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MADHYA PRADESH STATE JUDICIAL ACADEMY

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

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धारा 32 - मृत्युकालिक कथन की विश्वसनीयता। **75*** **143**

Sections 32 and 106 – Reliabilty of third dying declaration.

धाराएं 32 एवं 106 - तीसरे मृत्युकालिक कथन की विश्वसनीयता। **80(ii)** **147**

Section 113-B – Where all three ingredients of offence of dowry death are proved, presumption u/S 113-B has to be drawn in absence of rebuttal defence evidence.

धारा 113-ख - जहां दहेज मृत्यु के तीनों तत्व साबित हो जाते हैं, वहां खंडनीय बचाव साक्ष्य के अभाव में धारा 113-ख के तहत उपधारणा की जाएगी। **82*** **150**

Section 114 – See Section 125 of the Criminal Procedure Code, 1973.

धारा 114 - देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 125। **59*** **125**

FOOD SAFETY AND STANDARDS ACT, 2006

खाद्य सुरक्षा एवं मानक अधिनियम, 2006

Section 55 – There can be prosecution for offence both u/S 55 of FSS Act and u/S 188 IPC for non-compliance of orders passed under the Act.

धारा 55 - एफएसएस अधिनियम के तहत पारित आदेशों के अपालन के लिए इस अधिनियम की धारा 55 तथा धारा 188 भादंसं, दोनों के तहत अभियोजन हो सकता है। **76(i)*** **144**

HINDU MARRIAGE ACT, 1955

हिन्दू विवाह अधिनियम, 1955

Section 13 (1) (i) – See Section 125 of the Criminal Procedure Code, 1973.

धारा 13 (1) (i) - देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 125। **59*** **125**

Section 13B – (i) In case of divorce by mutual consent compliance of statutory period of six months is not mandatory, on satisfaction of Court about parties living separately for more than statutory period and failure of all efforts at mediation and conciliation.

(ii) Video conferencing can be used where parties are unable to appear in person for any just and valid reasons.

धारा 13बी - (i) पारस्परिक सम्मति से विवाह विच्छेद के मामले में न्यायालय के पक्षकारों के वैधानिक अवधि से अधिक अवधि के लिए पृथक रहने और मध्यस्थता और पुनर्मिलन के सभी प्रयासों के विफल होने के बारे में संतुष्ट होने पर, न्यूनतम छह माह की वैधानिक अवधि का पालन किया जाना आज्ञापक नहीं है।

(ii) जहां पक्षकार न्यायासंगत और वैध कारणों से स्वीय उपस्थिति में अक्षम हों वहां वीडियो कान्फ्रेसिंग का उपयोग किया जा सकता है। **77** **144**

Section 13B – Legal rights of minor daughter to claim maintenance and claim share in property of father cannot be terminated by an agreement between the parents and daughter shall have a discretion to exercise such rights or not on her attaining majority.

धारा 13बी - अवयस्क पुत्री का भरण-पोषण तथा पिता की संपत्ति में अंश के दावे का अधिकार माता-पिता के मध्य करार से समाप्त नहीं किया जा सकता तथा पुत्री के पास विवेकाधिकार होगा कि वयस्कता प्राप्त करने पर वह इन अधिकारों का प्रयोग करेगी या नहीं। **78*** **146**

INDIAN PENAL CODE, 1860

भारतीय दण्ड संहिता, 1860

Sections 34, 302 and 323 – See Sections 212, 215 and 464 of the Criminal Procedure Code, 1973.

धाराएं 34, 302 एवं 323 - देखें दण्ड प्रक्रिया संहिता, 1973 की धाराएं 212, 215 एवं 464।

63 **129**

Section 188 – Order u/S 188 IPC may relate to act which causes or tends to cause danger to human life and hence section 188 IPC will apply for alleged violation of prohibitory order of the Commissioner, Food and Safety also.

धारा 188 - धारा 188 भादंसं के तहत आदेश, मानव जीवन को संकट कारित करने वाले या कारित करने की प्रवृत्ति रखने वाले कार्य से संबंधित हो सकता है तथा अतः धारा 188 भादंसं आयुक्त, खाद्य एवं सुरक्षा के प्रतिबंधात्मक आदेश के कथित उल्लंघन पर भी लागू होगी। **76(ii)*** **144**

Sections 301 and 302 – If accussed person had intention to kill one person but killed another, they would be punishable for offence of murder under doctrine of transfer of malice.

धाराएं 301 एवं 302 - यदि अभियुक्तगण का किसी एक व्यक्ति की हत्या कारित करने का आशय था किंतु वे किसी अन्य की हत्या कर देते हैं, तो वे द्वेष के अंतरण के सिद्धांत के अंतर्गत हत्या का अपराध करने के लिए दण्डित किए जाने योग्य होंगे। **79*** **146**

Section 302 – Capital punishment commuted to life imprisonment, when motive of the crime was not on record, accused was young at the time of committing offence, there was absence of extreme brutality and State failed to show that there is no possibility of reform or rehabilitation.

धारा 302 - मृत्यु दण्ड आजीवन कारावास में परिवर्तित किया गया, जब अपराध का हेतु अभिलेख पर नहीं था, अपराध कारित करते समय अभियुक्त युवा था, नितांत पाश्विकता का अभाव था और राज्य यह दर्शित करने में असफल रहा कि सुधार या पुर्नवास की कोई संभावना नहीं है। **68(iii)*** **136**

Section 302 – Deceased died a homicidal death inside matrimonial home of which accused gave no explanation – No grave and sudden provocation by deceased and accused absconded after incident – Conviction upheld.

धारा 302 - मृतक की मृत्यु वैवाहिक गृह के अंदर हुई जिसका अभियुक्त ने कोई स्पष्टीकरण नहीं दिया - मृतक द्वारा कोई गंभीर और अचानक प्रकोपन नहीं और घटना के बाद अभियुक्त फरार हो गया - दोषसिद्धी की पुष्टि की गई। **80(i)** **147**

Sections 302 and 120B – Essentials of criminal conspiracy to commit murder.

धाराएं 302 एवं 120बी - हत्या कारित करने हेतु आपराधिक षड़यंत्र के आवश्यक तत्व।

81(i)* **148**

Section 304-B – See Section 113-B of the Evidence Act, 1872.

धारा 304-ख - देखें साक्ष्य अधिनियम, 1872 की धारा 113-ख। **82*** **150**

Section 306 – Accused was demanding his own lent money back from the deceased – No evidence that the accused was demanding an additional amount even after repayment of the entire loan amount by deceased – It cannot be said that accused abetted the deceased to commit suicide.

धारा 306 - अभियुक्त स्वयं द्वारा दी गई उधार राशि मृतक से वापस मांग रहा था - ऐसी कोई साक्ष्य नहीं कि अभियुक्त मृतक द्वारा संपूर्ण ऋण राशि अदा कर देने के बाद भी अतिरिक्त राशि की मांग कर रहा था - यह नहीं कहा जा सकता कि अभियुक्त ने मृतक को आत्महत्या के लिए दुष्प्रेरित किया।

83 **150**

Section 306 – Alleged act of insulting deceased by using abusive language by accused, will, by itself, not constitute abetment of suicide – There should be evidence capable of suggesting that accused intended by such act to instigate deceased to commit suicide.

INSURANCE ACT, 1938

बीमा अधिनियम, 1938

LAND ACQUISITION ACT, 1894

भू-अर्जन अधिनियम, 1894

Sections 4, 6, 11 and 16 – Suit for declaration of title and permanent injunction is not maintainable against the acquisition proceedings under the act and only remedy available is to either challenge the acquisition proceedings as being against the provisions of the Act or to claim compensation payable under the Act.

धाराएं 4, 6, 11 एवं 16 - अधिनियम के अधीन अर्जन कार्यवाहियों के विरूद्ध स्वत्व घोषणा व स्थाई निषेधाज्ञा का दावा प्रचलनीय नहीं है तथा एकमात्र उपचार या तो अर्जन कार्यवाहियों को अधिनियम के प्रावधानों के विरूद्ध होने से चुनौती देना या अधिनियम के अधीन देय प्रतिकर का दावा करना है।

87(i)* **161**

MOTOR VEHICLES ACT, 1988

मोटरयान अधिनियम, 1988

Section 50 r/w/s 2 (30) – Upon transfer of vehicle the person in whose name the vehicle stands registered in RTO records is treated to be the registered owner, even if possession handed over to transferee after receiving consideration and he is liable to pay compensation as long his name continues in RTO records.

धारा 50 सहपठित धारा 2 (30) - वाहन के अंतरण में जिस व्यक्ति के नाम पर मोटरयान, आरटीओ अभिलेखों में पंजीकृत होता है, उसे स्वामी माना जाता है, चाहे प्रतिफल प्राप्त करने के बाद अंतरिति को आधिपत्य दे दिया गया हो और वह क्षतिपूर्ति अदा करने हेतु दायी होगा जब तक उसका नाम आरटीओ अभिलेखों में बना रहता है। **88*** **162**

Section 147 – Due to effect of Section 64VB of the Insurance Act and Section 147 of Motor Vehicle Act, insurance Company cannot postpone the liability after receipt of premium and is liable to pay compensation.

धारा 147 - बीमा अधिनियम की धारा 64VB एवं मोटर यान अधिनियम की धारा 147 के प्रभाव के कारण, बीमा कंपनी प्रीमियम की राशि प्राप्त करने के बाद दायित्व को स्थगित नहीं कर सकती और प्रतिकर अदा करने के दायित्वाधीन है। **89** **162**

Section 147 – When claimant traveling in the tractor as a passenger in breach of policy, insurance company is not liable but directed to pay the compensation with liberty to recover it from the owner.

धारा 147 - पॉलिसी के उल्लंघन में जब दावेदार ट्रैक्टर में यात्री के रूप में यात्रा कर रहा था, तब बीमी कंपनी दायित्वाधीन नहीं है पर स्वामी से वसूल करने की स्वतंत्रता के साथ प्रतिकर अदा करने हेतु निर्देशित किया गया। **90** **165**

Section 147 – On accident by vehicle taken on hire by State Corporation whose conductor was provided by Corporation and driver, by owner, registered owner, Corporation and insurance company liable to pay compensation jointly and severally and corporation would be entitled to recover the amount from the owner as per the agreement between them.

धारा 147 - राज्य निगम द्वारा किराए पर लिए गए वाहन से दुर्घटना होने पर, जिसका परिचालक निगम द्वारा प्रदान किया गया था और चालक, स्वामी द्वारा, पंजीकृत स्वामी, निगम व बीमा कंपनी संयुक्ततः व पृथकतः क्षतिपूर्ति अदा करने के दायित्वाधीन हैं तथा उनके मध्य हुए करार के अनुसार निगम, स्वामी से राशि वसूल करने का हकदार होगा। **91*** **166**

Section 166 – Driving the vehicle by the deceased driver without a driving license, does not amount to contributory negligence on his part.

धारा 166 - मृतक चालक द्वारा बिना चालन अनुज्ञप्ति के वाहन चलाना उसकी स्वयं की ओर से योगदायी उपेक्षा नहीं है। **92*** **166**

Section 168 – Claimant's of deceased agriculturist who was also doing other work are entitled to future prospects in view of decision in ***National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680***.

धारा 168 - मृतक कृषक जो अन्य कार्य भी करता था, के दावेदार नेशनल इंश्योरेन्स कंपनी लिमिटिड वि. प्रणय सेठी, (2017) 16 एससीसी 680, में दिए गए निर्णय अनुसार भविष्यवर्ती लाभ प्राप्त करने के हकदार हैं। **93*** **167**

Section 168 – (i) In relation to Future Prospects, law laid down in ***National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680,*** case should be followed.

(ii) Deduction for personal and living expenses from the income of the deceased bachelor where widowed mother and large number of younger non-earning sisters or brothers were dependent on his income may be restricted to one-third.

(iii) Aged father and non-earning brother/sister dependent on deceased would be entitled to compensation as his dependents.

(iv) The term 'Consortium' includes 'spousal consortium', 'parental consortium', and 'filial consortium'.

धारा 168 - (i) भविष्यवर्ती लाभ के संबंध में नेशनल इंश्योरेंस कंपनी लिमिटेड वि. प्रणय सेठी, (2017) 16 SCC 680, प्रकरण में प्रतिपादित विधि का अनुसरण किया जाना चाहिये।

(ii) अविवाहित मृतक की आय से व्यक्तिगत व जीवन निर्वाह व्यय कि की जाने वाली कटौती को, जहां विधवा मां और आय न अर्जित करने वाले बड़ी संख्या में भाई या बहन उसकी आय पर आश्रित थे, एक-तिहाई तक सीमित किया जा सकता है।

(iii) मृतक पर आश्रित वृद्ध पिता व गैर कमाऊ भाई-बहिन आश्रित के रूप में प्रतिकर पाने के हकदार हैं।

(iv) सहचर्य अभिव्यक्ति में 'दाम्पत्यिक सहचर्य', 'पैतृक सहचर्य' एवं 'सन्तान संबंधी सहचर्य' शामिल हैं।

94 **167**

MUSLIM LAW:

मुस्लिम विधि:

– Conditions for making valid and complete oral gift under Muslim Law.

- मुस्लिम विधि में वैध और पूर्ण मौखिक दान करने की शर्तें। **97(iii) 171**

NEGOTIABLE INSTRUMENTS ACT, 1881

परक्राम्य लिखत अधिनियम, 1881

Section 138 – Amendment of typographical errors can be made in a complaint filed u/S 138 of N.I. Act

धारा 138 - परक्राम्य लिखत अधिनियम की धारा 138 के अधीन प्रस्तुत परिवाद में लेखन संबंधी त्रुटियों का संशोधन किया जा सकता है। **95* 170**

PREVENTION OF CORRUPTION ACT, 1988

भ्रष्टाचार निवारण अधिनियम, 1988

Section 13 – See Section 300 of the Criminal Procedure Code, 1973.

धारा 13 - देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 300। **96* 170**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012

Sections 3 and 4 – See Section 3 of Evidence Act, 1872 and Section 302 of the Indian Penal Code, 1860.

धाराएं 3 एवं 4 - देखें साक्ष्य अधिनियम, 1872 की धारा 3 एवं भारतीय दण्ड संहिता, 1860 की धारा 302।

68* 136

REGISTRATION ACT, 1908

रजिस्ट्रीकरण अधिनियम, 1908

Section 17 – See Section 58 (c) of the Transfer of Property Act, 1882.

धारा 17 - देखें संपत्ति अंतरण अधिनियम, 1882 की धारा 58 (ग)। **99* 177**

Sections 17, 49 and 50 – See Section 16 of the Contract Act, 1872.

धाराएं 17, 49 एवं 50 - देखें संविदा अधिनियम, 1872 की धारा 16। **97 171**

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

अनुसूचित जाति तथा अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989

Section 3(1)(x) – (i) Insult or intimidation must be with an intention to humiliate the victim in a public place for being a member of SC/ST community.

(ii) Word "Adiwasin" is not abusive enough to constitute offence u/S 3(1)(x) of the Act – "Adiwasin" means a female adiwasi or a female member of ST community beyond which no other meaning deserves to be ascribed to it.

धारा 3(1)(x) - (i) अनादर अथवा अभित्रास पीड़ित को एससी/एसटी समुदाय का सदस्य होने से अपमानित करने के आशय से लोक स्थान पर होना चाहिए।

(ii) शब्द ''आदिवासिन'' अधिनियम की धारा 3(1)(10) के अधीन अपराध गठित करने के लिए पर्याप्त अपमानजनक नहीं है - ''आदिवासिन'' का अर्थ है महिला आदिवासी या एसटी समुदाय की महिला सदस्य जिसके अतिरिक्त उस शब्द को अन्य कोई अर्थ देना उचित नहीं है। **98** **175**

TRANSFER OF PROPERTY ACT, 1882

संपत्ति अंतरण अधिनियम, 1882

Section 58 (c) – In registered sale deed no conditions of mortgage or of conditional sale mentioned and subsequent agreement of mortgage converting transaction into that of a conditional sale or mortgage, not registered – Such document is not admissible in evidence and cannot be relied upon in a suit for redemption of mortgage.

धारा 58 (ग) - पंजीकृत विक्रय अभिलेख में बंधक अथवा सशर्त विक्रय की शर्तें वर्णित नहीं तथा संव्यवहार को सशर्त विक्रय या बंधक में परिवर्तित करने का पश्चात का बंधक का करार पंजीकृत नहीं - ऐसा दस्तावेज साक्ष्य में ग्राहय नहीं है और बंधक मोचन हेतु वाद में निर्भरित नहीं किया जा सकता।

99* **177**

URBAN LAND (CEILING AND REGULATION) ACT, 1976

शहरी भूमि (अधिकतम सीमा एवं विनियमन) अधिनियम, 1976

Section 10(3) – Third party purchaser, purchasing property after issuance of notification u/S 10(3) of the Act, has no ***locus standi*** to claim the right in land.

धारा 10(3) - अधिनियम की धारा 10(3) के अधीन अधिसूचना जारी होने के बाद संपत्ति क्रय करने वाले व्यक्ति के पास उस भूमि पर दावा करने की कोई हैसियत नहीं होती है।

100* **178**

PART – IV
IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

संपादकीय

प्रदीप कुमार व्यास
संचालक

सम्माननीय पाठकगण,

यह अंक जब तक आपके पास पहुंचेगा तब तक कई न्यायाधीश महोदय अपनी नवीन पदस्थापना पर कार्यभार ग्रहण कर चुके होंगे। मैं उन सब न्यायाधीशगण को नवीन पदस्थापना सफलतापूर्वक, निर्विघ्न संपन्न हो ऐसी अग्रिम शुभकामनाएं देता हुं। जब भी कोई न्यायाधीश नवीन पदस्थापना के लिए प्रस्थान करें तो उन्हें सकारात्मक दृष्टिकोण लेकर जाना चाहिए। यदि स्थान विशेष के बारे में पूर्व से कोई छवि चाहे वह सकारात्मक या नकारात्मक बतलाई भी गई हो तो उससे प्रभावित नहीं होना चाहिए, ऐसा मेरा आग्रह है।

इस अंक में एक लेख दांडिक पुनरीक्षण पर शामिल किया गया है। सत्र न्यायाधीश एवं अपर सत्र न्यायाधीश के न्यायालय में दांडिक पुनरीक्षण दैनिक कार्य एक महत्वपूर्ण विषय होने से उस पर मेरे द्वारा तैयार एक लेख अपडेट करके शामिल किया गया है।

एक लेख वन्य जीव संरक्षण अधिनियम पर सुश्री स्वाती बजाज, विशेष कर्तव्य अधिकारी द्वारा तैयार किया गया है, उसे भी शामिल किया गया है जिससे इस अधिनियम के संबंध में नवीनतम विधिक स्थिति समझी जा सके।

माह फरवरी में अकादमी एवं जैव विविधता बोर्ड के संयुक्त प्रयास से एक कार्यशाला जैव विविधता अधिनियम, 2002 पर जागरुकता के लिए रखी गई थी जिसमें न्यायाधीशगण, अभियोजन अधिकारी, वन विभाग के अनुसंधान अधिकारी आदि ने एक साथ भाग लिया और विचारों का आदान-प्रदान किया।

इन दो माहों में बालक न्यायालय से संबंधित मुख्य बिन्दुओं पर एक कार्यशाला 2 और 3 मार्च को रखी गई थी। सायबर लाॅ पर एक कार्यशाला 8 एवं 9 मार्च को और एक कार्यशाला 15 एवं 16 मार्च को रखी गई थी। वर्ष 2017 बैच के सिविल जज वर्ग 2 का प्रथम रिफ्रेशर 11 मार्च, 2019 से 15 मार्च, 2019 तक रखा गया था जिसमें प्रथम बार 90 न्यायाधीश ने एक साथ भाग लिया। 25 मार्च, 2019 से 19 अप्रैल, 2019 तक इंडक्शन ट्रेनिंग प्रोग्राम नवनियुक्त सिविल जज वर्ग 2 के लिए रखा गया है जिसमें 100 न्यायाधीशगण एक साथ शामिल होंगे।

इतनी अधिक संख्या में एक साथ, एक ही स्थान पर प्रषिक्षण के लिए न्यायाधीषगण का उपस्थित होना अकादमी के लिए एक नया अनुभव रहा है।

मुझे आशा ही नहीं अपितु पूर्ण विश्वास है कि अप्रैल, 2019 का यह अंक अप्रैल माह में ही आपके हाथ में होगा व भविष्य में भी हम प्रयास करेंगे कि संबंधित माह का अंक संबंधित माह में ही आपके पास पहुंचे।

पत्रिका के बारे में आपके अमूल्य सुझाव सादर आमंत्रित हैं।

We always worry about our looks, status, powers etc. but the truth is they neither matter to those who love us nor to those who do not love us.

