sukur Ali***[23], the Court observed as under:-

> "Seervai who has said in his Constitutional Law of India, 3rd Edn. Vol. I, p. 857:
>
> "The right of a person accused of an offence, or against whom any proceedings were taken under the CrPC is a valuable right which was recognised by Section 304 CrPC. Article 22(1), on its language, makes that right a constitutional right, and unless there are compelling reasons, Article 22 (1) ought not to be cut down by judicial construction.....It is submitted that Article 22 (1) makes the statutory right under Section 304 CrPC a constitutional right in respect of criminal or quasi-criminal proceedings."

If an accused remains unrepresented by a lawyer, the trial court has a duty to ensure that he is provided with proper legal aid. Now, I may sound a note of caution. Many of you might feel, what is the necessity of harping on grant of legal aid. It is because even recently I have come across cases where the accused

[22] *Mohd. Ajmal Amir Kasab vs. State of Maharashtra, (2012) 9 SCC 1*
[23] *Mohd.. Sukur Ali vs. State of Assam, (2011) 4 SCC 729*

have been tried without being represented by a counsel. When the constitutional as well as statutory commands are violated by some, it is the duty of the Madhya Pradesh State Judicial Academy to ingrain that into the intellectual marrows of the judicial officers. So, I have highlighted on that object.

RIGHT AGAINST SELF-INCRIMINATION

The right against self-incrimination in Article 20 (3) and Section 161 (2) of the Code gives an accused person the right not be a witness against himself which includes the right to be informed that he has a right to call a lawyer before answering any of the questions put to him by the police. In this context, I may usefully quote a passage from ***Nandini Satpathi's***[24] case :-

> "20. Back to the constitutional quintessence invigorating the ban, on self-incrimination. The area covered by Article 20(3) and Section 161 (2) is substantially the same. So much so, we are inclined to the view, terminological expansion apart, that Section 161(2) of the Cr.P.C. is a parliamentary gloss on the Constitutional clause."

The Court, repelling the suggestion as to truncated and narrow interpretation, observed:

> "Such a narrow meaning may emasculate a necessary protection. There are only two primary queries involved in this clause that seals the lips into permissible silence, (i) Is the person called upon to testify 'accused of any offence', (ii) Is he being compelled to be witnesses against himself ?
>
> We hold that Section 161 enables the police to examine the accused during investigation. The prohibitive sweep of Article 20(3) goes back to the stage of police interrogation – not, as contended, commencing in court only. In our judgment, the provisions of Article 20(3) and Section 161(1) substantially cover the same area, so far as police investigations are concerned. The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. We are disposed to read 'compelled testimony' as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and

[24] *Nandini Satpathi vs. P.L. Dani, (1978) 2 SCC 424*

> intimidatory methods and the like – not legal penalty for violation. "So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Article 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right. But then, a stance of silence is running a calculated risk. On the other hand, **if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilty, it becomes 'compelled testimony', violative of Article 20(3).**"

As per **Section 41D** of the Code, when any person is arrested and interrogated by the police, he is entitled to meet an advocate of his choice during interrogation, though not throughout the interrogation. Also oral or written statement conveying personal knowledge likely to lead to incrimination by itself or furnishing a link in the chain of evidence comes within the prohibition of Article 20(3). Accordingly, narco analysis, polygraph and brain electrical activation profile tests are not permissible under Article 20 (3) and any evidence collected through them cannot be produced in the courts as laid down in ***Selvi v. Karnataka***[25] and ***Mohd. Ajmal Amir Kasab v. Mharashtra***[26].

CERTAIN OTHER SIGNIFICANT FACETS

SECTION 156 (3) OF THE CODE

Section 156(3) of the Code vests power in the Magistrate to direct investigation in cognizable offence by an officer of a police station over which, the Court has jurisdiction. To exercise the said discretion judicially, the Magistrate must be satisfied that the complaint brought before him warrants an investigation by the police. In case the complainant has in possession of all the material evidence to prove his case, no useful purpose will be served in directing investigating agency to investigate the matter and such a complaint should be treated as a complaint case and proceeded with. These principles have been stated in ***Skipper Beverages***[27] and ***Subhkaran Luharuka***[28].

SECTION 167 OF THE CODE

Remand of an accused to the custody is not an idle formality. The Code provides that endeavour has to be made to complete the investigation within 24 hours of the arrest and it is only if the investigation is not completed in 24 hours and the custody of the accused is warranted for carrying out investigation then

---

[25] *(2010) 7 SCC 263*
[26] *(2012) 9 SCC 1*
[27] *Skipper Beverages Pvt. Ltd. vs. State, 92 (2001) DLT 217*
[28] *Shri Subhkaran Luharuka & anr. vs. State &anr., ILR (2010) VI Delhi 495*

only police custody remand should be directed. The accused has a valuable right to be produced before the Magistrate within 24 hours of the arrest. The purpose whereof is not only to ward off illegal detention but also that if the accused has something to state or produce before the Court he can do so on the first available opportunity. While granting the remand, the Magistrate is duty bound to peruse the case diaries and see whether further detention of the accused in police custody or judicial custody is necessary or not. One of the checks and balances to maintain a fair investigation is to sign the case diary when produced before the Magistrate while seeking remand of the accused. In case, the case diaries are signed at that stage then chances of tampering with the investigation carried on is ruled out.

In ***Nirala Yadav***[29], the Court was dealing with a case wherein application was filed immediately after expiry of period stipulated from filing of the charge sheet. To get the benefit of the default provision as engrafted under proviso to sub-Section (2) of Section 167 of the Code, the Court required the accused to file a rejoinder affidavit by the time the initial period provided under the statute had expired. In that context, the court ruled:-

> "There was no question of any contest as if the application for extension had been filed prior to the expiry of time. The adjournment by the learned Magistrate was misconceived. He was obliged on that day to deal with the application filed by the accused as required under Section 167(2) CrPC. We have no hesitation in saying that such procrastination frustrates the legislative mandate. A Court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct."

SECTION 193 OF THE CODE

The controversy in relation to the exercise of power has been put to rest by the Constitution Bench in ***Dharam Pal***[30], wherein it has been held that:-

> ".....the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons

[29] *Union of India through CBI vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav (Crl. A. 786 of 2010 decided on 30.6.2014*

[30] *Dharam Pal and others vs. State of Haryana and another, (2014) 3 SCC 306*

not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein."

SECTION 319 OF THE CODE

Section 319 of the Code, as has been held by the Constitution Bench in ***Hardeep Singh***[31], is discretionary and extraordinary power. Though the accused subsequently is impleaded, he has to be treated as if he had been an accused when the court initially took cognizance of the offence and thereafter, the degree of satisfaction that is required for summoning a person under Section 319 of the Code would be the same as for framing the charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different. The controversy has always been struck up whether the word "evidence" used in Section 319 (1) of the Code could only mean evidence tested by cross-examination. The Constitution Bench has opined that considering the fact that under Section 319 of the Code a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) of the Code the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by the cross-examination. I must state here that this has been the consistent view of the High Court of Madhya Pradesh.

SECTION 357 OF THE CODE (COMPENSATION TO THE VICTIM)

Section 357 of the Code provides for an order of compensation whereas Section 357A and Section 357B which have now been added with effect from 31st December, 2009 lay down comprehensive guidelines for defraying compensation to the victims. Adequate compensation to the victim in addition to or without punishment often answers societal demand of a fair and just trial. Thus these provisions should be resorted to by the trial courts.

SECTIONS 437A OF THE CODE

A person acquitted is required to furnish bail bond with sureties which would be enforced for six months so that in case an appeal or leave to appeal

[31] *Hardeep Singh etc.etc. vs. State of Punjab and others, (2014) 3 SCC 92*

petition against the judgment is filed before the appellate court, the presence of the acquitted person is secured before the appellate court. This provision is more often forgotten. The very purpose of this provision is to ensure the presence of the acquitted persons before the appellate court. Thus, while taking the personal bond and the surety bond, the Court must satisfy itself fully as to the genuineness of the documents and the address where the acquitted person would be available after his release from the jail. The provision has to be kept in mind.

SENTENCING

The Court, in ***Jammel's case***[32], held that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing in mind and proceed to impose a sentence commensurate with the gravity of the offence.

Recently, in ***Sumer Singh***[33], noticing inadequate sentence of seven days of imprisonment for an offence punishable under Section 326 IPC, where the convict had Chopped off the left hand of the victim from the wrist, the Court was constrained to observe:-

> "It is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the Court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalized judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded,

[32] *Jammel vs. State of U.P., (2010) 12 SCC 532*
[33] *Sumer Singh vs. Surajbhan Singh and others, 2014 (6) SCALE 187 (2013)7 SCC 545*

> the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; and sanctity of conscience abhors it. The old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is, it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation. The victim, in this case, still cries for justice. We do not think that increase in fine amount or grant of compensation under the code would be a justified answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption."

In ***Gopal Singh v. State of Uttarakhand***[34], the Court opined that just punishment is the collective cry of the society. While the Collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect – propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these certain illustrative aspects put forth in a condensed manner. There can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which have been indicated hereinbefore and also have been stated in a number of pronouncements by the Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.

---

[34] *(2013) 7 SCC 545*

POWER OF ARREST

The power of arrest has been regulated under the Code in order to protect the fundamental rights under Articles 21 and 22 of the Constitution. Under **Section 41B** of the Code, every police officer while making an arrest is required to (a) bear an accurate, visible and clear identification of his name which will facilitate easy identification; (b) prepare a memorandum of arrest which shall be – (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made; (ii) countersigned by the person arrested; and (c) inform the person arrested, unless the memorandum is arrested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest. The power of the police to arrest has been further regulated by **Section 46** and **Section 49**.

Recently, the principle was highlighted in ***Hema Mishra***[35]:-

> "Above mentioned provisions make it compulsory for the police to issue a notice in all such cases where arrest is not required to be made under Clause (b) of Sub-section (1) of the amended Section 41. But, all the same, unwillingness of a person who has not been arrested to identify himself and to whom a notice has been issued under Section 41A, could be a ground for his arrest. Legislation has laid down various parameters, warranting arrest of a person, which itself is a check on arbitrary on unwarranted arrest and the right to personal liberty guaranteed under Article 21 of the Constitution of India."

ISSUE OF NON-BAILABLE WARRANT ON THE CONSTITUTIONALTOUCHSTONE

In ***Raghuvansh Dewanchand Bhasin***[36], it has been opined that it needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically but only after recording satisfaction that in the facts and circumstances of the case it is warranted. The courts have to be extra-cautious and careful while directing issuance of non-bailable warrant, else a wrongful detention would amount to denial of the constitutional mandate as envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain the rule of law and to keep the society in functional harmony, it is necessary to

[35] *Km. Hema Mishra vs. State of U.P. and ors., AIR 2014 SC 1066*
[36] *Raghuvansh Dewanchand Bhasin vs. State of Maharashtra, AIR 2011 SC 3393*

strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. Thereafter, the Court referred to the authority in ***Inder Mohan Goswami***[37], the Court had issued certain guidelines to be kept in mind while issuing non-bailable warrant:

> "53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:
>
> - It is reasonable to believe that the person will not voluntarily appear in court; or
> - The police authorities are unable to find the person to serve him with a summon; or
> - It is considered that the person could harm someone if not placed into custody immediately.
>
> 54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.
>
> 55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants."

While concurring with the observations, the learned Judges in ***Raghuvansh Dewanchand Bhasin*** issued further guidelines as under:-

> "(a) All the High Court shall ensure that the subordinate courts use printed and machine numbered Form 2 for issuing warrant of arrest and each such form is duly accounted for;

[37] *Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1*

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

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

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

(e) Every court must maintain a register (in the format given below at p. 804), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;

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

(g) A register similar to the one in para 28.5 supra shall be maintained at the police station concerned. The Station House Officer of the police station concerned shall ensure that each warrant of arrest issued by the court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;

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

(i) On the date fixed for the return of the warrant, the court must insist upon a compliance report on the action taken thereon by the Station House Officer of the police station concerned or the officer in charge of the agency concerned;

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

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

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

The said guidelines are to be followed as an endeavour to put into practice the directions stated therein. Be it clarified, the guidelines have been issued keeping in view the constitutional principle and the statutory norms. That is the bond between the constitutional concepts and criminal jurisprudential perspective. And for that reason I have used the phraseology sanctity of the Code.

DOUBLE JEOPARDY

The constitutional doctrine of double jeopardy which finds expression in Art 20 (2) is reflectible from the language employed in Section 300 of Code. In the case of ***Maqbool Hussasin***[38] the Constitution Bench, while discussing the concept of double jeopardy, ruled that:-

> "The fundamental right which is guaranteed in Art 20 (2) enunciates the principle of autrefois convict" or "double jeopardy". The roots of that principle are to be found in the well established rule of the common law of England "that where a person has been convicted of an offence by a Court of competent jurisdiction the conviction is a bar to all further criminal proceedings for the same offence." ***(Per Charles J. in Reg. v. Miles, (1890) 24 Q.B.D. 423 (A).)*** To the same effect is the ancient maxim *"Nimo Bis Debet Puniri Pro Uno Delicto"*, that is to say that no one ought to be twice punished for one offence or as it is sometimes written "Pro Eadam Causa" that is for the same cause."

Placing reliance on the same, a two-Judge Bench, in ***Sangeetaben Mahendrabhai Patel***[39] opined that :-

[38] *Maqbool Hussasin vs. State of Bombay, AIR 1953 SC 325*
[39] *Sangeetaben Mahendrabhai Patel v. State of Gujarat and another, (2012) 7 SCC 621*

> "14. This Court in ***Maqbool Hussain*** held that the fundamental right which is guaranteed under Article 20 (2) enunciates the principle of "autrefois convict" or "double jeopardy" i.e. a person must not be put in peril twice for the same offence. The doctrine is based on the ancient maxim nemo debet bis punier pro uno delicto, that is to say, that no one ought to be punished twice for one offence. **The plea of autrefois convict or autrefois acquit avers that the person has been previously convicted or acquitted on a charge for the same offence as that in respect of which he is arraigned. The test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient to justify a conviction of the other and not that the facts relied on by the prosecution are the same in the two trials. A plea of autrefois acquit is not proved unless it is shown that the verdict of acquittal of the previous charge necessarily involves an acquittal of the latter**."

Be it reiterated, the said principle is ingrained in Section 300 of the Code and to understand the concept, it is necessary to appreciate the ratio laid down by the Apex Court in the cases of ***S.A. Venkataraman[40], Om Prakash Gupta[41], Veereshwar Rao Agnihotri[42], Leo Roy Frey[43], S.L. Apte[44], Bhagwan Swarup Lal[45] Bishan Lal and L.R. Melwani[46].***

NATURAL JUSTICE AND ITS SIGNIFICANCE UNDER THE CODE

Natural justice, under the Constitution of India, may not be existing as a definite principle but it is read in by the Court to the great heights engrafted in Chapter III of the Constitution. This is a facet of constitutional humanistic Principle. In this context, I may usefully quote a passage from ***Nawabkhan Abbaskhan[47]***, it has been ruled that one of the first principles of the sense of justice is that you must not permit one side to use means of influencing a decision which means are not known to the other side.

Section 235(2) of the Code provides that if the accused is convicted, the Judge is required to proceed in accordance with the provisions, hear the accused

---

[40] *S.A. Venkataraman vs. Union of India, AIR 1954 SC 375*
[41] *Om Prakash Gupta v. State of U.P., AIR 1957 SC 458*
[42] *State of M.P. vs. Veereshwar Rao Agnihotri, AIR 1957 SC 592*
[43] *Leo Roy Frey vs. Supt., District Jail, AIR 1958 SC 119*
[44] *State of Bombay vs. S.L. Apte, AIR 1961 SC 578*
[45] *Bhagwan Swarup Lal Bishan Lal vs. State of Maharahstra, AIR 1965 SC 682*
[46] *Collector of Customs vs. L.R. Melwani, AIR 1970 SC 962*
[47] *Nawabkhan Abbaskhan, (1974) 2 SCC 121*

on the question of sentence, and then pass an order of sentence according to law. Interpreting the said provision, the Court in ***Allauddin Mian***[48], opined that:-

> "The requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235. The said provision therefore satisfies a dual purpose; it satisfies the rule of natural justice by according the accused an opportunity of being heard on the question of sentence and at the same time helps the court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed."

Thereafter, the two-Judge Bench proceeded to rule thus:-

> "We need hardly mention that in many cases a sentencing decision has far more serious consequences on the offender and his family members than in the case of a purely administrative decision;.....A sentencing decision taken without following the requirements of sub-section (2) of Section 235 of the Code in letter and spirit is vitiated. The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record."

Be it noted, the said principle was reiterated in ***Ajay Pandit***[49] placing reliance on ***Santa Singh***[50] and ***Muniappan***[51].

---

[48] *Allauddin Mian and Others vs. State of Bihar, (1989) 3 SCC 5*
[49] *Ajay Pandit alias Jagdish Dayabhai Patel vs. State of Maharashtra, (2012) 8 SCC 43*
[50] *Santa Singh vs. State of Punjab, (1976) 4 SCC 190*
[51] *Muniappan vs. State of T.N., (1981) 3 SCC 11*

This makes the duty of the trial Judge extremely important in this regard.

LIBERTY AND GRANT OF BAIL

Enlargement of bail or grant of bail has an association with individual liberty. Emphasising the concept of liberty, the Court in ***Rashmi Rekha Thatoi***[52], has observed:-

> "4. The thought of losing one's liberty immediately brings in a feeling of fear, a shiver in the spine, an anguish of terrible trauma, an uncontrollable agony, a penetrating nightmarish perplexity and above all a sense of vacuum withering the very essence of existence. It is because liberty is deep as eternity and deprivation of it, infernal. May be for this the protectors of liberty ask, "How acquisition of entire wealth of the world would be of any consequence if one's soul is lost?" It has been quite often said that life without liberty is eyes without vision, ears without hearing power and mind without coherent thinking faculty. It is not to be forgotten that liberty is not an absolute abstract concept. True it is, individual liberty is a very significant aspect of human existence but it has to be guided and governed by law. Liberty is to be sustained and achieved when it sought to be taken away by permissible legal parameters. A court of law is required to be guided by the defined jurisdiction and not to deal with matters being in the realm of sympathy of fancy."

Despite the fact that we have put liberty on the pedestal, yet it is not absolute. I have referred to this decision solely for the purpose that while granting bail, the court dealing with the application for bail has to follow the statutory command bearing in mind the constitutional principle of liberty which is not absolute.

In ***Ash Mohammad***[53], while discussing the concept of liberty and the legal restrictions which are founded on democratic norms, the Court observed that the liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes, it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law, an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest

[52] *Rashmi Rekha Thatoi and anr. vs. State of Orissa and ors., (2012) 5 SCC 690*
[53] *Ash Mohammad vs. Shiv Raj Singh alias Lalla Babu and another, (2012) 9 SCC 446*

and its deprivation must have due sanction of law. In an orderly society, an individual is expected to live with dignity having respect for law and also giving due respect to other's rights. It is well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmund Burke, while discussing about liberty opined, "it is regulated freedom". Thereafter, the two-Judge Bench proceeded to observe:-

> "18. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires.
>
> Thereafter the Court opined that liberty, although is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act."

Be it stated, in the said case, a history-sheeter, involved in number of cases pertaining to grave offences under IPC and other Acts, was enlarged on bail and the Apex Court treated the order of bail as one of impropriety and set it aside.

At this juncture, I am obliged to say that the courts while dealing with applications for grant of bail have to be careful keeping in view nature of offence and gravity. Sometimes it is noticed that no reasons are given. That does not

mean one is required to ascribe elaborate reasons. But, laconically allowing a bail application is totally undersirable. As far as grant of anticipatory bail is concerned, one has to be more cautious. The impact of the crime has to be seen. When judicial officer is rejecting the applications, no further observations like "when he surrenders" or "on his surrendering" or "if he files bail bonds", etc. never be made. In ***Ranjit Singh***[54] the High Court, while rejecting the application under Section 438 of the Code, had passed the following order:-

> "Considering the nature of the allegation and the evidence collected in the case-diary the petition is disposed of with a short direction that the petitioner shall surrender before the Competent Court and shall apply for regular bail and the same shall be considered upon furnishing necessary bail bond."

On the basis of the aforesaid order, the learned Additional Sessions Judge immediately instead of seeking any clarification from the High Court granted the benefit of bail to the accused under Section 439 of the Code. The victim approached the High Court and the High Court cancelled the bail order. On being approached by the accused, the Apex Court on other reasons declined to interfere and granted liberty to the accused to surrender to custody and move for regular bail with further stipulation that the same shall be considered independently on its own merits. In that context, the court quoted a passage from ***Rashmi Rekha Thatoi***[55], which reads thus:-

> ".....it is to be borne in mind that a court of law has to act within the statutory command and not deviate from it. It is a well-settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review. This has been so stated in ***Bay Berry Apartments (P) Ltd. v. Shobha***[56] and ***U.P. State Brassware Corpn. Ltd v. Uday Narain Pandey***.[57]"

Thereafter, it was compelled to observe that the order passed by the learned single Judge was potent enough to create enormous confusion. My purpose of saying this is that while passing an order, every judicial officer has to be extremely careful of what kind of directions he is issuing. All attempts are to be made to avoid this kind of confusion. I am compelled to say so as such kind of orders have become quite frequent.

---

[54] *Ranjit Singh vs. State of M.P. and others, 2013 (12) SCALE 190*
[55] *Rashmi Rekha Thatoi and another vs. State of Orissa and others, (2012) 5 SCC 690*
[56] *(2006) 13 SCC 737*
[57] *(2006) 1 SCC 479*

CONCLUSION

In conclusion, I must state that I have made a humble endeavour to present to you the sanctity of certain provisions under the Code and duty of the Court to sustain the same. I have also endeavoured to show the inter-connectivity between our constitutional norms and concepts and criminal jurisprudence. That is where precisely the sanctity of the Code emerges. I have found on many an occasion that some of the judicial officers feel themselves alienated in their own perception from the Constitution. You can never be a stranger to our compassionate and humane Constitution in the adjudicating process. I am certain, you are always reminded of your statutory duty but your alertness with humility would increase to keep the constitutional principles close to your heart and soul. That would elevate your work, the mindset and the sense of justice, continuous learner of law, wherever his position is, has to be intellectually humble and modest because such kind of modesty nourishes virtues and enables a man to achieve accomplishments. It encourages your sense of duty and disciplines your responsibility. That apart, I would not be very much wrong, if I say, when modesty and self-discipline get wedded to each other, one can asset what is right and these assertions would not be an expression of egotism but, on the contrary, it would be an ornament to your prosperity of knowledge. Lastly, I would suggest to you to learn with delight so that it would enrich your mind, you shall never feel the burden. Do live by sanctity of law.

Thank you.

•

PART - II

NOTES ON IMPORTANT JUDGMENTS

***62. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 3**

Whether suit filed by the Secretary on behalf of the plaintiff public Trust without joining the other trustees as plaintiffs is maintainable? Held, Yes, because the Secretary was authorized by the Trust to file the suit on its behalf by resolution of the General Body in which all the trustees, except one, were present and signed the resolution – Nothing on record to indicate any dissent on the part of trustee who has not signed the resolution.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धारा 3

क्या लोक न्यास की ओर से सचिव द्वारा प्रस्तुत वाद अन्य न्यासियों को संयोजित किये बिना पेश किया गया, वह चलने योग्य है? अभिनिर्धारित किया गया, हाँ क्योंकि सचिव को न्यास द्वारा उसकी ओर से वाद प्रस्तुत करने के लिये सामान्य निकाय के प्रस्ताव द्वारा अधिकृत किया गया था जिसमें एक न्यासी के अलावा सभी उपस्थित थे और उन्होंने प्रस्ताव पर हस्ताक्षर किये थे – अभिलेख पर ऐसा कुछ नहीं था जो यह इंगित करता हो कि जिस न्यासी के प्रस्ताव पर हस्ताक्षर नहीं है उसकी असहमति थी।

Ramshankar v. Guru Singh Sabha

Order dated 08.01.2013 passed by the High Court of M.P. in Second Appeal No. 373 of 1999, reported in I.L.R. (2014) M.P. 1541

•

***63. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 2 (1) (e), 11, 34 and 42**

Which Court will have the jurisdiction to entertain and decide an application under section 34 of the Act, 1996?

The reference is answered as follows:-

(a) Section 2 (1) (e) contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part-I of the Arbitration Act, 1996.

(b) The expression "with respect to an arbitration agreement" makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an Award is pronounced under Part-I of the 1996 Act.

(c) However, Section 42 only applies to applications made under Part-I if they are made to a court as defined – Since applications made under Section 8 are made to judicial authorities and since

applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.

(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(e) In no circumstances can the Supreme Court be "court" for the purposes of Section 2 (1) (e), and whether the Supreme Court does or does not retain seisin after appointing an Arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil court having original jurisdiction in the district as the case may be.

(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I,

(g) If a first application is made to a court which is neither a Principal Court of original jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject matter jurisdiction would be outside Section 42.

माध्यस्थ और सुलह अधिनियम, 1996 – धारा 2 (1) (इ), 11, 34 और 42

धारा 34 माध्यस्थ और सुलह अधिनियम, 1996 का आवेदन ग्रहण करने व निराकृत करने की अधिकारिता किस न्यायालय को होगी ? इस रिफरेंस का तीन न्यायमूर्तिगण की पीठ द्वारा उत्तर देकर न्यायालय कौन सी होगी यह स्पष्ट किया गया।

State of West Bengal & others v. Associated Contractors

Judgment dated 10.09.2014 passed by the Supreme Court in Civil Appeal No. 6691 of 2005, reported in AIR 2015 SC 260 (3-Judge Bench)

•

64. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 7 and 8

(i) Non-arbitrable dispute referred to arbitrator – Effect – Even if an issue is framed by the Arbitrator in relation to such a dispute, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the arbitrator.

(ii) Contract with regard to arbitration – Should be in writing – It cannot be presumed.

माध्यस्थ और सुलह अधिनियम, 1996 – धारा 7 और 8

(i) माध्यस्थ द्वारा निपटारा योग्य न होने वाला विवाद माध्यस्थ को निर्देशित – प्रभाव – माध्यस्थ द्वारा ऐसे विवाद के बारे में यदि विवाद्यक भी विरचित कर दिया गया

हो तब भी ऐसी कोई उपधारणा नहीं की जा सकती या इस आशय का निष्कर्ष नहीं निकाला जा सकता की पक्षकार उस विवाद को माध्यस्थ को निर्देशित करने में सहमत थे।

(ii) माध्यस्थ के बारे में संविदा – लिखित में होना चाहिए – इसकी (माध्यस्थ अनुबंध की) उपधारणा नहीं की जा सकती।

M/s Harsha Construction v. Union of India & Ors.

Judgment dated 05.09.2014 passed by the Supreme Court in Civil Appeal No. 534 of 2007, reported in AIR 2015 SC 270

Extracts from the judgment:

Arbitration arises from a contract and unless there is a specific written contract, a contract with regard to arbitration cannot be presumed. Section 7(3) of the Act clearly specifies that the contract with regard to arbitration must be in writing. Thus, so far as the disputes which have been referred to in Clause 39 of the contract are concerned, it was not open to the Arbitrator to arbitrate upon the said disputes as there was a specific clause whereby the said disputes had been "excepted". Moreover, when the law specifically makes a provision with regard to formation of a contract in a particular manner, there cannot be any presumption with regard to a contract if the contract is not entered into by the mode prescribed under the Act.

If a non-arbitrable dispute is referred to an Arbitrator and even if an issue is framed by the Arbitrator in relation to such a dispute, in our opinion, there cannot be a presumption or a conclusion to the effect that the parties had agreed to refer the issue to the Arbitrator. In the instant case, the respondent authorities had raised an objection relating to the arbitrability of the aforestated issue before the Arbitrator and yet the Arbitrator had rendered his decision on the said "excepted" dispute. In our opinion, the Arbitrator could not have decided the said "excepted" dispute.

We, therefore, hold that it was not open to the Arbitrator to decide the issues which were not arbitrable and the award, so far as it relates to disputes regarding non-arbitrable disputes is concerned, is bad in law and is hereby quashed.

•

65. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 16, 34 (2) (b) and 34 (2) (b) (ii)

(i) Objection on jurisdiction of the tribunal – Taking after submission of the statement of defence – "The subject-matter of the dispute is not capable of settlement by arbitration" whether it is an objection on jurisdiction? Held, No – It is related to Section 34(2) (b) of the Act, 1996 and not to section 16 of the Act of 1996.

(ii) Challenging the award on the ground that it is in conflict with public policy of India as provided under section 34 (2) (b) (ii) – It cannot be equated with the contention that tribunal under the Central Act does not have jurisdiction whereas the tribunal under the State Act has jurisdiction to decide the dispute – Public policy of India is referable to public policy of Union of India and not of an individual State.

माध्यस्थ और सुलह अधिनियम, 1996 – धारा 16, 34 (2) (बी) और धारा 34 (2) (बी) (ii)

(i) अधिकरण के क्षेत्राधिकार की आपत्ति – प्रतिरक्षा का कथन प्रस्तुत कर देने के बाद ऐसी आपत्ति लेना – ''विवाद की विषय वस्तु, माध्यस्थ द्वारा निपटाये जाने के योग्य नहीं है'' क्या यह क्षेत्राधिकार की आपत्ति है ? अभिनिर्धारित किया गया, नहीं यह धारा 34 (2) (बी) अधिनियम, 1996 से संबंधित है धारा 16 अधिनियम, 1996 से संबंधित नहीं है।

(ii) अवार्ड को भारत की लोकनीति के विरूद्ध होने के आधार पर चुनौती देना जो की धारा 34 (2) (बी) (ii) के अधीन है – यह इस दावे के समतुल्य नहीं है कि केन्द्रीय अधिनियम के तहत गठित अधिकरण को विवाद के निराकरण का क्षेत्राधिकार नहीं है बल्कि राज्य अधिनियम के अधीन गठित अधिकरण में क्षेत्राधिकार है – भारत की लोकनीति का तात्पर्य भारत संघ की लोकनीति से है न की किसी राज्य की लोकनीति से।

M/s. MSP Infrastructure Ltd. v. M.P. Road Devl. Corp. Ltd.

Judgment dated 05.12.2014 passed by the Supreme Court in Civil Appeal No. 10778 of 2014, reported in AIR 2015 SC 710

Extracts from the judgment:

It was next contended on behalf of the Respondent by the learned counsel that Section 16 undoubtedly empowers the Tribunal to rule on its own jurisdiction and any objections to it must be raised not later than the submission of the statement of defence. However, according to the learned senior counsel, objections to the jurisdiction of a Tribunal may be of several kinds as is well-known, and Section 16 does not cover them all. It was further contended that where the objection was of such a nature that it would go to the competence of the Arbitral Tribunal to deal with the subject matter of arbitration itself and the consequence would be the nullity of the award, such objection may be raised even at the hearing of the petition under Section 34 of the Act. In support, the learned senior counsel relied on clause (b) of sub-section (2) of Section 34 which reads as follows:-

"34 (2) An arbitral award may be set aside by the Court only if –

(a) .....

(b) the Court finds that –

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India."

It is not possible to accept this submission. In the first place, there is nothing to warrant the inference that all objections to the jurisdiction of the Tribunal cannot be raised under Section 16 and that the Tribunal does not have power to rule on its own jurisdiction. Secondly, Parliament has employed a different phraseology in Clause (b) of Section 34. That phraseology is "the subject matter of the dispute is not capable of settlement by arbitration." This phrase does not necessarily refer to an objection to 'jurisdiction' as the term is well known. In fact, it refers to a situation where the dispute referred for arbitration, by reason of its subject matter is not capable of settlement by arbitration at all. Examples of such cases have been referred to by the Supreme Court in the case of ***Booz Allen and Hamilton Inc. v. SBI Home Finance Limited and ors., AIR 2011 SC 2507*** This Court observed as follows:-

> "36. The well-recognised examples of nonarbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grants of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

The scheme of the Act is thus clear. All objections to jurisdiction of whatever nature must be taken at the stage of the submission of the statement of defence, and must be dealt with under Section 16 of the Arbitration Act, 1996. However, if one of the parties seeks to contend that the subject matter of the dispute is such as cannot be dealt with by arbitration, it may be dealt under Section 34 by the Court.

It was also contended by the learned counsel for respondent that the newly added ground that the Tribunal under the Arbitration Act, 1996 had no jurisdiction to decide the dispute in question because the jurisdiction lay with the Tribunal under the M.P. Act of 1983, was a question which can be agitated under sub-clause (ii) of clause (b) of sub-section (2) of Section 34 of the Arbitration Act, 1996. This provision enables the court to set-aside an award which is in conflict with the public policy of India. Therefore, it is contended that the amendment had been rightly allowed and it cannot be said that what was

raised was only a question which pertained to jurisdiction and ought to have been raised exclusively under Section 16 of the Arbitration Act, 1996, but in fact was a question which could also have been raised under Section 34 before the Court, as has been done by the Respondent. This submission must be rejected. The contention that an award is in conflict with the public policy of India cannot be equated with the contention that Tribunal under the Central Act does not have jurisdiction and the Tribunal under the State Act, has jurisdiction to decide upon the dispute. Furthermore, it was stated that this contention might have been raised under the head that the Arbitral Award is in conflict with the public policy of India. In other words, it was submitted that it is the public policy of India that arbitrations should be held under the appropriate law. It was contended that unless the arbitration was held under the State Law i.e. the M.P. Act that it would be a violation of the public policy of India. This contention is misconceived since the intention of providing that the award should not be in conflict with the public policy of India is referable to the public policy of India as a whole i.e. the policy of the Union of India and not merely the policy of an individual state. Though, it cannot be said that the upholding of a state law would not be part of the public policy of India, much depends on the context. Where the question arises out of a conflict between an action under a State Law and an action under a Central Law, the term public policy of India must necessarily understood as being referable to the policy of the Union. It is well known, vide Article 1 of the Constitution, the name 'India' is the name of the Union of States and its territories include those of the States.

•

66. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 31(7) (a) and 37(1) (b)

Word "sum" used in section 31 (7) (a) and 31(7) (b) – As per section 31 (7)(a), an award for payment of money may be inclusive of interest and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period – As per section 31 (7)(b), the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period at which stage the amount would be the sum arrived at after the merging of interest with the principal ; the two components having lost their separate identities.

माध्यस्थ और सुलह अधिनियम, 1996 – धारा 31 (7) (ए) और 31 (7) (बी)

शब्द ''राशि'' जो की धारा 31 (7) (ए) और धारा 31 (7) (बी) में प्रयुक्त हुआ है – धारा 31 (7) (ए) के अनुसार अवार्ड में जो धन के भुगतान के लिये हो ब्याज शामिल हो सकता है, ''राशि'' में मूल धन राशि + ब्याज अदा करने का निर्देश माध्यस्थ अधिकरण दे सकती है जो कि अवार्ड के पूर्व की अवधि से संबंधित है – धारा 31 (7) (बी) के अनुसार माध्यस्थ अधिकरण ऐसी ''राशि'' पर अवार्ड के अवधि का ब्याज देने का निर्देश

दे सकती है – उस प्रक्रम पर मूलधन में ब्याज मर्ज हो जाता है – दोनों शब्द अर्थात मूलधन और ब्याज अपनी प्रत्यक्ष पहचान उस स्टेज पर खो देते है।

M/s Hyder Consulting (UK) Ltd. v. Governor, State of Orissa through Chief Engineer

Judgment dated 25.11.2014 passed by the Supreme Court in Civil Appeal No. 3148 of 2012, reported in AIR 2015 SC856 (three Judge Bench)

Extracts from the judgment:

It is apparent that vide clause (a) of sub-section (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the pre-award period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period vide clause (b) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.

In fact this is a case where the language of sub-section 7 clause (a) and (b) is so plain and unambiguous that no question of construction of a statutory provision arises. The language itself provides that in the sum for which an award is made, interest may be included for the pre-award period and that for the post-award period interest up to the rate of eighteen per cent per annum may be awarded on such sum directed to be paid by the Arbitral Award.

•

67. CIVIL PROCEDURE CODE, 1908 – Section 9

SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1986 – Sections 22 and 26

(i) Maintainability of suit for recovery of money against sick company – The suit could lie and proceeded with only after express consent of the BIFR (Board for Industrial and Financial Reconstruction).

(ii) Maintainability of suit for declaration and injunction against sick company – The suit for seeking declaration that the company was no longer a sick company within the meaning of the SICA Act, 1986 was not competent and maintainable – The Civil Court was not right and justified in issuing injunction also.

सिविल प्रक्रिया संहिता, 1908 – धारा 9

बीमार औद्योगिक कंपनियाँ (विशेष प्रावधान) अधिनियम, 1986 – धारा 22 और 26

(i) सिक या बीमार कंपनी के विरूद्ध धन वसूली के वाद की पोषणीयता – ऐसा वाद बोर्ड की अभिव्यक्त अनुमति से ही लाया जा सकता है।

(ii) सिक कंपनी के विरूद्ध घोषणा और स्थायी निषेधाज्ञा के वाद की पोषणीयता – ऐसी घोषणा का वाद कि कंपनी अब अधिनियम, 1986 के अर्थो में सिक या बीमार कंपनी नहीं है, सक्षम और प्रचलन योग्य नहीं था। व्यवहार न्यायालय निषेधाज्ञा जारी करने में सही और न्याय संगत भी नहीं था।

Ghanshyam Sarda v. M/s Shiv Shankar Trading Co. and others
Judgment dated 13.11.2014 passed by the Supreme Court in Civil Appeal No. 10221 of 2014, reported in AIR 2015 SC 403

Extracts from the judgment:

As laid down by this Court the Act is a complete Code in itself. The Act gives complete supervisory control to the BIFR over the affairs of a sick Industrial Company from the stage of registration of reference and questions concerning status of sickness of such company are in the exclusive domain of the BIFR. Any submission or assertion by anyone including the Company that by certain developments the Company has revived itself and/or that its net worth since the stage of registration having become positive no such scheme for revival needs to be undertaken, must be and can only be dealt with by the BIFR. Any such assertion or claim has to be made before the BIFR and only upon the satisfaction of the BIFR that a sick company is no longer sick, that such company could be said to have ceased to be amenable to its supervisory control under the Act. The aspects of revival of such company being completely within its exclusive domain, it is the BIFR alone, which can determine the issue whether such company now stands revived or not. The jurisdiction of the civil court in respect of these matters stands completely excluded.

Unlike cases where the existence of jurisdictional fact or facts, on the basis of which alone a Tribunal can invoke and exercise jurisdiction, is or are doubted, stand on a different footing from the one where invocation and exercise of jurisdiction at the initial stage is not disputed but what is projected is that by subsequent or supervening circumstances the concerned Tribunal has lost jurisdiction. In the present case the fact that the company was registered as a sick company is not doubted nor has it been contended that the BIFR had wrongly assumed initial jurisdiction. But what is projected is that the net worth having become positive the BIFR has now lost jurisdiction over the company. In our view, the BIFR having correctly assumed jurisdiction and when all the financial affairs of such company were directly under the supervisory control of the BIFR, the power to decide whether it has since then lost the jurisdiction or not, is also in the exclusive domain of the BIFR. The BIFR alone is empowered to determine whether net worth has become positive as a result of which it would cease to have such jurisdiction. Any inquiry into such issue regarding net worth by anyone outside the Act including civil court, would be against the express intent of the Act and would lead to incongruous and undesired results. The suit as framed seeking declaration that the company was no longer a sick company within the meaning of the Act, was therefore not competent and maintainable. The Civil

Court was not right and justified in issuing injunction as it did. The counsel who represented the company before the BIFR on 04.04.2013, correctly submitted that before discharging the company the BIFR can examine the audited balance sheet and satisfy itself whether the net worth had turned positive.

Insofar as the recovery of money is concerned, the matter is completely covered by Section 22 (1) of the Act. The language employed in Section 22(1) of the Act refers to the entirety of the period beginning from the inquiry under Section 16 till the implementation of sanctioned scheme for revival. Section 22(1) bars any suit for recovery of money or for the enforcement of any security against the industrial company without the express consent of the Board. Reference in Section 22(1) is to "an Industrial Company" and not to "the sick Industrial Company" as found in later sub-sections of the same Section. This also throws light that the bar is during the period contemplated in said Section 22(1). Such bar is period specific and sub-section (5) of Section 22 entitles exclusion of such period while computing limitation. During the entirety of that period the Act grants protection to the company and leaves it to the discretion of the BIFR whether to permit filing and maintaining of suit or other proceedings. In the present case the BIFR was considering Draft Rehabilitation Scheme which is a stage under Section 18(3) and is completely covered by the period under Section 22 of the Act. The suit in the instant case as framed for recovery of money filed without the consent of the BIFR was not competent and maintainable. We may at this stage refer to the decisions rendered by this Court with regard to Section 22(1) of the Act. In ***Managing Director, Bhoruka Textiles Limited v. Kashmiri Rice Industries, AIR 2009 SC (Supp) 1947,*** after quoting sub-section (1) of Section 22 of the Act, it was observed:-

> "A plain reading of the aforementioned provision would clearly go to show that a suit is barred when an enquiry under Section 16 is pending. It is also not in dispute that prior to institution of the suit, the respondent did not obtain consent of the Board.
>
> 9. The provision of the Act and, in particular, Chapter III thereof, provides for a complete code. The Board has a wide power in terms of the provisions of the Act, although it is not a court. Sub-section (4) of Section 20 as also Section 32 of the Act provides for non obstante clauses. It envisages speedy disposal of the enquiry and preferably within the time framed provided for thereafter. Section 17 empowers the court to make suitable orders on the completion of enquiry. Preparation and sanction of the scheme is also contemplated under the Act."

In para 12 of the said decision, it was further stated:

> "If the civil court's jurisdiction was ousted in terms of the provisions of Section 22 of the Act, any judgment rendered by it would be coram non judice. It is a well settled principle of law that a judgment and decree passed by a court or tribunal lacking inherent jurisdiction would be a nullity."

Similarly, in ***Raheja Universal Limited v. NRC Limited, AIR 2012 SC 1440*** it was observed as under:

> "49. BIFR has been vested with wide powers and, being an expert body, is required to perform duties and functions of wide-ranged nature. If one looks into the legislative intent in relation to a sick industrial company, it is obvious that BIFR has to first make an effort to provide an opportunity to the sick industrial company to make its net worth exceed the accumulated losses within a reasonable time, failing which BIFR has to formulate a scheme for revival of the company, even by providing financial assistance in cases where in BIFR in its wisdom deems it necessary and finally only when both these options fail and the public interest so requires, BIFR may recommend winding up of the sick industrial company. So long as the scheme is under consideration before BIFR or it is being implemented after being sanctioned and is made operational from a given date, it is the legislative intent that such scheme should not be interjected by any other judicial process or frustrated by the impediments created by third parties and even by the management of the sick industrial company, in relation to the assets of the company."

The suit in the instant case, insofar as it relates to the claim for recovery of money, could lie or be proceeded with only after express consent of the BIFR.

•

68. CIVIL PROCEDURE CODE, 1908 – Section 149 and Order 41 Rule 3-A

(i) Effect of non-filing of application under Order 41 Rule 3-A CPC for condonation of delay along with memorandum of appeal – The defect can be rectified – It can happen due to some mistake or lapse as the appellant may omit to file the application under Order 41 Rule 3A CPC alongwith the appeal.

(ii) Appeal filed without any payment of court fees – The required court fees was duly paid later on or at the time of refiling – It should be construed that such payment of court fees was deemed to have been paid on the date on which the appeal was originally presented by virtue of the implication of Section 149 CPC.

(iii) Principles that should be kept in mind while condoning delay – Explained in para 23.

सिविल प्रक्रिया संहिता, 1908 – धारा 149 और आदेश 41 नियम 3-ए

(i) अपील के ज्ञापन के साथ आदेश 41 नियम 3-ए सी.पी.सी. का आवेदन विलंब क्षमा करने के लिये प्रस्तुत न करने का प्रभाव – ऐसी त्रुटि सुधारी जा सकती है – क्योंकि ऐसा हो सकता है कि किसी त्रुटि या चूक के कारण अपीलार्थी अपील के साथ आदेश 41 नियम 3-ए सी.पी. सी. का आवेदन प्रस्तुत करने से चूक गया हो।

(ii) अपील बिना किसी न्यायालय शुल्क के भुगतान के प्रस्तुत की गई – आवश्यक न्यायालय शुल्क बाद में या अपील के पुनः फाईल करते समय भुगतान कर दी गई – यह माना जाना चाहिये की मूलतः अपील जब प्रस्तुत की गई थी उसी दिनांक से धारा 149 सी.पी.सी. के प्रकाश में न्यायालय शुल्क का भुगतान कर दिया गया था।

(iii) विलंब को क्षमा करते समय मस्तिष्क में रखे जाने वाले सिद्धांत – पैरा 23 में बतलाये गये।

H. Dohil Constructions Company Private Limited v. Nahar Exports Limited and another

Judgment dated 20.08.2014 passed by the Supreme Court in Civil Appeal No. 7886 of 2014, reported in (2015) 1 SCC 680

Extracts from the judgment:

It was contended on behalf of the appellant(s) that the claim of the respondents that the appeals were filed with a delay of only 9 days cannot be accepted, inasmuch as the appeal papers were filed without any payment of court fee and, therefore, it cannot be considered as proper filing at all. It was contended that the court fee was paid only at the time of refiling in 2012 and, therefore, the delay in filing the appeals themselves should be calculated as 1825 days. As far as said submission is concerned, we find force in the contention of the learned Senior Counsel for the respondents in having placed reliance upon Section 149 CPC. The said section empowers the court to accept the payment of court fee at a later point of time if the appeal papers had been filed within the due date. Therefore, in the case on hand, when the appeals were presented with a delay of 9 days without payment of proper court fee and when the required court fee was duly paid at the time of refiling, it should be construed that such payment of court fee was deemed to have been paid on the date on which the appeals were originally presented by virtue of the implication of Section 149 CPC. Therefore, we do not find any substance in the said contention made on behalf of the appellant(s).

Though in the first blush, the said submission appears to be plausible, that very submission was repelled by this Court in ***State of M.P. v. Pradeep Kumar, (2000) 7 SCC 372.*** While considering that very submission, this Court has held as under in paras 10 and 11:

"10. What is the consequence if such an appeal is not accompanied by an application mentioned in sub-rule (1) of Rule 3-A? It must be noted that the Code indicates in the immediately preceding Rule that the consequence of not complying with the requirements in Rule 1 would include rejection of the memorandum of appeal. Even so, another option is given to the court by the said Rule and that is to return the memorandum of appeal to the appellant for amending it within a specified time or then and there. It is to be noted that there is no such rule prescribing for rejection of memorandum of appeal in a case where the appeal is not accompanied by an application for condoning the delay. If the memorandum of appeal is filed in such appeal without an accompanying application to condone delay the consequence cannot be fatal. The court can regard in such a case that there was no valid presentation of the appeal. In turn, it means that if the appellant subsequently files an application to condone the delay before the appeal is rejected the same should be taken up along with the already filed memorandum of appeal. Only then the court can treat the appeal as lawfully presented. There is nothing wrong if the court returns the memorandum of appeal (which was not accompanied by an application explaining the delay) as defective. Such defect can be cured by the party concerned and present the appeal without further delay.

11. No doubt sub-rule (1) of Rule 3-A has used the word 'shall'. It was contended that employment of the word 'shall' would clearly indicate that the requirement is peremptory in tone. But such peremptoriness does not foreclose a chance for the appellant to rectify the mistake, either on his own or being pointed out by the court. The word 'shall' in the context need be interpreted as an obligation cast on the appellant. Why should a more restrictive interpretation be placed on the sub-rule? The Rule cannot be interpreted very harshly and make the non-compliance punitive to an appellant. It can happen that due to some mistake or lapse an appellant may omit to file the application (explaining the delay) along with the appeal."

Having regard to the said pronouncement of this Court with which we fully concur, the said submission in the present case also stands rejected.

We may also usefully refer to the recent decision of this Court in ***Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649*** where several principles were culled out to be kept in mind while dealing with such applications for condonation of delay. Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under:

> "21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
>
> 21.5 (v) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.
>
> * * *
>
> 21.8. (viii) There is a distinction between inordinate delay and a delay of short duration of few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
>
> 21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.
>
> 21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the court should be vigilant not to expose the other side unnecessarily to face such a litigation."

•

69. CIVIL PROCEDURE CODE, 1908 – Section 152

(i) Scope of Section 152 of CPC – Only accidental omissions or mistakes may be corrected – Not all omissions and mistakes – The omission or mistake which goes to the merits of the case is beyond the scope of Section 152 – Clerical or arithmetical mistakes in judgments, decrees or orders may be corrected.

(ii) In this case, High Court has allowed the application under Section 152 CPC and directed that preliminary decree be amended – In the light of Order 20 Rule 18 (2) CPC in preliminary decree, not only the right of the plaintiff but also the rights and interests of others can also be declared – The Apex Court held High Court had not committed any mistake of law.

सिविल प्रक्रिया संहिता, 1908 – धारा 152

(i) धारा 152 सी.पी.सी. का विस्तार – केवल आकस्मिक भूल या त्रुटि सुधारी जा सकती है – सभी भूल और त्रुटियाँ नहीं – ऐसी भूल या त्रुटि जो प्रकरण के गुणदोष तक जाती है वह धारा 152 के विस्तार से बाहर है – लिपिकीय या गणितीय त्रुटियाँ जो कि किसी निर्णय, डिक्री या आदेश में हुई हो वे सुधारी जा सकती है।

(ii) इस मामले में उच्च न्यायालय ने धारा 152 सी.पी.सी. का आवेदन स्वीकार किया और ये निर्देश दिये कि प्रारंभिक आज्ञप्ति में संशोधन किया जाये। आदेश 20 नियम 18 (2) सी.पी.सी. के प्रकाश में प्रारंभिक डिक्री में न केवल वादी के अधिकार बल्कि अन्य पक्षकारों के अधिकार और हित भी घोषित किये जा सकते है – सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया की उच्च न्यायालय ने ऐसा करके कोई विधि की त्रुटि नहीं की है।

Srihari (dead) through Legal Representative Ch. Niveditha Reddy v. Syed Maqdoom Shah and others

Judgment dated 16.09.2014 passed by the Supreme Court in Civil Appeal No. 2352 of 2008, reported in (2015) 1 SCC 607

Extracts from the judgment:

From the language of Section 152 of the Code, as quoted above, and also from the interpretation of the section given in the case of State of ***Punjab v. Darshan Singh, (2004) 1 SCC 328*** the section is meant for correcting the clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. It is true that the powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court under guise of invoking after the result of the judgment earlier rendered. The corrections contemplated under the section are of correcting only accidental omissions or mistakes and not all omissions and mistakes. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152. In ***Bijay Kumar Saraogi v. State of Jharkhand, (2005) 7 SCC 748*** also it has been reiterated that Section 152 of the Code can be invoked for the limited purpose of correcting clerical errors or arithmetical mistakes in judgments or accidental omissions.