– ANONYMOUS

"Success isn't always about greatness. It's about consistency. Consistent hard work leads to success.
Than Greatness will come."

– ANONYMOUS

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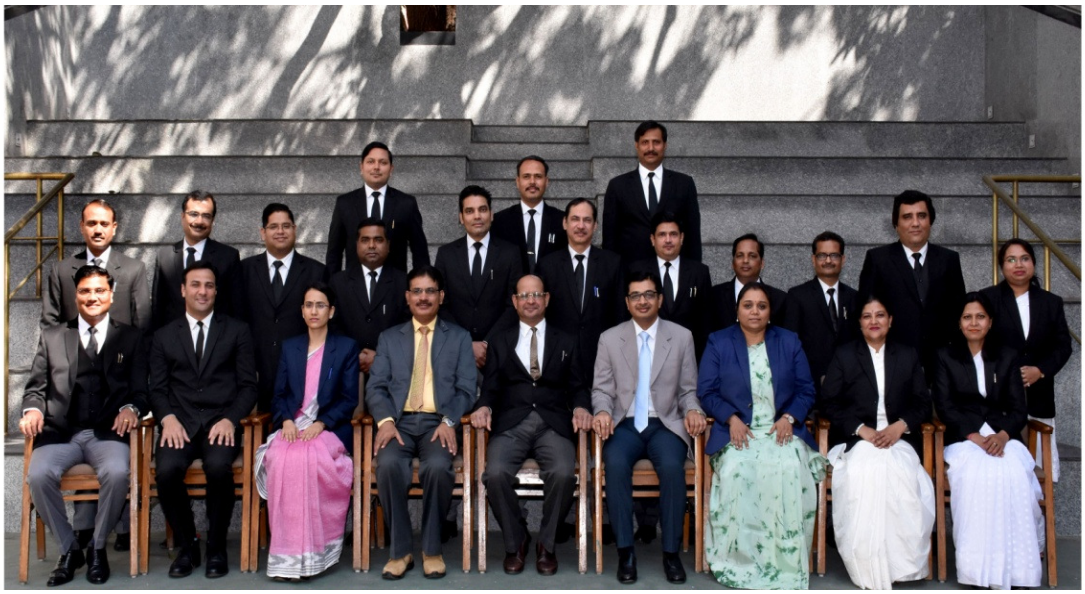
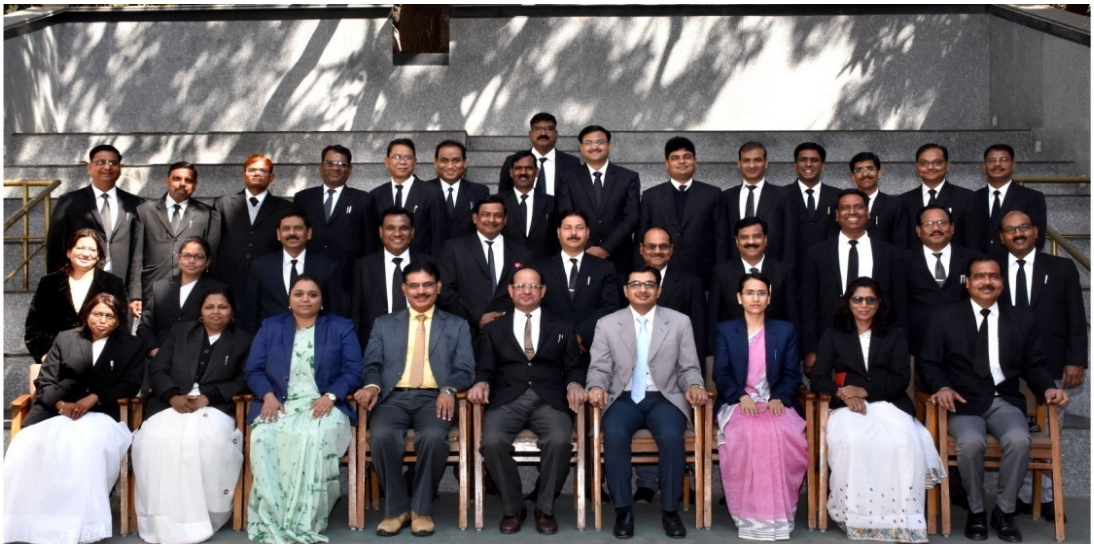
MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGH COURT OF M.P., JABALPUR



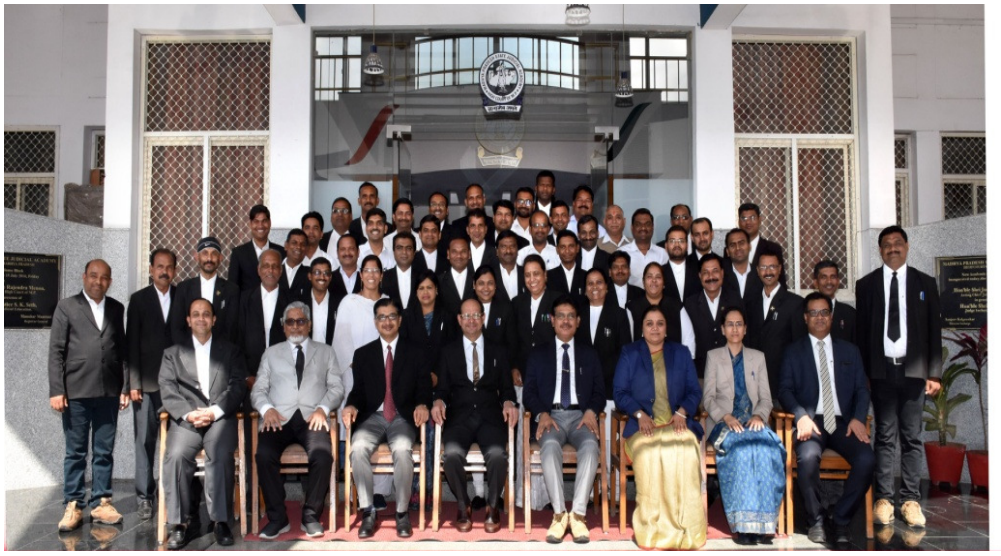
Foundation Course (First Phase) for District Judges (Entry Level) directly appointed from the Bar
(05.02. 2019 - 23.02.2019)



Advance Course for District Judges (Entry Level) (Promoted)
(11.02.2019 - 23.02.19)

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

Workshop on – Law on Biodiversity and Forest Conservation
(23.02.2019)



Motivational Workshop for Advocates
(25.02.2019 - 28.02.2019)

TRANSFER OF HON'BLE SHRI JUSTICE PANKAJ KUMAR JAISWAL TO ALLAHABAD HIGH COURT

Hon'ble Shri Justice Pankaj Kumar Jaiswal, who occupied the august office of the Judge of the High Court of Madhya Pradesh for more than fourteen years, has been transferred to the High Court of Allahabad as Judge.

His Lordship was born on 24.09.1958. After obtaining LL.B. degree from NES College, Jabalpur, enrolled as an Advocate of M.P. State Bar Council in the year 1981 and started practice in the High Court of Madhya Pradesh at Jabalpur under his father, Shri M.L. Jaiswal, Senior Advocate of the High Court. His Lordship was Standing Counsel for many Corporations and Public Undertakings.

His Lordship was appointed as Judge of High Court of M.P. on 11.10.2004.

During His Lordship's tenure in the High Court of Madhya Pradesh, rendered valuable services as Judge, Administrative Judge and Member of various Administrative Committees of the High Court.

His Lordship was accorded farewell ovation on 3rd February, 2019 at Principal Seat of High Court of Madhya Pradesh, Jabalpur.

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

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HON'BLE SHRI JUSTICE CHANDRAHAS SIRPURKAR DEMITS OFFICE

Hon'ble Shri Justice Chandrahas Sirpurkar has demitted office on His Lordship's attaining superannuation. His Lordship was born on March 4, 1957 at Chhindwara, Madhya Pradesh. Passed Matriculation and Graduation Examination in first division. Stood First Class First in LL.B. Final Year Examination in the year 1980 from University of Sagar. His Lordship after

obtaining LL.B degree, topped 1983 Batch of Civil Judges in Madhya Pradesh and joined as Civil Judge Class II on March 4, 1983.

As Judge of District Judiciary, His Lordship worked as Deputy Commissioner in the Office of Commissioner for the welfare of Bhopal Gas Victims, Bhopal. Also worked for a long time as Registrar Judicial and Central Project Coordinator for Madhya Pradesh. As Secretary to the Rule Committee of the High Court, was associated with drafting of the High Court of Madhya Pradesh Rules, 2008 and Rules under various other statutes. As Central Project Coordinator, for the State of Madhya Pradesh, was also associated with computerization of the High Court and District Courts. In aforesaid capacities, had opportunity of studying working patterns and application of Information and Communication Technology in the High Courts and Districts Courts in the states of Gujarat, Karnataka, Delhi, Andhra Pradesh, Tamil Nadu, and Orissa. Worked as Director of the State Judicial Academy and edited bimonthly journal JOTI.

His Lordship attended an advance course on the subject of Adult Learning Strategies in Canadian Judicial Institute in Ottawa, Canada. Before elevation to the High Court, worked as Principal Secretary to the Department of Law and Legislative Affairs, Government of M.P.

His Lordship was appointed as Additional Judge of the High Court of Madhya Pradesh on October 25th, 2014 and Permanent Judge on February 27th, 2016.

During His Lordship's tenure, rendered valuable services as Judge, Member of various Administrative Committees of the High Court including Committee for Overall Working of Judicial Officers' Training and Research Institute (MPSJA). His Lordship, addressed the participants of various training programmes/workshops conducted by the Academy on divergent topics on various occasions and provided wholehearted support to the Academy.

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

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दाण्डिक पुनरीक्षण

-प्रदीप कुमार व्यास,
संचालक
म.प्र. राज्य न्यायिक अकादमी

जैसे ही कोई न्यायाधीश, सत्र न्यायाधीश या अपर सत्र न्यायाधीश के रूप में पदोन्नत होते हैं या नवनियुक्त होते हैं, उन्हें कुछ नई शक्तियाँ मिलती हैं। कुछ नये क्षेत्राधिकार मिलते हैं। उनमें से एक क्षेत्राधिकार दाण्डिक पुनरीक्षण का या Criminal revision का क्षेत्राधिकार होता है। दाण्डिक पुनरीक्षण को लेकर कई प्रश्न नवनियुक्त अपर सत्र न्यायाधीश महोदय के मन में उत्पन्न होते हैं जैसेः-

1. अंतवर्ती आदेश कौन से हैं?
2. अंतवर्ती आदेश की पहचान कैसे करेंगे?
3. यदि पुनरीक्षण अवधि बाधित है तो क्या प्रत्यर्थीगण को सुनना आवश्यक है?
4. प्रारंभिक तर्क सुनकर पुनरीक्षण को कब प्रारंभिक स्तर या मोशन में ही खारिज कर देना चाहिये?
5. यदि पुनरीक्षण अंतिम सुनवाई के लिये ग्राह्य कर ली है तो क्या प्रत्यर्थीगण को नोटिस देना आवश्यक है?
6. क्या पुनरीक्षण में तथ्यों का पुनर्मूल्यांकन कर सकते हैं?
7. क्या पुनरीक्षण में साक्ष्य का पुनर्मूल्यांकन कर सकते हैं?
8. पुनरीक्षणकर्ता अनुपस्थित हो जाये तो क्या करना है?
9. पुनरीक्षणकर्ता मर जाये तब क्या स्थिति होगी?
10. पक्षों में समझौता हो जाये तब क्या होगा?
11. पुनरीक्षण न्यायालय की शक्तियाँ क्या हैं? उन शक्तियों का विस्तार क्या है?

और ऐसे कई प्रश्न उत्पन्न होते हैं, यहाँ हम ऐसे ही विभिन्न प्रश्नों पर विचार करेंगे।

1. पुनरीक्षण का मूल प्रावधानः-

धारा 397(1) दण्ड प्रक्रिया संहिता, 1973 के अनुसार उच्च न्यायालय या कोई सेशन न्यायाधीश अपनी स्थानीय अधिकारिता के अन्दर स्थित किसी अवर या अधीनस्थ दाण्डिक न्यायालय के समक्ष की कार्यवाही के अभिलेख को, किसी अभिलिखित या पारित किये गये निष्कर्ष, दण्डादेश या आदेश की **शुद्धता, वैधता, या औचित्य** के बारे में और ऐसे अधीनस्थ न्यायालय की किन्हीं **कार्यवाहियों की नियमितता** के बारे में अपना समाधान करने के प्रयोजन से मंगा सकता है और उसकी परीक्षा कर सकता है और ऐसे अभिलेख मंगाते समय निर्देश दे सकता है कि अभिलेख की परीक्षा लंबित रहने तक किसी दण्डादेश का निष्पादन निलम्बित किया जाये और यदि अभियुक्त अभिरक्षा में है तो उसे जमानत पर या उसके अपने बंधपत्र पर छोड़ दिया जाये।

स्पष्टीकरण - सभी मजिस्ट्रेट चाहे वे कार्यपालक या न्यायिक और चाहे वे आरंभिक अधिकारिता का प्रयोग कर रहे हों या अपील अधिकारिता का, इस उपधारा के और धारा 398 के प्रयोजन के लिए सेशन न्यायाधीश से अवर या अधीनस्थ समझे जायेंगे।

धारा 397(2) दण्ड प्रक्रिया संहिता के अनुसार उपधारा (1) द्वारा प्रदत्त पुनरीक्षण की शक्तियों का प्रयोग किसी अपील, जांच, विचारण या अन्य कार्यवाही में पारित किसी अंतर्वर्ती आदेश के बावत् नहीं किया जायेगा।

धारा 397(3) दण्ड प्रक्रिया संहिता के अनुसार यदि किसी व्यक्ति द्वारा इस धारा के अधीन आवेदन या तो उच्च न्यायालय को या सेशन न्यायाधीश को किया गया है तो उसी व्यक्ति द्वारा कोई और आवेदन उसमें से दूसरे के द्वारा ग्रहण नहीं किया जाये।

उक्त प्रावधान पुनरीक्षण के मूलभूत प्रावधान हैं जिसके तहत यह कार्यवाहियां सेशन न्यायाधीश के न्यायालय में प्रस्तुत होती हैं वे उसे अपर सेशन न्यायाधीश को भी अंतरित करते हैं।

दाण्डिक पुनरीक्षण को सुनने व निराकृत करने का कार्य सामान्यतः सत्र न्यायाधीश महोदय को अपने पास रखना चाहिए या उन अपर सत्र न्यायाधीश को अंतरित करना चाहिए जिनसे संबंधित मजिस्टेªट के बारे में वे वार्षिक गोपनीय चरित्रावली लिखते समय प्रतिवेदन लेना उचित मानते हैं क्योंकि दाण्डिक पुनरीक्षण से संबंधित मजिस्ट्रेट की कार्यप्रणाली का सतत् पर्यवेक्षण हो जाता है।

2. पुनरीक्षण के प्रावधान की प्रकृति:-

जिस तरह अपील एक वैधानिक अधिकार होता है, उस तरह पुनरीक्षण एक वैधानिक अधिकार नहीं है जिसमें विधि और तथ्य के प्रश्नों पर निराकरण की मांग की जा सके। पुनरीक्षण में अपवाद स्वरूप परिस्थितियों में आदेश में हस्तक्षेप किया जाता है। इस संबंध में न्याय दृष्टांत ***गोपाल विरूद्ध कन्हैयालाल, 1984 एम.पी.डब्ल्यू.एन. 452 एवं गोपाल विरूद्ध कन्हैया लाल, 1985 एम.पी.डब्ल्यू.एन. 27,*** अवलोकनीय है।

न्यायदृष्टांत ***श्री अंशदास हिन्दी विद्यापीठ विरूद्ध नारायण दास, 1986 (1), एम.पी.डब्ल्यू.एन. 209,*** के अनुसार पुनरीक्षण की शक्तियां विवेकाधिकार पर आधारित शक्तियां हैं।

न्यायदृष्टांत ***ओमप्रकाश विरूद्ध खच्चू राम, 1987 (1) डब्ल्यू.एन. 141,*** के अनुसार पुनरीक्षण का क्षेत्राधिकार पर्यवेक्षणीय प्रकृति का या सुपरवाईजरी नेचर का होता है।

न्यायदृष्टांत ***अमरचंद अग्रवाल विरूद्ध शांति बोस, ए.आई.आर. 1973 एस.सी. 799***, भी अवलोकनीय है जिसमें पुनरीक्षण की शक्तियों को विवेकाधिकार पर आधारित पर्यवेक्षणीय प्रकृति की शक्तियाँ माना गया है।

पुनरीक्षण की शक्तियाँ विस्तृत हैं लेकिन वैवेकीय हैं। ऐसी शक्तियों का प्रयोग अन्याय रोकने के लिये किया जा सकता है लेकिन ऐसी अवैधता जो मामले की जड़ तक नहीं जाती है उसमें ऐसी शक्तियों का प्रयोग नहीं कर सकते हैं। इस सम्बंध में न्यायदृष्टांत **जसवंत राई विरूद्ध स्टेट ऑफ हिमाचल प्रदेश, 2000 सी.आर.एल.जे.1970,** अवलोकनीय है।