Now we have to examine whether by the impugned order, the High Court has only corrected the clerical, arithmetical or accidental omission in the decree passed or not. To appreciate the same, first we think it necessary to mention as to what the word "expression accidental omission" mean. In ***Master Construction Co. (P) Ltd. v. State of Orissa and another, AIR 1966 SC 1047,*** expression – "accidental slip or omission" has been explained as an error due to a careless mistake or omission unintentionally made. It is further observed in the said case that:

> "7.....there is another qualification, namely, such an error shall be apparent on the face of the record, that is to say, it is not an error which depends for its discovery, elaborate arguments on questions of fact or law".
>
> (emphasis supplied)

At the end, we would also like to refer the case of ***Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689*** wherein it is explained that:

> "5. 'partition' is a redistribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of land or other properties jointly held by them into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty.

This Court has earlier also reiterated in ***U.P. SRTC v. Imtiaz Hussain, (2006) 1 SCC 380*** that the basis of provision of Section 152 of the Code is found on the maxim actus curiae neminem gravabit i.e. an act of Court shall prejudice no man. As such an unintentional mistake of the Court which may prejudice the cause of any party must be rectified. However, this does not mean that the Court is allowed to go into the merits of the case to alter or add to the terms of the original decree or to give a finding which does not exist in the body of the judgment sought to be corrected.

•

70. CIVIL PROCEDURE CODE, 1908 – Order 16 Rule 2

Plaintiff claimed *mesne profit* – He wants to prove the prevalent market rate of the properties in the locality – Filed application under Order 16 Rule 2 CPC – Trial court rejected the same on the ground that under Section 10 of M.P. Accommodation Control Act, 1961 the plaintiff has remedy to approach RCA for fixation of standard rent – Held, the trial court has lost sight of the fact that section 10 of the Act is not applicable to the facts of the case as the plaintiff is not claiming standard rent – Order of trial court reversed.

सिविल प्रक्रिया संहिता, 1908 – आदेश 16 नियम 2

वादी ने अंतर्वती लाभ का दावा किया – वह उस क्षेत्र में संपत्तियों की प्रचलित बाजार दर प्रमाणित करना चाहता है – उसने आदेश 16 नियम 2 सी.पी.सी. का आवेदन दिया – विचारण न्यायालय ने आवेदन इस आधार पर निरस्त किया की वादी को धारा 10 म.प्र. स्थान नियंत्रण अधिनियम, 1961 के तहत मानक किराया निर्धारित करवाने के लिये आर.सी.ए. के पास जाने का उपचार उपलब्ध है – अभिनिर्धारित किया गया, विचारण न्यायालय ने इस तथ्य को ध्यान में नहीं रखा है कि प्रकरण के तथ्यों में धारा 10 अधिनियम लागू नहीं होती है क्योंकि वादी ने मानक किराये का दावा नहीं किया है – विचारण न्यायालय का आदेश उलट दिया गया।

Smt. Manisha Lalwani v. Dr. D.V. Paul
Order dated 17.11.2014 passed by the High Court of M.P. in Writ Petition No. 15483 of 2013, reported in AIR 2015 MP 20

Extracts from the Order:

The Trial Court has rejected the application preferred by the petitioner on the ground that under Section 10 of the Act, the petitioner has remedy to approach Rent Controlling Authority for fixation of standard rent and summon to Smt. Shanta Paul has been refused on the ground that transaction is prohibited under the Benami Transactions (Prohibition) Act, 1988. By summoning Mrs. Shanta Paul, the petitioner wanted to discharge initial burden with regard to subletting of the accommodation which initially lies on him. However, the trial Court refused to summon Mrs. Shanta Paul simply on the ground that transaction in question is prohibited under the Benami Transaction (Prohibition) Act, 1988. The trial Court has decided the application without perusal of the grounds mentioned in the application. In the instant case, the petitioner is claiming mesne profit and, therefore, in order to prove the prevalent market rate of the properties in the locality, summons to Branch Manager, Andhra Bank, Katni ought to have been issued by the trial Court as the petitioner is entitled to mesne profits in view of law laid down in ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705.*** The trial Court has lost the sight of the fact that Section 10 of the Act has no application to the facts of the case as the petitioner is not claiming standard rent. The aforesaid approach of the trial Court cannot be termed, but perverse. Thus, the impugned order suffers not only from non-application of mind but error apparent on face of the record as well.

•

71. CIVIL PROCEDURE CODE, 1908 – Order 22 Rules 4 and 5
HINDU MARRIAGE ACT, 1955 – Section 5

(i) Defendant died during pendency of appeal – Appellate court allowed the application under Order 22 Rule 4 CPC without proper inquiry – Hon'ble the Apex Court held that after following proper procedure prescribed in Order 22 Rule 5 CPC, the appellate court should have decided, who are the LRs of deceased and under what capacity – Before deciding this material question the appellate court cannot proceed to decide the appeal on merits – It may take recourse to proviso of Order 22 Rule 5 CPC.

(ii) Presumption of marriage – When can be drawn? When a man and woman have cohabited continuously for a number of years like a spouse – The court can draw such presumption.

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 4 और 5

हिन्दू विवाह अधिनियम, 1955 – धारा 5

(i) अपील के लंबित रहने के दौरान प्रतिवादी की मृत्यु हुई – अपील न्यायालय में आदेश 22 नियम 4 सी.पी.सी. का आवेदन उचित जाँच के बिना स्वीकार कर लिया – सर्वोच्च न्यायालय ने अभिनिर्धारित किया की अपील न्यायालय को आदेश 22 नियम 5 सी.पी.सी. में विहित प्रक्रिया का अनुपालन करके यह निर्धारित करना चाहिये की कौन मृतक का विधिक प्रतिनिधि है और किस हैसियत से है – इस तात्विक प्रश्न के निराकरण के पूर्व अपील न्यायालय अपील में आगे कार्यवाही नहीं कर सकती और अपील को गुणदोष पर निराकृत नहीं कर सकती – वह आदेश 22 नियम 5 सी.पी.सी. के परंतुक का सहारा भी ले सकती है।

(ii) विवाह की उपधारणा – कब की जा सकती है – जब एक पुरूष और एक महिला लगातार कई वर्षों से स्पाउस के रूप में रहते हैं – तब न्यायालय ऐसी उपधारणा कर सकता है।

Karedla Parthasaradhi v. Gangula Ramanamma (d) through LRs. and others

Judgment dated 04.12.2014 passed by the Supreme Court in Civil Appeal No. 3872 of 2009, reported in AIR 2015 SC 891

Extracts from the judgment:

The question as to in which circumstances, the Court can draw presumption as to the legality of marriage was succinctly explained by Mulla in his book- Hindu Law, 17th Edition in Article 438, page 664 under the heading – "Presumption as to legality of marriage" – in following words:

> "438. ***Presumption as to legality of marriage*** – Where it is proved that a marriage was performed in fact, the court will presume that it is valid in law, and that the necessary ceremonies have been performed. A Hindu marriage is recognized as a valid marriage in English law. Presumption as to marriage and legitimacy – There is an extremely strong presumption in favour of the validity of a marriage and the legitimacy of its offspring if from the time of the alleged marriage the parties are recognized by all persons concerned as man and wife and are so described in important documents and on important occasions. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied. Similarly the fact that a woman was living under the control and protection of a man who generally lived with her and acknowledged her children raises a strong presumption that she is the wife of that man. However, this presumption may be rebutted by proof of facts showing that no marriage could have taken place."

The question arose before this Court in ***Thakur Gokal Chand v. Parvin Kumari @ Usha Rani, AIR 1952 SC 231***, as to whether on facts/evidence, the Court could record a finding about the existence of lawful marriage between the parties and, if so, what should be the principle to be applied while deciding such question. Learned Judge - Fazal Ali J, speaking for the Bench examined this question in the context of Section 50 of the Indian Evidence Act, 1872 and other relevant provisions of law and laid down the following principle of law for determination of such question:

> "It seems to us that the question as to how far the evidence of those particular witnesses is relevant under section 50 is academic, because it is well-settled that continuous cohabitation for a number of years may raise the presumption of marriage. In the present case, it seems clear that the plaintiff and Ram Piari lived and were treated as husband and wife for a number of years, and, in the absence of any material pointing to the contrary conclusion, a presumption might have been drawn that they were lawfully married. But the presumption which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy that presumption, the court cannot ignore them"

In recent time, this Court in ***Madan Mohan Singh & ors. v. Rajni Kant & anr., AIR 2010 SC 2933,*** relying upon the aforesaid principle of law, reiterated the same principle in following words:

> "The courts have consistently held that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a number of years. However, such presumption can be rebutted by leading unimpeachable evidence. (Vide ***Mohabbat Ali Khan v. Mohd. Ibrahim Khan, AIR 1929 PC 135, Gokal Chand v. Parvin Kumari, AIR 1952 SC 231, S.P.S. Balasubramanyam v. Suruttayan, AIR 1994 SC 133, Ranganath Parmeshwar Panditrao Mali v. Eknath Gajanan Kulkarni, AIR 1996 SC 1290 and Sobha Hymavathi Devi v. Setti Gangadhara Swamy, AIR 2005 SC 800."***)

In the first place, the High Court should have remanded the case to the trial court by taking recourse to the provision of Order XXII Rule 5 proviso for deciding the question as to whether K. Sanjiva Rao (respondent no.1 herein) was the legal representative of deceased defendant no.1 (Gangula Ramanamma) and if so, in what capacity - adopted son or legatee on the strength of Will dated 02.01.1984. Secondly, without first deciding this material question, the High Court could not have either allowed the application and nor it could have proceeded to decide the appeal on merits. Thirdly, the High Court simply allowed

the application without recording a finding as to whether any right in the suit property was devolved in favour of K. Sanjiva Rao (respondent no.1) after the death of defendant no. 1 and if so, in what capacity. This finding alone would have enabled K. Sanjiva Rao to become the appellant and prosecute the appeal on merits and lastly, this was a case where inquiry into the question was necessary and it could be done only by the trial court.

•

72. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 3-A

Can the validity of a decree passed on a compromise be challenged in a separate suit? Held, No – When a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of such agreement or compromise, it is that court alone which can decide the question – The court cannot direct the parties to file a separate suit – Such suit will not be maintainable in the light of Order 23 Rule 3-A CPC.

सिविल प्रक्रिया संहिता, 1908 – आदेश 23 नियम 3-ए

क्या एक समझौते के आधार पर पारित आज्ञप्ति की वैधानिकता को एक पृथक वाद द्वारा चुनौती दी जा सकती है ? अभिनिर्धारित किया गया, नहीं – जब एक अनुबंध या समझौते की वैधानिकता से संबंधित प्रश्न किसी न्यायालय के समक्ष जिसने उस समझौते या अनुबंध के आधार पर आज्ञप्ति पारित की थी उत्पन्न होता है – केवल वही न्यायालय उस प्रश्न को निराकृत कर सकती है – वह न्यायालय पक्षकारों को पृथक वाद प्रस्तुत करने का निर्देश नहीं दे सकती है – ऐसा वाद आदेश 23 नियम 3-ए सी.पी.सी. के प्रकाश में चलने योग्य नहीं होता।

R. Rajanna v. S. R. Venkataswamy and others

Judgment dated 20.11.2014 passed by the Supreme Court in Civil Appeal No. 10416 of 2014, reported in AIR 2015 SC 706

Extracts from the judgment:

It is manifest from a plain reading that in terms of the proviso to Order XXIII Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order XXIII Rule 3, the agreement or compromise shall not be deemed to be lawful within meaning of the said rule if the same is void or voidable under Indian Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the Court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would

make the same void or voidable under the Contract Act. More importantly, Order XXIII Rule 3A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the Court that passed the decree on the basis of any such agreement or compromise, it is that Court and that Court alone who can examine and determine that question. The Court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order XXIII Rule 3A of CPC. That is precisely what has happened in the case at hand. When the appellant filed OS No.5326 of 2005 to challenge validity of the compromise decree, the Court before whom the suit came up rejected the plaint under Order VII Rule 11 CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order XXIII Rule 3A of the CPC. Having thus got the plaint rejected, the defendants (respondents herein) could hardly be heard to argue that the plaintiff (appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS No.5326 of 2005 and if the plaint in the suit has been rejected to pursue his remedy against such rejection before a higher Court.

•

***73. CIVIL PROCEDURE CODE, 1908 – Order 30 Rule 10**

What is sole proprietorship concern? When an individual uses a fictional trade name in place of his own name is called sole proprietorship concern as provided under Order 30 Rule 10 CPC.

सिविल प्रक्रिया संहिता, 1908 – आदेश 30 नियम 10

एक सोल प्रोपराइटरशिप कनसर्न क्या है ? जब एक व्यक्ति एक काल्पनिक व्यापारिक नाम उसके स्वयं के नाम के स्थान पर उपयोग करता है तो इसे सोल प्रोपराइटरशिप कनसर्न कहां जाता है – जैसा की आदेश 30 नियम 10 सी.पी.सी. में प्रावधान है।

M/s Bhagwati Vanaspati Traders v. Senior Superintendent of Post Offices, Meerut

Judgment dated 10.10.2014 passed by the Supreme Court in Civil Appeal No. 4854 of 2009, reported in AIR 2015 SC 901

•

74. CRIMINAL PROCEDURE CODE, 1973 – Section 31

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

How to run sentences where there is one trial and the accused is convicted in two or more offences? Held, section 31 Cr. P.C. gives full discretion to the court to order sentence for two or more offences in one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances – The discretion has to be exercised along the judicial lines and

not mechanically – It is not a normal rule to order the sentences to be consecutive and exception is to make the sentences concurrent.

दण्ड प्रक्रिया संहिता, 1973 – धारा 31

भारतीय दण्ड संहिता, 1860 – धारा 498-ए और 306

जहां एक विचारण में अभियुक्त को दो या दो से अधिक अपराधों में दोषसिद्ध किया जाता है – दण्ड कैसे चलेगे (भुगताए जाएंगे) – अभिनिर्धारित किया, धारा 31 द.प्र.सं. न्यायालय को पूर्ण विवेकाधिकार देती है कि न्यायालय अपराधों की प्रकृति, गंभीर या अल्पीकरण की परिस्थितियों को देखते हुए एक विचारण में दो या अधिक अपराधों का दण्ड साथ–साथ चलने का निर्देश दे सकती है। विवेकाधिकार न्यायिक दिशा में उपयोग करना होता है न कि यांत्रिक तरीके से। ऐसा कोई सामान्य नियम नहीं है की दण्ड एक के बाद एक भुगताए जाते हैं व दण्ड साथ–साथ भुगताना एक अपवाद होता है।

O.M. Cherian alias Thankachan v. State of Kerala and others

Judgment dated 11.11.2014 passed by the Supreme Court in Criminal Appeal No. 2387 of 2014, reported in AIR 2015 SC 303 (3-Judge Bench)

Extracts from the judgment:

Under Section 31 Cr.P.C. it is left to the full discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offenses. It is difficult to lay down any strait jacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offenses committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.

Accordingly, we answer the Reference by holding that Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offenses at one trial to run concurrently, having regard to the nature of offenses and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the Court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the Court may direct. We also do not find any conflict in earlier judgment in ***Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Asst. Collector of Customs (Prevention), Ahmedabad and anr., AIR 1988 SC 2143 and Section 31 Cr.P.C.***

•

75. CRIMINAL PROCEDURE CODE, 1973 – Sections 125 and 354

Grant of maintenance – Section 125 (2) Cr.P.C. impliedly requires the court to consider making the order for maintenance effective from either of the two dates i.e. from the date of order or from the date of application, having regard to the relevant facts – The court should record reasons in support of the order passed by it in both eventualities as provided under section 354 (6) of the Cr.P.C.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125 और 354

भरण पोषण मंजूर करना – धारा 125 (2) द.प्र.सं. परोक्ष रूप से न्यायालय से यह अपेक्षा करती है कि वह भरण पोषण का आदेश दो में से किसी तारीख से, सुसंगत तथ्यों के प्रकाश में, प्रभावी बनावे अर्थात आदेश की तारीख से या आवेदन की तारीख से। न्यायालय को उसके आदेश के समर्थन में दोनों ही दशाओं में कारण अभिलिखित करना चाहिये जैसा की धारा 354 (6) द.प्र.सं. में प्रावधान है।

Jaiminiben Hirenbhai Vyas and another v. Hirenbhai Rameshchandra Vyas and another

Judgment dated 19.11.2014 passed by the Supreme Court in Criminal Appeal No. 2435 of 2014, reported in AIR 2015 SC 300

Extracts from the judgment:

The provision expressly enables the Court to grant maintenance from the date of the order or from the date of the application. However, Section 125 of the Cr.P.C. must be construed with sub-section (6) of Section 354 of the Cr.P.C. which reads thus:

> "***354 (6) Language and contents of judgment*** – Every order under Section 117 or sub-section (2) of Section 138 and every final order made under Section 125, Section 145 of Section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.

Therefore, every final order under Section 125 of the Cr.P.C. [and other sections referred to in sub-section (c) of Section 354] must contain points for determination, the decision thereon and the reasons for such decision. In other words, Section 125 and Section 354 (6) must be read together.

Section 125 of the Cr.P.C. therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354 (6) of the Cr.P.C. the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to

prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case.

•

76. CRIMINAL PROCEDURE CODE, 1973 – Sections 197 and 482
INDIAN PENAL CODE, 1860 – Sections 120-B, 420 and 468

(i) Sanction for prosecution – Necessity – During discharging 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 – No sanction for prosecution is necessary.

(ii) After losing battle in civil proceeding – Filing of complaint – Attempt to convert a case of civil nature into a criminal prosecution by the respondent – Amounts to abuse of process of law.

दण्ड प्रक्रिया संहिता, 1973 – धारा 197 और 482

भारतीय दण्ड संहिता, 1860 – धारा 120.बी, 420 और 468

(i) अभियोजन चलाने की अनुमति – आवश्यकता – यदि एक लोक सेवक अपने कार्यालयीन कर्त्तव्यों के निर्वहन के दौरान आपराधिक षड़यंत्र या आपराधिक दुराचरण में शामिल होता है तो उसके ऐसे आपराधिक कृत्यों को कार्यालयीन कर्त्तव्यों का निर्वहन नहीं माना जा सकता है और ऐसे में धारा 197 आकर्षित नहीं होती है – अभियोजन चलाने की अनुमति की आवश्यकता नहीं होती।

(ii) सिविल कार्यवाही में पराजित हो जाने के बाद – परिवाद प्रस्तुत करना – एक सिविल प्रकृति के मामले को दांडिक मामले में परिवर्तित करने का प्रत्यार्थी द्वारा प्रयत्न किया गया – यह विधि की प्रक्रिया के दुरूपयोग के समान है।

Rajib Ranjan and others v. R. Vijay Kumar

Judgment dated 14.10.2014 passed by the Supreme Court in Criminal Appeal No. 729 of 2010, reported in (2015) 1 SCC 513

Extracts from the judgment:

The ratio of the aforesaid cases i.e. ***State of Maharashtra v. Budhikota Subbarao, (1993) 3 SCC 339, Raghunath Ananth Govilkar v. State of Maharashtra, (2008) 11 SCC 289, Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287, Amrik Singh v. State of Pepsu, AIR 1955 SC 309 and Shambhoonath Misra v. State of U.P., AIR 1997 SC 2102*** which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanor 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. In fact, the High Court has dismissed

the petitions filed by the appellant precisely with these observations namely the allegations pertain to fabricating the false records which cannot be treated as part of the appellants normal official duties. The High Court has, thus, correctly spelt out the proposition of law. The only question is as to whether on the facts of the present case, the same has been correctly applied.

Having regard to the circumstances narrated and explained above, we are also of the view that attempt is made by the respondent to convert a case with civil nature into criminal prosecution. In a case like this, High Court would have been justified in quashing the proceedings in exercise of its inherent powers under Section 482 of the Code. It would be of benefit to refer to the judgment in the case of ***Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736,*** wherein the Court adversely commented upon this very tendency of filing criminal complaints even in cases relating to commercial transaction for which civil remedy is available is available or has been availed. The Court held that the following observations of the Court in this behalf are taken note of:

> "13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In ***G. Sagar Suri v. State of U.P., (2000) 2 SCC 636,*** this Court observed: (SCC p. 643, para 8)
>
> > "8....It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

•

77. CRIMINAL PROCEDURE CODE, 1973 – Sections 235 and 248(2)

INDIAN PENAL CODE, 1860 – Sections 302, 304-B and 498-A

(i) When charge under section 302 IPC shall be framed along with section 304-B IPC ? Held, where there is evidence, either direct or circumstantial, to show that the offence falls under section 302 IPC, the trial court should frame the charge under section 302 IPC even if the police has not expressed any opinion in that regard in the report under section 173 (2) of Cr.P.C.

(ii) Hearing on a sentence to accused by the appellate court – Where there is minimum sentence prescribed and same has been awarded by the appellate court and no prejudice is caused to the accused, it is not necessary to follow the procedure under section 235 Cr.P.C.

दण्ड प्रक्रिया संहिता, 1973 – धारा 235 और 248 (2)

भारतीय दण्ड संहिता, 1860 – धारा 302, 304–बी और 498–ए

(i) कब धारा 304 बी भा.द.सं. के आरोप के साथ धारा 302 भा.द.सं. का आरोप विरचित किया जायेगा ? अभिनिर्धारित किया गया, जहां ऐसी प्रत्यक्ष या परिस्थिति जन्य साक्ष्य हो जो यह दर्शाती हो की अपराध धारा 302 भा.द.सं. में आता है, विचारण न्यायालय को धारा 302 भा.द.सं. का आरोप विरचित करना चाहिये चाहे पुलिस ने उसके प्रतिवेदन धारा 173 (2) दण्ड प्रक्रिया संहिता में अपने प्रतिवेदन में इस संबंध में कोई राय नहीं दी हो।

(ii) अपील न्यायालय द्वारा अभियुक्त को दण्ड के प्रश्न पर सुना जाना – जहां न्यूनतम दण्ड विहित है और वही अपील न्यायालय द्वारा दिया जा रहा है और उससे अभियुक्त के हितों पर कोई प्रतिकूल असर नहीं गिरता है – यह आवश्यक नहीं है कि धारा 235 दंप्र.सं. में बतलाई प्रक्रिया का पालन किया जाये।

Vijay Pal Singh and others v. State of Uttarakhand

Judgment dated 06.12.2014 passed by the Supreme Court in Criminal Appeal No. 37of 2011, reported in AIR 2015 SC 684

Extracts from the judgment:

However, it is generally seen that in cases where a married woman dies within seven years of marriage, otherwise than under normal circumstances, no inquiry is usually conducted to see whether there is evidence, direct or circumstantial, as to whether the offence falls under Section 302 of IPC. Sometimes, Section 302 of IPC is put as an alternate charge. In cases where there is evidence, direct or circumstantial, to show that the offence falls under Section 302 of IPC, the trial court should frame the charge under Section 302 of IPC even if the police has not expressed any opinion in that regard in the report under Section 173(2) of the Cr.PC. Section 304B of IPC can be put as an alternate charge if the trial court so feels. In the course of trial, if the court finds that there is no evidence, direct or circumstantial, and proof beyond reasonable doubt is not available to establish that the same is not homicide, in such a situation, if the ingredients under Section 304B of IPC are available, the trial court should proceed under the said provision. In ***Muthu Kutty and another v. State by Inspector of Police, T.N., AIR 2005 SC 1473,*** this Court addressed the issue and held as follows:

> "20. A reading of Section 304-B IPC and Section 113- B, Evidence Act together makes it clear that law authorises a presumption that the husband or any other relative of the husband has caused the death of a woman if she happens to die in circumstances not normal and that there was evidence to show that she was treated with cruelty or harassed before her death in connection with any demand for dowry. It, therefore, follows that the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the offence of death. For those that are direct participants in the commission of the offence of death there are already provisions incorporated in Sections 300, 302 and 304. The provisions contained in Section 304-B IPC and Section 113-B of the Evidence Act were incorporated on the anvil of the Dowry Prohibition (Amendment) Act, 1984, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death. This conceptual difference was not kept in view by the courts below. But that cannot bring any relief if the conviction is altered to Section 304 Part II. No prejudice is caused to the accused-appellants as they were originally charged for offence punishable under Section 302 IPC along with Section 304-B IPC."

Though in the instant case the accused were charged by the Sessions Court under Section 302 of IPC, it is seen that the trial court has not made any serious attempt to make an inquiry in that regard. If there is evidence available on homicide in a case of dowry death, it is the duty of the investigating officer to investigate the case under Section 302 of IPC and the prosecution to proceed in that regard and the court to approach the case in that perspective. Merely because the victim is a married woman suffering an unnatural death within seven years of marriage and there is evidence that she was subjected to cruelty or harassment on account of demand for dowry, the prosecution and the court cannot close its eyes on the culpable homicide and refrain from punishing its author, if there is evidence in that regard, direct or circumstantial.

Now, the last question as to whether the case should be remitted back to the High Court for the purpose of Section 235 of Cr.PC, we are of the view that in the present case, it is not necessary. The conviction is under Section 304B IPC. The mandatory minimum punishment is seven years. Of course, there is no such minimum punishment under Section 498A of IPC or Section 201 of IPC. Since the sentence in respect of offence under Section 498A of IPC for two years rigorous imprisonment and one year under Section 201 of IPC are to run concurrently, no prejudice whatsoever is caused to the two appellants. Therefore, this is not a fit case for following the procedure under Section 235 of Cr.PC by this Court or for remand in that regard to the High Court.

•

78. CRIMINAL PROCEDURE CODE, 1973 – Section 309
EVIDENCE ACT, 1872 – Sections 137 and 138
Unnecessary adjournments – Duty of Court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded – Cross-examination of a witness should not be deferred unless there are special reasons for grant of time and that too has to be recorded.

दण्ड प्रक्रिया संहिता, 1973 – धारा 309

साक्ष्य अधिनियम, 1872 – धारा 137 और 138

अनावश्यक स्थगन – न्यायालय का यह कर्त्तव्य है कि वह यह देखे कि न केवल विधि अनुसार अभियुक्त के हितों की सुरक्षा की जाये बल्कि समाज और सामूहिक हित की सुरक्षा भी की जाये – एक गवाह का प्रतिपरीक्षण नहीं रोकना चाहिये जब तब की समय देने के लिये विशेष कारण न हो और ऐसे कारण लेखबद्ध करना चाहिये।

Vinod Kumar v. State of Punjab

Judgment dated 21.01.2015 passed by the Supreme Court in Criminal Appeal No. 554 of 2012, reported in (2015) 3 SCC 220

Extracts from the judgment:

If one is asked a question, what afflicts the legally requisite criminal trial in its conceptual eventuality in this country the two reasons that may earn the status of phenomenal signification are, first, procrastination of trial due to non-availability of witnesses when the trial is in progress and second, unwarranted adjournments sought by the counsel conducting the trial and the unfathomable reasons for acceptation of such prayers for adjournments by the trial courts, despite a statutory command under Section 309 of the Code of Criminal Procedure, 1973 (CrPC) and series of pronouncements by this Court. What was a malady at one time, with the efflux of time, has metamorphosed into malignancy. What was a mere disturbance once has become a disorder, a diseased one, at present.

Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts.

Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics.

There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall

we say, “Awake! Arise!”. There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.

•

79. CRIMINAL PROCEDURE CODE, 1973 – Section 313

(i) Effect of non-compliance of mandatory provision of Section 313 Cr.P.C. – The accused would not be entitled for acquittal on the ground of such non-compliance.

(ii) If such non-compliance caused material prejudice to the accused, the appellate Court is empowered to remand the case to examine the accused again under section 313 Cr.P.C. and may direct for re-trial of the case from the stage of recording of statement under section 313 Cr.P.C. – It cannot be said to be amounting to filling up of lacuna in the prosecution case.

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

(i) धारा 313 दं.प्र.सं. के आज्ञापक प्रावधान का अनुपालन न करने का प्रभाव – अभियुक्त ऐसा अनुपालन न करने के आधार पर दोषमुक्ति का हकदार नही होगा।

(ii) यदि ऐसा अनुपालन न करना अभियुक्त पर तात्विक रूप से प्रतिकूल प्रभाव डालता है तब अपील न्यायालय प्रकरण को प्रतिप्रेषित करने के लिए सशक्त होती है और यह निर्देश दे सकती है कि धारा 313 द.प्र.सं. के कथन अभिलिखित करने के प्रक्रम से मामले का पुनः विचारण किया जाये। इसे अभियोजन के प्रकरण की कमी पूरा करने के समान नहीं कहा जा सकता।

Nar Singh v. State of Haryana

Judgment dated 11.11.2014 passed by the Supreme Court in Criminal Appeal No. 2388 of 2014, reported in AIR 2015 SC 310

Extracts from the judgment:

Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarized as under:-

(i) Whenever a plea of non-compliance of Section 313 Cr.P.C. is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the

matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer;

(ii) In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

(iii) If the appellate court is of the opinion that non-compliance with the provisions of Section 313 Cr.P.C. has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 Cr.P.C. and the trial Judge may be directed to examine the accused afresh and defence witness if any and dispose of the matter afresh;

(iv) The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.

In our view, accused is not entitled for acquittal on the ground of non-compliance of mandatory provisions of Section 313 Cr.P.C. We agree to some extent that the appellant is prejudiced on account of omission to put the question as to the opinion of Ballistic Expert (Ex-P12) which was relied upon by the trial court as well as by the High Court. Trial court should have been more careful in framing the questions and in ensuring that all material evidence and incriminating circumstances were put to the accused. However, omission on the part of the Court to put questions under Section 313 Cr.P.C. cannot enure to the benefit of the accused.

The conviction of the appellant under Section 302 IPC and Section 25 (IB) of the Arms Act by the trial court in Sessions Case No. 40/2005 and the sentence imposed on him as affirmed by the High Court is set aside. The matter is remitted back to the trial court for proceeding with the matter afresh from the stage of recording statement of the accused under Section 313 Cr.P.C. The trial court shall examine the accused afresh under Section 313 Cr.P.C. in the light of the above observations and in accordance with law. The trial Judge is directed to marshal the evidence on record and put specific and separate questions to the accused with regard to incriminating evidence and circumstance and shall also afford an opportunity to the accused to examine the defence witnesses, if any, and proceed with the matter. Since the occurrence is of the year 2005, we direct the trial court to expedite the matter and dispose of the same in accordance with law preferably within a period of six months from the date of receipt of this judgment. Since we are setting aside the conviction imposed upon the appellant-

accused, the appellant accused is at liberty to move for bail, if he is so advised. On such bail application being moved by the appellant-accused, the trial court shall consider the same in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter.

•

80. CRIMINAL PROCEDURE CODE, 1973 – Section 357-A
INDIAN PENAL CODE, 1860 – Sections 302 and 364-A
EVIDENCE ACT, 1872 – Sections 27 and 106

(i) When section 106 of the Evidence Act, 1872 is attracted? Held, the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused.

(ii) Recovery of dead body from covered gutters and personal belongings of the deceased from other places disclosed by the accused stood fully proved – It casts a duty on the accused to give proper explanation – If accused failed to give an explanation, it provides an additional circumstance against the accused.

(iii) Duty of the court to grant compensation to the victim – Explained in para 14.

दण्ड प्रक्रिया संहिता, 1973 – धारा 357-ए

भारतीय दण्ड संहिता, 1860 – धारा 302 और 364-ए

साक्ष्य अधिनियम, 1872 – धारा 27 और 106

(i) धारा 106 भारतीय साक्ष्य अधिनियम, 1872 कब आकर्षित होती है ? अभिनिर्धारित किया गया, यह प्रावधान तब आकर्षित होता है जब अभियोजन के लिए वे तथ्य स्थापित करना असंभव या आनुपातिक रूप से कठिन होता है जो तथ्य विशेषतः अभियुक्त के ज्ञान है।

(ii) एक ढकी हुई नाली से मृत शरीर और मृतक के व्यक्तिगत सामान अन्य स्थान से अभियुक्त की सूचना पर बरामद होना पूर्णतः प्रमाणित हुआ – यह अभियुक्त पर कर्तव्य अधिरोपित करता है कि वह उसका उचित स्पष्टीकरण दे – यदि अभियुक्त स्पष्टीकरण देने में असफल रहता है तो यह अभियुक्त के विरूद्ध एक अतिरिक्त परिस्थिति होती है।

(iii) आहत् को प्रतिकर देने का न्यायालय का कर्तव्य – निर्णय चरण 14 में स्पष्ट किया।

Suresh & Anr. v. State of Haryana

Judgment dated 28.11.2014 passed by the Supreme Court in Criminal Appeal No. 420 of 2012, reported in AIR 2015 SC 518

Extracts from the judgment:

This is a case where Section 106 of the Evidence Act is clearly attracted

which requires the accused to explain the facts in their exclusive knowledge. No doubt, the burden of proof is on the prosecution and Section 106 is not meant to relieve it of that duty but the said provision is attracted when it is impossible or it is proportionately difficult for the prosecution to establish facts which are strictly within the knowledge of the accused. Recovery of dead bodies from covered gutters and personal belongings of the deceased from other places disclosed by the accused stood fully established. It casts a duty on the accused as to how they alone had the information leading to recoveries which was admissible under Section 27 of the Evidence Act. Failure of the accused to give an explanation or giving of false explanation is an additional circumstance against the accused as held in number of judgments, including ***State of Rajasthan v. Jaggu Ram, AIR 2008 SC 982***.

We are informed that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District legal authorities. It has been brought to our notice that even though almost a period of five years has expired since the enactment of Section 357A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the Courts. It has also been pointed out that the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.

We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.

•

***81. CRIMINAL PROCEDURE CODE, 1973 – Sections 438 and 439 (2)**

When an order for cancellation of bail can be passed? Held, it may be passed on the following grounds:-

(a) When the accused is found tampering with the evidence during the investigation or during trial;

(b) When the person on bail commits similar offences or any heinous offence during the period of bail;

(c) When the accused has absconded and trial of the case gets delayed on that account;

(d) When the offence so committed by the accused had created serious law and order problem in the society and accused had become a hazard on the peaceful living of the people;

(e) If the High Court finds that the Lower Court granting bail has exercised its judicial power wrongly;

(f) If the High Court or the Sessions Court finds that the accused has misused the privilege of bail;

(g) If the life of the accused itself be in danger;

दण्ड प्रक्रिया संहिता, 1973 – धारा 438 और 439 (2)

कब जमानत निरस्ती का आदेश पारित किया जा सकता है ? अभिनिर्धारित किया गया, यह आदेश निम्न आधारों पर पारित किया जा सकता है :–

(ए) जब अभियुक्त अनुसंधान या विचारण के दौरान गवाहों को प्रभावित करते हुये पाया जाये।

(बी) जब अभियुक्त जमानत पर रहते हुये समान अपराध या कोई गंभीर अपराध कारित करता है।

(सी) जब अभियुक्त फरार हो जाता है और इस कारण प्रकरण का विचारण विलंबित होता है।

(डी) जब अभियुक्त द्वारा कारित अपराध समाज में गंभीर कानून और व्यवस्था की स्थिति उत्पन्न कर दे और अभियुक्त शांति पूर्ण जीवन जी रहे लोगों के लिये एक संकट बन जाये।

(इ) यदि उच्च न्यायालय यह पाती है कि अधीनस्थ न्यायालय ने जमानत देते समय अपने न्यायिक शक्तियों का गलत तरीके से प्रयोग किया है।

(एफ) यदि उच्च न्यायालय या सेशन न्यायालय यह पाते है कि अभियुक्त ने जमानत के विशेषाधिकार का दुरूपयोग किया है।

(एच) यदि अभियुक्त स्वयं का जीवन खतरे में हो।

Ashok Singh v. State of M.P. and another

Order dated 18.11.2014 passed by the High Court of M.P. in Misc. Criminal Case No. 13456 of 2014, reported in M.P.H.T. 2015 (1) 29

•

82. CRIMINAL PROCEDURE CODE, 1973 – Sections 457 and 482
MINERALS (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, 2006 – Rule 18 (4) Proviso
Transportation of coal – Seizure of vehicle, release of – Law explained.

Facts of the case:

On receipt of information regarding transportation of illegal coal in a truck, police seized the vehicle under section 102 of CrPC – Intimation of seizure was sent to concerning Mining Officer – An application for release of the vehicle under section 457 CrPC filed before the Judicial Magistrate was rejected by him – Revision petition filed before the Sessions Judge was also rejected observing that the intimation was sent by the police to the authorized person under Rule 18 of Rules 2006 provides that the authorized person may release the seized vehicle under sub rule (2) of Rule 18 on the execution of bond to his satisfaction by the person from whose possession such property was seized on the condition that such persons shall produce property whatever was asked to do so by the authorized person. It was further observed that sub rule (3) of Rule 18 provides that the authorized person shall send intimation of such seizure to the Magistrate having jurisdiction to try such offence and proviso to sub rule (4) provides that where report has been given to the concerning Magistrate, the property seized shall be released only on orders of such Magistrate and that no such intimation is received from the concerning authorized person. Therefore, the Magistrate had no jurisdiction to release the seized Vehicle till intimation is sent to the Magistrate. The authority to release property on interim custody lies only with the authorized person. Further held, only when the authorized person is satisfied that minerals were being transported illegally in the vehicle, he sends the intimation to the Magistrate with a view that further proceedings for prosecution of the person concerned would be taken and since in the present case as the Magistrate has not received any intimation from the authorized person (i.e. Mining Officer District Katni), he (Magistrate) had no jurisdiction to release the vehicle on interim custody. Therefore, the learned Magistrate as well as the learned Additional Sessions Judge did not commit any error of law.

दण्ड प्रक्रिया संहिता, 1973 – धारा 457 और 482

खनिज (अवैध खनन, परिवहन और संग्रहण का संरक्षण) नियम, 2006 –नियम 18 (4) कोयले का परिवहन – जब्त वाहन का छोड़ा जाना – विधि समझाई गई।

Ruaab Ahmed v. State of M.P.

Order dated 15.09.2014 passed by the High Court in Miscellaneous Criminal Case No. 8139 of 2014, reported in 2014 (5) MPHT 129

Extracts from the order:

This application under Section 482 of Cr.PC is directed against the order passed by learned First Additional Sessions Judge. Katni in Criminal Revision No. 97/14 on 27-5-14 whereby the learned Additional Sessions Judge Cr.PC by which the learned Judicial Magistrate dismissed the application filed by the present applicant for granting interim custody of truck bearing registration No. Mp-18-GA-0510.

The facts giving rise to this petition are that on 8-5-2014, Police station, Badwara, District Katni, received an information through informant that a truck bearing registration No. MP-GA-0510 is coming from Umariya to Katni. In the said vehicle, illegal coal was being transported. On this information, the truck was stopped and checked by Badwara Police. The driver Rammit Yadav could not produce any valid documents and, therefore, the truck was seized under Section 102 of Cr.PC and Istgasa No. 1/14 was registered. Intimation of seizure of the vehicle was sent to Mining Officer of the district.

The Present applicant filed an application under Section 457 of Cr.PC before the concerning Magistrate at Katni. The learned Magistrate rejected the application on 15-5-14 against which the revision was filed before the First Additional Sessions Judge. The Additional Session Judge observed that intimation was sent by the police to the authorized person under Madhya Pradesh Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2006. The Rule 18 provides that the authorized person may release the property seized under sub-rule (2) of Rule 18 on execution of a bond to the satisfaction of the authorized person by the person, from whose possession such property was seized on a condition that such person shall produce the property whenever asked to do so by the authorized person sub-rule (3) of Rule 18 provides that the authorized person shall send intimation of such seizure to the Magistrate having jurisdiction to try such offence and proviso to sub-rule (4) provides that where report has been given to the concerning Magistrate the property seized shall be released only under the orders of such Magistrate.

Accordingly, the learned Additional Sessions Judge found that no intimation is received by the concerning Magistrate in this case and, therefore, the Magistrate had no jurisdiction to release the property. On this premise, the revision was dismissed.

The moot question in this revision is whether under the said Rules, the Magistrate had jurisdiction to release the seized property.

Going through the provisions of Rule 18 of the said Rules, it is clear that till intimation is sent to the Magistrate, the authority to release the property on interim custody lies only with the authorized person. It also implies that only when the authorized person is satisfied that minerals were being transported illegally in the vehicle, he sends an intimation to the Magistrate with a view that further proceeding for prosecution of the person concerned would be taken. In this case, however, as the Magistrate had not received any intimation from the

authorised person, which was Mining Officer, District Katni, he had no jurisdiction to release the vehicle interim custody.

It is apparent that the Mining Officer was not satisfied that the minerals were being transported illegally and as such he did not choose to send an intimation to the Magistrate. In such circumstances, in my considered opinion, the learned Magistrate and the learned Additional Sessions Judge did not commit any error of law.

•

83. EVIDENCE ACT, 1872 – Sections 63, 65, 65-A and 65-B

Generalia specialibus non derogant means special law will always prevail over the general law – Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act – Sections 59, 65-A and 65-B of the Evidence Act are complete Code in itself – Being a special law, the general law under Sections 63 and 65 Evidence Act has to yield. An electronic record by way of secondary Evidence shall not be admitted in evidence unless the requirements under section 65-B are satisfied – So, in the case of CD, VCD, chip etc. same shall be accompanied by the certificate in terms of section 65-B obtained at the time of taking the document, without which, the secondary evidence regarding that electronic record is inadmissible.

[*State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru, AIR 2005 SC 3820* overruled]

साक्ष्य अधिनियम, 1872 – धारा 63, 65, 65-ए और 65-बी

''जनरलिया स्पेशिलिबस नान डेरोगेट'' अर्थात विशेष विधि हमेशा सामान्य विधि पर अभिभावी होगी। इलेक्ट्रोनिक अभिलेख को प्रमाणित करना एक विशेष प्रावधान है जो सूचना और प्रौधोगिक अधिनियम द्वारा साक्ष्य अधिनियम के विभिन्न प्रावधानों में संशोधन द्वारा लाया गया है। धारा 59, 65ए, 65बी साक्ष्य अधिनियम अपने आप में एक पूर्ण संहिता है। एक विशेष विधि होने के कारण धारा 63 व 65 साक्ष्य अधिनियम की सामान्य विधि को झुका देते है (या उन पर अभिभावी होते है) जब तक धारा 65बी की अनिवार्यता पूर्ण नहीं होती एक इलेक्ट्रानिक अभिलेख को द्वितीयक साक्ष्य द्वारा ग्राह्य नहीं किया जा सकता अतः सी.डी., व्ही.सी. डी. चिप आदि के मामले में उनके साथ धारा 65बी साक्ष्य अधिनियम के अनुसार प्रमाण पत्र लगा होना चाहिए जो दस्तावेज लेते समय प्राप्त किया जाता है – उसके बिना इलेक्ट्रोनिक अभिलेख के बारे में द्वितीयक साक्ष्य ग्राह्य नहीं होती है।

स्टेट (एन.सी.टी. देहली) विरूद्ध नवजोत संधु उर्फ अफसन गुरू, ए.आई.आर. 2005 एस.सी. 3820 को ओवर रूल्ड किया गया)

Anvar P. V. v. P. K. Basheer and others

Judgment dated 18.09.2014 passed by the Supreme Court in Civil Appeal No. 4226 of 2012, reported in AIR 2015 SC 180 (3-Judge Bench)

Extracts from the judgment:

Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65 A of the Evidence Act, read with Section 59 and 65 B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65 B of the Evidence Act. That is a complete Code in itself. Being a special law, the general law under Section 63 and 65 has to yield.

The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65 A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in ***Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600,*** does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

•

84. HINDU MARRIAGE ACT, 1955 – Section 13
EVIDENCE ACT, 1872 – Sections 45 and 114

(i) Divorce on the ground of adulterous life style of the wife – Husband moved an application for DNA test of himself and the male child born to the wife – It would be most possible method for husband to establish and confirm the allegations levelled by him against his wife – As DNA Testing is the most legitimate and scientifically perfect method, application is allowed.

(ii) If wife declines for DNA test, the allegation would be determined by the court, by drawing a presumption provided under Section 114 (h) of the Evidence Act.

हिन्दू विवाह अधिनियम, 1955 – धारा 13

साक्ष्य अधिनियम, 1872 – धारा 45 और 114

(i) पत्नी की जारतापूर्ण जीवनशैली के आधार पर विवाह विच्छेद – पति ने एक आवेदन उसके और उसकी पत्नी से उत्पन्न बच्चे के डी.एन.ए. परिक्षण के लिये लगाया – पति द्वारा पत्नी के विरूद्ध लगाये गये अभियोगों को स्थापित करने और उसकी पुष्टि के लिये यह सबसे संभाव्य विधि होगी – क्योंकि डी.एन.ए.

परीक्षण सबसे तर्क संगत और वैज्ञानिक रूप से सही विधि है – आवेदन स्वीकार किया गया।

(ii) यदि पत्नी डी.एन.ए. परीक्षण से इंकार करती है तब न्यायालय द्वारा अभियोगों को धारा 114 (एच) साक्ष्य अधिनियम में उपलब्ध उपधारणा लेते हुये निर्धारित किया जा सकता है।

Dipanwita Roy v. Ronobroto Roy

Judgment dated 15.10.2014 passed by the Supreme Court in Civil Appeal No. 9744 of 2014, reported in AIR 2015 SC 418

Extracts from the judgment:

It is borne from the decisions rendered by this Court in ***Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission for Woman and another, AIR 2010 SC 285*** and ***Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik and another, AIR 2014 SC 932*** that depending on the facts and circumstances of the case, it would be permissible for a Court to direct the holding of a DNA examination, to determine the veracity of the allegation(s), which constitute one of the grounds, on which the concerned party would either succeed or lose. There can be no dispute, that if the direction to hold such a test can be avoided, it should be so avoided. The reason, as already recorded in various judgments by this Court, is that the legitimacy of a child should not be put to peril.

The question that has to be answered in this case, is in respect of the alleged infidelity of the appellant-wife. The respondent-husband has made clear and categorical assertions in the petition filed by him under Section 13 of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person, who was the father of the male child born to the appellant-wife. It is in the process of substantiating his allegation of infidelity, that the respondent-husband had made an application before the Family Court for conducting a DNA test, which would establish whether or not, he had fathered the male child born to the appellant-wife. The respondent feels that it is only possible for him to substantiate the allegations levelled by him (of the appellant-wife's infidelity) through a DNA test. We agree with him. In our view, but for the DNA test, it would be impossible for the respondent-husband to establish and confirm the assertions made in the pleadings. We are therefore satisfied, that the direction issued by the High Court, as has been extracted hereinabove, was fully justified. DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the respondent-husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the appellant-wife is right, she shall be proved to be so.

We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife

liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent-husband, against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof. Section 114 as also illustration (h), referred to above, are being extracted hereunder:

> "114. Court may presume existence of certain facts – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.
>
> Illustration (h) – That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him."

This course has been adopted to preserve the right of individual privacy to the extent possible. Of course, without sacrificing the cause of justice. By adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under Section 112 of the Indian Evidence Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved.

•

85. HINDU MARRIAGE ACT, 1955 – Section 13

Divorce on the ground of mental cruelty – Whether refusal to have sexual intercourse for a long time without sufficient reason itself amounts to mental cruelty? Held, Yes [*Samar Gosh v. Jaya Gosh, (2007) 4 SCC 511* (3-Judge Bench) followed].

हिन्दू विवाह अधिनियम, 1955 – धारा 13

मानसिक क्रूरता के आधार पर विवाह विच्छेद की आज्ञप्ति – क्या लंबे समय तक लैंगिक सहवास से, बिना पर्याप्त करण के, इंकार करना अपने आप में मानसिक क्रूरता के समान है ? अभिनिर्धारित किया गया, हाँ, [*समीर घोष विरूद्ध जया घोष, (2007) 4 एस.सी.सी. 511* तीन न्यायमूर्तिगण की पीठ का अनुसरण किया गया]

Vidhya Viswanathan v. Kartik Balakrishnan

Judgment dated 22.09.2014 passed by the Supreme Court in Civil Appeal No. 9036 of 2014, reported in AIR 2015 SC 285

Extracts from the judgment:

Undoubtedly, not allowing a spouse for a long time, to have sexual

intercourse by his or her partner, without sufficient reason, itself amount mental cruelty to such spouse. A Bench of Three Judges of this Court in ***Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511*** has enumerated some of the illustrations of mental cruelty. Paragraph 101 of the said case is being reproduced below:

> Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

•

***86. HINDU SUCCESSION ACT, 1955 – Sections 4, 6 and 8**

Suit for partition by grandson – After coming into force of the Hindu Succession Act, 1956 grandson has no birth right in the properties of grandfather and he cannot claim partition during the life time of his father.

हिन्दू उत्तराधिकारी अधिनियम, 1956 – धारा 4, 6, और 8

पोते द्वारा विभाजन का वाद – हिन्दू उत्तराधिकारी अधिनियम, 1956 के प्रभाव में आने के बाद पोते को उसके दादा की संपत्ति में जन्म से कोई अधिकार नहीं होता है और वह उसके पिता के जीवन काल में विभाजन का दावा नहीं कर सकता।

Uttam v. Saubhag Singh and ors.

Judgment dated 29.10.2013 passed by the High Court of M.P. in Second Appeal No. 206 of 2005, reported in I.L.R. (2014) M.P. 1593

③

87. INDIAN PENAL CODE, 1860 – Sections 53, 279, 337 and 304-A

(i) By driving the jeep on the public road in a rash and negligent manner, the accused had endangered the life of one victim who died and another who got injured – Trial court found him guilty for offences punishable under Section 279, 337, 304-A IPC and sentenced him to undergo six months and two years R.I. with fine of Rs. 2,500 – ASJ, in appeal, upheld the order of trial court – High Court, in revision, reduced the sentences to period already undergone – The Apex Court set aside the order of the High Court and restored the sentence imposed by the Trial Court.

(ii) Duty of court to award adequate sentence – Reiterated.

भारतीय दण्ड संहिता, 1860 – धारा 53, 279, 337 और 304.ए

(i) अभियुक्त ने लोकमार्ग पर जीप को उतावलेपन और उपेक्षा से चलाकर एक आहत् का जीवन खतरे में डाला जिसकी मृत्यु हो गई और दूसरा आहत् घायल हुआ – विचारण न्यायालय ने उसे अपराध धारा 279, 337, 304ए भा.द.सं. में दोषी पाया और उसे 6 माह और 2 वर्ष का दण्ड और रूपये 2500/– अर्थदण्ड किया – अपर सत्र न्यायाधीश ने अपील में विचारण न्यायालय के आदेश को

कायम रखा – उच्च न्यायालय ने पुनरीक्षण में दण्ड को अभिरक्षा में गुजारी गई अवधि तक कम किया – सर्वोच्च न्यायालय ने उच्च न्यायालय के आदेश को अपास्त किया और विचारण न्यायालय द्वारा अधिरोपित दण्ड को पुनः कायम किया।

(ii) न्यायालय के युक्तियुक्त दण्ड को देने के कर्त्तव्य को पुनः बतलाया गया।

State of Madhya Pradesh v. Surendra Singh

Judgment dated 13.11.2014 passed by the Supreme Court in Criminal Appeal No. 2401 of 2014, reported in AIR 2015 SC 398

Extracts from the judgment:

We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter-productive in the long run and against the interest of the society.