3. प्रश्नाधीन आदेश की सत्यप्रतिलिपि लगाना:-

न्यायदृष्टांत ***राजकपूर विरूद्ध स्टेट देहली एडमीनिस्ट्रेशन, ए.आई.आर. 1980 एस.सी. 258,*** तीन न्यायमूर्तिगण की पीठ के अनुसार पुनरीक्षण प्रक्रियात्मक तकनीकियों के कारण कि, आदेश की प्रतिलिपि संलग्न नहीं है, ग्राह्य न करना उचित नहीं माना गया। दण्ड प्रक्रिया संहिता में ऐसी प्रतिलिपि लगाना आवश्यक नहीं है। इस मामले में विचारण न्यायालय का अभिलेख आ चुका था फिर भी पुनरीक्षण प्रश्नाधीन आदेश की प्रतिलिपि न लगाने के आधार पर खारिज की गई थी।

न्यायदृष्टांत ***एस. भूपिन्दर सिंह विरूद्ध नरेन्द्र कौर, 1990 सी.आर.एल.जे. 2265,*** के अनुसार भी प्रश्नाधीन आदेश की प्रतिलिपि न होने के आधार पर पुनरीक्षण खारिज करना उचित नहीं माना गया।

उचित प्रक्रिया यह हो सकती है कि पुनरीक्षणकर्ता को ऐसी प्रतिलिपि पेश करने का या तो समय दे दिया जाये या यदि संबंधित न्यायालय उसी स्थान पर हो तो अभिलेख बुलवाकर भी प्रश्नाधीन आदेश देखा जा सकता है।

4. अभिलेख बुलवाना:-

विचारण न्यायालय का अभिलेख न होना घातक नहीं है। पुनरीक्षण के अध्याय में विचारण न्यायालय का अभिलेख बुलवाना आज्ञापक नहीं है।

प्रत्येक मामले में पुनरीक्षण आवेदन को दर्ज करने के पहले विचारण न्यायालय का अभिलेख मंगवाना आवश्यक नहीं है। इस संबंध में न्यायदृष्टांत शंकर विरूद्ध जानाबाई, 1978 सीआरएलजे 888, अवलोकनीय है।

विचारण न्यायालय का अभिलेख अंतिम सुनवाई के समय ही बुलवाना अधिक उचित रहता है, इसे भी ध्यान रखना चाहिए।

5. परिसीमा का प्रश्न:-

परिसीमा अधिनियम 1963 के अनुच्छेद 131 के अनुसार जिस आदेश या दण्डादेश का पुनरीक्षण चाहा गया है उसके पारित होने की तारीख से **90 दिन** के अन्दर पुनरीक्षण पेश होना चाहिए।

न्यायदृष्टांत ***म्युनिसिपल कारपोरेशन ऑफ देहली विरूद्ध गिरधारी लाल, ए.आई.आर. 1981, एस.सी. 1169,*** के अनुसार पुनरीक्षण परिसीमा के तकनीकी आधार पर खारिज नहीं करना चाहिए। जहाँ न्याय की हानि हुई हो और आदेश अवैध प्रतीत होता हो वहाँ सौमोटो पावर का उपयोग भी किया जा सकता है।

सामान्यतः विलंबित पुनरीक्षण के साथ धारा 5 परिसीमा अधिनियम, 1963 का आवेदन लगा होता है और विलंब का कारण दर्शाया होता है जिस पर विचार करके न्यायालय उचित मामलों में विलंब क्षमा भी कर सकता है।

एक प्रश्न यह उत्पन्न होता है कि क्या पुनरीक्षण अवधि बाधित है, तो विपक्षी को अर्थात प्रत्यर्थी को विलम्ब क्षमा करने के बिंदु पर धारा 5 परिसीमा अधिनियम के आवेदन का सूचनापत्र दिया जाना आवश्यक है।

मेरे विनम्र मत में सर्वप्रथम तो यह देख लेना चाहिये कि क्या पुनरीक्षण प्रथम दृष्ट्या प्रचलनशील है अर्थात यदि किसी अंतवर्ती आदेश के विरूद्ध यदि पुनरीक्षण की गई है तब उसे प्रारंभिक स्तर पर या मोशन में ही खारिज कर देना चाहिये और यदि प्रथम दृष्टया यह पाया जाता है कि पुनरीक्षण प्रचलनशील है तब यह प्रश्न उठता है कि क्या धारा 5 परिसीमा अधिनियम के आवेदन की सूचना प्रत्यर्थीगण को दी जाना चाहिये।

कुछ विद्वानों का मत है कि विलम्ब क्षमा करना न्यायालय और पुनरीक्षणकर्ता के बीच का विषय है और इसमें प्रत्यर्थी को सूचनापत्र देना आवश्यक नहीं है लेकिन कुछ विद्वानों का मत है कि ऐसा सूचनापत्र दिया जाना चाहिये। मेरे मत में विलम्ब क्षमा किया जाये या नहीं इस बिंदु पर प्रत्यर्थीगण को सुन लेना चाहिये क्योंकि **धारा 401(2)** दं.प्र.सं के अनुसार ऐसा कोई आदेश जो अभियुक्त या अन्य व्यक्ति पर प्रतिकूल प्रभाव डालता हो तब तक नहीं किया जायेगा जब तक उसे स्वयं या उसके प्लीडर द्वारा सुने जाने का अवसर नहीं मिल चुका हो। यदि विलम्ब क्षमा किया जाता है तो यह आदेश निश्चित रूप से विपक्षी पर प्रतिकूल होगा और उसको सुने बिना पारित नहीं किया जाना चाहिये।

न्यायदृष्टांत ***स्टेट ऑफ महाराष्ट्र विरूद्ध शरदचंद्र विनायक डोंगरे, ए.आई.आर. 1995 एस.सी. 231, टी.रामचन्द्र राव विरूद्ध स्टेट ऑफ कर्नाटका, ए.आई.आर. 2002 एस.सी. 1856 एवं कृष्ण विरूद्ध स्टेट, 1977 सी.आर.एल.जे. 90 एम.पी.,*** में यह प्रतिपादित किया गया है कि विलम्ब क्षमा करने का आवेदन प्रसंज्ञान के पूर्व आता है, उस पर अभियुक्त को सुना जाना आज्ञापक है।

उक्त वैधानिक स्थिति के प्रकाश में विचार करें तो विलम्ब क्षमा करने पर विचार करने से पूर्व विपक्षी को सूचनापत्र दिया जाना चाहिये ताकि वह अपना पक्ष रख सके।

6. सुनवाई का अधिकार:-

धारा 403 दं.प्र.सं. के अनुसार इस संहिता में अभिव्यक्त रूप से जैसा उपबंधित है उसके सिवाय, जो न्यायालय अपनी पुनरीक्षण की शक्तियों का प्रयोग कर रहा है उसके समक्ष स्वयं या प्लीडर द्वारा सुने जाने का अधिकार किसी भी पक्षकार को नहीं है; किन्तु यदि न्यायालय ठीक समझता है तो वह ऐसी शक्तियों का प्रयोग करते समय किसी पक्षकार को स्वयं या उसके प्लीडर द्वारा सुन सकेगा।

धारा 401(2) दं.प्र.सं. के अनुसार इस धारा के अधीन कोई आदेश जो अभियुक्त या अन्य व्यक्ति पर प्रतिकूल प्रभाव डालता है, तब तक न किया जायेगा जब तक की उसे अपनी प्रतिरक्षा में या तो स्वयं या प्लीडर द्वारा सुने जाने का अवसर न मिल चुका हो।

उक्त दोनों प्रावधानों को एक साथ पढ़ने से यह स्थिति स्पष्ट होती है कि पुनरीक्षण को अंतिम सुनवाई के लिए ग्राह्य कर लेने के बाद विपक्षी को सूचना पत्र जारी कर दिया जाना चाहिए क्योंकि पुनरीक्षण में सुनवाई योग्य प्रश्न पाये जाने पर ही उसे अंतिम सुनवाई के लिए ग्राह्य किया जाता है और उस समय यह कहना कठिन होता है जो अंतिम आदेश किया जायेगा वह अभियुक्त पर या विपक्षी पर प्रतिकूल प्रभाव डालने वाला होगा या नहीं। अतः उचित परिपाटी यही हो सकती है कि पुनरीक्षण अंतिम सुनवाई के लिए ग्राह्य कर लिये जाने के बाद विपक्षी को सूचना पत्र जारी कर दिये जावें।

न्यायदृष्टांत ***उमा नाथ पाण्डे विरूद्ध स्टेट ऑफ उत्तर प्रदेश, (2009) 12 एस.सी.सी. 40,*** के मामले में एक प्रत्यर्थी ने पुनरीक्षण की थी जिसमें आवेदक और अन्य पक्षकारों को सूचना पत्र दिये बिना केवल प्रत्यर्थी क्रमांक 2 को सुनकर पुनरीक्षण का निराकरण किया गया था। माननीय सर्वोच्च न्यायालय ने इसे उचित नहीं माना और सभी पक्षकारों को सूचना पत्र करके फिर से पुनरीक्षण सुनकर निराकृत करने के निर्देश दिये।

न्यायदृष्टांत ***बाल मनोहर जालान विरूद्ध सुनील पासवान, (2014) 9 एस.सी.सी. 640,*** के अनुसार पुनरीक्षण में किसी व्यक्ति के विरूद्ध कोई आदेश पारित करने के पूर्व उसे सुना जाना आवश्यक है चाहे प्रश्नाधीन आदेश उसके कार्यवाही में शामिल हुये बिना पारित किया गया था। धारा 401(2) दं.प्र.सं. पर विचार करते हुए व न्यायदृष्टांत ***महावीर भाई एम. काकड़ीया विरूद्ध शैलेश भाई एम. पटेल, (2012) 10 एस.सी.सी. 517,*** को विचार में लेते हुए उक्त विधि प्रतिपादित की गई जिसमें धारा 202 एवं 203 दं.प्र.सं को भी विचार में लिया गया था।

न्यायदृष्टांत ***ज्ञानसिंह विरूद्ध स्टेट ऑफ एम.पी., 2018 (2) ए.एन.जे. एम.पी. 173*** के अनुसार धारा 401(2) दं.प्र.सं. में प्रयुक्त शब्द ''अन्य व्यक्ति'' में परिवादी/सूचनाकर्ता भी सम्मिलित है। पुनरीक्षण परिवादी को प्रत्यर्थी के रूप में संयोजित किये बिना एवं उसे सुनवाई का अवसर दिये बिना स्वीकार नहीं करना चाहिये।

उक्त वैधानिक स्थिति से भी यही स्पष्ट होता है कि पुनरीक्षण में विपक्षीगण को सुनना आवश्यक होता है।

7. अपील न करने पर स्थिति:-

धारा 401(4) दं.प्र.सं. के अनुसार जहाँ इस संहिता के अधीन अपील हो सकती है किन्तु कोई अपील नहीं की जाती है, वहाँ उस पक्षकार की प्रेरणा पर जो अपील कर सकता था, **पुनरीक्षण की कोई कार्यवाही ग्रहण नहीं की जाएगी।**

न्यायदृष्टांत ***संतोष कुमार विरूद्ध जयदका गैस एजेंसी, दांडिक पुनरीक्षण 1296/15, आदेश दिनांक 4.12.15 जबलपुर बैंच,*** के अनुसार जहां दोषमुक्ति के विरूद्ध अपील की जा सकती है, वहां धारा 401(4) के प्रकाश में पुनरीक्षण ग्राह्य नहीं होती है।

8. उच्च न्यायालय व सेशन न्यायालय दोनों में पुनरीक्षण:-

धारा 402 दं.प्र.सं. के अनुसार जहाँ एक ही विचारण में दोषसिद्ध एक या अधिक व्यक्ति पुनरीक्षण के लिए आवेदन उच्च न्यायालय में करते हैं और उसी विचारण में दोषसिद्ध कोई अन्य व्यक्ति पुनरीक्षण के लिए आवेदन सेशन न्यायाधीश को करते हैं, तब उच्च न्यायालय पक्षकारों की सुविधा और अंर्तग्रस्त प्रश्नों के महत्व को ध्यान में रखते हुए यह विनिश्चय करेगा कि कौन सा न्यायालय पुनरीक्षण के आवेदनों को अंतिम रूप से निपटायेगा और यदि उच्च न्यायालय स्वयं निपटाना उचित मानती है तो वह सेशन न्यायालय की कार्यवाहियों को भी अपने यहाँ मंगा सकेगी और निराकरण कर सकेगी या अपने यहाँ की कार्यवाहियों को सेशन न्यायालय को निपटारे के लिए भेज सकेंगी।

न्यायदृष्टांत ***मोहम्मद हनीफ खान विरूद्ध समीम बेगम, 1977 सी.आर.एल.जे. 116,*** के अनुसार यदि किसी पक्षकार ने सेशन न्यायालय में पुनरीक्षण यह कहकर खारिज करवा लिया कि वह

उसे **चलाना नहीं चाहता है** तो वह उच्च न्यायालय में **द्वितीय पुनरीक्षण** का आवेदन फाइल नहीं कर सकता है।

लेकिन यदि कोई पक्षकार सेशन न्यायाधीश के न्यायालय से पुनरीक्षण वापस ले लेता है तो वह उच्च न्यायालय में पुनरीक्षण प्रस्तुत कर सकेगा। इस संबंध में न्यायदृष्टांत ***हरक सिंह विरूद्ध लालू मणि, 1977 सी.आर.एल.जे. 723 पटना,*** अवलोकनीय है।

लेखक के मत में पुनरीक्षणकर्ता से इस सम्बंध में पूछताछ की जा सकती है कि, यह उसकी प्रथम पुनरीक्षण है, इसके अलावा उसने और कोई पुनरीक्षण सत्र न्यायालय में या उच्च न्यायालय में न तो पेश की है, न लंबित है और न निराकृत हुई है। जमानत आवेदन की तरह पुनरीक्षण में भी प्रथम आदेश पत्र में इस बारे में उल्लेख किया जा सकता है।

9. अंतर्वर्ती आदेश क्या है?

न्यायदृष्टांत ***भास्कर इंडस्ट्रीज लिमिटेड विरूद्ध भिवानी डैनिम, 2003 (1) जे.एल.जे. 56 एस.सी.,*** के मामले में यह प्रतिपादित किया गया है कि कोई आदेश मात्र इस कारण अंतर्वर्ती आदेश नहीं हो जाता है कि वह प्रकरण की अंतर्वर्ती अवस्था में पारित किया गया है बल्कि इसका सुरक्षित परीक्षण यह है कि पुनरीक्षण करने वाले पक्षकार का पक्ष मान लिया जाता है तो दाण्डिक कार्यवाही उस बिन्दु पर समाप्त हो जाएगी। यदि ऐसा होता है तो आदेश अंतर्वर्ती आदेश नहीं कहलाता है।

इस संबंध में न्यायदृष्टांत ***मधु लीमिये विरूद्ध स्टेट ऑफ महाराष्ट्र, ए.आई.आर. 1978 एस.सी. 47,*** तीन न्यायमूर्तिगण की पीठ का न्यायदृष्टांत भी अवलोकनीय है जिसमें यह परीक्षण बतलाया गया है कि ऐसा आदेश जिसमें किसी बिन्दु पर अभियुक्त के पक्ष को अस्वीकार कर दिया गया हो, यदि स्वीकार कर लिया जाये तब कार्यवाही समाप्त हो जाएगी, ऐसे आदेश को निश्चित रूप से अंतर्वर्ती आदेश नहीं कहा जा सकता।

इस संबंध में न्यायदृष्टांत ***बी.सी. शुक्ला विरूद्ध स्टेट, थ्रू सी.बी.आई., ए.आई.आर. 1980 एस.सी. 962,*** चार न्यायमूर्तिगण की पीठ, ***राजेन्द्र कुमार सीताराम पांडे विरूद्ध उत्तम, 1999 (3) एस.सी.सी. 134, के.के. पटेल विरूद्ध स्टेट ऑफ गुजरात, (2000) 6 एस.सी.सी. 195, एवं अमरनाथ विरूद्ध स्टेट ऑफ हरियाणा, ए.आई.आर. 1977 एस.सी. 2185,*** भी अवलोकनीय है।

उक्त ***मधु लीमिये*** वाले मामले में यह भी कहा गया है कि सामान्यतः अंतर्वर्ती आदेश को अंतिम आदेश के विपरीत समझा जाता है लेकिन ऐसा अर्थ और यह सिद्धांत कि जो अंतिम आदेश नहीं हैं, वे अंतर्वर्ती आदेश हैं यह न्याय संगत नहीं है। यदि ऐसा माना गया तो यह पुनरीक्षण की शक्तियों के लिए घातक होगा और यह विधायिका का आशय भी नहीं है।

उक्त ***बी.सी. शुक्ला*** वाले मामले में यह भी कहा गया कि अंतर्वर्ती शब्द का नर्मरूख लेकर अर्थ लगाना चाहिए।

न्यायदृष्टांत ***स्टेट विरूद्ध एन.एम.टी. जॉय, (2004) 5 एस.सी.सी. 729*** में अंतर्वर्ती आदेश शब्द को विभिन्न न्यायदृष्टांतों पर विचार करते हुए स्पष्ट किया गया है।

9 (ए). अंतर्वर्ती आदेश का परीक्षण:-

अंतर्वर्ती आदेश की मुख्य पहचान यह है कि यदि पुनरीक्षणकर्ता का पक्ष विचारण न्यायालय द्वारा स्वीकार कर लिया जाता तो दांडिक कार्यवाही वहीं समाप्त हो जाती। यदि ऐसा है तो संबंधित आदेश अंतर्वर्ती आदेश नहीं माना जाता है जैसे पुनरीक्षणकर्ता का पक्ष था कि उसके विरूद्ध कोई आरोप नहीं बनते हैं उसे उन्मोचित कर दिया जावे लेकिन विचारण न्यायालय उस पर आरोप विरचित कर देती है। यदि पुनरीक्षणकर्ता का पक्ष मान लिया जाता और उसे उन्मोचित कर दिया जाता तो दांडिक कार्यवाही उसी बिंदु पर समाप्त हो जाती।

यदि पुनरीक्षणकर्ता का पक्ष विचारण न्यायालय द्वारा मान लिया जाता तब भी दांडिक कार्यवाही समाप्त नहीं होती, यदि ऐसी स्थिति है तो संबंधित आदेश एक अंतर्वर्ती आदेश माना जायेगा, जैसे यदि पुनरीक्षणकर्ता का पक्ष यह है कि उसे जमानत पर रिहा कर दिया जावे लेकिन विचारण न्यायालय उसका जमानत आवेदन खारिज कर देती है। यदि पुनरीक्षणकर्ता का पक्ष मान लिया जाता और उसे जमानत का लाभ दे दिया जाता तब भी दांडिक कार्यवाही समाप्त नहीं होती।

यह अंतर्वर्ती आदेश का एक मुख्य परीक्षण है।

एक और परीक्षण यह है कि यदि आदेश स्थिर रहा तो न्याय की गंभीर हानि होगी। आदेश की शुद्धता, वैधता या औचित्य के बारे में इस तरह की कमी है जो न्याय की हानि होने की श्रेणी में आता है जैसे क्षेत्राधिकार के बिना पारित आदेश, ऐसी अवैधता जो मामले की जड़ तक जाती हो आदि। यदि ऐसी स्थिति है तब यदि दांडिक कार्यवाही समाप्त नहीं भी होती है तब भी आदेश को अंतर्वर्ती आदेश नहीं माना जायेगा।

यह आदेश की प्रकृति का पता लगाने का दूसरा परीक्षण है।

अतः मेरा आग्रह है कि प्रत्येक सत्र न्यायाधीश एवं अपर सत्र न्यायाधीश, प्रश्नाधीन आदेश को गंभीरतापूर्वक पढ़कर निम्न दो प्रश्न पर समाधान करें:-

1. पहला, क्या पुनरीक्षणकर्ता का पक्ष विचारण न्यायालय द्वारा मान लिया जाता तो दांडिक कार्यवाही समाप्त हो जाती?