In a recent decision in the case of ***State of Madhya Pradesh v. Bablu, 2014 AIR SCW 5212,*** after considering and following the earlier decisions, this Court reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which commensurate with gravity, nature of crime and the manner in which the offence is committed. One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers.

•

88. INDIAN PENAL CODE, 1860 – Section 120-B

EVIDENCE ACT, 1872 – Section 8

CRIMINAL PROCEDURE CODE, 1973 – Sections 190 and 204

(i) Magistrate is empowered to issue process against a person who has not been charge-sheeted provided sufficient material is available in the police report showing his involvement in the crime – He is also empowered to ignore the conclusion arrived at by the I.O. and apply his mind independently on the

facts emerging from the investigation and take cognizance of the case.

(ii) Principle of "alter ego" when applied – Explained in para 39.

भारतीय दण्ड संहिता, 1860 – धारा 120बी

साक्ष्य अधिनियम, 1872 – धारा 8

दण्ड प्रक्रिया संहिता, 1973 – धारा 190 और 204

(i) मजिस्ट्रेट ऐसे व्यक्ति के विरूद्ध जिसे पुलिस ने अपने अभियोग पत्र में अभियुक्त नहीं बनाया है आदेशिका जारी करने के लिए सशक्त है, किन्तु उस व्यक्ति के विरूद्ध पुलिस प्रतिवेदन में उसके अपराध में शामिल होना दर्शाने के लिए पर्याप्त सामग्री होना चाहिये – वह (मजिस्ट्रेट) अनुसंधान अधिकारी द्वारा निकाले गये निष्कर्ष को अनदेखा करने के लिए सशक्त है और मामले के तथ्यों जो की अनुसंधान से स्पष्ट होते हैं उन पर स्वतंत्र मस्तिष्क लगा सकता है और प्रकरण में संज्ञान ले सकता है।

(ii) ''आल्टर इगो'' का सिद्धांत कब लागू होता है – पैरा 39 में समझाया गया।

Sunil Bharti Mittal v. C.B.I.

Judgment dated 09.01.2015 passed by the Supreme Court in Criminal Appeal No. 34 of 2015, reported in AIR 2015 SC 923

Extracts from the judgment:

When the company is the offendor, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In ***Aneeta Hada v. Godfather Travels & Tours (P) Ltd, AIR 2012 SC 2795*** the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction namely where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company. This very principle is elaborated in various other judgments. We have already taken note of ***Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd., 2010 AIR SCW 6151*** and ***S.K. Alagh v. State of U.P., AIR 2008 SC 1731***. Few other judgments reiterating this principle are the following:

*1. **Jethsur Surangbhai v. State of Gujarat, AIR 1984 SC 151***

"9. With due respect what the High Court seems to have missed is that in a case like this where there was serious

defalcation of the properties of the Sangh, unless the prosecution proved that there was a close cohesion and collusion between all the accused which formed the subject matter of a conspiracy, it would be difficult to prove the dual charges particularly against the appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the appellant disappears. The only ground on the basis of which the High Court has convicted him is that as he was the Chairman of the Managing Committee, he must be held to be vicariously liable for any order given or misappropriation committed by the other accused. The High Court, however, has not referred to the concept of vicarious liability but the findings of the High Court seem to indicate that this was the central idea in the mind of the High Court for convicting the appellant. In a criminal case of such a serious nature mens rea cannot be excluded and once the charge of conspiracy failed the onus lay on the prosecution to prove affirmatively that the appellant was directly and personally connected with acts or omissions pertaining to Items 2, 3 and 4. It is conceded by Mr Phadke that no such direct evidence is forthcoming and he tried to argue that as the appellant was Chairman of the Sangh and used to sign papers and approve various tenders, even as a matter of routine he should have acted with care and caution and his negligence would be a positive proof of his intention to commit the offence. We are however unable to agree with this somewhat broad statement of the law. In the absence of a charge of conspiracy the mere fact that the appellant happened to be the Chairman of the Committee would not make him criminally liable in a vicarious sense for items 2 to 4. There is no evidence either direct or circumstantial to show that apart from approving the purchase of fertilisers he knew that the firms from which the fertilisers were purchased did not exist. Similar is the case with the other two items. Indeed, if the Chairman was to be made liable then all members of the Committee viz. Tehsildar and other nominated members, would be equally liable because all of them participated in the deliberations of the meetings of the Committee, a conclusion which has not even been suggested by the prosecution. As Chairman of the Sangh the appellant had to deal with a large variety of matters and it would not be humanly possible for him to analyse and go into the details of every small matter in order to find out whether there has

been any criminal breach of trust. In fact, the hero of the entire show seems to be A-3 who had so stage-managed the drama as to shield his guilt and bring the appellant in the forefront. But that by itself would not be conclusive evidence against the appellant. There is nothing to show that A-3 had either directly or indirectly informed the appellant regarding the illegal purchase of fertilisers or the missing of the five oil engines which came to light much later during the course of the audit. Far from proving the intention the prosecution has failed to prove that the appellant had any knowledge of defalcation of Items 2 to 4. In fact, so far as item 3 is concerned, even Mr Phadke conceded that there is no direct evidence to connect the appellant."

2. ***Sham Sunder v. State of Haryana, AIR 1989 SC 1982***

"9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

3. ***Hira Lal Hari Lal Bhagwati v. CBI, AIR 2003 SC 2545***

"30. In our view, under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field i.e. the Customs Act, 1962 the appellants have been thereinunder wholly discharged and the GCS granted immunity from prosecution."

4. ***Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668***

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156 (3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any

provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

5. ***R. Kalyani v. Janak C. Mehta, 2009 AIR SCW 1836***

"32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created."

6. ***Sharon Michael v. State of T.N., AIR 2008 SC (Supp) 688***

"16. The first information report contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the appellants in relation to execution of the contract. No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant Company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the Company."

7. ***Keki Hormusji Gharda v. Mehervan Rustom Irani, AIR 2009 SC 2594***

"16. We have noticed hereinbefore that despite of the said road being under construction, the first respondent went to the police station thrice. He, therefore, was not obstructed from going to the police station. In fact, a firm action had been taken by the authorities. The workers were asked not to do any work on the road. We, therefore, fail to appreciate that how, in a situation of this nature, the Managing Director and the Directors of the Company as also the Architect can be said to have committed an offence under Section 341 IPC.

17. The Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company.

18. In ***Pepsi Foods Ltd. v. Special Judicial Magistrate, AIR 1998 SC 128*** this Court held as under:

> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

19. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the complaint petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the court, still the High Court would refuse to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure."

Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (See ***SWIL Ltd. v. State of Delhi, AIR 2001 SC 2747***). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See ***Union of India v. Prakash P. Hinduja and another, AIR 2003 SC 2612***). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.

③

89. INDIAN PENAL CODE, 1860 – Section 300 Exception 1 and Section 302

(i) When exception 1 of Section 300 IPC is attracted? Held, where the following ingredients of exception 1 are satisfied then the same is attracted:

a. The deceased must have given provocation to the accused;

b. The provocation so given must have been grave;

c. The provocation given by the deceased must have been sudden;

d. The offender by reason of such grave and sudden provocation must have been deprived of his power of self-control; and

e. The offender must have killed the deceased or any other person by mistake or accident during the continuance of the deprivation of the power of self-control.

(ii) Grave provocation within the meaning of Exception 1 of Section 300 IPC is a provocation where judgment and reason take leave of the offender and violent passion takes over – "Provocation" has been defined by Oxford Dictionary, as an action, insult, etc. that is likely to provoke physical retaliation – The term "grave" only adds an element of virulent intensity to what is otherwise likely to provoke retaliation.

भारतीय दण्ड संहिता, 1860 – धारा 300 अपवाद एक और धारा 302

(i) धारा 300 का अपवाद एक कब आकर्षित होता है ? अभिनिर्धारित किया गया, जब अपवाद एक के निम्नलिखित घटक संतुष्ट होते है तब वह आकर्षित होता है :

ए. मृतक द्वारा अभियुक्त को प्रकोपन दिया जाना चाहिए।

बी. दिया गया प्रकोपन गंभीर होना चाहिए।

सी. मृतक द्वारा दिया गया प्रकोपन अचानक होना चाहिए।

डी. ऐसे गंभीर और अचानक प्रकोपन द्वारा अभियुक्त उसके स्वयं नियंत्रण की शक्ति से वंचित हो चुका हो, और

इ. अभियुक्त द्वारा आहत् को या किसी अन्य व्यक्ति को त्रुटिवश या दुर्घटनावश मार दिया जाना चाहिए जो कि लगातार उसके स्वयं नियंत्रण की शक्ति से वंचित होने के कारण किया जाना चाहिए।

(ii) धारा 300 के अपवाद एक के अर्थ में गंभीर प्रकोपन ऐसा प्रकोपन होता है जहां अभियुक्त की निर्णय और तर्क या विवेक बुद्धि समाप्त हो जाती है और धैर्य समाप्त हो जाता है। ''प्रकोपन'' को ऑक्सफोर्ड डिक्शनरी में एक क्रिया, अपमान आदि के रूप में परिभाषित किया गया है। प्रकोपन शारीरिक प्रतिशोध के समान है। शब्द गंभीर केवल कटुता के तत्व की तीव्रता को बढ़ा देता है।

B.D. Khunte v. Union of India and others

Judgment dated 30.10.2014 passed by the Supreme Court in Criminal Appeal No. 242 of 2012, reported in (2015) 1 SCC 286 (3-Judge Bench)

Extracts from the judgment:

In ***Holmes v. Director of Public Prosecutions, 1946 AC 588,*** provocation has been explained as under:

> "The whole doctrine relating to provocation depends on the fact that is causes, or may cause, a sudden and temporary loss of self-control, whereby malice, which is the formation of an intention to kill or to inflict grievous bodily harm, is negative. Consequently, where the provocation inspires an actual intention to kill, or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies."

This Court was in ***K.M. Nanavati v. State of Maharashtra, AIR 1962 SC 605*** dealing with a somewhat similar question in case the wife of the accused had confessed her illicit intimacy with the deceased when the deceased was not present. The prosecution case as proved at the trial was that after the confession of the wife, the accused had driven her and the children to a cinema and left them there, gone to his ship to take a revolver loaded with six rounds and driven his car to the office of the deceased and then to his flat, gone to his bedroom and shot him dead. This Court held that between 1.30 p.m. when the deceased left his house and 4.20 p.m. when the murder took place there was a gap of three hours which was sufficient time for him to regain his self-control even if he had not regained it earlier. The following passage from the decision is significant when it deals with the expression "grave" within the meaning of Exception 1 to Section 300 IPC:

"86. Bearing these principles in mind, let us look at the facts of this case. When Sylvia confessed to her husband that she had illicit intimacy with Ahuja, the latter was not present. We will assume that he had momentarily lost his self-control. But, if his version is true – for the purpose of this argument we shall accept that what he has said is true – it shows that he was only thinking of the future of his wife and children and also of asking for an explanation from Ahuja for his conduct. This attitude of the accused clearly indicates that he had not only regained his self-control, but, on the other hand, was planning for the future. Then he drove his wife and children to a cinema, left them there, went to his ship, took a revolver on a false pretext, loaded it with six rounds, did some official business there, and drove his car to the office of Ahuja and then to his flat, went straight to the bedroom of Ahuja and shot him dead. Between 1.30 p.m., when he left his house, and 4.20 p.m.., when the murder took place, three hours had elapsed, and therefore there was sufficient time for him to regain his self-control, even if he had not regained it earlier. On the other hand, his conduct clearly shows that the murder was a deliberate and calculated one. Even if any conversation took place between the accused and the deceased in the manner described by the accused – though we do not believe that – it does not affect the question, for the accused entered the bedroom of the deceased to shoot him. The mere fact that before the shooting the accused abused the deceased and the abuse provoked an equally abusive reply could not conceivably be a provocation for the murder. We, therefore, hold that the facts of the case do not attract the provisions of exception 1 to Section 300 of the Penal Code."

•

90. INDIAN PENAL CODE, 1860 – Section 302

EVIDENCE ACT, 1872 – Sections 3 and 32

(i) Death – Suicide or homicide – Burn injury case – Injuries found on neck and below the body upto legs – If one is to pour kerosene on oneself, it is normal human conduct to pour it over the head and in any case, not on the face by sparing the head – Theory of suicide unacceptable.

(ii) Setting afire another person after pouring kerosene – It is an act which is likely to cause death of such person – Offence of murder is complete – Conviction held, proper.

भारतीय दण्ड संहिता, 1860 – धारा 302

साक्ष्य अधिनियम, 1872 – धारा 3 और 32

(i) मृत्यु – आत्महत्या या मानव वध – जलने से आयी चोट का प्रकरण – चोटे गर्दन और शरीर के निचले भाग में टांगो तक पाई गई – यदि कोई स्वयं पर केरोसिन उड़ेलता है तो यह सामान्य मानवीय आचरण है वह सिर से उड़ेलता और किसी भी दशा में सिर को बचाते हुये चेहरे पर या शरीर के अन्य भाग पर नहीं उड़ेलता है – आत्महत्या की कहानी स्वीकार योग्य नहीं पाई गई।

(ii) अन्य व्यक्ति पर केरोसिन उड़ेलने के बाद आग लगाना – यह ऐसा कृत्य है जिससे उस व्यक्ति की मृत्यु कारित होगी – हत्या का अपराध पूर्ण हो जाता है – दोषसिद्धि उचित पाई गई।

Mallella Shyamsunder v. State of A.P.

Judgment dated 29.10.2014 passed by the Supreme Court in Criminal Appeal No. 1381of 2011, reported in (2015) 2 SCC 486

Extracts from the judgment:

The post-mortem report refers to the following injuries:

> "9. Injuries: Ante mortem dermo epidermal burns present over lower half of face, neck, chest, upper third of abdomen, both upper extremities, both thighs, part of back of both legs and part of back of trunk amounting to 70% of total body surface area. Skin peeled off at many places over burnt area and peeled off areas are red in colour.
>
> Part of the burns are infected."

It is very significant to note that the antemortem dermo epidermal burns are over lower half of face, neck and then down the body to the legs. If one is to pour kerosene on oneself, it is the normal human conduct to 7 Page 8 pour it over the head, and in any case, not to pour it on the face sparing the head.

As rightly held by the Sessions Court and the High Court, setting fire on another person after pouring kerosene is an act likely to cause death of such person. It is a matter of simple and common knowledge that in the process, the victim is likely to suffer death on account of the burns. Therefore, the offence of 8 Page 9 murder is complete and, hence, we have no hesitation in our mind in reaffirming the conviction of the appellant under Section 302 of IPC.

•

***91. INDIAN PENAL CODE, 1860 – Section 302**

Murder trial – Circumstantial evidence – Theory of last seen together – Deceased was last seen with the accused – His dead body was found soon thereafter – Certain articles belonging to the deceased were recovered from the custody of accused and his uncle at their instance – Conviction held proper.

भारतीय दण्ड संहिता, 1860 – धारा 302

हत्या का विचारण – परिस्थिति जन्य साक्ष्य – अंतिम बार साथ देखे जाने का सिद्धांत – मृतक अभियुक्त के साथ अंतिम बार देखा गया – उसके ठीक पश्चात् उसका मृत शरीर पाया गया – मृतक से संबंधित कुछ वस्तुएँ अभियुक्त और उसके चाचा से उनकी निशादेही से बरामद हुई – दोषसिद्धि उचित पायी गई।

Raghuvendra v. State of M.P.

Judgment dated 07.01.2015 passed by the Supreme Court in Criminal Appeal No. 2371 of 2010, reported in AIR 2015 SC 704

•

***92. INDIAN PENAL CODE, 1860 – Sections 302 and 376 (2) (f)**
EVIDENCE ACT, 1872 – Sections 3 and 27
CRIMINAL PROCEDURE CODE, 1973 – Section 366

(i) Circumstantial evidence, tests thereof:

(a) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(b) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(c) the circumstances, taken cumulatively, should form a complete chain so there is no escape from the conclusion that the crime was committed by the accused and none else.

(ii) Circumstantial evidence – Cautious approach, necessity of – Where the entire prosecution case hinges on circumstantial evidence, the Court must adopt cautious approach for basing the conviction on circumstantial evidence and unless the prosecution evidence points irresistibly to the guilt of the accused, it would not be sound and safe to base the conviction.

(iii) Gang rape and murder – Circumstantial evidence, appreciation of.

Facts of the case:

The deceased aged about 4 years did not return to her home who had come out of her house to see a marriage procession – Next day her dead body was found in a *nullah* – During investigation, the police arrested the three accused persons on suspicion of being involved in the crime – In the post mortem, death was found to be caused by asphyxia – There was head injury caused by hard and blunt object which was found to be sufficient to cause death in ordinary course of nature – Evidence of sexual assault were also present – Death found to be homicidal in nature – There were two circumstantial evidence proved against the accused person viz (a) DNA report and (b) the seizure of articles from the spot – Trial Court

convicted the three accused persons and made criminal reference for confirmation of death sentence – Held, the prosecution has brought out two very important circumstances against the accused persons leading to the inevitable conclusion of guilt of the accused persons – Appeal against conviction and sentence were dismissed.

Sentencing – Death sentence, imposition of.

Allowing the reference, it was held that on the one side there are the rights of the accused to life and on the other the rights of women and maidens and infants in society to lead normal healthy lives – On balance we find that the accused persons by their extremely depraved and demonic acts against an infant of three or four years, have forfeited the right to be treated softly or lightly – The circumstances already discussed, cry for the heaviest sentence against the accused persons – So long as the death sentence remains on the statute book, it would, in our opinion, be a travesty of justice to award lesser sentence of life to the accused – Hence, we would confirm death sentence awarded to each of the accused.

भारतीय दण्ड संहिता, 1860 – धारा 302 और 376 (2) (एफ)

साक्ष्य अधिनियम, 1872 – धारा 3 और 27

दण्ड प्रक्रिया संहिता, 1973 – धारा 366

(i) परिस्थिति जन्य साक्ष्य का परीक्षण कैसे किया जाये स्पष्ट किया गया।

(ii) परिस्थिति जन्य साक्ष्य के बारे में सावधानी पूर्ण रूख की आवश्यकता बतलाई गई।

(iii) सामूहिक बलात्संग और हत्या – परिस्थिति जन्य साक्ष्य का मूल्यांकन मृत्यु दण्ड संबंधित परिस्थितियाँ बतलाई गई।

Jitendra @ Jeetu and others v. State of M.P.

Judgment dated 21.08.2014 passed by the High Court in Criminal Appeal No. 596 of 2013, reported in 2014 (5) MPHT 45 (DB)

③

***93. INDIAN PENAL CODE, 1860 – Section 302 r/w/s 147, 148 and 149**
EVIDENCE ACT, 1872 – Sections 3 and 134

A Appreciation of evidence :

(i) Interested/related witnesses – Evidence of interested witness cannot be disbelieved on the ground that they are related or interested witness – Close relationship on the contrary guarantees that they would be most reluctant to spare the real culprits and falsely implicate innocent ones.

(ii) Minor discrepancies on trivial matters, Effect of – The witnesses are not expected to describe the incident in graphic detail and with such precision as to state which member and in what manner participated in the commission

of offence – Discrepancies which are not major and significant, do not dilute credibility of such witnesses.

(iii) Examination of all the eye witnesses, whether necessary – There exists no law that the prosecution must examine all the eye witnesses – It is for the prosecution to decide as to how many and who should be examined as their witnesses for proving a case.

B. *Unlawful assembly* – Necessity for constitution of – Some overt act on the part of each member, exception of – Observation made in the case of *Baladin and others v. State of Uttar Pradesh, AIR 1956 SC 181* (4-Judge Bench) that mere presence in an assembly does not make a person, who is present as a member of the unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of any unlawful assembly or unless the case falls under section 142 IPC, cannot be treated as laying down an unqualified proposition of law – Knowing that an assembly is an unlawful assembly if a person continues to remain present there, not because of idle curiosity but continues to stay there in prosecution of common object of the unlawful assembly, he is vicariously liable for the acts committed by the unlawful assembly.

भारतीय दण्ड संहिता, 1860 – धारा 302 सहपठित धारा 147, 148 और 149

साक्ष्य अधिनियम, 1872 – धारा 3 और 134

ए. साक्ष्य का मूल्यांकन

(i) हितबद्ध/रिश्तेदार गवाह – किसी साक्षी के साक्ष्य पर उसके रिश्तेदार या हितबद्ध गवाह होने के आधार पर अविश्वास नहीं किया जा सकता – इसके विपरीत निकट का रिश्तेदार वास्तविक अपराधी को बचाने और किसी निर्दोष को लिप्त करने में अनिच्छुक होता है।

(ii) तुच्छ बातों के बारे में छोटे विरोधाभाषों का प्रभाव – विरोधाभाष जो बड़े न हो और महत्वपूर्ण न हो वे गवाह की विश्वसनीयता तो कम नहीं करते।

(iii) सभी प्रत्यक्ष साक्षीगण का परीक्षण करवाने की आवश्यकता न होना – ऐसा कोई कानून नहीं है कि अभियोजन को सभी प्रत्यक्ष साक्षीगण का परीक्षण करवाना चाहिये – यह अभियोजन पर है कि वह यह निश्चित करे की कितने और कौन से गवाह अपना प्रकरण प्रमाणित करने के लिए करवाना है।

बी. अवैध सभी – प्रत्येक सदस्य का कुछ कृत्य होने की आवश्यकता का अपवाद – समझाया गया।

Nand Kumar and others v. State of Chhattisgarh and others

Judgment dated 31.10.2014 passed by the High Court in Criminal Appeal No. 906 of 2012, reported in 2014 (5) MPHT 365

•

94. INDIAN PENAL CODE, 1860 – Sections 304-B, 306 and 498-A
EVIDENCE ACT, 1872 – Section 113-B

(i) Dowry death within one year of marriage – Appreciation of evidence – Mentioning in suicide note that 'nobody be held responsible' but also stating that all the doors were closed for her – She had no other way available (expect to leave the world) – When a young married girl finds herself in helpless situation and decides to end her life, in absence of any other circumstance, it is natural to infer that she was unhappy in her matrimonial home – A suicide note cannot be treated as conclusive of there being no one responsible for the situation when evidence on record categorically points to harassment for dowry.

(ii) Mother and brother were acquitted by the High Court – Claim for parity by husband – The husband is not only primarily responsible for safety of his wife, he is expected to be conversant with her state of mind more than any other relative – If the wife commits suicide by setting herself on fire, preceded by dissatisfaction of the husband and his family with dowry, the inference of harassment against the husband may be patent – Responsibility of the husband towards his wife is qualitatively different and higher as against his other relatives – So the case of the husband stands on a different footing.

भारतीय दण्ड संहिता, 1860 – धारा 304–बी, 306 और 498–ए

साक्ष्य अधिनियम, 1872 – धारा 113–बी

(i) विवाह के एक वर्ष के भीतर दहेज मृत्यु – साक्ष्य का मूल्यांकन – आत्महत्या के लेख में ''किसी को उत्तरदायी नहीं माना जाये'' दर्ज था – किन्तु उसने यह भी लिखा था कि उसके लिये सभी दरवाजे बंद हो चुके थे – उसके पास अन्य कोई रास्ता (केवल संसार को छोड़ने के अलावा) उपलब्ध नहीं था – जब एक युवा विवाहित लड़की अपने आपको असहाय स्थिति में पाती है और अपना जीवन समाप्त करने का निर्णय करती है, किसी अन्य परिस्थिति के अभाव में, यह स्वाभाविक रूप से अनुमान लगाया जा सकता है कि वह उसके ससुराल में नाखुश थी। एक आत्महत्या का लेख निश्चायक साक्ष्य नहीं माना जा सकता क्योंकि उसमें किसी को भी उत्तरदायी न मानने का तथ्य लिखा है जहां दहेज के लिये उसे तंग करने के बिन्दु पर सुस्पष्ट साक्ष्य हो।

(ii) उच्च न्यायालय द्वारा माता और भाई को दोषमुक्त किया गया है – पति द्वारा समानता का दावा – पति प्राथमिक रूप से न केवल उसकी पत्नी की सुरक्षा के लिये उत्तरदायी होता है बल्कि उससे यह आशा की जाती है कि वह पत्नी की मानसिक दशा से अन्य रिश्तेदारों की तुलना में अधिक परिचित होता है – यदि पत्नी स्वयं को आग लगाकर आत्महत्या करती है, जो की पति और उसके परिवार के सदस्यों के दहेज के कारण असंतुष्ट होने से किया जाता है ऐसे में पति के विरूद्ध तंग करने का अनुमान स्पष्ट होता है – पति का उसकी पत्नी के प्रति दायित्व गुणात्मक रूप से अन्य रिश्तेदारों की तुलना में अधिक होता है – अतः पति का मामला भिन्न स्तर का होता है।

Naresh Kumar v. State of Haryana and others

Judgment dated 14.11.2014 passed by the Supreme Court in Criminal Appeal No. 1266 of 2013, reported in (2015) 1 SCC 797

Extracts from the judgment:

We may now refer to the suicide note. It, inter alia, states:

> "All the doors are closed for me. Besides this, no other way is available to me and I adopted the way which I liked."