2. दूसरा, दांडिक कार्यवाही तो समाप्त नहीं होती लेकिन आदेश ऐसा है जिसमें उसकी शुद्धता, वैधता, औचित्य या क्षेत्राधिकार के उपयोग के संबंध में ऐसी कमी है कि यदि आदेश स्थिर रहा तो क्या न्याय की गंभीर हानि होगी?

इस प्रकार विचार करेंगे तभी धारा 397(2) दं.प्र.सं. संशोधन करके जोड़ने का उद्देश्य प्राप्त हो सकेगा।

10. कौन से आदेश अंतर्वर्ती होते हैं?

प्रायः सत्र न्यायालय के सामने और अपर सत्र न्यायालय के सामने यह प्रश्न उपस्थित होते हैं कि कौन-कौन से आदेश अंतर्वर्ती आदेश होते हैं। यदि एक सूची उनके सामने उपलब्ध हो तो एट ए ग्लांस या एक दृष्टि में पुनरीक्षण सामने आते ही यह पता लग सकता है कि प्रश्नगत आदेश अंतर्वर्ती आदेश है या नहीं। यहाँ ऐसे ही कुछ आदेश के बारे में विवरण देंगे।

(1) जमानत आदेश:-

जमानत आदेश एक अंतर्वर्ती आदेश होता है। उसके विरूद्ध पुनरीक्षण ग्राह्य नहीं होती है। इस संबंध में न्यायदृष्टांत ***पवन विरूद्ध हरभजन सिंह, 2012 (1) एम.पी.एच.टी. 487, अवलोकनीय है। न्यायदृष्टांत अमरनाथ विरूद्ध स्टेट ऑफ हरियाणा, ए.आई.आर. 1977 एस.सी. 2185 निर्णय चरण 6, रामनरेश सिंह विरूद्ध स्टेट ऑफ एम.पी., 1995 सी.आर.एल.जे. 2523 एवं स्टेट ऑफ एम.पी. विरूद्ध मानिक लाल शाह, 1994 जे.एल.जे. 436*** के अनुसार जमानत स्वीकार करने का आदेश एक अंतर्वर्ती आदेश होता है, उसके विरूद्ध धारा 397(2) दण्ड प्रक्रिया संहिता के प्रकाश में पुनरीक्षण ग्राह्य नहीं होती है।

जमानत में शर्त लगाने का आदेश अंतर्वर्ती आदेश होता है। इस संबंध मे न्यायदृष्टांत ***लक्ष्मी विरूद्ध स्टेट ऑफ यू.पी., 1978 सी.आर.एल.जे. 51,*** अवलोकनीय है।

जमानत देने, जमानत न देने, जमानत निरस्त करने के आदेश अंतर्वर्ती आदेश होते हैं। उनके विरूद्ध पुनरीक्षण चलने योग्य नहीं होता है। इस संबंध में ***ठाकुर वी. हरिप्रसाद विरूद्ध स्टेट ऑफ ए.पी., 1977 सी.आर.एल.जे. 471,*** अवलोकनीय है।

लेखक के मत में जमानत चाहे वह धारा 167(2), 436, 437, 437ए, 437(6), 438, 439 दं.प्र.सं., 1973 में से किसी भी प्रावधान में दी गई हो या खारिज की गई हो तो उसके विरूद्ध पुनरीक्षण प्रचलन योग्य नहीं होती है क्योंकि यदि जमानत उचित रूप से नहीं दी गई है तो उसके लिए जमानत निरस्ती के प्रावधान धारा 437(5) एवं 439(2) दं.प्र.सं. के तहत उपलब्ध हैं और यदि जमानत अस्वीकार की गई है तब भी वरिष्ठ न्यायालय में जाने के लिए धारा 439 दं.प्र.सं. का मार्ग खुला रहता है। इसके अतिरिक्त जमानत देने या न देने से कार्यवाही अंतिम रूप से समाप्त नहीं होती है व पक्षकारों के अधिकारों का अंतिम रूप से निराकरण नहीं होता है। अतः यह संदेह मन से निकाल लेना चाहिए कि जमानत आदेश की शुद्धता, वैधता और औचित्य देखने के लिए पुनरीक्षण ग्राह्य की जा सकती है।

(2) धारा 91 एवं 311 सी.आर.पी.सी. के आवेदन पर आदेश:-

धारा 138 एन.आई. एक्ट के मामले में एक आवेदन पत्र अभियुक्त ने धारा 91 दण्ड प्रक्रिया संहिता के तहत दस्तावेज प्रस्तुत करने और धारा 311 दण्ड प्रक्रिया संहिता के तहत साक्षियों को पुनः प्रतिपरीक्षण के लिए बुलाने का आवेदन पेश किया। विचारण न्यायालय ने दोनों आवेदन निरस्त किये। उच्च न्यायालय ने आवेदन स्वीकार किये। माननीय सर्वोच्च न्यायालय ने यह मत दिया कि धारा 91 एवं 311 दण्ड प्रक्रिया संहिता के आवेदन पर पारित आदेश अंतर्वर्ती आदेश होते हैं और उनके विरूद्ध पुनरीक्षण धारा 397(2) दण्ड प्रक्रिया संहिता के तहत ग्राह्य नहीं होती है। इस संबंध में न्यायदृष्टांत ***सेथुरमन विरूद्ध राजा मानिक्कम, (2009) 5 एस.सी.सी. 153*** अवलोकनीय है।

इस मामले में यह कहा गया है कि इन आवेदनों पर पारित आदेश किसी भी तथ्य को अंतिम रूप से निराकृत नहीं करते हैं, इनके विरूद्ध की गयी पुनरीक्षण चलने योग्य नहीं होती है।

न्यायदृष्टांत ***दीपक विश्वकर्मा विरूद्ध स्टेट ऑफ एम.पी., 2014 (4) एम.पी.जे.आर.एस.एन. 20*** के अनुसार गवाह को पुनः बुलाने से इंकार करने के आदेश के विरूद्ध पुनरीक्षण - विचारण न्यायालय ने अभियोजन गवाहों को प्रतिपरीक्षित करने व बचाव गवाहों के परीक्षण का पूर्ण अवसर पहले ही दे दिया गया था, ऐसे में न्याय की हानि के तर्क में पुनरीक्षण स्वीकार नहीं की जा सकती।

मजिस्ट्रेट द्वारा धारा 94 दं.प्र.सं. 1898, अब 91 दं.प्र.सं. के अधीन किसी दस्तावेज को पेश करने पर असमर्थता प्रकट करने पर भी संबंधित व्यक्ति को न्यायालय में उपस्थित होने का आदेश एक अंतर्वर्ती आदेश है और उसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है। इस संबंध में न्यायदृष्टांत ***परमेश्वरी देवी विरूद्ध राज्य, ए.आई.आर. 1977 एस.सी. 403*** तीन न्यायमूर्तिगण की पीठ का न्यायदृष्टांत अवलोकनीय है।

(3) गवाह को पक्ष विरोधी घोषित करने से इन्कार करना:-

न्यायदृष्टांत ***स्टेट ऑफ एम.पी. विरूद्ध लक्ष्मण प्रसाद सिंह, 1996 (2) डब्ल्यू.एन. 110,*** के अनुसार गवाह को पक्ष विरोधी घोषित करने से इन्कार करने का आदेश एक अन्तरिम प्रकृति का होता है जिसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होता है।

(4) धारा 408 दण्ड प्रक्रिया संहिता का आदेश:-

धारा 408 दण्ड प्रक्रिया संहिता के तहत सेशन न्यायाधीश को मामला अंतरित करने का आवेदन दिया गया जो निरस्त कर दिया गया। उसके विरूद्ध पुनरीक्षण ग्राह्य नहीं होगी क्योंकि धारा 407 (2) दण्ड प्रक्रिया संहिता के परन्तुक के तहत संबंधित पक्ष उच्च न्यायालय को आवेदन कर सकता है। इस संबध में न्यायदृष्टांत ***अनीता शर्मा विरूद्ध स्टेट ऑफ एम.पी., आई.एल.आर. 2012 एम.पी. 608***, अवलोकनीय है।

(5) गवाह को समन करना, प्रकरण स्थगित करना, प्रतिवेदन बुलवाना:-

न्यायदृष्टांत ***अमरनाथ विरूद्ध स्टेट ऑफ हरियाणा, ए.आई.आर. 1977 एस.सी. 2185*** निर्णय चरण 6, के अनुसार गवाह को समन करने का आदेश देना, प्रकरण को स्थगित करना या प्रकरण में तिथि बढ़ाना, प्रतिवेदन बुलवाना और ऐसे ही अन्य कदम जो प्रकरण में सहायक होते हैं, धारा 397(2) दण्ड प्रक्रिया संहिता के तहत अंतर्वर्ती आदेश होते हैं।

किसी परीक्षित गवाह को प्रतिपरीक्षण के लिए पुनः तलब करने का आवेदन खारिज करना एक अंतर्वर्ती आदेश है और उसके विरूद्ध पुनरीक्षण चलने योग्य नहीं पाया गया। इस संबंध में न्यायदृष्टांत ***द्वारका दास विरूद्ध स्टेट ऑफ हिमाचल प्रदेश, 1980 सी.आर.एल.जे. 1018,*** अवलोकनीय है।

(6) अभियुक्त को पुलिस अभिरक्षा में देने का आदेश:-

अभियुक्त को धारा 167 दण्ड प्रक्रिया संहिता के तहत पुलिस अभिरक्षा में देने के आदेश को अंतर्वर्ती आदेश माना गया है। इस आदेश के विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है। इस संबंध में न्यायदृष्टांत ***स्टेट विरूद्ध एन.एच.टी. जॉय, ए.आई.आर. 2004 एस.सी. 2282,*** तीन न्यायमूर्तिगण की पीठ अवलोकनीय है।

(7) प्रतिपरीक्षण में असंगत प्रश्न की अनुमति न देना:-

न्यायदृष्टांत ***सुन्दरलाल पटवा विरूद्ध दिग्विजय सिंह, 2003 (1) एम.पी.एल.जे. 200,*** के अनुसार विचारण न्यायालय ने संदर्भ से परे एवं विषय की वास्तविकता से असंगत प्रश्न पूछने की अनुमति नहीं दी। इसे अंतर्वर्ती आदेश माना गया और यह प्रतिपादित किया गया कि ऐसे आदेश में तब तक हस्तक्षेप नहीं किया जाता जब तक कि इसके कारण घोर अन्याय न हुआ हो और हस्तक्षेप से कार्यवाही समाप्त हो जाती हो।

(8) सर्च वारंट जारी करने का आदेश:-

न्यायदृष्टांत ***हरक सिंह विरूद्ध लालूमणि, 1977 सी.आर.एल.जे. 723 पटना,*** के अनुसार अवयस्क के लिए तलाशी वारंट जारी करने का आदेश अंतर्वर्ती आदेश है। उसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है।

(9) धारा 156(3) दं.प्र.सं. का आदेशः-

न्यायदृष्टांत ***नाथन विरूद्ध वेथीनाथन, 1975 सी.आर.एल.जे. 994, फादर थामस विरूद्ध स्टेट, 2011 सी.आर.एल.जे. 2278 इलाहाबाद फुल बैंच एवं अयूब विरूद्ध स्टेट ऑफ एम.पी., आई.एल.आर. 2009 एम.पी. 1484,*** के अनुसार किसी परिवाद को धारा 156(3) दं.प्र.सं. के तहत अन्वेषण और रिपोर्ट के लिए भेजना अंतर्वर्ती आदेश है और उसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है।

(10) व्यक्तिगत उपस्थिति से मुक्ति देना:-

न्यायदृष्टांत ***एन. दिनेशन विरूद्ध के.वी. बेदी, 1981 सी.आर.एल.जे. 1551,*** के अनुसार किसी व्यक्ति को व्यक्तिगत उपस्थिति से मुक्ति देने का आदेश एक अंतर्वर्ती आदेश होता है जिसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होती।

(11) मजिस्ट्रेट द्वारा मामला धारा 209 दं.प्र.सं. के तहत सुपुर्द कराना:-

न्यायदृष्टांत ***बिमल कुमार विरूद्ध स्टेट, 1976 सी.आर.एल.जे. 1864 डी.बी. कलकत्ता,*** के अनुसार मजिस्ट्रेट द्वारा धारा 209 दं.प्र.सं. के तहत मामला सत्र न्यायालय को सुपुर्द करने का आदेश एक अंतर्वर्ती आदेश होता है जिसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है।

(12) धारा 202 दं.प्र.सं. के तहत जाँच का आदेश:-

मजिस्ट्रेट द्वारा धारा 202 दं.प्र.सं. के तहत जाँच करने का आदेश एक अंतर्वर्ती आदेश होता है जिसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है। इस संबंध में न्यायदृष्टांत ***श्री नागेश्वर विरूद्ध स्टेट, 1978 सी.आर.एल.जे. एन.ओ.सी. 57 पटना,*** अवलोकनीय है।

(13) धारा 123 भारतीय साक्ष्य अधिनियम के अधीन आदेश:-

धारा 123 भारतीय साक्ष्य अधिनियम के तहत सरकार के दस्तावेज पेश करने के विशेषाधिकार संबंधी पक्ष को मंजूर या नामंजूर करने का आदेश एक अंतर्वर्ती आदेश होता है और उसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है। इस संबंध में न्यायदृष्टांत ***मनोहन नाथ विरूद्ध स्टेट ऑफ जम्मू कश्मीर, 1980 सी.आर.एल.जे. 292 एफ.बी.,*** अवलोकनीय है।

(14) अभियोजन की मंजूरी की वैधता को उचित ठहराने वाला आदेश:-

ऐसा आदेश अंतर्वर्ती आदेश होता है जिसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होता है। इस संबंध में न्यायदृष्टांत ***डी. पास्कले विरूद्ध स्टेट, 1977 सी.आर.एल.जे. एन.ओ.सी. 92,*** अवलोकनीय है।

(15) अपमिश्रित नमूने को सी.एफ.एल. भेजने का आदेश:-

नमूने के अन्य भाग को परीक्षण के लिए केन्द्रीय खाद्य प्रयोगशाला भेजने का आदेश एक अंतर्वर्ती आदेश होता है। इस संबंध में न्यायदृष्टांत ***जगदीश विरूद्ध कारपोरेशन ऑफ कलकत्ता, 1979 सी.आर.एल.जे. 1303 डी.बी.,*** अवलोकनीय है।

(16) परिवाद का वापस किया जाना:-

परिवाद का वापस किया जाना एक न्यायिक आदेश नहीं माना गया है बल्कि प्रशासकीय आदेश माना गया है। वैसे भी परिवाद वापस करने में प्रकरण अंतिम रूप से निराकृत नहीं होता है। अतः ऐसे आदेश के विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है।

(17) खात्मा मंजूर:-

खात्मा मंजूर करने के आदेश के विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है क्योंकि पुनरीक्षणकर्ता न्यायालय में खात्मा का सूचना पत्र मिलने पर प्रोटैस्ट पिटिशन लगा सकता था।

(18) प्रमाण समाप्त करना:-

परिवादी को प्रमाण के कई अवसर दिये गये। उसने गवाहों को समंस करने के लिये कोई कदम नहीं उठाये। दोषमुक्ति का आदेश पारित किया गया। ऐसे आदेश के विरूद्ध धारा 378(4) दं.प्र.सं. के तहत अपील होगी। पुनरीक्षण चलने योग्य नहीं है। इस सम्बंध में न्यायदृष्टांत ***हिम एडवांस एंड सेविंग प्राईवेट लिमि. विरूद्ध रवीन्द्र कुमार गुप्ता, 2002 सी.आर.एल.जे. 4741 हिमाचल प्रदेश*** अवलोकनीय है।

(19) किशोर न्याय (बालकों की देख-रेख एवं संरक्षण) अधिनियम, 2015:-

अधिनियम की धारा 102 के तहत किशोर न्याय बोर्ड द्वारा पारित आदेश के विरूद्ध पुनरीक्षण उच्च न्यायालय में होती है। इसे ध्यान में रखना चाहिये।

(20) एक पक्षीय भरण पोषण आदेश:-

यदि मजिस्ट्रेट ने भरण-पोषण का आदेश एक पक्षीय पारित किया है और पति ने धारा 126(2) दं.प्र.सं. के तहत उसे अपास्त करने का आवेदन नहीं दिया है तो पुनरीक्षण प्रचलन योग्य नहीं होती है।

इस सम्बंध में न्यायदृष्टांत ***वनीता मारू विरूद्ध माणक चंद्र, (1984) 1 डी.एम.सी. 460 (एम.पी.),*** अवलोकनीय है।

(21) समन मामले में अपराध विवरण सुनाने के विरूद्ध पुनरीक्षण:-

धारा 138 एन.आई. एक्ट या अन्य समन मामलों में अपराध की विशिष्टियाँ सुना देने के बाद उस आदेश के विरूद्ध कई बार पुनरीक्षण प्रस्तुत होती है, लेकिन ऐसी पुनरीक्षण प्रचलन योग्य नहीं होती हैं क्योंकि समन मामले में उन्मोचन या डिस्चार्ज की कोई स्टेज नहीं होती है। **धारा 251 से धारा 259 दं.प्र.सं., 1973** में कहीं भी उन्मोचन का कोई प्रावधान नहीं है। अतः समन मामले में एक बार

अपराध की विशिष्टियाँ सुना देने के बाद अध्याय 20 दं.प्र.सं. के तहत समन विचारण प्रक्रिया अपनाना होती है। इस संबंध में न्यायदृष्टांत ***सुब्रमण्यम सेथुरमन विरूद्ध स्टेट ऑफ महाराष्ट्र, 2005 (1) एम.पी.एल.जे. 260 (एस.सी.),*** अवलोकनीय है। अतः यह ध्यान रखना चाहिये कि समन विचारण मामलों में अपराध की विशिष्टियाँ सुना देने के विरूद्ध यदि पुनरीक्षण आती है तो उसे प्रारंभिक स्तर पर ही उक्त विधिक स्थिति के प्रकाश में खारिज कर देना चाहिये।

22. धारा 207 दंप्रसं का आदेश:-

धारा 207 दं.प्र.सं. के तहत प्रतिलिपी दिये जाने से इंकार करने का आदेश एक अंतर्वर्ती आदेश है और उसके विरूद्ध पुनरीक्षण प्रचलन योग्य नहीं होती है। इस संबंध में न्यायदृष्टांत ***नवल सिंह विरूद्ध स्टेट ऑफ एम.पी., 2007 लॉ सूट एमपी. 40,*** अवलोकनीय है जिसमें उक्त न्यायदृष्टांत ***मधु लिमये, व्ही.सी. शुक्ला*** एवं ***सेतु रमन*** को विचार में लिया गया है।

23. धारा 210 दं.प्र.सं के तहत पारित आदेश:-

धारा 210 दं.प्र.सं. के तहत परिवाद और पुलिस चालान को समेकित करने का आदेश एक अंतर्वर्ती आदेश है। इस संबंध में न्यायदृष्टांत ***रामचंद्र प्रसाद विरूद्ध रामशरण शर्मा, 1979 सी.आर.एल.जे.एन.ओ.सी. 198,*** अवलोकनीय है।

24. धारा 274 दं.प्र.सं. के अधीन ओदश:-

धारा 274 दं.प्र.सं. के तहत पारित आदेश अंतर्वर्ती आदेश है। इस संबंध में न्यायदृष्टांत ***गुरुवचन विरूद्ध दीदार, 1977 सी.आर.एल.जे. एन.ओ.सी. 165,*** अवलोकनीय है।

25. धारा 256 दं.प्र.सं. में पारित आदेश:-

न्यायदृष्टांत ***नरेन्द्र कुमावत विरूद्ध रंजीत, आई.एल.आर. 2017 एम.पी. 159***, के अनुसार समन मामले में परिवाद खारिज करने के आदेश के विरूद्ध पुनरीक्षण - धारा 256 दं.प्र.सं. के अनुसार समन मामले में परिवाद खाारिज होना दोषमुक्ति की श्रेणी में आता है। अतः ऐसे आदेश के विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है। धारा 378(4) दं.प्र.सं. के तहत अपील करनी होती है।

26. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 के अधीन आदेश:-

इस अधिनिमय में धारा 29 में सत्र न्यायायल में अपील का प्रावधान है और ऐसी अपील अंतिम आदेशों के विरूद्ध की जा सकती है। अतः अंतिम आदेशों के विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है।

इस अधिनियम में पुनरीक्षण का कोई प्रावधान नहीं है लेकिन धारा 28 के तहत शेष मामलों में दं.प्र.सं. के प्रावधान लागू होते हैं। अतः अंतरिम आदेश के विरूद्ध पुनरीक्षण उक्त कसौटियों को ध्यान में रखते हुए चलने योग्य हो भी सकती है और नहीं भी हो सकती है, अर्थात् आदेश ऐसा हो जिसमें शुद्धता, वैधता, औचित्य, कार्यवाही की नियमितता के बारे में ऐसी कमी हो जो मामले की जड़ तक जाती हो और जिससे न्याय की गंभीर हानि होती हो तभी पुनरीक्षण चलने योग्य होगी अन्यथा नहीं।

11. कौन से आदेश अंतर्वर्ती आदेश नहीं होते हैं?

एक प्रश्न यह उत्पन्न होता है कि किन आदेशों को अंतर्वर्ती आदेश नहीं माना गया। इस संबंध में एक सूची उपलब्ध रहे तो एक दृष्टि में यह पता लग सकता है कि कौन-कौन से आदेश अंतर्वर्ती आदेश नहीं होते हैं। यहाँ ऐसे ही आदेशों के बारे में विवरण हैं, जो इस प्रकार हैं:-

(1) प्रसंज्ञान लेने का आदेश:-

जहाँ विचारण न्यायालय ने प्रसंज्ञान ले लिया हो और आदेशिका जारी करने का आदेश जारी कर दिया हो तब ऐसा आदेश अंतर्वर्ती आदेश नहीं होता है किन्तु एक इन्टरमीजिएट या क्वॉसी फाइनल आदेश होता है जिस पर धारा 397 (2) दण्ड प्रक्रिया संहिता का वर्जन या बार लागू नहीं होता है, उसके विरूद्ध पुनरीक्षण चलने योग्य होती है जैसा कि न्यायदृष्टांत ***यशवंत सिंह विरूद्ध स्टेट ऑफ एम.पी., 2011 (1) एम.पी.एल.जे. 350,*** में प्रतिपादित किया गया है।

न्यायदृष्टांत ***धारीवाल टोबेको प्रोड्क्टस लिमिटेड विरूद्ध स्टेट ऑफ महाराष्ट्र, (2009) 2 एस.सी.सी. 370,*** के अनुसार भी समन जारी करने का आदेश धारा 397 के अर्थों में अंतर्वर्ती आदेश नहीं होता है। इस मामले में न्यायदृष्टांत ***अमरनाथ विरूद्ध स्टेट ऑफ हरियाणा, ए.आई.आर. 1977 एस.सी. 2185***, को विचार में लिया गया जिसमें यह प्रतिपादित किया गया है कि ऐसे आदेश द्वारा प्रथम बार अभियुक्त के विरूद्ध कार्यवाही प्रारंभ होती है और उसे अविवादित रूप से आदेश को चुनौती देने का अधिकार होता है और ऐसा नहीं करने देने से उसके मूल्यवान अधिकार की हानि होती है।

इस संबंध में न्यायदृष्टांत ***राजेन्द्र कुमार एस.पांडे विरूद्ध उत्तम, 1999 (1) एम.पी.एल.जे. 544 एस.सी.,*** अवलोकनीय है।

न्यायदृष्टांत ***द्वारका प्रसाद जाट विरूद्ध स्टेट ऑफ एम.पी., 2013 (IV) एम.पी.जे.आर. 126***, के अनुसार धारा 204 दं.प्र.सं.के तहत किसी व्यक्ति के विरूद्ध आदेशिका जारी करने का आदेश एक इंटरमिजियट या क्वॉसी फाईनल आदेश है जिसके विरूद्ध पुनरीक्षण चलने योग्य है।

अदालत प्रसाद विरूद्ध रूपलाल जिंदल, ए.आई.आर. 2004 एस.सी. 4674, के न्यायदृष्टांत से कई न्यायाधीश इस प्रकार भ्रमित होते हैं कि प्रसंज्ञान लेने के आदेश के विरूद्ध अभियुक्त का पुनरीक्षण धारा 397 दण्ड प्रक्रिया संहिता प्रचलन योग्य नहीं होता है लेकिन यह ध्यान रखना चाहिए कि इस मामले में यह विधि प्रतिपादित नहीं की गई है कि धारा 397 दण्ड प्रक्रिया संहिता के तहत भी अभियुक्त को कोई उपचार उपलब्ध नहीं होते।

इस मामले में मुख्य रूप से यह कहा गया है कि एक बार यदि मजिस्ट्रेट प्रसंज्ञान लेकर आदेशिका जारी करने का आदेश कर देता है तो वह अपने ही आदेश का पुनरावलोकन नहीं कर सकता है, अभियुक्त को मजिस्ट्रेट के समक्ष आवेदन करने के बजाय धारा 482 दण्ड प्रक्रिया संहिता में कार्यवाही करना चाहिए। लेकिन यह नहीं कहा गया कि अभियुक्त 397 दण्ड प्रक्रिया संहिता में भी कार्यवाही नहीं कर सकता।

न्यायदृष्टांत ***मधुसुदन तिवारी विरूद्ध श्याम सुन्दर, आई.एल.आर. 2015 एम.पी. 137,*** के अनुसार आदेशिका जारी करने के आदेश में पुनरीक्षण में निम्न दशाओं में हस्तक्षेप किया जा सकता हैः-

1. जहां परिवाद में किये गये अभिवचनों या उसके समर्थन में अभिलिखित किये गये गवाहों के कथनों को उसी रूप में विचार में लेने पर भी अभियुक्त के विरूद्ध पूरी तरह से कोई मामला नहीं बनता है या अपराध के आवश्यक घटक प्रगट नहीं होते हैं।

2. जहां परिवाद में किये गये अभिवचन स्पष्टतः निरर्थक और अंतरनिहित रूप से असंभाव्य हों जिसके कारण कोई भी प्रज्ञावान व्यक्ति ऐसा निष्कर्ष नहीं निकाल सकता कि अभियुक्त के विरूद्ध अग्रसर होने के पर्याप्त आधार हैं।

3. मजिस्ट्रेट द्वारा आदेशिका जारी करने में प्रयुक्त विवेकाधिकार स्वेच्छाचारी और मनमाना हो जो बिना किसी साक्ष्य के या ऐसी सामग्री जो पूरी तरह असंगत या अग्राह्य है, उस पर आधारित है।

इस मामले में यह भी प्रतिपादित किया गया कि आदेशिका जारी करने के प्रक्रम पर अभियुक्त का बचाव विचार में नहीं लिया जा सकता। न्यायालय को केवल यह देखना है कि क्या मामले में अग्रसर होने के पर्याप्त आधार हैं, यह नहीं देखना है कि क्या दोषसिद्धि के पर्याप्त आधार हैं।

न्यायदृष्टांत ***अलका बापू गोड़ विरूद्ध प्रकाश कन्हैयालाल, ए.आई.आर. 2017 एस.सी. 724,*** के अनुसार आदेशिका जारी करने के पूर्व परिवादी द्वारा पेश प्रमाण की प्रोबिटी नहीं देखी जा सकती।

न्यायदृष्टांत ***एम.एस. धोनी विरूद्ध वाय. श्यामसुंदर, (2017) 7 एससीसी. 760***, निर्णय चरण 13 के अनुसार प्रसंज्ञान लेने वाले मजिस्ट्रेट के लिये सावधानियां बतलाई गई हैं - समन जारी करने के पूर्व यह देखना चाहिये कि अपराध के घटक प्रथम दृष्ट्या बनते हैं, मजिस्ट्रेट को क्षेत्राधिकार है, समन जारी करना आवश्यक है तभी समन जारी करना चाहिये।

पुनरीक्षण न्यायालय के समक्ष एक प्रश्न यह भी रहता है कि क्या वह विचारण न्यायालय को यह निर्देश दे सकती है कि किसी अपराध विशेष में प्रकरण पंजीबद्ध किया जावे?

न्यायदृष्टांत ***रेवा राम विरूद्ध स्टेट ऑफ एम.पी., 2004 (4) एम.पी.एल.जे. 351*** के मामले में पुनरीक्षण में विशेष न्यायाधीश ने मजिस्ट्रेट को यह निर्देश दिये कि धारा 3(1)(10) एस.सी.एस.टी. एक्ट और धारा 506 भा.दं.सं. के अपराध का संज्ञान लिया जाये। ऐसे निर्देश को अवैध और क्षेत्राधिकार से बाहर माना गया। धारा 398 दं.प्र.सं. में उच्च न्यायालय अथवा सेशन जज अग्रिम जाँच के लिए प्रकरण प्रतिप्रेषित कर सकता है लेकिन न्यायदृष्टांत ***हंसराज शर्मा विरूद्ध शिवचरण श्शर्मा, 2004 (3) एम.पी.एल.जे. 485,*** के अनुसार धारा 398 और 399 सी.आर.पी.सी. को एक साथ पढ़ना चाहिए। ऐसा करने पर पुनरीक्षण में ऐसे निर्देश दिये जा सकते हैं कि मजिस्ट्रेट किसी अपराध विशेष में प्रकरण पंजीबद्ध करे।

न्यायदृष्टांत ***अशोक माहेश्वरी राजकमल प्रकाशन प्राइवेट लिमिटेड विरूद्ध दिनेश पौराणिक, 2007 सी.आर.एल.जे. एन.ओ.सी. 827 एम.पी.,*** के मामले में विचारण न्यायालय में धारा 203 दण्ड प्रक्रिया संहिता के तहत परिवाद निरस्त किया था। पुनरीक्षण न्यायालय ने आदेश अपास्त किया और अभियुक्त के विरूद्ध धारा 420 भारतीय दण्ड संहिता में प्रकरण पंजीबद्ध करने का निर्देश दिया। ऐसे निर्देशों को क्षेत्राधिकार के बाहर नहीं माना गया।

इस तरह धारा 398 और 399 दं.प्र.सं. को एक साथ पढ़ें तो विचारण न्यायालय को ऐसे निर्देश दिये जा सकते हैं कि किसी अपराध विशेष में प्रकरण पंजीबद्ध किया जावे क्योंकि उक्त हंसराज वाला न्यायदृष्टांत उक्त रेवाराम वाले न्यायदृष्टांत के पूर्व का है जिसमें हंसराज शर्मा वाले मामले को विचार में नहीं लिया गया है जो पूर्व का न्यायदृष्टांत था, अतः वह अधिभावी प्रभाव रखेगा।

पुनरीक्षण न्यायालय के समक्ष एक प्रश्न यह भी रहता है कि प्रकरण पंजीबद्ध करने के विरूद्ध प्राप्त पुनरीक्षण में व्यवहार प्रकृति का विवाद किसे मानें?

वर्तमान समय में व्यवहार प्रकृति के विवादों में धारा 420, 467, 468 एवं 471 भा.दं.सं. का परिवाद लगा देने की प्रवृत्ति बढ़ती जा रही है लेकिन जहां अभियुक्त का आशय प्रथम दृष्ट्या प्रारंभ से ही परिवादी के साथ छल करने का रहा हो, उस स्थिति में और जहां केवल रुपये वसूली का उद्देश्य रहा हो उस स्थिति में अंतर करना होगा।

न्यायदृष्टांत ***एम. कृष्णन् विरूद्ध विजय सिंह, ए.आई.आर. 2001 एस.सी. 3014,*** के अनुसार केवल सिविल मामले का लंबित होना किसी विवाद को सिविल प्रकृति का विवाद नहीं बना देता है क्योंकि धोखाधड़ी, छल आदि के मामलों में कुछ तत्व सामान्यतः सिविल प्रकृति के होते हैं। इस मामले में यह भी कहा गया कि न्यायालय को यह देखना चाहिए कि क्या अभियुक्त के विरूद्ध कार्यवाही के कोई आधार हैं या नहीं। यदि अविवादित अभिवचनों और तथ्यों से कोई मामला न बनता हो तभी कार्यवाही समाप्त करना चाहिए लेकिन न्यायदृष्टांत ***शिवदयाल शुक्ला विरूद्ध सुम्मीलाल, 1984 एम.पी.डब्ल्यू.एन. 528***, के अनुसार सिविल मामले में दाण्डिक प्रकरण संस्थित करना प्रक्रिया का दुरूपयोग है।

न्यायदृष्टांत ***रीनी जौहर विरूद्ध स्टेट ऑफ एम.पी., 2016 (2) जे.एल.जे. 320 एस.सी.,*** के अनुसार सिविल मामले में दाण्डिक कार्यवाही उचित नहीं मानी गयी है। अपराध का कोई घटक आकर्षित नहीं हो रहा था।

इस तरह मामला सिविल प्रकृति का है या नहीं, इस पर गंभीरता से विचार करना चाहिए और उसी प्रकाश में प्रकरण दर्ज करने के आदेश में हस्तक्षेप करना चाहिए।

न्यायदृष्टांत ***मलय श्रीवास्तव विरूद्ध शंकर प्रताप सिंह, आई.एल.आर. 2017 एम.पी. 199***, के अनुसार पुनरीक्षण न्यायालय प्रश्नाधीन आदेश इस आधार पर अपास्त नहीं कर सकता कि आदेश परिवादी के दूषित आशय से प्रेरित था। पुनरीक्षण न्यायालय केवल सामान्य विधि और लिखित विधि की पृष्ठभूमि में आदेश की सत्यता देख सकता है।

विचारण न्यायालय ने आदेश किस तरीके से लिखा इस आधार पर उसका औचित्य नहीं देखना होता है बल्कि आदेश में दिये गये कारणों के आधार पर औचित्य देखना चाहिए। इस संबंध में न्यायदृष्टांत ***अल्पना शुक्ला राव विरूद्ध श्रीमती मंजूषा मिश्रा, 2001 (2) एम.पी.एल.जे. एस.एन. 3***, अवलोकनीय है।

न्यायदृष्टांत ***नुपुर तलवार विरूद्ध सी.बी.आई., ए.आई.आर. 2012 एस.सी. 1921,*** के अनुसार अभियुक्त के विरूद्ध आदेशिका जारी करने के आदेश के विरूद्ध पुनरीक्षण में पुनरीक्षण न्यायालय इन प्रश्नों पर नहीं जा सकती कि विचारण न्यायालय के आदेश के कारण पर्याप्त हैं या

अपर्याप्त हैं, अच्छे हैं या खराब हैं। वह केवल यह देख सकती है कि अभियुक्त के विरूद्ध आदेशिका जारी करने के पर्याप्त कारण अभिलेख पर हैं या नहीं।

(2) दण्ड में कमी:-

दण्ड में कमी के विरूद्ध परिवादी का पुनरीक्षण चलने योग्य होता है जैसा कि न्यायदृष्टांत ***के. पांडुरंगन विरूद्ध एस.एस.आर. बेलू स्वामी, (2003) 8 एस.सी.सी. 625 एवं नादिर खान विरूद्ध स्टेट (देहली एडमीनिस्ट्रेशन), 1975 (2) एस.सी.सी. 406***, में प्रतिपादित किया गया है।

(3) न्यायालय के क्षेत्राधिकार संबंधित आदेश:-

मामले में न्यायालय के क्षेत्राधिकार को चुनौती देने वाला एक आवेदन पेश किया गया जो निरस्त किया गया। ऐसा आदेश अंतर्वर्ती आदेश नहीं माना गया। इस संबंध में न्यायदृष्टांत ***मधु लीमिये विरूद्ध स्टेट ऑफ महाराष्ट्र, ए.आई.आर. 1978 एस.सी. 47,*** तीन न्यायमूर्तिगण की पीठ अवलोकनीय है।

(4) दण्डादेश में वृद्धि:-

न्यायदृष्टांत ***एकनाथ शंकरराव विरूद्ध स्टेट ऑफ महाराष्ट्र, ए.आई.आर. 1977 एस.सी. 1177,*** तीन न्यायमूर्तिगण की पीठ के अनुसार धारा 377 दण्ड प्रक्रिया संहिता के अपील के प्रावधान के कारण पुनरीक्षण में दण्ड में वृद्धि की शक्तियां वापस नहीं ली गई हैं। उच्च न्यायालय अपनी सोमोटो रिवीजन की शक्तियों के तहत दण्ड में वृद्धि कर सकता है चाहे धारा 377 दण्ड प्रक्रिया संहिता में अपील के प्रावधान है।

न्यायदृष्टांत ***संजीव मिश्रा विरूद्ध मनोज जैन, 2002 (1) एम.पी.एल.जे. 286,*** के मामले में अभियुक्त पर धारा 138 एन.आई.एक्ट में 2500/- रूपये अर्थदण्ड किया गया। परिवादी ने पुनरीक्षण प्रस्तुत की जो चलने योग्य होना निर्धारित किया गया।

(5) धारा 133(2) दं.प्र.सं. का आदेश:-

धारा 133(2) दं.प्र.सं. के तहत कारखाना बंद करने का आदेश अंतर्वर्ती आदेश नहीं है। उसके विरूद्ध पुनरीक्षण चलने योग्य होती है। इस संबंध में न्यायदृष्टांत ***अग्रवाल ब्रेवरीज विरूद्ध स्टेट ऑफ एम.पी., 1993 (2) डब्ल्यू.एन. 80,*** अवलोकनीय है।

(एफ) आरोप विरचित करने का आदेश कब अंतर्वर्ती और कब नहीं?