The tenor of the suicide note clearly shows that the deceased was in helpless condition and she found no other way to come out of the situation. The suicide note cannot be taken to be encyclopaedia of the entire situation in which the deceased was placed. It is not possible to infer from the said note that the deceased was happy in her matrimonial home. Mere mention that nobody may be held responsible, while also stating that all the doors were closed for her and she had no other way available (except to leave the world), in not enough to exonerate the appellant. When a young married girl finds herself in helpless situation and decides to end her life, in absence of any other circumstance, it is natural to infer that she was unhappy in her matrimonial home. A suicide note cannot be treated as conclusive of there being no one responsible for the situation when evidence on record categorically points to harassment for dowry.

③

***95. INDIAN PENAL CODE, 1860 – Sections 363 and 376**

CRIMINAL PROCEDURE CODE, 1973 – Sections 164 and 439

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 6 and 17

Statements of two prosecutrix recorded under section 164 Cr. P.C. for bail, use of – There are contradictions in the statements of both the prosecutrix regarding the place of occurrence – It can be used only for corroboration or contradiction purpose during trial – Application under section 439 Cr.P.C. rejected.

भारतीय दण्ड संहिता, 1860 – धारा 363 और 376

दण्ड प्रक्रिया संहिता, 1973 – धारा 164 और 439

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धारा 6 और 17

दो अभियोक्त्रियों के धारा 164 दण्ड प्रक्रिया संहिता के अंतर्गत अभिलिखित कथनों का जमानत के लिये उपयोग – दोनों अभियोक्त्रियों के कथनों में घटना के स्थान के बारे में विरोधाभास है – इसे (धारा 164 द.प्र.सं. के कथन) पुष्टि या खण्डन के उद्देश्य से विचारण के समय उपयोग में लाया जा सकता है – धारा 439 द.प्र.सं. का आवेदन खारिज किया।

Sachin v. State of H.P.

Judgment dated 12.12.2014 passed by the Himachal Pradesh High Court in Criminal MP (M) No. 1362 of 2014, reported in 2015 Cri.L.J. (NOC) 157 (H.P.)

•

96. INDIAN PENAL CODE, 1860 – Section 376

(i) Directions issued in *Delhi Domestic Working Women's Forum v. Union of India and others, (1995) 1 SCC 14* reiterated.

(ii) Sexual assault cases, how to be dealt with? Hon'ble the Apex Court made some important observations – The victim of rape should generally be examined by a female doctor – She should be provided the help of a psychiatrist – Medical report should be prepared expeditiously and the doctor should examine the victim of rape thoroughly and give his/her opinion with all possible angles e.g. opinion regarding the age taking into consideration the number of teeth, secondary sex characters and radiological test, etc. – The Investigating Officer must ensure that the victim of rape should be handled carefully by lady police official/officer, depending upon the availability of such official/officer – The victim should be sent for medical examination at the earliest and her statement should be recorded by the I.O. in the presence of her family members making the victim comfortable except in incest cases – Investigation should be completed at the earliest to avoid the bail to the accused on technicalities as provided under Section 167 Cr.P.C. and final report should be submitted under Section 173 Cr.P.C. at the earliest.

भारतीय दण्ड संहिता, 1860 – धारा 376

(i) न्याय दृष्टांत *देहली डोमेस्टिक वर्किंग विमेन्स फोरम विरूद्ध यूनियन ऑफ इंडिया और अन्य, (1995) 1 एस.सी.सी. 14* में दिये गये निर्देश पुनः बतलाये गये।

(ii) लैंगिक हमले के मामलों को किस तरह लिया जाये – माननीय सर्वोच्च न्यायालय ने कुछ महत्वपूर्ण टिप्पणियाँ की – बलात्कार की पीड़ित का परीक्षण सामान्यतः महिला चिकित्सक द्वारा किया जाना चाहिये – उसे किसी मनोवैज्ञानिक की सहायता उपलब्ध कराना चाहिये – चिकित्सा प्रतिवेदन शीघ्र तैयार करना चाहिए और डॉक्टर को आहत् का विस्तार से परीक्षण करने के बाद अपनी राय देना चाहिए और सभी दृष्टिकोण से राय देना चाहिए जैसे उम्र के बारे में राय, दांतों की संख्या, द्वितीयक लैंगिक विशिष्टियाँ और रेडियो लॉजिकल परीक्षण आदि; अनुसंधान अधिकारी को यह सुनिश्चित करना चाहिये की बलात्कार से पीड़ित महिला के साथ सावधानी पूर्वक एक महिला पुलिस अधिकारी द्वारा हेंडल करना चाहिए, यदि महिला पुलिस अधिकारी उपलब्ध हो। आहत को शीघ्रता से मेडिकल परीक्षण के लिये भेजना चाहिए और उसके कथन अन्वेषण अधिकारी द्वारा उसके परिवार के सदस्यों के उपस्थिति में लेना चाहिए। अनुसंधान शीघ्रता से पूर्ण कर लेना चाहिए ताकि अभियुक्त को तकनीकी आधारों पर धारा 167 द.प्र.सं. के तहत जमानत न मिल जाये अंतिम प्रतिवेदन भी शीघ्र प्रस्तुत करना चाहिए।

Dilip v. State of Madhya Pradesh

Judgment dated 16.04.2013 passed by the Supreme Court in Criminal Appeal No. 1156 of 2010, reported in I.L.R. (2014) M.P. 1465 (SC)

Extracts from the judgment:

We would like to express our anguish that the prosecution could have been more careful and the trial Court could have shown more sensitivity towards the case considering its facts and circumstances.

In ***Delhi Domestic Working Women's Forum v. Union of India and others, (1995) 1 SCC 14,*** this Court found that in the cases of rape, the investigating agency as well as the Subordinate courts sometimes adopt totally a indifferent attitude towards the prosecutrix and therefore, this court issued following directions in order to render assistance to the victims of rape:

> "(1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape."

•

***97. INDIAN PENAL CODE, 1860 – Sections 376, 377, 417 and 420**
CRIMINAL PROCEDURE CODE, 1973 – Section 53-A
Medical examination of accused during investigation – Prosecution filed application under section 53-A Cr.P.C. opposed by accused – According to prosecution, earlier examination was conducted to find out whether there is any mark of violence on the accused – Held, it is the prime duty of the accused to co-operate with the

investigating agency – The ground of delayed medical examination can be raised at the time of trial.

भारतीय दण्ड संहिता, 1860 – धारा 376, 377, 417 और 420

दण्ड प्रक्रिया संहिता, 1973 – धारा 53-ए

अनुसंधान के दौरान अभियुक्त का चिकित्सा परीक्षण – अभियोजन ने धारा 53ए द.प्र.सं. के अधीन आवेदन प्रस्तुत किया – अभियुक्त ने उसका विरोध किया – अभियोजन के अनुसार पूर्व में अभियुक्त का परीक्षण यह ज्ञात करने के लिये करवाया गया था कि अभियुक्त पर हिंसा के कोई चिन्ह तो नहीं है – अभिनिर्धारित किया गया, यह अभियुक्त का सर्वोच्च कर्तव्य है कि वह अनुसंधान एजेंसी के साथ सहयोग करे, विलंबित चिकित्सा परीक्षण का आधार विचारण के समय उठाया जा सकता है।

Siva Vallabhaneni v. State of Karnataka and another

Judgment dated 03.09.2014 passed by the Supreme Court in SLP (Crl.) No. 5844 of 2014, reported in (2015) 2 SCC 90

•

***98. JUDICIAL SERVICE PAY REVISION, PENSION AND OTHER RETIREMENT BENEFITS RULES, 2003 – Rules 9 and 11-A**

CONSTITUTION OF INDIA – Articles 14, 15 and 39 (d)

(i) Labour judiciary – Salary and dearness allowance, payment of – Presiding Officers of the Labour Court and the Judges of the Industrial Court are entitled to the pay scale at par with the Civil Judges and District Judges as well as in the matter of pay fixation also – Further held, members of the Labour Judiciary are entitled to dearness allowance at the same rate as that of serving judicial officer.

(ii) Petrol allowance and other benefits, payment of – Held, these benefits are given to a judicial officer not on the basis of statutory rules but based on executive instructions and as this was a decision based on the policy of executive discretion of the State Government, parity in this regard cannot be extended to the members of the Labour Judiciary.

न्यायिक सेवा वेतन पुनरीक्षण, पेंशन और अन्य सेवानिवृत्ति लाभ नियम 2003 – नियम 9 और 11-ए

भारत का संविधान – अनुच्छेद 14, 15 और 39 (डी)

(i) श्रम न्याय पालिका – वेतन और मंहगाई भत्ता का भुगतान – श्रम न्यायालय के पीठासीन अधिकारी और औद्योगिक न्यायालय के न्यायाधीश भी सिविल जज और जिला जज के समान वेतन पाने के अधिकारी है और उसी अनुसार उनका वेतन निर्धारण करवाने के अधिकारी है श्रम न्याय पालिका के सदस्य भी मंहगाई भत्ता अन्य न्यायिक अधिकारियों के समान पाने के अधिकारी है।

(ii) पेट्रोल एलाउंस और अन्य सुविधाओं का भुगतान किया जाना – अभिनिर्धारित किया गया, ये लाभ न्यायिक अधिकारी को वैधानिक नियमों के आधार पर नहीं दिये जाते है बल्कि प्रशासकीय निर्देश के आधार पर दिये जाते है इनके संबंध में श्रम न्याय पालिका के सदस्यों को समानता के आधार पर भुगतान नहीं किया जा सकता है।

State of M.P. and others v. Satish Shrivastava

Order dated 14.07.2014 passed by the High Court in Writ Appeal No. 511 of 2014, reported in 2014 (5) MPHT 133 (DB)

•

99. LAND ACQUISITION ACT, 1894 – Section 23

(i) Assessment of compensation – Deductions for development of land – It can sway back and forth – Can only be determined after carefully considering factors such as size of land, nearness to developed area, etc.

(ii) Determination of market value of land – Comparative sale method – Sale instances in relation to small piece of land situated near the acquired land can be considered, subject to:-

(a) Reasonable deductions for developmental costs that will be incurred in the future and,

(b) The evidence that these lands can be compared to the acquired land in terms of its vicinity and the comparable benefits and advantages.

(iii) In this case sixty percent deduction on market value of acquired land for development expenses allowed.

भूमि अधिग्रहण अधिनियम, 1894 – धारा 23

(i) प्रतिकर निर्धारण – भूमि के विकास के लिये कटौतियाँ – इनका निर्धारण कुछ कारकों जैसे भूमि का आकार – विकसित क्षेत्र से समीपता आदि पर सावधानी पूर्वक विचार करके किया जा सकता है।

(ii) भूमि का बाजार मूल्य निर्धारित करना – तुलनात्मक विक्रय विधि – अधिग्रहित भूमि के पास की कम आकार की भूमि के विक्रय उदाहरण भी विचार में लिये जा सकते है लेकिन :–

(ए) भविष्य में लगने वाला विकास खर्च के लिये युक्तियुक्त कटौती,

(बी) ऐसा साक्ष्य होना चाहिए की उस भूमि की तुलना अधिग्रहित भूमि से की जा सकती है क्योंकि वह अधिग्रहित भूमि से निकट है और उसके लाभ अधिग्रहित भूमि के समान है इसलिये तुलना के योग्य है।

(iii) इस मामले में अधिग्रहित भूमि के बाजार मूल्य में 60 प्रतिशत कटौती विकास खर्च के लिये मानी गई।

Nirmal Singh etc. v. State of Haryana

Judgment dated 26.09.2014 passed by the Supreme Court in Civil Appeal No. 3982 of 2011, reported in AIR 2015 SC 453

Extracts from the judgment:

Further, this Court has discussed the basis on which deductions on the market value should be made for the development of land, keeping in mind various factors that influence it. In the case of ***Viluben Jhalejar Contractor v. State of Gujarat, AIR 2005 SC 2214*** wherein this Court held thus:-

> "20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

	Positive factors	Negative factors
1	Smallness of size	Largeness of area
2	Proximity to a road	Situation in the interior at a distance from the road
3	Frontage on a road	Narrow strip of land with very small frontage compared to depth
4	Nearness to developed area	Lower level requiring the depressed portion to be filled up
5	Regular shape	Remoteness from developed locality
6	Level vis-à-vis land under acquisition	Some special disadvantageous factors which would deter a purchaser
7	Special value for an owner of an adjoining property to whom it may have some very special advantage	

> 21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price."

Thus, when it comes to deductions for development of land, it can sway back and forth and can only be determined after carefully considering factors such as size of land, nearness to developed area, etc. as discussed in the above case.

Sale instances in relation to small pieces of land situated near the acquired land can be considered, subject to (i) reasonable deductions for developmental costs that will be incurred in the future as per the cases referred to supra and (ii) the evidence that these lands can be compared to the acquired land in terms of its vicinity and the comparable benefits and advantages.

Before we determine the extent of deductions to be allowed on the market value of the acquired land, we must take note of the following details; firstly, the acquired land is mostly agricultural in nature and vacant at the moment; secondly, the determination of the market value of the acquired land based on the sale instances in relation to small pieces of land situated near the acquired land as produced by the land owners; thirdly, the well settled principle by this Court in a catena of cases that larger portions of land incur higher developmental costs compared to smaller portions of land. Therefore, we are of the opinion based on the facts and circumstances of the cases on hand and keeping in mind the legal principles laid down in the cases referred to supra, to allow 60% deduction on the market value of the acquired land towards developmental expenses.

The following table depicts the relevant sale deeds as per the date of notification under Section 4 of the Act that are produced as evidence by the land owners, followed by the deduction towards developmental expenses and the value per acre of the acquired land:

Ex.	Date	Area sold	Value Per acre(Rs.)
P4	17.5.2001	200 sq. yards	48,40,000
P12	20.6.2001	95 sq. yards	33,88,000
P13	11.1.2001	5.37 marlas	24,13,407
P14	11.1.2001	80 sq. yards	24,20,000

Average market value per acre	32,65,351
Deductions for developmental expenses	60%
VALUE PER ACRE	13,06,140

•

100. MOTOR VEHICLES ACT, 1988 – Sections 2 (30), 50 (1) (a) (i) and 168
MOTOR VEHICLES RULES, 1989 (CENTRAL) – Rule 55

Who is owner for the purpose of section 168 M.V. Act, 1988? Held, a person who is the registered owner of a motor vehicle can be termed as 'owner' for the purpose of section 168 of the M.V. Act unless the other party is in a position to establish that it is a case of hire-purchase agreement, lease agreement or hypothecation agreement and in that case, the person in possession of vehicle may also be called as 'owner'.

मोटरयान अधिनियम, 1988 – धारा 2 (30), 50 (1) (ए) (i) और 168
केन्द्रीय मोटरयान नियम, 1989 – नियम 55

धारा 168 मोटरयान अधिनियम, 1988 के उद्देश्य से वाहन स्वामी कौन है ? अभिनिर्धारित किया गया, एक व्यक्ति जो वाहन का पंजीकृत स्वामी या रजिस्टर्ड ओनर है उसे धारा 168 मोटरयान अधिनियम के उद्देश्य से स्वामी कहा जाता है जब तक की दूसरा पक्ष इस स्थिति में न हो की वह यह स्थापित कर दे की यह हायर परचेस अनुबंध, लीज अनुबंध या हाइपोथिकेशन अनुबंध का मामला है और उस दशा में वह व्यक्ति जो वाहन के आधिपत्य में है वह भी स्वामी कहलाता है।

Bharat Singh and another v. Madankunwar and others

Judgment dated 10.04.2013 passed by the High Court of M.P. in M.A. No. 734 of 2009, reported in 2015 ACJ 43

[Note :- Also see *HDFC Bank Ltd. v. Kumari Reshma, AIR 2015 SC 290* (3-Judge Bench) published in this issue as Note No. 101]

Extracts from the judgment:

In view of the foregoing discussion, the judgment of Division Bench of this court, relied upon by learned counsel for respondent No.7 in the case ***Brijlal Khilwani v. Sohan, 2007 ACJ 1666 (MP)***, requires consideration. In the said case, this court has considered the definition of owner under the old Motor Vehicles Act as well as under the new Motor Vehicles Act and thereafter because under an agreement the possession was delivered and the instalments were required to be paid and as per the terms of the agreement after payment of such instalments the vehicle was required to be registered, therefore, the transferee was accepted as owner of the vehicle, however, on facts, the said case is distinguishable. Similarly, the case of learned single Judge in the case of ***Madhav Singh v. Ratna, 2011 ACJ 577*** (MP) judgment passed in ***Pankaj v. Rajni M.A. No. 78 of 2013;*** decided on 17.01.2013, is of no help in the light of the recent pronouncement of the Apex Court in the case of ***Pushpa v. Shakuntala, 2011 ACJ 705 (SC).*** Thus, the argument of learned counsel, relying upon the aforesaid judgment to accept the son of the appellants as owner though he was not the registered owner though he was not the registered owner in R.T.O. cannot be accepted and is hereby repelled. In view of foregoing discussion the only inescapable conclusion that can be arrived at is that a person who is the

registered owner of a motor vehicle can be termed as 'owner' for the purpose of section 168 of the motor vehicles Act unless the other party is in a position to establish that it is a case of hire-purchase agreement, lease agreement or hypothecation agreement, lease agreement or hypothecation agreement and on its proof, the person in possession of vehicle may also be called as owner.

•

101. MOTOR VEHICLES ACT, 1988 – Sections 2 (30) and 168

(i) Who is the owner of a motor vehicle especially in case of hire-purchase agreement? Held, a person in whose name a motor vehicle stands registered is the owner of the vehicle and in case of hire-purchase agreement or an agreement of hypothecation, the person in possession of the vehicle under the agreement is the owner.

(ii) Who is liable to pay compensation where vehicle is subject to hire-purchase agreement? If the vehicle is insured, the insurer is liable to pay compensation otherwise the person in possession of the vehicle under such agreement is liable to pay compensation.

मोटर यान अधिनियम, 1988 – धारा 2 (30) और 168

(i) एक वाहन स्वामी कौन है विशेषतः हायर परचेस अनुबंध के मामले में ? अभिनिर्धारित किया गया, एक व्यक्ति जिसके नाम से वाहन पंजीकृत या रजिस्टर्ड होता है वह वाहन स्वामी है और हायर परचेस अनुबंध या हाइपोथिकेशन अनुबंध के मामलों में वह व्यक्ति जिसके आधिपत्य में वाहन होता है वह स्वामी होता है।

(ii) जहां वाहन हायर परचेस अनुबंध के अधीन हो प्रतिकर के लिए कौन उत्तरदायी होता है ? यदि वाहन बीमित है तो बीमा करने वाला (बीमा कंपनी) प्रतिकर के लिए उत्तरदायी होती है अन्यथा वह व्यक्ति जिसके आधिपत्य में अनुबंध के अधीन वाहन होता है वह प्रतिकर के लिए उत्तरदायी होता है।

HDFC Bank Ltd. v. Kumari Reshma and ors.

Judgment dated 01.12.2014 passed by the Supreme Court in Civil Appeal No. 10608 of 2014, reported in AIR 2015 SC 290 (3-Judge Bench)

Extracts from the judgment:

On a plain reading of the aforesaid definition, it is demonstrable that a person in whose name a motor vehicle stands registered is the owner of the vehicle and, where motor vehicle is the subject of hire-purchase agreement or an agreement of hypothecation, the person in possession of the vehicle under that agreement is the owner. It also stipulates that in case of a minor, the guardian of such a minor shall be treated as the owner. Thus, the intention of the legislature in case of a minor is mandated to treat the guardian of such a minor

as the 'owner' this is the first exception to the definition of the term 'owner'. The second exception that has been carved out is that in relation to a motor vehicle, which is the subject of hire-purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of vehicle under that agreement is the owner. Be it noted, the legislature has deliberately carved out these exceptions from registered owners thereby making the guardian of a minor liable, and the person in possession of the vehicle under the agreements mentioned in the dictionary clause to be the owners for the purposes of this Act.

On a careful analysis of the principles stated in ***Mohan Benefit Pvt. Ltd. v. Kachraji Rayamalji, 1995 AIR SCW 1491, Rajasthan State Road Transport Corporation v. Kailash Nath Kothari, AIR 1997 SC 3444, National Insurance Co. Ltd. v. Deepa Devi and ors., AIR 2008 SC 735, Godavari Finance Co. v. Degala Satyanaryanamma, AIR 2004 SC 2493 and Uttar Pradesh State Road Transport Corporation v. Kulsum and ors., (2011) 8 SCC 142*** it is found that there is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasise, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of the policy under which the insurer can seek exoneration.

•

102. MOTOR VEHICLES ACT, 1988 – Section 166

Assessment of compensation in death cases – Income of house wife, assessment of – It is difficult to monetize the domestic work done by a house wife – Looking to the domestic services and contribution made by her to the house, is reasonable to fix her income at Rs. 3,000/- per month.

मोटर यान अधिनियम, 1988 – धारा 166

मृत्यु प्रकरणों में प्रतिकर का निर्धारण – गृह स्वामिनी या हाउस वाईफ की आय – एक गृह स्वामीनी द्वारा किये गये गृह कार्यो की कीमत निकालना कठिन है – उसके द्वारा की गई घरेलू सेवाओं और घर में किये गये योगदान को देखते हुये यह युक्तियुक्त होगा की उसकी आमदानी 3000/– रूपये प्रतिमाह नियत की जाये।

Jitendra Khimshanker Trivedi and others v. Kasam Daud Kumbhar and others

Judgment dated 03.02.2015 passed by the Supreme Court in Civil Appeal No. 1415 of 2015, reported in 2015 ACJ 708 (SC)

Extracts from the judgment:

Even assuming Jayvantiben Jitendra Trivedi was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a house-wife. The services of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/

home-maker does not work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise, taking deceased Jayvantiben Jitendra Trivedi as the home maker, it is reasonable to fix her income at Rs.3,000/- per month.

Recognizing the services of the home maker and that domestic services have to be recognized in terms of money, in ***Arun Kumar Agrawal & anr. v. National Insurance Company Ltd. & Ors., 2010 ACJ 2161 (SC)***, this Court has held as under:-

> "The alternative to imputing money values is to measure the time taken to produce these services and compare these with the time that is taken to produce goods and services which are commercially viable. One has to admit that in the long run, the services rendered by women in the household sustain a supply of labour to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If we take these services for granted and do not attach any value to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric.
>
> The household work performed by women throughout India is more than US $612.8 billion per year (Evangelical Social Action Forum and Health Bridge, p. 17). We often forget that the time spent by women in doing household work as homemakers is the time which they can devote to paid work or to their education. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society, as well as various physical, social and psychological problems. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing "just compensation".

•

103. MOTOR VEHICLES ACT, 1988 – Section 166

Whether deduction of *ex gratia* payment from compensation is permissible? Held, No – The State Government, Union of India and their undertakings which include bank has issued a policy specifying the fact on an application filed by the family members, if compassionate appointment was not made then *ex gratia* is payable to such family – So *ex gratia* payment cannot be deducted from compensation.

मोटरयान अधिनियम, 1988 – धारा 166

क्या प्रतिकर में से एक्सग्रेसिया का भुगतान कम किया जाना (अर्थात काटा जाना) अनुमत है ? अभिनिर्धारित किया गया, नहीं। राज्य सरकार व भारत संघ और उसके अधीन उद्यम जिसमें बैंक भी शामिल है, उन्होंने एक नीति जारी की है की यदि परिवार के सदस्य द्वारा अनुकंपा नियुक्ति का आवेदन किया जाता है व अनुकंपा नियुक्ति नहीं दी जाती है तब परिवार को एक्सग्रेसिया राशि भुगतान की जायेगी अतः यह राशि प्रतिकर में से नहीं काटी जा सकती।

Sandhya and others v. Guddu and others

Judgment dated 12.02.2013 passed by the High Court of M.P. in M.A. No. 2605 of 2011, reported in 2015 ACJ 168

Extracts from the judgment:

So far as the award of the compensation is concerned, in the considered opinion of this court the Tribunal has rightly awarded a sum of Rs. 27, 91,500. So far as the deduction of ex gratia is concerned, it is to be observed here that the amount of ex gratia is paid to the family of the deceased when they apply for compassionate appointment. In this regard the State Government, Union of India and their undertakings which include bank has issued a policy specifying the fact on an application filed by the family members, if compassionate appointment was not made then ex gratia is payable to such family. In such circumstances the amount of ex gratia cannot be deducted as specified under the provision of Motor Vehicles Act. My view finds support from the judgment of the Division Bench of this court in the case of ***Bhanwri Bai v. Union of India, 2009 ACJ 1319 (MP),*** wherein the judgment of Hon'ble Supreme Court in the case of ***United India Insurance Co. Ltd. v. Patricia Jean Mahajan, 2002 ACJ 1441 (SC),*** has already been considered by this court and distinguished. In the considered opinion of this court and in the light of judgment of the Division Bench in ***Bhanwri Bai*** (supra) with respect to deduction on the point of ex gratia directly covers the issue. However, deduction so made from the compensation amount towards ex gratia is not permissible.

•

104. MOTOR VEHICLES ACT, 1988 – Section 168

(i) Assessment of compensation in death case – Future prospects for bank manager aged 27 years – 50 % of annual income to be added under the head of future prospects.

(ii) Assessment of compensation in death case – Claimants are parents – What is appropriate multiplier? Appropriate multiplier is 11 as per the age of the parents.

(iii) Rs. 25,000 was awarded as funeral expenses to according to the principles laid down by the Apex Court in *Rajesh v. Rajbir Singh, 2013 ACJ 1403*.