न्यायदृष्टांत ***खगेस कुमार गोयल विरूद्ध स्टेट ऑफ एम.पी., 1997 (2) एम.पी.एल.जे. 690,*** के अनुसार आरोप विरचित करते समय अभियुक्त की यह प्रतिरक्षा की उसके विरूद्ध कोई आरोप नहीं बनता है वह उन्मोचित होने का अधिकारी है, इसे नकारने का आदेश अंतर्वर्ती आदेश नहीं है।

इस मामले में यह भी कहा गया कि अभियुक्त का यह अभिवाक् कि जो आरोप विरचित किये गये हैं उनसे लघु आरोप बनते हैं। इसे नकारने का आदेश अंतर्वर्ती आदेश है।

आरोप विरचित करने के आदेश के विरूद्ध पुनरीक्षण में केवल अभियोजन के दस्तावेज देखे जाने हैं। अभियुक्त का बचाव या प्रतिरक्षा के दस्तावेज नहीं देखे जाते हैं जैसा कि न्यायदृष्टांत ***स्टेट ऑफ उड़ीसा विरूद्ध देवेन्द्र नाथ पादी, (2005) 1 एससीसी 568*** अवलोकनीय है।

(6) अभियुक्त को क्षमा दान करने का आदेश:-

न्यायदृष्टांत ***स्टेट ऑफ यूपी विरूद्ध कैलाश नाथ अग्रवाल, ए.आई.आर. 1973 एस.सी. 2210***, तीन न्यायमूर्तिगण की पीठ के मामले में यह प्रतिपादित किया गया है कि अभियुक्त को क्षमा दान करने का आदेश पुनरीक्षण योग्य होता है।

(7) धारा 319 दं.प्र.सं. के आवेदन पर समन न करना:-

न्यायदृष्टांत ***मोहित विरूद्ध स्टेट ऑफ यूपी, (2013) 7 एससीसी 789,*** के अनुसार विचारण न्यायालय ने परिवादी के आवेदन धारा 319 दंप्रसं पर समन जारी करने से इंकार कर दिया। ऐसा आदेश अंतर्वर्ती आदेश नहीं है और इसके विरूद्ध पुनरीक्षण चलने योग्य है। इस मामले में न्यायदृष्टांत ***मधू लिमिये विरूद्ध स्टेट ऑफ महाराष्ट्र, (1977) 4 एस.सी.सी. 551, अमरनाथ विरूद्ध स्टेट ऑफ हरियाणा, (1977) 4 एस.सी.सी. 137 और एम.सी.डी. विरूद्ध रामकृष्ण रस्तोगी, (1983) 1 एस.सी.सी. 1,*** को विचार में लेते हुए यह प्रतिपादित किया गया कि परिवादी द्वारा प्रस्तुत धारा 319 दं.प्र.सं. के आवेदन पर समन जारी करने से इंकार करना अंतर्वर्ती आदेश नहीं है और उसके विरूद्ध पुनरीक्षण चलने योग्य है।

(8) धारा 204(4) दं.प्र.सं. का आदेश:-

परिवाद धारा 204 (4) दं.प्र.सं. के अधीन खारिज किया गया था। क्या उक्त आदेश के विरूद्ध पुनरीक्षण चलने योग्य है ? अभिनिर्धारित किया गया, हाँ। यदि विधायिका का आशय यह होता की ऐसा आदेश भी दोषमुक्ति का आदेश माना जायेगा और धारा 378 दं.प्र.सं. के क्षेत्र में आयेगा। तब धारा 204 (4) दंप्रसं में ''खारिज'' शब्द के स्थान पर ''दोषमुक्त'' शब्द इस्तेमाल करने में कोई कठिनाई नहीं थी। धारा 204 (4) दण्ड प्रक्रिया संहिता के अधीन परिवाद का खारिज किये जाने का आदेश धारा 378 दंप्रसं के अधीन अपील योग्य नहीं हैं। इस संबंध में न्यायदृष्टांत ***भूपेन्द्र सिंह विरूद्ध साकेत कुमार, 2016 (1) एम.पी.एल.जे. 209,*** अवलोकनीय है।

(9) धारा 258 दं.प्र.सं.:-

यदि धारा 258 दं.प्र.सं. के तहत कार्यवाही मजिस्ट्रेट द्वारा रोकी गयी है और ऐसा मुख्य गवाहों के कथन लेने के बाद किया गया है तो उसका प्रभाव दोषमुक्ति होता है और उसके विरूद्ध पुनरीक्षण चलने योग्य नहीं होती है। अन्य दशा में अर्थात मुख्य गवाहों के कथन हुए बिना यदि कार्यवाही रोकी गयी है तो उसका प्रभाव उन्मोचन होता है और ऐसे आदेश के विरूद्ध पुनरीक्षण प्रचलन योग्य होती है।

इस सम्बंध में न्यायदृष्टांत ***1994, सी.आर.एल.जे. 454 (गुजरात),*** अवलोकनीय है।

(10) धारा 321 दं.प्र.सं. के अधीन आदेश:-

धारा 321 दं.प्र.सं. के अधीन प्रकरण वापस लेने का आदेश या प्रकरण वापस लेने के आवेदन को खारिज करने का आदेश पुनरीक्षण योग्य है। इस संबंध में न्यायदृष्टांत ***शिवनंदन पासवान विरूद्ध राज्य, ए.आई.आर. 1983 एस.सी. 194,*** अवलोकनीय है।

(11) पक्षकार बनाने का आदेश:-

किसी व्यक्ति को दाण्डिक कार्यवाही में पक्षकार बनाने का आदेश पुनरीक्षण योग्य है। इस सम्बंध में न्यायदृष्टांत ***एस. सी. अरोड़ा विरूद्ध भारत संघ, 1979 सी.आर.एल.जे. 358*** अवलोकनीय है।

(12) परिसीमा काल बढ़ाने का आदेश:-

किसी दाण्डिक कार्यवाही में परिसीमा काल बढ़ाने का आदेश पुनरीक्षण योग्य होता है। इस सम्बंध में न्यायदृष्टांत ***जी.डी. अय्यर विरूद्ध स्टेट, 1978 सी.आर.एल.जे. 1180,*** अवलोकनीय है।

(13) धारा 249 दं.प्र.सं. के अधीन आदेश:-

ऐसे आदेश के विरूद्ध पुनरीक्षण चलने योग्य होती है। इस सम्बंध में ***न्यायदृष्टांत आर.आर. वर्मा विरूद्ध टी.एम. ललानी, 1980 सी.आर.एल.जे. एन.ओ.सी. 5, एवं असगर अली विरूद्ध जालम रसूल, 1979 सी.आर.एल.जे. एन.ओ.सी. 4480,*** अवलोकनीय है।

(14) 451 दं.प्र.सं. के अधीन आदेश:-

ऐसे आदेश के विरूद्ध पुनरीक्षण चलने योग्य होती है क्योंकि अंतरिम सुपुर्दगी के आदेश से पक्षकारों के मूल्यवान अधिकार प्रभावित होते हैं। इस सम्बंध में न्यायदृष्टांत ***भारत माहे विरूद्ध उत्तरप्रदेश राज्य, 1975 सी.आर.एल.जे. 890, राजू विरूद्ध राजस्थान राज्य 1992 सी.आर.एल.जे. 73*** एवं ***महादेव विरूद्ध स्टेट ऑफ राजस्थान, 1997 सी.आर.एल.जे. 1614,*** अवलोकनीय है।

(15) बिना अधिकारिता के दिया गया आदेश:-

कोई आदेश चाहे वह अंर्तवर्ती प्रकृति का हो, लेकिन बिना अधिकारिता के दिया गया हो तो ऐसा आदेश अवैधता के कारण अंर्तवर्ती नहीं होगा और उसके विरूद्ध पुनरीक्षण चलने योग्य होगी। इस सम्बंध में न्यायदृष्टांत ***भीमा नाईक विरूद्ध उड़ीसा राज्य, 1975 सी.आर.एल.जे. 1923,*** अवलोकनीय है।

(16) मुस्लिम महिला (तलाक पर अधिकारों के संरक्षण)

अधिनियम, 1986 की धारा 3 का आदेश:-

मुस्लिम महिला (तलाक पर अधिकारों के संरक्षण) अधिनियम 1986 की धारा 3 के अधीन पारित आदेश में पति पत्नि के अधिकार तथा दायित्व अंतिम रूप से तय होते हैं। अतः ऐसे आदेश के विरूद्ध पुनरीक्षण चलने योग्य होती है। इस सम्बंध में न्यायदृष्टांत ***शफात एहमद विरूद्ध फहमीदा सरदार, 1990 सी.आर.एल.जे. 1887 या ए.आई.आर. 1990 ईलाहबाद 182,*** अवलोकनीय है।

(17) तृतीय पक्ष के विरूद्ध आदेश:-

किसी तृतीय पक्ष के अधिकारों को प्रभावित करने वाले आदेश के विरूद्ध पुनरीक्षण चलने योग्य होती है। इस संबंध में न्यायदृष्टांत ***परमेश्वरी देवी विरूद्ध राज्य, ए.आई.आर. 1978 एस.सी. 403,*** अवलोकनीय है।

(18) धारा 197 दं.प्र.सं. का आवेदन खारिज करने के विरूद्ध पुनरीक्षण:-

यदि विचारण न्यायालय ने धारा 197 दं.प्र.सं. का आवेदन खारिज कर दिया है, तो उसके विरूद्ध पुनरीक्षण प्रचलन योग्य होती है। इस संबंध में न्यायदृष्टांत ए.एस.राय विरूद्ध एन.एन.कुट्टी, 1978 क्रि.ला.ज. एन.ओ.सी. 65, अवलोकनीय है।

(19) धारा 320 दं.प्र.सं. का आवेदन खारिज किया जाना:-

यदि विचारण न्यायालय परिवादी का आवेदन धारा 320 दं.प्र.सं. खारिज कर देता है और उसे समझौता करने की अनुमति नहीं देता है तो ऐसे आदेश के विरूद्ध पुनरीक्षण प्रचलन योग्य होती है।

ऐसी पुनरीक्षण में यह भी ध्यान रखना चाहिये कि विचारण न्यायालय ने समझौता करने की अनुमति का आवेदन किन कारणों से खारिज किया है और वे कारण ऐसे हैं जो उचित हैं या नहीं, जैसे कि समाज विरोधी अपराधों जिसमें कई लोगों के साथ धोखाधड़ी हुई हो, ऐसे मामलों में समझौता आवेदन विचारण न्यायालय खारिज कर देता है।

20. धारा 203 दंप्रसं का आदेश:-

न्यायदृष्टांत ***बुद्धसिंह कुशवाहा विरूद्ध उमेशसिंह, आई.एल.आर. 2018 एम.पी. 988 डी.बी.,*** के अनुसार धारा 203 दं.प्र.सं के तहत परिवाद का खारिज किया जाना दोषमुक्ति की श्रेणी में नहीं आता है। यह जांच है, विचारण नहीं है। अतः धारा 378(4) दंप्रसं के तहत अपील नहीं होगी अपितु पुनरीक्षण होगी।

21. प्रोटैस्ट पिटीशन खारिज करना:-

न्यायदृष्टांत ***वाली विरूद्ध वाली मोहम्मद, 1980 सी.आर.एल.जे. एन.ओ.सी. 50 (राजस्थान),*** के अनुसार परिवादी ने प्रोटैस्ट पिटिशन प्रस्तुत की। मजिस्ट्रेट ने संज्ञान लेने से इंकार कर दिया। यह अंतर्वर्ती आदेश नहीं है। पुनरीक्षण चलने योग्य है।

22. धारा 125 दं.प्र.सं. के तहत भरण-पोषण एवं अंतरिम भरणपोषण:-

धारा 125 दं.प्र.सं के तहत दिया गया भरण-पोषण का आदेश पुनरीक्षण योग्य होता है। इस संबंध में न्यायदृष्टांत ***सुमेर विरूद्ध संधूरन, 1987 सी.आर.एल.जे. 1396 (पंजाब),*** अवलोकनीय है क्योंकि ऐसे आदेश के विरूद्ध दं.प्र.सं. में अपील का कोई प्रावधान नहीं है और ऐसे आदेश पक्षकारों के अधिकारों का अंतिम रूप से निराकरण कर देते हैं।

इसी प्रकार अंतरिम भरण-पोषण का आदेश पुनरीक्षण योग्य होता है क्योंकि ऐसे आदेश पक्षकारों के अधिकारों का कुछ सीमा तक अंतिम रूप से निराकरण कर देते हैं लेकिन यह जरूर देख लेना चाहिए कि जहां अंतरिम भरण-पोषण दिलाने से इंकार करते समय न्यायालय ने अयथार्थ या उपेक्षापूर्ण आदेश किया हो। न्यायालय को प्रथम दृष्टया यह संतोष होना चाहिए कि जिस व्यक्ति के पक्ष में भरण पोषण दिलाया जा रहा है उसे प्रथम दृष्टया भरण पोषण का एक विधिक अधिकार विरोधी पक्ष के विरूद्ध है। इस संबंध में न्यायदृष्टांत ***ममता विरूद्ध अशोक, 1992 सी.आर.एल.जे. 2605 बाम्बे,*** अवलोकनीय है जिसमें अंतरिम भरण पोषण के आदेश को अंतर्वती आदेश कहा गया है लेकिन उक्त तथ्यों को ध्यान में रखते हुए पुनरीक्षण चलने योग्य हो सकती है, ऐसा भी प्रतिपादित किया गया है।

12. अनुपस्थिति में निरस्ती:-

दाण्डिक पुनरीक्षण को अनुपस्थिति में निरस्त नहीं किया जा सकता। दाण्डिक अपील की अनुपस्थिति में निराकरण के बारे में जो विधि प्रतिपादित की गई है वही दाण्डिक पुनरीक्षण में भी लागू होती है। इस संबंध में न्यायदृष्टांत ***मदनलाल कपूर विरूद्ध राजीव थापर, (2007) 7 एस.सी.सी. 623,*** अवलोकनीय है।

इस मामले में यह भी कहा गया है कि मामला दाण्डिक न्याय प्रशासन से संबंधित है। यह प्रतिपादित किया गया है कि एक दाण्डिक मामला अनुपस्थिति में निरस्त नहीं किया जा सकता है और उसे गुण-दोष पर निराकृत करना चाहिए।

इस मामले में न्यायदृष्टांत ***बानी सिंह विरूद्ध स्टेट ऑफ यू.पी., (1996) 4 एस.सी.सी. 720,*** तीन न्यायमूर्तिगण की पीठ को विचार में लिया गया है जिसमें यह प्रतिपादित किया गया है कि एक दाण्डिक अपील अनुपस्थिति में निरस्त नहीं करना चाहिए बल्कि गुण-दोष पर निराकृत करना चाहिए। सूचना पत्र देने पर भी यदि अपीलार्थी या उसके अभिभाषक उपस्थित नहीं होते हैं तो न्यायालय को अपील गुण-दोष पर निराकृत करना चाहिए। यदि अपीलार्थी जेल में हो तब राज्य के खर्चे पर उसकी ओर से अधिवक्ता नियुक्त करना चाहिए। इस मामले में पूर्व के न्यायदृष्टांत ***रामनरेश यादव विरूद्ध स्टेट ऑफ बिहार, ए.आई.आर. 1987 एस.सी. 1500,*** को ओवर रूल कर दिया गया।

न्यायदृष्टांत ***परशुराम पटेल विरूद्ध स्टेट ऑफ उड़ीसा, (1994) 4 एस.सी.सी. 664,*** के अनुसार एक दाण्डिक अपील अनुपस्थिति में निरस्त नहीं की जा सकती।

उक्त न्यायदृष्टांत ***मदन लाल कपूर*** में कहा गया है कि दाण्डिक अपील की अनुपस्थिति में निरस्तगी के बारे में जो कारण बतलाये गये हैं वे दाण्डिक पुनरीक्षण पर भी लागू होते हैं।

13. पुनरीक्षण का उपशमन:-

एक बार पुनरीक्षण प्रस्तुत हो जाने के बाद पुनरीक्षणकर्ता की मृत्यु से भी उसका उपशमन या अबेटमेंट नहीं होता है क्योंकि दण्ड प्रक्रिया संहिता में पुनरीक्षण के उपशमन का कोई प्रावधान नहीं है। जैसे ही पुनरीक्षण अंतिम सुनवाई के लिए ग्राह्य कर ली जाती है न्यायालय को उसका परीक्षण करना होता है जब तब कि वह ऐसा करना अनावश्यक न मानती हो।

न्यायदृष्टांत ***टी.वी. विश्वनाथन् विरूद्ध स्टेट ऑफ केरला, 2006 सी.आर.एल.जे. 3864,*** का मामला धारा 138 एन.आई. एक्ट में दोषसिद्धि का था। पुनरीक्षण लंबित रहने के दौरान अभियुक्त मर गया। यह प्रतिपादित किया गया कि पुनरीक्षण चालू रहेगी और न्यायालय उचित आदेश कर सकती है।

न्यायदृष्टांत ***प्रनब कुमार मित्रा विरूद्ध स्टेट ऑफ वेस्ट बंगाल, ए.आई.आर. 1959 एस.सी. 144,*** पाँच न्यायमूर्तिगण की पीठ ने यह प्रतिपादित किया है कि जहाँ पुनरीक्षण को प्रथम दृष्टया ग्राह्य कर लिया गया हो और अभिलेख बुलवा लिया गया हो वहाँ दोषसिद्ध व्यक्ति की मृत्यु के बाद भी न्यायालय आदेश की शुद्धता, वैधता और औचित्य का परीक्षण कर सकती है। उपशमन का प्रावधान अपील के लिए है पुनरीक्षण के लिए नहीं है क्योंकि पुनरीक्षण की शक्तियाँ पर्यवेक्षण की

शक्तियाँ होती हैं और किसी व्यक्ति के जीवित रहने या मरने से इन शक्तियों पर प्रभाव नहीं पड़ता है।

यदि धारा 125 दं.प्र.सं. के पुनरीक्षण में पति की मृत्यु हो जाये तो कार्यवाही वैसे ही समाप्त हो जाती है। अतः ऐसे मामले अपवाद में आते हैं जहाँ पुनरीक्षण समाप्त की जा सकती है।

14. फोरम का चुनाव पुनरीक्षणकर्ता का अधिकार है:-

धारा 397 दण्ड प्रक्रिया संहिता की शक्तियाँ माननीय उच्च न्यायालय को और माननीय सत्र न्यायालय को समवर्ती हैं और यह पुनरीक्षणकर्ता का विकल्प है कि वह दोनों न्यायालयों में से किस न्यायालय में जाने का चुनाव करता है। पुनरीक्षणकर्ता को यह नहीं कहा जा सकता कि उसे पहले सत्र न्यायालय में जाना चाहिए। इस संबंध में न्यायदृष्टांत ***ईशाक जैसी विरूद्ध जसमीत सिंह सलूजा, 2003 (2) ए.एन.जे. (एम.पी.) 262*** और ***स्टेट ऑफ एम.पी. विरूद्ध खिजार मोहम्मद, 1996 एम.पी.एल.जे. 1007,*** अवलोकनीय हैं।

15. दोषमुक्ति का दोषसिद्धि में परिवर्तन:-

दाण्डिक पुनरीक्षण में दोषमुक्ति के आदेश को दोषसिद्धि के आदेश में परिवर्तित नहीं किया जा सकता क्योंकि पुनरीक्षण न्यायालय की शक्तियाँ सीमित होती हैं। इस मामले में न्यायदृष्टांत ***बिंदेश्वरी प्रसाद सिंह विरूद्ध स्टेट ऑफ बिहार, ए.आई.आर. 2002 एस.सी. 2907***, अवलोकनीय है।

दोषमुक्ति के विरूद्ध यदि प्राइवेट पक्षकार द्वारा पुनरीक्षण की जाती है तब पुनरीक्षण न्यायालय का ऐसे आदेश में हस्तक्षेप का स्कोप बहुत सीमित होता है।

इस संबंध में न्यायदृष्टांत ***तेलमल विरूद्ध श्रीमती सरजू देवी, 2006 (1) एम.पी.एल.जे. 590,*** अवलोकनीय है।

न्यायदृष्टांत ***अकालू अहिर विरूद्ध रामदेव राम, ए.आई.आर. 1973 एस.सी. 2154*** में यह प्रतिपादित किया गया है कि दोषमुक्ति के निष्कर्ष में निम्न परिस्थितियों में ही पुनरीक्षण में हस्तक्षेप करना चाहिएः-

1. जहाँ न्यायालय को प्रकरण के विचारण का क्षेत्राधिकार नहीं था फिर भी उसने अभियुक्त को दोषमुक्त कर दिया हो।
2. अभियोजन जिस साक्ष्य को पेश करना चाहता था विचारण न्यायालय ने गलत तरीके से साक्ष्य का अधिकार समाप्त कर दिया और साक्ष्य नहीं लिया।
3. जहाँ अपील न्यायालय ने ऐसा गलत निष्कर्ष दिया हो कि विचारण न्यायालय ने जो साक्ष्य स्वीकार की, वह अग्राह्य थी।
4. जहाँ विचारण न्यायालय ने या अपील न्यायालय ने तात्विक साक्ष्य को अनदेखा किया हो।
5. जहाँ समझौता विधि की दृष्टि से अवैध हो, उस समझौते के आधार पर अभियुक्त को दोषमुक्त किया हो।

यह प्रतिपादित किया गया है कि उक्त कुछ उदाहरण हैं, इसी प्रकार के अन्य कारण भी हो सकते हैं जिनमें अपवाद स्वरूप परिस्थितियों में ही दोषमुक्ति के आदेश में पुनरीक्षण में हस्तक्षेप करना चाहिए। इस संबंध मे न्यायदृष्टांत ***के. चिन्ना स्वामी रेड्डी विरूद्ध स्टेट, ए.आई.आर. 1962 एस.सी. 1788,*** तीन न्यायमूर्तिगण की पीठ का न्यायदृष्टांत भी अवलोकनीय है जिसमें उक्त 5 परिस्थितियों में दोषमुक्ति के आदेश में हस्तक्षेप उचित माना गया है।

न्यायदृष्टांत ***रामवृक्ष सिंह विरूद्ध अम्बिका यादव, (2004) 7 एस.सी.सी. 665***, के अनुसार जहाँ तात्विक साक्ष्य को अनदेखा किया गया हो वहीं दोषमुक्ति के आदेश में हस्तक्षेप किया जा सकता है। पुनरीक्षण न्यायालय दोषमुक्ति के आदेश को दोषसिद्धि में परिवर्तित नहीं कर सकते हैं।

इस संबंध में न्यायदृष्टांत ***के चिन्ना स्वामी रेड्डी विरूद्ध स्टेट ऑफ ए.पी., ए.आई.आर. 1962 एस.सी. 1788 एवं डी. स्टीफन्स् विरूद्ध नौसीबोला, ए.आई.आर. 1951 एस.सी. 196,*** भी अवलोकनीय हैं।

न्यायदृष्टांत ***बबलू कुमार विरूद्ध स्टेट ऑफ बिहार, 2015 एआईआर एससीडब्ल्यू 4655,*** के मामले में विचारण न्यायालय, लोक अभियोजक के कर्तव्य स्पष्ट करते हुए पुनरीक्षण में दोषमुक्ति को अपास्त करते हुए पुनः विचारण के निर्देश दिये गये और ये कहा गया कि न्यायालय का यह विधिक दायित्व है कि वह यह देखे कि अभियोजन ने जिन गवाहों का उल्लेख किया है वे वास्तव में पेश किये गये हैं। समन जारी किये गये हैं वे वास्तव में तामील हुए हैं। ऋजु विचारण पर बल दिया गया।

न्यायदृष्टांत ***गणेशा विरूद्ध सरनप्पा, (2014) 1 एस.सी.सी. 87,*** के मामले में यह प्रतिपादित किया गया कि पुनरीक्षण में न्यायालय अपील न्यायालय की धारा 386 दं.प्र.सं. की सभी शक्तियों का प्रयोग कर सकते हैं, केवल दोषमुक्ति को दोषसिद्धि में परिवर्तित नहीं कर सकते। अपवाद स्वरूप मामले में पुनः विचारण के आदेश कर सकते हैं। दोषमुक्ति को पुनरीक्षण में तभी अपास्त किया जा सकता है जब उक्त परिस्थितियाँ अभिलेख से स्पष्ट होती हैं।

16. पुनरीक्षण और विधि का बिन्दु:-

कुछ न्यायाधीशों का यह मत रहता है कि पुनरीक्षण केवल विधि के बिन्दु पर ही होते हैं। इस संबंध में न्यायदृष्टांत ***मुजीब हुसैन उर्फ सोनू विरूद्ध इस्माईल, 2009 (1) एम.पी.एच.टी. 434,*** के अनुसार पुनरीक्षण के क्षेत्राधिकार से इस आधार पर इन्कार नहीं करना चाहिए कि मामले में कोई विधि का प्रश्न उत्पन्न नहीं होता है क्योंकि धारा 397 दण्ड प्रक्रिया संहिता में किसी भी आदेश, निष्कर्ष या दण्डादेश की शुद्धता, वैधता और औचित्य पर विचार करना होता है।

इस संबंध में न्यायदृष्टांत ***पांडुरंग सीताराम भगत विरूद्ध स्टेट ऑफ महाराश्ट्र, 2005 एस.सी.सी. (क्रिमिनल) 1198,*** अवलोकनीय है।

न्यायदृष्टांत ***तुलसीराम मेहता विरूद्ध स्टेट ऑफ एम.पी., 2009 (4) एम.पी.एल.जे. 397,*** में यह कहा गया है कि पुनरीक्षण न्यायालय का क्षेत्राधिकार अत्यंत सीमित होता है। उसे साक्ष्य का पुर्नमूल्याकंन या तथ्य के निष्कर्ष का पुर्नमूल्याकंन नहीं करना चाहिए। केवल विधि के बिन्दु पर और ऐसी त्रुटियाँ, जो रिकार्ड पर देखने से ही स्पष्ट होती हैं, को विचार में लेना चाहिए।

17. सौमोटो पावर

सत्र न्यायालय को पुनरीक्षण की स्वतः शक्ति भी प्राप्त है अर्थात् कोई पक्ष यदि पुनरीक्षण न भी करे, तब भी सत्र न्यायालय पुनरीक्षण की शक्तियों का स्वयं प्रयोग कर सकते हैं जैसा कि न्यायदृष्टांत ***नारायण सिंह विरूद्ध स्टेट ऑफ एम.पी., 2004 (4) एम.पी.एल.जे. 487 एवं गुरुमुख दास विरूद्ध स्टेट ऑफ एम.पी., 2000 सी.आर.एल.जे. 2419,*** में प्रतिपादित किया गया है।

18. द्वितीय अपील न्यायालय नहीं है:-

पुनरीक्षण न्यायालय को यद्यपि अपील न्यायालय की सभी शक्तियाँ रहती हैं लेकिन उसे उन शक्तियों का प्रयोग द्वितीय अपील न्यायालय की तरह नहीं करना चाहिए बल्कि आदेश की शुद्धता, वैधता और औचित्य तथा कार्यवाही की नियमितता को देखने के उद्देश्य से ही इन शक्तियों का प्रयोग करना चाहिए।

इस संबंध में न्यायदृष्टांत ***स्टेट ऑफ महाराष्ट्र विरूद्ध जगमोहन सिंह, 2004 (7) एस.सी.सी. 659,*** अवलोकनीय है।

जहाँ न्याय की विफलता नहीं हुई हो वहाँ कार्यवाही की अनियमितता या अन्योचित्ता के आधार पर पुनरीक्षण में हस्तक्षेप नहीं किया जा सकता। इस संबंध में न्यायदृष्टांत ***ए.आई.आर. 1979 एस.सी. 683*** अवलोकनीय है।

19. धारा 398 दण्ड प्रक्रिया संहिता के तहत अतिरिक्त जाँच के निर्देशः-

जहाँ मुख्य न्यायिक मजिस्ट्रेट को अतिरिक्त जाँच के निर्देश दिये गये हों वहाँ उसके लिए यह आवश्यक नहीं है कि वे अतिरिक्त साक्ष्य लेखबद्ध करें। यह मजिस्ट्रेट का विवेकाधिकार है कि वे परिवादी की ओर से अतिरिक्त साक्ष्य लें या नहीं लें । मजिस्ट्रेट द्वारा, अतिरिक्त साक्ष्य लिये बिना उसी साक्ष्य को, जो अभिलेख पर है, पुनः विचार करके यह निष्कर्ष दिया जा सकता है कि अभियुक्त के विरूद्ध प्रथम दृष्टया मामला बनता है या नहीं लेकिन यदि मजिस्ट्रेट ने गवाहों को तलब करके उनका फिर से परीक्षण कर लिया हो तो मात्र इस कारण से उसकी कार्यवाही व्यर्थ नहीं हो जाती है। इस संबंध में न्यायदृष्टांत ***सुब्रतादास विरूद्ध स्टेट ऑफ झारखंड, ए.आई.आर. 2011 एस.सी. 177,*** अवलोकनीय है।

अतिरिक्त जाँच किस विधि से की जाये और कौन से विशिष्ट आरोप विरचित किये जायें, ऐसे निर्देश नहीं दिये जा सकते हैं। इस संबंध में न्यायदृष्टांत ***राजा राम गुप्ता विरूद्ध धर्म प्रसाद, 1983 एम.पी.एल.जे. 56,*** अवलोकनीय है।

20. अभियुक्त की प्रतिरक्षा के बारे में:-

पुनरीक्षण की शक्तियों का प्रयोग करते समय अभियुक्त की प्रतिरक्षा को विचार में नहीं लिया जाता है। यदि ऐसे दस्तावेज जो देखने से ही संदेह से रहित हों, जो अभियुक्त ने यह दर्शाने के लिए प्रस्तुत किए हों कि, उसके विरूद्ध मामला नहीं चल सकता, तब ऐसे दस्तावेज को नहीं देखा जाना और यह कहना कि इन दस्तावेज पर बचाव के समय विचार किया जायेगा, इससे न्याय की हानि होगी। अतः समुचित मामले में जहाँ दस्तावेज देखने से ही संदेह से परे लगते हों, उनको विचार में ले

सकते हैं जैसा कि न्यायदृष्टांत ***हर्षेन्द्र कुमार डी. विरूद्ध रेवती लता, (2011) 3 एस.सी.सी. 351,*** अवलोकनीय है।

21. तथ्यों का पुनर्मूल्याकंन:-

पुनरीक्षण की शक्तियों का प्रयोग करते समय तथ्यों का पुनर्मूल्याकंन या तथ्य के प्रश्न के निष्कर्ष में हस्तक्षेप नहीं किया जा सकता है। इस संबंध में न्यायदृष्टांत ***रामचंद्र विरूद्ध जानकी लाल, 1987 (2) एम.पी.डब्ल्यू.एन. 183, विमला बाई विरूद्ध मनोहर लाल, 1984 एम.पी.डब्ल्यू.एन. 396, मोहम्मद गनी विरूद्ध स्टेट ऑफ एम.पी., 1985 एम.पी.डब्ल्यू.एन. 480*** एवं ***महतार विरूद्ध लक्ष्मण, 1985 एम.डब्ल्यू.एन. 418,*** अवलोकनीय हैं।

न्यायदृष्टांत ***रामदयाल विरूद्ध स्टेट ऑफ एम.पी., 1987 जे.एल.जे. 131*** में यह स्पष्ट किया गया है कि तथ्यों के निष्कर्ष में कब हस्तक्षेप किया जा सकता है।

इस मामले में यह बतलाया गया है कि जहाँ न्याय की तात्विक हानि हुई हो वहाँ पुनरीक्षण तथ्यों के निष्कर्ष में हस्तक्षेप किया जा सकता है।

22. साक्ष्य का पुनर्मूल्याकंन:-

न्यायदृष्टांत ***मुन्नालाल विरूद्ध हरिसिंह, 1984 एम.पी.डब्ल्यू.एन. 187 एवं शांति बाई विरूद्ध भेलू भाई, 1985 एम.पी.डब्ल्यू.एन. 125,*** के अनुसार पुनरीक्षण की शक्तियों का प्रयोग करते समय साक्ष्य का पुनर्मूल्याकंन नहीं किया जा सकता।

न्यायदृष्टांत ***जागेश्वर प्रसाद विरूद्ध स्टेट ऑफ एम.पी., 1986 (2) डब्ल्यू.एन. 22,*** के अनुसार किसी साक्षी के कथनों पर विश्वास करने या न करने का प्रश्न पुनरीक्षण में नहीं सुना जा सकता लेकिन न्यायदृष्टांत ***बोतलाल भीमराज विरूद्ध स्टेट ऑफ एम.पी., 1985 एम.पी.एल.जे. 584,*** के अनुसार जहाँ न्याय की हानि हुई हो वहां साक्ष्य का पुनर्मूल्याकंन किया जा सकता है।

पुनरीक्षण न्यायालय से यह अपेक्षा नहीं होती कि वह अपील न्यायालय की तरह साक्ष्य का पुर्नमूल्यांकन करे। न्यायदृष्टांत ***ए.आई.आर. 2008 एस.सी. 1165,*** अवलोकनीय है।

न्यायदृष्टांत ***स्टेट ऑफ एम.पी. विरूद्ध मनीश कुमार गर्ग, 2016 (1) एम.पी.जे.आर. 25,*** के अनुसार अपील और पुनरीक्षण के क्षेत्राधिकार में अंतर होता है। एक अपील न्यायालय साक्ष्य का पुनर्मूल्यांकन कर सकता है जबकि पुनरीक्षण के क्षेत्राधिकार में अभिलेख की जांच कार्यवाही की वैधानिकता एवं नियमितता की संतुष्टि के उद्देश्य से की जाती है। जहां विपर्यस्त निष्कर्ष निकाले गये हों वहीं तथ्यों का मूल्यांकन अनुज्ञेय होता है।

23. अपील का पुनरीक्षण में, पुनरीक्षण का अपील में परिवर्तन:-

अपील को पुनरीक्षण में परिवर्तित किया जा सकता है। इसी तरह पुनरीक्षण आवेदन इस गलत विश्वास के आधार पर किया गया था कि उससे कोई अपील नहीं होती है, तब उच्च न्यायालय धारा 401 (5) दं.प्र.सं. के तहत पुनरीक्षण को अपील मान सकता है।

न्यायदृष्टांत ***महेश कुमार विरूद्ध राज्य, 1978 सी.आर.एल.जे. 390 इलाहबाद,*** के अनुसार पुनरीक्षण को अपील में और अपील को पुनरीक्षण में परिवर्तित किया जा सकता है दं.प्र.सं. में ऐसा करने में कोई बाधा नहीं है क्योंकि ये प्रक्रियात्मक प्रावधान न्याय के लिए बने हैं।

24. बल न देना या नॉट प्रेस:-

कभी-कभी पुनरीक्षणकर्ता पुनरीक्षण प्रस्तुत कर देने के बाद उस पर बल नहीं देना चाहता या चलाना नहीं चाहता। यदि पुनरीक्षण प्रारंभिक सुनवाई कर के ग्राह्य कर ली गई है उसके बाद उसका निराकरण सामान्यतः गुण-दोष पर ही करना होता है लेकिन पुनरीक्षणकर्ता अभियुक्त मर चुका हो तब मूल कार्यवाही वैसे ही उपशमित हो जाती है, ऐसे में अभिभाषक उस पर बल नहीं देने का पक्ष रखता है।

जिस आदेश के विरूद्ध पुनरीक्षण की गई, वह मूल कार्यवाही या मूल परिवाद अनुपस्थिति में निरस्त हो गया, ऐसे में पुनरीक्षण के निष्फल हो जाने के कारण उसे खारिज करवाना चाहते हैं।

पुनरीक्षण अभी प्रस्तुत की है और प्रारंभिक तर्क सुनकर उसे ग्राह्य नहीं किया है।

ये कुछ ऐसे उदाहरण हैं जहाँ पुनरीक्षण को नहीं चलाना चाहिए या बल न देने से खारिज किया जा सकता है। सामान्य नियम यही है कि एक बार पुनरीक्षण अंतिम सुनवाई के लिए ग्राह्य कर लिये जाने पर उसका निराकरण गुण-दोष पर ही करना होता है।

25. आदेश का स्वरूपः-

पुनरीक्षण के आदेश का स्वरूप कैसा हो? यह प्रश्न न्यायालय के मन में रहता है।

न्यायदृष्टांत ***पाल जार्ज विरूद्ध स्टेट, ए.आई.आर. 2002 एस.सी. 657,*** के अनुसार दाण्डिक पुनरीक्षण यह लिखते हुए खारिज की गई कि निर्णय में कोई अवैधता, अनौचित्य, अशुद्धता या क्षेत्राधिकार की त्रुटि नहीं है। इस आदेश को उचित नहीं माना गया। जो बचाव लिये गये हैं उन्हें गुण-दोष पर परीक्षित किये बिना और कारण चाहे कितने ही संक्षिप्त हों, लिखे बिना, इस प्रकार पुनरीक्षण खारिज करना उचित नहीं है।