मोटरयान अधिनियम, 1988 – धारा 168

(i) मृत्यु प्रकरण में प्रतिकर निर्धारण – 27 वर्षीय बैंक मेनेजर के लिए भविष्य की संभावनाएँ – वार्षिक आय का 50 प्रतिशत भविष्य की संभावना के शीर्ष में जोड़ा जाये।

(ii) मृत्यु प्रकरण में प्रतिकर का निर्धारण – आवेदकगण माता–पिता – उचित गुणांक क्या है – माता–पिता की उम्र से 11 का गुणांक उचित गुणांक है।

(iii) दाह संस्कार खर्च 25000/– रूपये माननीय सर्वोच्च न्यायालय द्वारा न्याय दृष्टांत राजेश विरूद्ध राजबीर सिंह, 2013 ए.सी.जे. 1403 में प्रतिपादित सिद्धांत के अनुसार अवार्ड किये गये।

Kanhsingh and another v. Tukaram and others

Judgment dated 13.01.2015 passed by the Supreme Court in Civil Appeal No. 347 of 2015, reported in 2015 ACJ 594 (SC)

Extracts from the judgment:

We have heard the learned counsel for the parties. In our considered view, the courts below have erred in taking the monthly income of the deceased at Rs.11,146/-. From the facts, circumstances and evidence on record, it is clear that the deceased was 27 years of age, working with HDFC as the Manager earning Rs.1,81,860/- per annum (i.e. Rs.15,155/- per month) and there were definite chances of his further promotion and consequent increase in salary by way of periodical revision of the salary on the basis of cost of living Index prevalent in the area if he would alive and worked in the bank. Therefore, adding 50% under the head of future prospects to the annual income of the deceased according to the principle laid down in the case of ***Vimal Kanwar v. Kishore Dan, 2013 ACJ 1441 (SC)*** the total loss of income comes to Rs.2,72,790/- per annum [Rs. 1,81,860 + (1/2 of Rs.1,81,860)]. Deducting 10% tax (Rs.27,279/-), net annual income comes to Rs.2,45,511/-. Deducting 1/3rd (Rs.81,837) towards personal expenses since the claimants are the parents of the deceased, loss of dependency comes to Rs. 1,63,674 X 11(appropriate multiplier as per the age of the parent) = Rs. 18,00,414/-.

The Tribunal and the High Court have further erred in law in awarding only Rs.2,000/- for funeral expenses instead of Rs.25,000/- according to the principles laid down by this Court in ***Rajesh v. Rajbir Singh, 2013 ACJ 1403 (SC).*** Hence, we award Rs.25,000/- towards the same.

•

105. MUSLIM LAW:

Prompt Dower – Suit for declaration and permanent injunction filed by plaintiff/wife against defendant/husband alleging that the suit plot was given to the plaintiff on account of Prompt Dower by the defendant – *Nikahnama* contains recitals of suit plot – Defendant objected the admissibility of that document for want of stamp duty – Held, suit plot was assigned by the defendant to plaintiff in lieu of *Mahr* at the time of marriage – The document is Marriage Certificate and simple *Hiba* – Document does not attract any stamp duty – Admissible in evidence.

मुस्लिम विधिः

मेहर–ए–मुसज्जल – वादी /पत्नी द्वारा प्रतिवादी /पति के विरूद्ध घोषणा और स्थायी निषेधाज्ञा के लिये वाद पेश किया गया – यह अभिवचन किया गया कि वादग्रस्त प्लाट वादी को प्रतिवादी द्वारा मेहर–ए– मुसज्जल के कारण दिया गया – निकाह नामे में वादग्रस्त प्लाट देने के तथ्य समाविष्ट थे – प्रतिवादी ने इस दस्तावेज को स्टाम्प ड्यूटी के अभाव के कारण साक्ष्य में ग्राह्य होने के बारे में आपत्ति की – अभिनिर्धारित किया गया, वादग्रस्त प्लाट प्रतिवादी द्वारा वादी को विवाह के समय मेहर के एवज में दिया गया – यह दस्तावेज विवाह का प्रमाण है और साधारण हिबा है – दस्तावेज पर कोई स्टाम्प ड्यूटी आकर्षित नहीं होती है – यह साक्ष्य में ग्राह्य है।

Habib Khan v. Shahjad Bi

Judgment dated 30.10.2013 passed by the High Court of M.P. in W.P. No. 989 of 2010, reported in I.L.R. (2014) M.P. 1517

Extracts from the order:

The law of Dower is uncodified law. Dower (Mahr) is defined in Rule 79 of Mohammadan's Law. Rule 81 deals with subject of dower (Mahr). Rule 83 deals with types of dower. Rule 85 deals with prompt dower and deferred dower. These Rules are reproduced as under:-

> Rule 79. Dower (Mahr) Defined Dower (mahr) is something which has some value in the terms of money and the wife is entitled to receive it as a gift from her husband for entering into a contract of marriage.
>
> Rule 81. Subject of Dower (Mahr) – A fixed sum of money or anything in the category of property in existence having value form the subject of dower.
>
> Rule 83. Types of Dower – Dower may be of two types – Specified Dower (Mahr-i-Musamma or Mahr-i-Tafweez) and Proper Dower (Mahr-i-Misl or Mahrul-Mithl).
>
> Rule 85. Prompt Dower (Mahr-i-Muajjal) and Deferred Dower (Mahr-Muwajjal) specified Dower may be divided into two parts – Prompt Dower and Deferred Dower:-

(i) Prompt Dower (Mahr-i-Muajjal) is payable to wife immediately after marriage or on her demand at any time.

(ii) Deferred Dower (Mahr-i-Muajjal) is payable to wife on the expiry of Specified period or on the happening of such contingency to which it is deferred. On the dissolution of the marriage, either by divorce or death of either party, it is payable immediately in every other case.

(iii) The amount payable to wife by way of prompt Dower and deferred dower is fixed at the time of making the contract of Dower.

(v) Where at the time of marriage, it is not specified which part of the Specified Dower is prompt and which part is deferred, the Shias regard the whole of Specified Dower as Prompt. But the Sunnis regard one-half part as prompt and the other half as deferred.

The learned trial Court has rejected the objection filed by the petitioner because of Article 52 of Indian Stamp Act which has nothing to do with the deed of Dower as it deals with Proxy. Article 58 of Indian Stamp Act, 1894 deals with statement. As per clause (a) of Article 58 deed of dower executed on the occasion of marriage between Mohammadans is exempted from payment of stamp duty. In the matter of ***Rasool Mohammad v. Kulsumbi, 1959 JLJ 51*** this Court held that among the Shias, the dower must be presumed to be prompt unless payment of the whole or any part of the dower is expressly postponed. It was further held that so far as the Sunnis of the Madhya Pradesh are concerned, the presumption does not apply and the court should fix a reasonable part of the dower debt to be payable promptly.

•

106. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

Territorial jurisdiction for complaint under section 138 N.I. Act – Issuance of demand notice from place 'D' or deposit of the cheque in place 'D' bank by the payee or receipt of the notice by the accused demanding payment in place 'D' will not confer jurisdiction upon the Courts in place 'D' – Place where the drawee bank which dishonoured the cheque is situated has jurisdiction to entertain the complaint and take cognizance of the offence under section 138 N.I. Act – ***Dashrath Rupsingh Rathod v. State of Maharashtra, AIR 2014 SC 3519*** **followed.**

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

धारा 138 एन.आई. एक्ट के परिवाद के लिये प्रादेशिक क्षेत्राधिकार – स्थान डी से मांग सूचना पत्र जारी करना या स्थान डी के बैंक में पेयी द्वारा चैक जमा करना या अभियुक्त को स्थान डी में भुगतान करने का सूचना पत्र प्राप्त होना स्थान डी के न्यायालयों को कोई क्षेत्राधिकार नहीं देगा – स्थान जहां चैक जारी करने वाले का वह

बैंक जिसने चैक अनादरित किया स्थित है वही धारा 138 एन.आई. एक्ट के अपराध का परिवाद ग्रहण करने और संज्ञान लेने का क्षेत्राधिकार होगा – ए.आई.आर. 2014 एस.सी. 3519 दशरथ रूपसिंह राठौर विरूद्ध स्टेट ऑफ महाराष्ट्र का अनुसरण किया गया।

Vinay Kumar Shailendra v. Delhi High Court Legal Services Committee and anr.

Judgment dated 04.09.2014 passed by the Supreme Court in Criminal Appeal No. 8469 of 2014, reported in 2015 CriLJ 166 (SC) (3-Judge Bench)

Extracts from the judgment:

In the light of the pronouncement of this Court in ***Harman Electronics Private Limited and anr. v. National Panasonic India Private Limited , AIR 2009 SC 1168, Dashrath Rupsingh Rathod v. State of Maharashtra and anr., AIR 2014 SC 3519 and K. Bhaskaran v. Sankaran Vaidhyan Balan, AIR 1999 SC 3762*** we have no hesitation in holding that the issue of a notice from Delhi or deposit of the cheque in a Delhi bank by the payee or receipt of the notice by the accused demanding payment in Delhi would not confer jurisdiction upon the Courts in Delhi. What is important is whether the drawee bank who dishonoured the cheque is situate within the jurisdiction of the Court taking cognizance. In that view, we see no reason to interfere with the order passed by the High Court which simply requires the Magistrate to examine and return the complaints if they do not have the jurisdiction to entertain the same in the light of the legal position as stated in ***Harman's case*** (supra). All that we need to add is that while examining the question of jurisdiction the Metropolitan Magistrates concerned to whom the High Court has issued directions shall also keep in view the decision of this Court in ***Dashrath's*** case (supra).

•

107. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

Though "stop payment" instructions have been given by drawer to the bank, offence punishable under section 138 N.I. Act is made out – Complainant had failed to discharge his obligations as per agreement by not repairing/replacing the damaged USP system or contents of the reply sent by the accused were not disclosed in the complaint – These facts are matter of evidence.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

यद्यपि ''भुगतान रोके'' या स्टाप पेमेन्ट के निर्देश बैंक को चैक जारी करने वाले ने दिये थे, धारा 138 एन.आई. एक्ट के अधीन दण्डनीय अपराध बनता है – परिवादी अनुबंध के अधीन क्षतिग्रस्त यूएसपी सिस्टम को सुधारने /रिप्लेस करने में असफल रहा या उसने अभियुक्त के जवाब के तथ्यों को परिवाद में प्रगट नहीं किया – ये तथ्य साक्ष्य की विषयवस्तु हैं।

Pulsive Technologies P. Ltd. v. State of Gujarat & Ors.

Judgment dated 22.08.2014 passed by the Supreme Court in Criminal Appeal No. 1808 of 2014, reported in 2015 Cri.L.J 283 (SC)

Extracts from the judgment:

We find that the High Court has relied on ***M.M.T.C. Ltd. and anr. v. Medchl Chemicals and Pharma (P) Ltd. and anr., AIR 2002 SC 182*** and ***Modi Cements v. Kuchil Kumar Nandi, AIR 1998 SC 1057*** and yet drawn a wrong conclusion that inasmuch as cheque was dishonoured because of "stop payment" instructions, offence punishable under Section 138 of the NI Act is not made out. The High Court observed that "stop payment" instructions were given because the complainant had failed to discharge its obligations as per agreement by not repairing/replacing the damaged UPS system. Whether complainant had failed to discharge its obligations or not could not have been decided by the High Court conclusively at this stage. The High Court was dealing with a petition filed under Section 482 of the Code for quashing the complaint. On factual issue, as to whether the complainant had discharged its obligations or not, the High Court could not have given its final verdict at this stage. It is matter of evidence. This is exactly what this Court said in ***M.M.T.C. Ltd*** (supra). Though the High Court referred to ***M.M.T.C. Ltd.*** (supra), it failed to note the most vital caution sounded therein.

The High Court also erred in quashing the complaint on the ground that the contents of the reply sent by the accused were not disclosed in the complaint. Whether any money is paid by the accused to the complainant is a matter of evidence. The accused has ample opportunity to probabilise his defence. On that count, in the facts of this case, complaint cannot be quashed.

•

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

(i) Vicarious liability of Director of Company – There must be specific averments against the Director showing as to how and in what manner he was responsible for the conduct of the business of the Company.

(ii) Dishonoured Cheques were issued by virtue of Letter of Guarantee as per complainant – Letter of Guarantee gives way to civil liability – Complainant can always pursue the remedy before appropriate Court – Such Dishonour of Cheques would not make alleged Director of Company liable under section 138 of the N.I. Act.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138 और 141

(i) कंपनी के साथ उसके संचालक का संयुक्त दायित्व – संचालक के विरूद्ध विशिष्ट अभिकथन होना चाहिये जो यह दर्शाते हो की संचालक कैसे और किस तरीके से कंपनी के कार्य और व्यापार के लिये उत्तरदायी है।

(ii) परिवादी के अनुसार अनादरित चैक लेटर ऑफ ग्यारन्टी की वजह से जारी किये गये थे – लेटर ऑफ ग्यारन्टी सिविल दायित्व प्रदान करती है – परिवादी उचित न्यायालय के समक्ष उपचार ले सकता है – ऐसे अनादरित चैक कंपनी के संचालक को धारा 138 एन.आई. एक्ट के अधीन दायी नहीं बनाते है।

Pooja Ravinder Devidasani v. State of Maharashtra & Anr.

Judgment dated 17.12.2014 passed by the Supreme Court in Criminal Appeal No. 2604 of 2014, reported in AIR 2015 SC 675

Extracts from the judgment:

So far as the Letter of Guarantee is concerned, it gives way for a civil liability which the respondent No. 2-complainant can always pursue the remedy before the appropriate Court. So, the contention that the cheques in question were issued by virtue of such Letter of Guarantee and hence the appellant is liable under Section 138 read with Section 141 of the N.I. Act, cannot also be accepted in these proceedings.

Putting the criminal law into motion is not a matter of course. To settle the scores between the parties which are more in the nature of a civil dispute, the parties cannot be permitted to put the criminal law into motion and Courts cannot be a mere spectator to it. Before a Magistrate taking cognizance of an offence under Section 138/141 of the N.I. Act, making a person vicariously liable has to ensure strict compliance of the statutory requirements. The Superior Courts should maintain purity in the administration of Justice and should not allow abuse of the process of the Court. The High Court ought to have quashed the complaint against the appellant which is nothing but a pure abuse of process of law.

•

109. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 142 and 145
CRIMINAL PROCEDURE CODE, 1973 – Sections 200 and 204

(i) Can complaint be filed by a power-of-attorney holder? Held, Yes – Filing of complaint under Section 138 NI Act through power-of-attorney is perfectly legal and competent – *A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790* (3-Judge Bench) relied on.

(ii) If power-of-attorney holder has possessed personal knowledge of the transactions, he can depose and verify the contents of the complaint.

(iii) Where the complainant herself has come in the witness box, no need to examine power-of-attorney holder as a witness.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138, 142 और 145

दण्ड प्रक्रिया संहिता, 1973 – धारा 200 और 204

(i) क्या परिवाद मुखतियार द्वारा प्रस्तुत किया जा सकता है ? अभिनिर्धारित, हाँ धारा 138 एन.आई. एक्ट का परिवाद मुखतियार द्वारा प्रस्तुत करना पूरी तरह

वैधानिक और सक्षम है – न्याय दृष्टांत *ए.सी. नारायण विरूद्ध स्टेट ऑफ महाराष्ट्र, (2014) 11 एस.सी.सी. 790* (तीन न्यायमूर्तिगण की पीठ) पर विश्वास किया गया।

(ii) यदि मुखतियार नामा धारक को संव्यवहार का व्यक्तिगत ज्ञान हो तो वह कथन दे सकता है और परिवाद की अंतरवस्तु को सत्यापति कर सकता है।

(iii) जहां परिवादी स्वयं साक्ष्य कक्ष में आ गई हो – वहां मुखतियार नामा धारक को साक्षी के रूप में परिक्षित करवाना आवश्यक नहीं था।

Vinita S. Rao v. Essen Corporate Services Private Limited and another

Judgment dated 17.09.2014 passed by the Supreme Court in Criminal Appeal No. 2065 of 2014, reported in (2015) 1 SCC 527

Extracts from the judgment:

The second submission of the respondents is that the complaint cannot be filed by a power-of-attorney holder. This question is no more res integra. A Division Bench of this Court while considering a criminal appeal arising out of conviction under Section 138 of the NI Act noticed ***A.C. Narayan v. State of Maharashtra, (2014) 11 SCC 809*** diversion of opinion between different High Courts on the question whether the eligibility criteria prescribed by Section 142 (a) of the NI Act would stand satisfied if the complaint itself is filed in the name of the payee or the holder in the due course of the cheque and/or whether the complaint has to be presented before the court by the payee or the holder of the cheques himself. The Division Bench felt that another issue which would arise for consideration is whether the payee must examine himself in support of the complaint keeping in view the insertion of Section 145 in the NI Act (Act 5 of 2002). The Division Bench was of the view that the matter should be considered by a larger Bench so that there can be authoritative pronouncement of this Court on the above issues. In ***A.C. Narayanan v. State of Maharashtra (2014) 11 SCC 790,*** the Three-Judge Bench of this Court dealt with this reference. This Court noted the questions which had to be decided by it in terms of the reference order as under:

> "21.1 (i) Whether a power-of-attorney holder can sign and file a complaint petition on behalf of the complainant?/ Whether the eligibility criteria prescribed by Section 142 (a) of the NI Act would stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque?
>
> 21.2 (ii) Whether a power-of-attorney holder can be verified on oath under Section 200 of the Code?
>
> 21.3 (iii) Whether specific averments as to the knowledge of the power-of-attorney holder in the impugned transaction must be explicitly asserted in the complaint?

21.4 (iv) If the power-of-attorney holder fails to assert explicitly his knowledge in the complaint then can the power-of-attorney holder verify the complaint on oath on such presumption of knowledge?

21.5 (v) Whether the proceedings contemplated under Section 200 of the Code can be dispensed with in the light of Section 145 of the NI Act which was introduced by an amendment in the year 2002?"

After considering the relevant provision of the NI Act and the relevant judgments on the point, this Court clarified the legal position and answered the questions in the following manner: [***A.C. Narayanan case*** (3-Judge Bench) (supra)]

"33.1.(i) Filing of complaint petition under Section 138 of NI Act through power of attorney is perfectly legal and competent.

33.2. (ii) The power-of-attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power-of-attorney holder must have witnessed the transaction as an agent of the payee/holder in the course of possess due knowledge regarding the said transactions.

33.3 (iii) It is required by the complainant to made specific assertion as to the knowledge of the power-of-attorney holder in the said transaction explicitly in the complaint and the power-of-attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.

33.4. (iv) In the light of Section 145 of the NI Act, it is open to the magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the NI Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the NI Act.

33.5. (v) The function under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person."

It was also urged that the power-of-attorney holder should have also been examined on oath. This submission must also be rejected as apart from being devoid of substance it is clearly aimed at frustrating the prosecution. When the complainant herself has stepped in the witness box, we do not see the need for the power-of-attorney holder to examine himself as a witness. Law cannot be reduced to such absurdity. The purport of the NI Act will be frustrated if such approach is adopted by the courts. We, therefore, reject this submission.

•

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

(i) Mutation work – Illegal gratification – Incompetency of the accused, non-effect of – The accused Patwari allegedly received illegal gratification for mutation work in Revenue Department – It was pleaded on his behalf that he was not competent in mutation and regarding issuance of *Rin Pustika* – Therefore, had no occasion to demand bribe – Held, the fact that the Patwari was a key person to initiate the proceedings, was sufficient to give an impression to the complainant that the accused would be helpful in the process of mutation and preparation of *Rin Pustika* – Therefore, it does not make any difference if the accused Patwari is not competent to make mutation.

(ii) Demand and acceptance of illegal gratification – Is *sine qua non* – Law reiterated.

(iii) Evidence of Police Officer, appreciation of – Police Officer cannot be disbelieved merely on the basis that he is a Police Officer.

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 7 और 13 (1) (डी) सहपठित धारा 13 (2)

(i) नामांतरण का कार्य – अवैध परितोषण – अभियुक्त के अक्षम (उक्त कार्य करने में) होने का प्रभाव न होना – राजस्व विभाग में नामांतरण के कार्य के लिये अभियुक्त पटवारी द्वारा अभिकथित रूप से अवैध परितोषण प्राप्त किया – अभियुक्त की ओर से यह बचाव लिया गया की वह नामांतरण करने और ऋण पुस्तिका जारी करने में सक्षम नहीं था – अतः रिश्वत की मांग का अवसर ही नही था – अभिनिर्धारित किया गया यह तथ्य कि पटवारी कार्यवाही प्रारंभ करने में एक महत्वपूर्ण व्यक्ति था यह परिवादी को यह आभास करवाने के लिये पर्याप्त था कि अभियुक्त नामांतरण की कार्यवाही में और ऋण पुस्तिका बनवाने में उसके लिये सहायक होगा – अतः इससे कोई फर्क नही पड़ता कि पटवारी अभियुक्त नामांतरण कार्य करने में सक्षम नहीं था।

(ii) अवैध परितोषण की मांग और उसे स्वीकार किया जाना – एक अनिवार्य शर्त है – विधि पुनः बतलाई गई।

(iii) पुलिस अधिकारी की साक्ष्य का मूल्यांकन – पुलिस अधिकारी की साक्ष्य पर उसके पुलिस अधिकारी होने के आधार पर अविश्वास नहीं किया जा सकता।

Laxmikant v. State of M. P.

Order dated 20.12.2013 passed by the High Court in Criminal Appeal No. 2735 of 1998, reported in 2014 (5) MPHT 143 (DB)

Extracts from the order:

The main question for consideration arises that if the appellant was not competent for mutation, then what would be the impact on the case of the prosecution? This question has been considered by the Kerala High Court in ***Cherian Lukose v. State of Kerala, AIR 1968 Kerala 60,*** in which it has been observed by the Kerala High Court that though the nurse was not competent to allot the bed but her role for allotment of bed was important and general public had an impression that she was important person who could help in allotment so to offer bribe to her. A Division Bench of this Court by referring the decision of ***Cherian Lukose v. State of Kerala*** (supra) has taken the similar view in the judgment delivered in Criminal Appeal No. 81/2001 ***Jagdish Chandra Raikwar v. State of M.P on 19.8.2010,*** which remained unchanged in S.L.P.(Cri.) No. 8598/2010, which was dismissed by the Apex Court on 25.10.2010.

Similar is the situation in the instant case. In this case though the appellant was not competent for mutation but he was an important person to initiate the mutation proceedings, therefore, the complainant must be under impression that the appellant would be helpful person in the process of mutation and preparation of Rin-Pustika. Thus, it cannot be said that there was no opportunity or motive to receive the bribe by the appellant.

It is true that the demand and acceptance of the amount as illegal gratification is sine-qua-non for constituting the offence under Section 7, 13 of the Prevention of Corruption Act. The facts of ***Ram Mohan Agrawal (dead) through LRs v. State of M.P. 2012 (1) MPLJ (Cri.) 483 and Narendra Champaklal Trivedi v. State of M.P. through SPE, Lokayukt, 2012 (2) MPLJ (Cri.) 661 Gujarat*** are different than the instant case. In the aforesaid cases, the prosecution was failed to prove the demand and acceptance of amount of illegal gratification. But in the instant case, as discussed hereinabove, it has been proved on record that the complainant filed a complaint (Ex.P-5) before B. D. Handa (PW-4), who directed R.R.Mishra (PW-11) for further enquiry. This fact has been duly corroborat ed by R.R.Mishra (PW-11), independent Panch witness R.P. Shukla (PW-2) and further corroborated by R.B. Singh (PW-5), who was also the witness of aforesaid procedure. Though R.B. Singh (PW-5) was Inspector in the Police, but it is well established principle of law that Police Officer should not be disbelieved only on the basis of the fact that he is a Police Officer unless and until there is some enmity with the appellant brought on record.

•

111. PREVENTION OF CORRUPTION ACT, 1988 – Sections 13 (1) (c), (d) and 15

For framing of charge under section 15 of PC Act against an accused, whether it is necessary that he must also be charged either under section 13 (1)(c) or 13(1)(d) of the PC Act ? Held, No.

भष्टाचार निवारण अधिनियम, 1988 – धारा 13 (1) (सी), (डी) और 15

क्या एक अभियुक्त के विरूद्ध धारा 15 भ्रष्टाचार निवारण अधिनियम के अधीन आरोप विरचित करने के लिये यह आवश्यक है की उस पर या तो धारा 13 (1) (सी) या धारा 13 (1) (डी) भ्रष्टाचार निवारण अधिनियम का आरोप होना चाहिये? अभिनिर्धारित किया गया, नहीं। यह विधि की आवश्यकता नहीं है कि एक अभियुक्त के विरूद्ध धारा 15 भ्रष्टाचार निवारण अधिनियम का आरोप विरचित करने के लिये उस पर या तो धारा 13 (1) (सी) या धारा 13 (1) (डी) भ्रष्टाचार निवारण अधिनियम का आरोप होना चाहिये।

State through Inspector of Police v. A. Arun Kumar and another

Judgment dated 17.12.2014 passed by the Supreme Court in Criminal Appeal No. 2602 of 2014, reported in (2015) 2 SCC 417

Extracts from the judgment:

In our considered view, the material on record discloses grave suspicion against the respondents and the Special Court was right in framing charges against the respondents. We must also observe that the High Court was not justified in stating that Section 15 of the PC Act could not be invoked in the present case. Since the duty drawback was not actually availed, the prosecution had rightly alleged that there was an attempt to commit offence under the relevant clauses of Section 13(1) of the PC Act. It is not the requirement of law that in order to charge an accused under Section 15 of the PC Act he must also be charged either under Section 13(1)(c) or 13(1)(d) of the PC Act. The assessment of the High Court in that behalf is not correct.

•

***112. PROTECTION OF HUMAN RIGHTS ACT, 1994 – Section 12**

Jurisdiction of Human Rights Commission – It does not have any jurisdiction to deal with disputed questions of title and possession of the property.

मानवाधिकार संरक्षण अधिनियम, 1994 – धारा 12

मानवाधिकार आयोग का क्षेत्राधिकार – आयोग को संपत्ति के स्वत्व और आधिपत्य के विवादित प्रश्नों को निपटाने का क्षेत्राधिकार नहीं होता है।

G. Manikyamma & others v. Roudri Co-operative Housing Society and others

Judgment dated 25.11.2014 passed by the Supreme Court in Civil Appeal No. 10534 of 2014, reported in AIR 2015 SC 720

•

113. REGISTRATION ACT, 1908 – Sections 17(1) (a) and 17 (2) (vi)

Consent decree passed by the court for disputed property – In subsequent suit it was found that some property was joint Hindu family property and some was self-acquired – Property related to joint Hindu family did not require compulsory registration in view of section 17 (2) (vi) of the Registration Act – Property which was self-acquired and gifted did require compulsory registration in view of section 17 (1) (a) of Registration Act.

पंजीकरण अधिनियम, 1908 – धारा 17 (1) (ए) और धारा 17 (2) (vi)

विवादग्रस्त संपत्ति के लिये न्यायालय द्वारा सहमति अज्ञाप्ति या कंसेन्ट डिक्री पारित की गई – पश्चातवर्ती वाद में यह पाया गया कुछ संपत्ति संयुक्त हिन्दू परिवार की संपत्ति है और कुछ स्वअर्जित संपत्ति है – संपत्ति जो संयुक्त हिन्दू परिवार से संबंधित है उसके लिये अनिवार्य पंजीकरण धारा 17 (2) (vi) पंजीकरण अधिनियम के तहत आवश्यक नहीं है – संपत्ति जो स्व–अर्जित हो और दान की गई हो उसके बारे में धारा 17 (1) (ए) पंजीकरण अधिनियम के तहत पंजीकरण अनिवार्य है।

Phool Patti and Another v. Ram Singh (Dead) Through LR's and another

Judgment dated 06.01.2015 passed by the Supreme Court in Civil Appeal No. 1240 of 2005, reported in (2015) 3 SCC 164

Extracts from the judgment:

What follows from this is that 20 kanals of land was gifted by Bhagwana to Ram Singh. This gift clearly requires compulsory registration under Section 17(1)(a) of the Registration Act, 1908 (the Act). Ram Singh's claim over 32 kanals of land was acknowledged in the consent decree dated 24th November, 1980. This did not require compulsory registration in view of Section 17 (2) (vi) of the Act.

The terms of the family settlement are not on record. As mentioned above, the family settlement could relate to the ancestral as well as self-acquired property of Bhagwana or only the ancestral property. It appears that it related only to the ancestral property and not the self-acquired property (hence the reference to a hibba). The decree relating to 32 kanals of land did not require compulsory registration, as mentioned above. However, the self acquired property of Bhagwana that is 20 kanals, therefore, in view of the law laid down in ***Bhoop Singh v. Ram Singh Major, (1995) 5 SCC 709*** the gift of 20 kanals of land by Bhagwana in favour of Ram Singh, notwithstanding the decree in the first suit, requires compulsory registration since it created, for the first time, right, title or interest in immovable property of a value greater than Rs.100/- in favour of Ram Singh.

•

114. SPECIFIC RELIEF ACT, 1963 – Section 20

(i) Subsequent rise in price of property – Will not be treated as a hardship entailing refusal of the decree for specific performance – The court may take notice of the above fact.

(ii) Looking to all the facts and circumstances of the case, the Court may impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree for specific performance.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

(i) संपत्ति की कीमत बाद में बढ़ गई – इसे ऐसा तकलीफदेह (या अपरिहार्य) नहीं समझा जाएगा कि इसके कारण विनिर्दिष्ट अनुपालन की आज्ञप्ति देने से इंकार कर दिया जाए। न्यायालय उक्त तथ्य को ध्यान में रख सकती है।

(ii) मामले के समस्त तथ्यों और परिस्थितियों को देखते हुए न्यायालय कोई युक्तियुक्त शर्त अधिरोपित कर सकती है जिसमें अतिरिक्त राशि एक पक्षकार द्वारा दूसरे पक्षकार को, विनिर्दिष्ट अनुपालन की आज्ञप्ति देते समय या उससे इंकार करते समय, देने की शर्त शामिल है।

K. Prakash v. B.R. Sampath Kumar

Judgment dated 22.09.2014 passed by the Supreme Court in Civil Appeal No. 9047 of 2014, reported in AIR 2015 SC 9

Extracts from the judgment:

Subsequent rise in price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstance and, therefore, on that ground a decree for specific performance cannot be reversed.

However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant-owner of the property. This aspect of the matter is considered by a three Judge Bench of this Court in ***Nirmala Anand v. Advent Corporation (P) Ltd. and others, (2002) 8 SCC 146*** where this Court held:-

> "6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances

of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

•

115. SPECIFIC RELIEF ACT, 1963 – Section 20

EVIDENCE ACT, 1872 – Sections 63, 65 and 66

(i) Xerox copy of power-of-attorney produced by the plaintiff in evidence – Signature and contents of the said document were admitted by the defendant – A certified copy of that document is also on record – There is no question of proving the said document as required under the Evidence Act.

(ii) Discretionary relief for specific performance – Depends upon the conduct of the parties – Where the defendant does not come with clean hands and suppresses material facts and evidence and mislead the court, equitable discretion should be exercised against him.

(iii) Plaintiff should not be denied specific performance only on account of phenomenal increase in price during the pendency of litigation – The court may impose reasonable conditions including payment of additional amount to the vendor.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

साक्ष्य अधिनियम, 1872 – धारा 63, 65 और 66

(i) वादी द्वारा साक्ष्य में मुखतियार नामा की फोटो प्रति प्रस्तुत की गई – इस दस्तावेज की अंतरवस्तु और उस पर हस्ताक्षर होना प्रतिवादी ने स्वीकार किया था – दस्तावेज की एक प्रमाणित प्रतिलिपि भी अभिलेख पर है – इस दस्तावेज को साक्ष्य अधिनियम के अनुसार प्रमाणित करने की कोई आवश्यकता नहीं है।

(ii) विनिर्दिष्ट पालन का विवेकीय अनुतोष – पक्षकारों के आचरण पर निर्भर रहता है – जहां प्रतिवादी स्वच्छ हाथों से न्यायालय में नहीं आता है और तात्विक तथ्य और साक्ष्य छिपाता है तथा न्यायालय को भ्रमित करने का प्रयास करता है – साम्यपूर्ण विवेकाधिकार उसके विरूद्ध प्रयुक्त करना चाहिये।

(iii) वादी विनिर्दिष्ट अनुपालन से केवल इस कारण इंकार नहीं कर सकता कि विवाद लंबित रहने के दौरान संपत्ति की कीमतों में वृद्धि हुई है – न्यायालय क्रेता पर युक्तियुक्त शर्तें लगा सकती है जिसमें अतिरिक्त भुगतान की शर्त भी हो सकती है।

Zarina Siddiqui v. A. Ramalingam alias R. Amarnathan

Judgment dated 29.10.2014 passed by the Supreme Court in Civil Appeal No. 9947 of 2014, reported in AIR 2015 SC 580

Extracts from the judgment:

Curiously enough, although it was pleaded by defendant no.1 that the power of attorney was given to defendant no.2 for limited purpose of managing the property, the said power of attorney was not produced in the Court. DW-1 did not produce the original power of attorney to prove his case that the second defendant, his elder brother, was only authorized to manage the property. It is the plaintiff, who produced the xerox copy of the registered power of attorney, which was shown to the DW-1 during cross- examination, who admitted the signature in the power of attorney. All these relevant pieces of evidence have not been appreciated by the High Court in its right perspective. Instead of drawing adverse inference against the defendant, in not producing the original power of attorney, which was in their power and possession, the High court has committed grave error in holding that the power of attorney has not been proved as required under Sections 65 and 66 of the Evidence Act. In our view, when the Xerox copy of power of attorney produced by the plaintiff in evidence and the signature and the contents of the said power of attorney were admitted by the defendant, there was no question of proving the said document as required under the Evidence Act. The judgment of reversal passed by the High Court by coming to the aforesaid conclusion is wholly perverse and contrary to law. A certified copy of the power of attorney is now on record and it falsifies the case of the defendants/respondent undisputedly.

The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misled the Court then such discretion should not be exercised by refusing to grant specific performance.

Be that as it may, in the facts and circumstances of the case and considering the phenomenal increase in price during the period the matter remained pending

in different courts, we are of the considered opinion that impugned order under appeal be set aside but with a condition imposed upon the appellant (plaintiff) to pay a sum of Rs.15,00,000/- (Rupees Fifteen Lacs) in addition to the amount already paid by the appellant to the respondent. On deposit in trial court of aforesaid amount by the appellant, for payment to the respondent, within three months from today, the respondent shall execute and register the sale deed in favour of the plaintiff in respect of the suit property. In the event the aforesaid condition of deposit of Rs.15 lacs is fulfilled within the time stipulated hereinabove but the defendant fails to comply with the direction, then the appellant shall be entitled to execute the decree in accordance with the procedure provided in law.

•

116. SUCCESSION ACT, 1925 – Section 63

(i) Execution of Will – Suspicious and unnatural circumstances – How to appreciate? All the suspicious and unnatural circumstances put together and on the basis of their consideration and close scrutiny, the cumulative effect would be weighed by court and thereafter reach on a judicial verdict.

(ii) Exclusion of sons from Will – Discrepancy with regard to the place of execution of the Will – Prominent part played by the plaintiff in execution and registration of Will, lack of knowledge of English of the testator, non-production of original Will, were considered by Hon'ble the Apex Court and the Will was found to be properly executed.

उत्तराधिकार अधिनियम, 1925 – धारा 63

(i) विल का निष्पादन – संदेहास्पद व अस्वाभाविक परिस्थितियाँ – कैसे मूल्यांकन किया जाये – सभी संदेहास्पद और अस्वाभाविक परिस्थितियों को एक साथ रख कर और उन पर विचार व सूक्ष्म छानबीन करके उनके संचयी प्रभाव को तौलना होगा और फिर एक न्यायिक अभिमत पर पहुंचना होगा।

(ii) विल में पुत्रों को बाहर रखना, विल के निष्पादन के स्थान के बारे में विरोधाभास – वादी का विल के निष्पादन और पंजीकरण में महत्वपूर्ण भूमिका अदा करना, निष्पादनकर्ता को अंग्रेजी का ज्ञान न होना, मूल विल पेश न करना जैसी परिस्थितियों पर विचार करके माननीय उच्चतम न्यायालय ने विल को उचित रीति से निष्पादित होना पाया।

Leela Rajagopal & Ors. v. Kamala Menon Cocharan & Ors.

Judgment dated 08.09.2014 passed by the Supreme Court in Civil Appeal No. 9282 of 2010, reported in AIR 2015 SC 107

Extracts from the judgment:

A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a Will or the unnatural circumstances surrounding its

execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the Court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the Court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a Will or a singular circumstance that may appear from the process leading to its execution or registration. This is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.

In the present case, a close reading of the Will indicates its clear language, and its unambiguous purport and effect. The mind of the testator is clearly discernible and the reason for exclusion of the sons is apparent from the Will itself. Insofar as the place of execution is concerned, the inconsistency appearing in the verification filed along with the application for probate by PW-3 and the oral evidence of the said witness tendered in Court is capable of being understood in the light of the fact that the verification is in a standard form (Form No. 55) prescribed by the Madras High Court on the Original Side, as already noticed. Besides, in the facts of the present case the participation of the first respondent in the execution and registration of the Will cannot be said to be a circumstance that would warrant an adverse conclusion. The conduct of the first respondent in summoning her friend (PW-3) to be an attesting witness and in taking the testator to the office of the Sub-Registrar should, again, not warrant any adverse conclusion. It also cannot escape notice that the Will dated 11.1.1982 is identical with the contents of the earlier Will dated 28.12.1981. Insofar as the execution of the Will dated 28.12.1981 and its registration is concerned no active participation has been attributed to the first respondent. The change of the attesting witnesses and the non-examination of Seetha Padmanabhan who had attested the second Will dated 11.1.1982 has been sufficiently explained.

The lack of knowledge of English even if can be attributed to the testator would not fundamentally alter the situation inasmuch as before registration of the Will the contents thereof can be understood to have been explained to the testator or ascertained from her by the sub-registrar, PW-4, who had deposed that such a practice is normally adhered to. The non-production of the original Will and reliance on the certified copy thereof is a circumstance which has been reasonably explained by the first respondent (plaintiff) the original Will, after its execution on 11.1.1982, was in the custody of the testator and it is only on the day of her death i.e. 27.4.1991 that the first respondent (plaintiff) could find that the Will was missing from the envelope marked ‘Kpp Will’. The stand of the plaintiff that the original Will was lost while in the custody of her mother and her knowledge of such loss on the day of her mother’s death cannot be disbelieved merely because no report in this regard was lodged before the police.

•

PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION REGARDING MANNER OF DISPOSAL OF SEIZED NARCOTIC DRUGS, PSYCHOTROPIC SUBSTANCES, CONTROLLED SUBSTANCES AND CONVEYANCES AND OFFICER AUTHORISED FOR DISPOSAL UNDER THE N.D.P.S. ACT, 1985

[Ministry of Finance (Department of Revenue) Notification No. G.S.R. 38(E) Dated the 16th January, 2015. Published In Gazette of India (Extraordinary) Part II Section 3(I) Dated 16-01-2015 Pages 6-11.]

In exercise of the powers conferred by section 52A of the ***Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985),*** hereinafter referred to as the said Act, and in supersession of notification number G.S.R. 339(E), dated 10th May, 2007, except as respects things done or omitted to be done before such supersession, the Central Government, having regard to the hazardous nature, vulnerability to theft, substitution, and constraints of proper storage space, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, hereby specifies the narcotic drugs, psychotropic substances, controlled substances and conveyances which shall, as soon as may be after their seizure, be disposed of, the officers who shall dispose them of and the manner of their disposal.

2. Items to be disposed of. – All narcotic drugs, psychotropic substances, controlled substances and conveyances shall be disposed of under section 52A of the said Act.

3. Officers who shall initiate action for disposal. – Any officer in-charge of a police station or any officer empowered under section 53 of the said Act shall initiate action for disposal of narcotic drugs, psychotropic substances, controlled substances or conveyances under section 52A of that Act.

4. Manner of disposal. – (1) Where any narcotic drug, psychotropic substance, controlled substance or conveyance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the said Act or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances as per Annexure 1 to this notification and apply to any Magistrate under sub-section (2) of section 52A of the said Act as per Annexure 2 to this notification within thirty days from the date of receipt of chemical analysis report of seized narcotic drugs, psychotropic substances or controlled substances.

(2) After the Magistrate allows the application under sub-section (3) of section 52A of the said Act, the officer mentioned in sub-paragraph (1) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the seized items to the Chairman of the Drug Disposal Committee for a decision by the Committee on the disposal, and the aforesaid officer shall send a copy of the details along with the items seized to the officer-in-charge of the godown

5. Drug Disposal Committee.- The Head of the Department of each Central and State drug law enforcement agency shall constitute one or more Drug Disposal Committees comprising three Members each which shall be headed by an officer not below the rank of Superintendent of Police, Joint Commissioner of Customs and Central Excise, Joint Director of Directorate of Revenue Intelligence or officers of equivalent rank and every such Committee shall be directly responsible to the Head of the Department.

6. Functions.- The functions of the Drug Disposal Committee shall be to –

(a) meet as frequently as possible and necessary;

(b) conduct a detailed review of seized items pending disposal;

(c) order disposal of seized items; and

(d) advise the respective investigation officers or supervisory officers on the steps to be initiated for expeditious disposal.

7. Procedure to be followed by the Drug Disposal Committee with regard to disposal of seized items.- (1) The officer-in-charge of godown shall prepare a list of all the seized items that have been certified under section 52A of the said Act and submit it to the Chairman of the concerned Drug Disposal Committee.

(2) After examining the list referred to in sub-paragraph (1) and satisfying that the requirements of section 52A of the said Act have been fully complied with, the members of the concerned Drug Disposal Committee shall endorse necessary certificates to this effect an thereafter that Committee shall physically examine and verify the weight and other details of each of the seized items with reference to the seizure report, report of chemical analysis and any other documents, and record its findings in each case.

8. Power of Drug Disposal Committee for disposal of seized items- The Drug Disposal Committee can order disposal of seized items up to the quantity or value indicated in the Table below, namely:-

Table

Sl No.	Name of Item	Quantitity per consignment
1.	Herion	5 Kg.
2.	Hashish (Charas)	100 Kg.
3.	Hashish Oil	20 Kg.
4.	Ganja	1000 Kg.
5.	Cocaine	2 Kg.
6.	Mandrax	3000 Kg.
7.	Poppy straw	Up to 10 MT.
8.	Other narcotic drugs, psychotropic substances, controlled substances or conveyances	Up to the value of Rs. 20 lakh.

Provided that if the consignments are larger in quantity or of higher value than those indicated in the Table, the Drug Disposal Committee shall send its recommendations to the Head of the Department who shall order their disposal by a high level Drug Disposal Committee specially constituted for this purpose.

9. Mode of disposal of drugs.- (1) Opium, morphine, codeine and thebaine shall be disposed of by transferring to the Government Opium and Alkaloid Works under the Chief Controller of Factories.

(2) In case of narcotic drugs and psychotropic substances other than those mentioned in sub-paragraph (1), the Chief Controller of Factories shall be intimated by the fastest means of communication available, the details of the seized items that are ready for disposal.

(3) The Chief Controller of Factories shall indicate within fifteen days of the date of receipt of the communication referred to in sub-paragraph (2), the quantities of narcotic drugs and psychotropic substances, if any, that are required by him to supply as samples under rule 67B of the Narcotic Drugs and Psychotropic Substances Rules, 1985.

(4) Such quantities of narcotic drugs and psychotropic substances, if any, as required by the Chief Controller of Factories under sub-paragraph (3) shall be transferred to him and the remaining quantities of narcotic drugs and psychotropic substances shall be disposed of in accordance with the provisions of sub-paragraphs (5), (6) and (7).

(5) Narcotic drugs, psychotropic substances and controlled substances having legitimate medical or industrial use, and conveyances shall be disposed of in the following manner:-

(a) narcotic drugs, psychotropic substances and controlled substances which are in the form of formulations and labeled in accordance with the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) and rules made thereunder may be sold, by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, after confirming the composition and formulation from the licensed manufacturer mentioned in the label, to a person fulfilling the requirements of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and the rules and orders made thereunder, provided that a minimum of 60% of the shelf life of the seized formulation remains at the time of such sale;

(b) narcotic drugs, psychotropic substance and controlled substances seized in the form of formulations and without proper labeling shall be destroyed;

(c) narcotic drugs, psychotropic substances and controlled substances seized in bulk form may be sold by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Drugs and Cosmetics Act, 1940 (23 of 1940) and the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), and the rules and orders made thereunder, after confirming the standards and fitness of the seized substances for medical purposes from the appropriate authority under the Drugs and Cosmetics Act, 1940 (23 of 1940) and the rules made thereunder;

(d) controlled substances having legitimate industrial use may be sold, by way of tender or auction or in any other manner as may be determined by the Drug Disposal Committee, to a person fulfilling the requirements of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and the rules and orders made thereunder;

(e) seized conveyances shall be sold off by way of tender or auction as determined by the Drug Disposal Committee.

(6) Narcotic drugs, psychotropic substances and controlled substances which have no legitimate medical or industrial use or such quantity of seized items which is not found fit for such use or could not be sold shall be destroyed.

(7) Destruction referred to in sub-paragraph (b) shall be by incineration in incinerators fitted with appropriate air pollution control devices, which comply with emission standards and such incineration may only be done in places approved by the State Pollution Control Board or where adequate facilities and security arrangements exist and in the latter case, in order to ensure that such incineration may not be a health hazard or polluting, consent of the State Pollution

Control Board or Pollution Control Committee, as the case may be, shall be obtained, and the destruction shall be carried out in the presence of the Members of the Drug Disposal Committee.

10. Intimation to Head of Department on destruction.- The Drug Disposal Committee shall intimate the Head of the Department regarding the programme of destruction at least fifteen days in advance so that, in case he deems fit, he may either himself conduct surprise checks or depute an officer for conducting such surprise checks and after every destruction operation, the Drug Disposal Committee shall submit to the Head of the Department a report giving details of destruction.

11. Certificate of destruction.- A certificate of destruction (in triplicate) containing all the relevant data like godown entry number, gross and net weight of the items seized, etc., shall be prepared and signed by the Chairman and Members of the Drug Disposal Committee as per format at Annexure 3 and the original copy shall be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy shall be kept by the Drug Disposal Committee.

12. Details of sale to be entered in godown register.- As and when the seized narcotic drug, psychotropic substance, controlled substance or conveyance is sold by way of tender or auction or in any other manner determined by Drug Disposal Committee, appropriate entry indicating details of such sale shall be made in the godown register.

13. Communication to Narcotics Control Bureau.- Details of disposal of narcotic drugs, psychotropic substances, controlled substances and conveyances shall be reported to the Narcotics Control Bureau in the Monthly Master Reports.

Annexure 1

INVENTORY OF SEIZED NARCOTIC DRUGS, PSYCHOTROPIC SUBTANCES, CONTROLLED SUBSTANCES AND CONVEYANCES

[under Section 52A (2) of the Narcotic Drugs and Psychotropic Substances Act, 1985]

Case No.

Seizing agency:

Seizing officer:

Date of seizure:

Place of seizure:

Name and designation of the officer preparing this inventory:

Table

Sl. No.	Narcotic Drug/Psychotropic Substance/ Controlled Substance/Conveyance	Quality	Quantity	Mode of Packing
(1)	(2)	(3)	(4)	(5)

Mark and Mark and	Other identifying Particulars of seized items or packing	Country of origin	Remarks
(6)	(7)	(8)	(9)

Signature, name and designation of the officer

Certification by the Magistrate under sub-section (3) of Section 52A of the Narcotic Drugs and Psychotropic Substance Act, 1985

Whereas the above officer applied to me under sub-section (2) section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 to certify the above inventory, and sub-section (3) of that section requires any Magistrate to whom an application is made to allow the application as soon as may be, I, having been satisfied that the above inventory is as per the seizure documents and the consignments of seized goods related to the case presented before me, certify the correctness of the above inventory.

Signature, name and designation of the Magistrate

Annexure 2

APPLICATION FOR DISPOSAL OF SEIZED NARCOTIC DRUGS, PSYCHOTROPIC SUBTANCES, CONTROLLED SUBSTANCES AND CONVEYANCES UNDER SECTION 52A (2) OF THE NDPS ACT, 1985

[Application to be made by the officer in-charge of a police station or an officer empowered under section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985 who has custody of the seized narcotic drugs, psychotropic substances, controlled substances and conveyances]

To,

Learned Magistrate,

.....

.....

Sir,

Sub: Application for certification of correctness of inventory, photographs and samples of seized narcotic drugs, psychotropic substances, controlled substances and conveyances

1. All narcotic drugs, psychotropic substances, controlled substances and conveyances have been identified by the Central Government under section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 as vulnerable to theft and substitution vide Notification No..... dated.....

2. As required under sub-section (2) of section 52 A of the Narcotic Drugs and Psychotropic Substances Act, 1985, I submit the enclosed inventory of seized narcotic drugs, psychotropic substances, controlled substances, and/or conveyances and request you to-

(a) certify the correctness of the inventory;

(b) permit taking, in your presence, photographs of the seized items in the inventory and certify such photographs as true; and

(c) allow drawing of representative samples in your presence and certify the correctness of the list of samples so drawn.

3. I request you to allow this application under sub-section (3) of Section 52 A of the Narcotic Drugs and Psychotropic Substances Act, 1985 so that the seized narcotic drugs, psychotropic substances, controlled substances, and/or conveyances can thereafter be disposed of as per sub-section (1) of section 52A of the said Act retaining the certificate, photographs and samples as primary evidence as per sub-section (4) of section 52A (4).

Yours faithfully,

Signature, name and designation of the officer

Date :.....

CERTIFICATE BY THE MAGISTRATE UNDER SUB-SECTION (3) OF SECTION 52A OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

I allow the above application under sub-section (3) of section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 and hereby, certify the correctness of the enclosed inventory, the enclosed photographs taken and the list of samples drawn in my presence.

Signature, name and designation of the Magistrate

Date :.....

Annexure 3

CERTIFICATE OF DESTRUCTION

[See Paragraph 11 of Notification No. dated the... ... .]

This is to certify that the following narcotic drugs, psychotropic substances and controlled substances, were destroyed in our presence.

1. Case No.
2. Narcotic Drug/Psychotropic Substance/Controlled Substance:
3. Seizing agency:
4. Seizing officer:
5. Date of seizure:
6. Place of Seizure:
7. Godown entry number:
8. Gross weight of the drug seized:
9. Net weight of the narcotic drugs, psychotropic substances, controlled substances destroyed (after taking samples, etc.):
10. Where and how destroyed.

Signature(s), name(s) and
designation(s) of Chairman/Members
of the Drug Disposal Committee.

•