सामान्यतः आदेश के प्रथम पैरा में पुनरीक्षण किस आदेश से व्यथित होकर पेश की गई है और वह किस न्यायालय ने पारित किया है इस बारे में विवरण देना चाहिए। आदेश के दूसरे पैरा में अभियोजन का मामला संक्षिप्त में बतलाना चाहिए। पुनरीक्षण के संक्षिप्त तथ्य लिखना चाहिए। विचारणीय प्रश्न बनाना चाहिए। दोनों पक्षों के तर्क लिखते हुए एक सकारण आदेश पारित करना चाहिए। अंतिम पैरा बहुत स्पष्ट होना चाहिए कि क्या पुनरीक्षण खारिज की गई है या स्वीकार की गई है या अंशतः स्वीकार की गई है और प्रश्नाधीन आदेश को कहां तक रूपांतरित किया गया है। आदेश की एक प्रति के साथ विचारण न्यायालय का अभिलेख भेजा जाना चाहिए।

26. विविध:-

(1) न्यायदृष्टांत ***हरिराम विरूद्ध स्टेट ऑफ एम.पी., 2009 (3) एम.पी.एच.टी. 24,*** के मामले में मृतक और अभियुक्त के बीच गत 8 वर्षों से अवैध संबंध थे। घटना दिनांक को देर रात्रि मृतक अभियुक्त के गांव में उसके घर पहुंची, दरवाजा खटखटाया, दरवाजा नहीं खोले जाने पर उसने

जहरीली गोलियाँ खा लीं और उसकी मृत्यु हो गयी। अभियुक्त के विरूद्ध धारा 306 भारतीय दण्ड संहिता का अभियोग पत्र प्रस्तुत किया गया और उसके विरूद्ध आरोप विरचित किया गया। पुनरीक्षण में अभियुक्त को उन्मोचित किया गया।

(2) न्यायदृष्टांत ***राधेश्याम विरूद्ध स्टेट ऑफ एम.पी., 2014 (3) एम.पी.एच.टी. 103,*** के मामले में अभियुक्त के विरूद्ध धारा 306 भा.दं.सं. के आरोप विरचित किये गये। ट्रक के स्वामी अभियुक्त ने मृतक चालक से पैसा लौटाने की मांग की। दोनों के बीच विवाद हुआ। मालिक ने ड्राइवर को धमकी दी। पुनरीक्षण में यह अभिनिर्धारित किया गया कि उधार दी गई राशि वापस मांगना मृतक को तंग करने के समान नहीं माना जा सकता। अभियुक्त के विरूद्ध आत्महत्या के दुष्प्रेरण के आरोप विरचित करने के प्रथम दृष्ट्या आधार नहीं पाये गये। पुनरीक्षण में अभियुक्त को उन्मोचित किया गया।

(3) न्यायदृष्टांत ***सुरजीत सिंह विरूद्ध स्टेट ऑफ एम.पी., 2016 (1) जे.एल.जे. 19,*** के अनुसार मृतक की संपत्ति का दुर्विनियोग या आधिपत्य में ले लिये जाने से मृतक के लिये गंभीर वित्तीय संकट उत्पन्न हो गया था। जब एक व्यक्ति को अभियुक्त द्वारा ऐसी दशा में पहुंचा दिया जाए जहां उसके लिए आत्महत्या के अलावा कोई रास्ता न बचा हो, तब यह आत्महत्या के लिए दुष्प्रेरण के समान माना जायेगा।

(4) न्यायदृष्टांत ***दिनेश विरूद्ध स्टेट ऑफ एम.पी., आई.एल.आर. 2017 एम.पी. 162,*** के अनुसार मृतक को ऋण की राशि वापस करने के लिये प्रेरित करना या समझाना दुष्प्रेरण नहीं है। अनावश्यक दबाव बनाने पर मृतक विधिक उपचार ले सकता था। आरोप अपास्त किये गये।

(5) न्यायदृष्टांत ***नरसिंह प्रसाद सिंह विरूद्ध राजकुमार, ए.आई.आर. 2001 एस.सी. 1828,*** के मामले में अभियुक्त ने धारा 498 ए आई.पी.सी. में की गई दोषसिद्धि के विरूद्ध पुनरीक्षण प्रस्तुत की। अभियुक्त ने दोषसिद्धि को चुनौती नहीं दी, केवल दण्ड के प्रश्न तक अपने तर्क सीमित रखे। उच्च न्यायालय ने अभिरक्षा में गुजारी गई अवधि के दण्ड का आदेश दिया जिसके लिए कोई कारण लेखबद्ध नहीं किये। उच्च न्यायालय ने यह पुष्टि भी नहीं की कि अभियुक्त मामले में अभिरक्षा में नहीं रहा है। दण्डादेश में ऐसे परिवर्तन को उचित नहीं माना गया। आदेश अपास्त किया गया और प्रकरण फिर से निराकृत करने के लिए भेजा गया।

इस विधिक स्थिति को अपील में अभिरक्षा में गुजारी गई अवधि के दंड से अपीलार्थी/अभियुक्त को दंडित करते समय ध्यान में रखा जाना चाहिए।

(6) ट्रक के संपहरण या फोरफीचर के विरूद्ध पुनरीक्षण में अभियुक्त और ट्रक मालिक को पक्षकार के रूप में जोड़ना चाहिए। इस संबंध में न्यायदृष्टांत ***शब्बीर हुसैन विरूद्ध स्टेट ऑफ एम.पी., 1984 एम.पी.डब्ल्यू.एन. 437,*** अवलोकनीय है।

(7) अपील न्यायालय का आदेश कि गवाहों को जप्त आर्टिकल दिखाया जाये, इस उद्देश्य से प्रकरण पुनः विचारण के लिए प्रतिप्रेषित किया गया। ऐसे आदेश के विरूद्ध अभियुक्त की पुनरीक्षण संक्षिप्त रूप से खारिज की गई। इस संबंध में न्यायदृष्टांत ***मनोज विरूद्ध स्टेट ऑफ एम.पी., 2005 (4) एम.पी.एल.जे. 547,*** अवलोकनीय है।

27. उपसंहार:-

इस प्रकार पुनरीक्षण पेश होने के बाद उक्त प्रावधानों को ध्यान में रखते हुए उसका त्वरित निराकरण करना चाहिए। सर्वप्रथम प्रश्नाधीन आदेश का ध्यानपूर्वक अवलोकन करके यह देखना चाहिए कि क्या आदेश अंतर्वर्ती आदेश तो नहीं है। यदि अंतर्वर्ती आदेश है तब 397(2) दं.प्र.सं. के तहत उसके विरूद्ध पुनरीक्षण वर्जित है और ऐसी पुनरीक्षण को प्रारंभिक स्तर पर अर्थात् मोशन में ही खारिज कर देना चाहिए।

यदि आदेश अंतर्वर्ती आदेश नहीं है तब यह विचार करना चाहिए कि क्या पुनरीक्षणकर्ता का पक्ष मान लिये जाने पर कार्यवाही उसी स्टेज पर समाप्त नहीं होती किंतु आदेश की शुद्धता, वैधता या औचित्य की कसौटी पर आदेश में ऐसी कोई कमी तो नहीं है जो मामले की जड़ तक जाती हो, जिससे न्याय की गंभीर हानि हो रही हो यह विचार करना चाहिए।

पुनरीक्षण को अंतिम सुनवाई के लिऐ ग्राह्य कर लेने के बाद विपक्षीगण को सूचना पत्र देना चाहिए। पुनरीक्षणकर्ता की अनुपस्थिति या मृत्यु के बाद भी पुनरीक्षण को गुण-दोष पर निराकृत करना चाहिए और आदेश की प्रतिलिपि के साथ धारा 405 दं.प्र.सं. के तहत विचारण न्यायालय का अभिलेख आदेशानुसार कार्यवाही के लिए लौटाना चाहिए। विचारण न्यायालय का अभिलेख अंतिम सुनवाई के समय ही बुलवाना अधिक उचित रहता है, इसे भी ध्यान रखना चाहिए। यदि पुनरीक्षण अवधि बाधित हो और अंतरवर्ती आदेश के विरूद्ध नहीं हो तब विपक्षी को विलंब क्षमा करने के पूर्व सुनवायी का एक अवसर दिया जाना चाहिए।

सोचो वह जो बोल सको, बोलो वह जो लिख सको, लिखो वह जो हस्ताक्षर करके किसी को दे सको .....

एक

TRIAL OF WILDLIFE OFFENCES – AN OVERVIEW

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INTRODUCTION

The rapid decline of wild animals and birds in India has been a cause of grave concern. Some wild animals and birds have become devoid of it and even in sanctuaries and National Parks, the protection afforded to wildlife needed to be improved. The Wild Birds and Animal Protection Act, 1912 and existing State laws had become completely outdated. In order to ensure the ecological and environmental security of the country, to have a uniform legislation on wildlife throughout the country to establish a network of protected areas, to regulate illicit trade in wildlife and its product, the Central Government by virtue of 1972 Amendment in Constitution of India, enacted Wildlife Protection Act. It is the most significant legislation on wildlife protection based on ecosystem approach.

The Rajasthan High Court while delivering its judgment ***State of Rajasthan v. Salman Khan and others, 2012 CrLJ 1763,*** has also expressed concern about threat to wildlife and held that damage caused to wild life even if it cannot be calculated in terms of money is definitely a loss to the ecology and as a result, a loss to the public and society at large. It is pertinent to mention here that the Act not only protects wild animals but also protects flaura and fauna.

Thus, the Wild Life (Protection) Act, 1972, is the umbrella legislation for enforcement of Wild Life crimes. While dealing cases under offences against Wild Life, there are certain nuances which occur before the Magistrate like whether offences are bailable or not, who are competent persons for investigation, competent person authorised to file complaint, its effect of non-compliance, jurisdiction of Court to deal with vehicle seized during investigation, who are forest officers etc and many more. Due to aforementioned and others reasons, trial of such offences are delayed. In order to expedite the trial of such offences, this article deals with the procedural aspects regarding trial of such offences.

SCHEME OF OFFENCES UNDER THE ACT

In order to understand the trial of offences under Wild Life Protection Act, firstly it is necessary to know the different offences which are punishable under the Act. Offences under the Act can be divided into 3 categories which are as follows:-

1) Offences of Hunting
2) Offences related to Protected Areas
3) Offences relating to unauthorized possession, transport and trade

i) Offences of Hunting:

Hunting has been broadly defined under Section 2 (16) of the Act to cover all acts of killing, poisoning, capturing, coursing, snaring, trapping, driving, baiting, injuring, destroying or taking any part of the body of wild animal or captive

animal (or damaging or disturbing the eggs or nests of birds or reptiles) and every attempt to do so. To achieve the purpose of formulating the Act, hunting of all **wild animals** (*i.e.* those listed in Schedule I to IV) is prohibited under Section 9 of the Act subject to exception as provided in Sections 11 and 12.

Apart this, the object of the Act is not only to protect the wild animals but also to protect **specified plants.** (*i.e.* those listed in Schedule VI). For this, Section 17A of the Act prohibits picking, uprooting, damaging, destroying, acquiring, possessing, selling, transportation or collection of any specified plant from any forest land subject to exception as provided in it.

ii) Offences related to Protected Areas:

One of the mechanism through which aim of the Act can be achieved is safeguarding Wild Life habitat by creation and management of Protected Areas. Chapter IV of the Act deals with the creation and protection of protected areas. According to Section 2(24A) of the Act, protected areas includes:-

1) Sanctuary
2) National Park
3) Conservation Reserve
4) Community Reserve

Provisions mentioned in Sections 27 to 33A of the Act sets out the acts and omissions which if committed in Sanctuaries amounts to an offence. These acts or omissions are also prohibited in National Park, Conservation Reserve, Community Reserve or Tiger Reserve, by virtue of Section 35(8), Section 36A(2), 36(C)2 and 38V(2) respectively.

Acts or omissions which amount to an offence in Sanctuary is placed below in tabular form:-

S.No.	Section	Offence
1	**Sec. 27(1)**	Restriction on entry in sanctuary except in accordance with the conditions of permit granted u/S 28.
2	**Sec. 27(2)**	Duties of a person to do certain acts, so long as he resides in sanctuary.
3	**Sec. 27(3)**	Prohibition regarding alteration, destruction of boundary mark of sanctuary.
4	**Sec. 27(4)**	Prohibition regarding teasing or molestation of any wild animal or litter the grounds of sanctuary.
5	**Sec. 29**	General provision of prohibiting destruction or damage to Wild Life or its habitat in sanctuary.
6	**Sec. 30**	Prohibition in respect to causing fire in sanctuary.
7	**Sec. 31**	Prohibition regarding entry into sanctuary with weapon.

8	**Sec. 32**	Prohibition of use of injurious substance which may cause injury or endanger any Wild Life in sanctuary.
9	**Sec. 33A(2)**	Prohibition of taking of any live stock for grazing without immunisation.

iii) Offences relating to unauthorized possession, trade and transport:

The regulatory regime for offences relating to unauthorized possession, trade and transport can be categorized as follows:-

- **Unauthorized possession, trade and transport in respect to Scheduled Animal:**

According to Section 49A(a) of the Act, ***Scheduled Animal means an animal specified for the time being in Schedule I or Part II of Schedule II.*** Unauthorized possession, trade and transport of Scheduled Animal is governed by Sections 40, 42, 43(1) and Chapter V-A of the Act. As a result of these provisions, no wild or captive animal (or animal article or trophy or uncured trophy derived from an animal) listed in Schedule I and Part II of Schedule II can be: a) possessed without an ownership certificate under Section 42; and b) transferred or acquired by any means other than inheritance. The only exceptions to this is the tail feather of the peacock.

- **Unauthorized possession, trade and transport in respect to Species listed in Part I of Schedule II, Schedule III and Schedule IV:**

This aspect is governed by Sections 44, 48, and 49 of the Act. Although hunting of these species is also prohibited, but Section 44 provides for the issue of licenses to taxidermists, eating houses, and dealers dealing in animal articles, trophies, uncured trophies, captive animals, and snake venom of the species listed in these schedules.

INVESTIGATION OF OFFENCES UNDER WILD LIFE PROTECTION ACT

Offences against Wild Life can be said to be White Collar Crime, in which crime is committed in a systematic manner in forest areas where there is very less scope of any eye witness. So, collection of evidence by Investigating officer is very challenging task during investigation. Investigation plays a very important role in criminal trial because result of the trial depends upon the investigation conducted by investigating authority.

Criminal investigation is a patient step by step process of discovering, collecting, preparing, identifying and presenting evidence within the legal frame work before competent Court. So, it is necessary for the investigating officer to collect sufficient evidence during investigation and present it before the competent Court to convince that the alleged offence is committed by accused.

The word investigation does not find a place anywhere in the Wild Life (Protection) Act, 1972, except in sub section (8) of Section 50. Therefore, according to provisions of Section 4 of Cr.P.C., unless there is any specific

provision under the Act regarding search, seizure, arrest, bail and recording of statement during investigation, provisions under various Sections of Cr.P.C. shall be followed.

Who can conduct investigation under the Act?

Unlike other regular offences under Penal Code, where police officers are empowered to conduct investigation, the first question which comes to mind while dealing Wild Life offences is who can conduct investigation for offences against Wild Life?

According to Section 50(1) of the Wild Life (Protection) Act, the following officers are empowered to enter into any place where Wild Life materials are suspected to be kept, conduct search for such Wild Life materials and seize the same, arrest and detain the accused or the suspect.

The empowered officers are as follows:

- Director of Wildlife Preservation;
- Any other officer authorized by Director;
- Chief Wildlife Warden;
- Any officer authorized by the Chief Wildlife Warden;
- Any Forest Officer;
- Any Police Officer not below the rank of Sub Inspector.

Who is a Forest Officer

Another issue which accrues regularly before Magistrate is who is a Forest Officer? Section 2(12A) of Wild Life Protection Act defines Forest Officer as ***'an officer appointed under clause (2) of Section 2 of the Indian Forest Act or under any other Act for the time being in force in a State.'***

According to Section 2(2) of the Indian Forest Act, 1927 ***"Forest-officer" means any person whom the State Government or any officer empowered by the State Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer.***

Accordingly, the State Government by ***Notification No. 624-65-341-XV- dated 21 June, 1928 and Notification No 718-15, dated 12 Aug, 1929*** appointed following officers as Forest Officers to do all acts and exercise powers of Forest Officers:

- Conservator of forest;
- Collectors;
- Assistant Commissioner;
- Deputy Conservator of forest (whether on probation or otherwise);
- Range Officer;
- Assistant Forest Range Officer;
- Forester;

- Forest Guard (whether permanent or temporary employment)

From the notification issued by the State Government, it is crystal clear that even Forest Guard is a Forest Officer and has power to seize any animal article and arrest any suspect during investigation under offences against Wildlife.(Also see: ***Atibai v. State of M.P., 2008 (2) MPLJ 83*** and ***Bholaram v. State of M.P., 2014 (5) MPHT 279***)

Whether police officers are authorized to investigate offences under WPA?

By virtue of Section 50(1) of the Act, it can be said that police officer of the rank of Sub-Inspector and above only are authorized to investigate the offences committed under the Act. Apart this, the Station House Officer of police station, by virtue of ***notification dated 21.10.1976, No- 14-28-76-X-2*** is authorized to exercise power granted under Section 55(b) of the Act, 1972. Thus, Police officers of the rank of Sub Inspector and above are entitled to conduct investigation and SHO can file complaint by exercising power granted under Section 55 of the Act. [Refer: ***Somnath v. State of Chhattisgarh, 2015 Cr.L.J 476 (Chhattisgarh)***]

Investigation done by unauthorized person, effect of:

From the above, it is aptly clear that only officers empowered u/S 50 of the Act are entitled to conduct investigation of offences against Wild Life. But sometimes due to several reasons, investigation is conducted by unauthorized officer. In such a situation, defence which is commonly raised by accused is that whole trial is vitiated and accused is entitled for such benefit. In this regard, the moot question is ***what will be the effect, if investigation is conducted by someone other than the officer prescribed for the purpose?*** Wildlife Protection Act is a Special Act to protect the Wild Life, Likewise there are different Special Act like Prevention of Corruption Act, wherein according to Section 17, investigation has to be conducted by particular investigating officer. In ***Union of India and others v. T. Nathamuni, (2014) 16 SCC 285,*** the Apex Court while dealing specifically with regard to investigation carried out by an unauthorized officer under Prevention of Corruption Act has held that invalidity of investigation does not vitiate the result unless a miscarriage of justice has been caused thereby.

Hence, provisions of Section 50(1) of Wild Life Protection Act is *in pari materia* to provisions of Section 17 of Prevention of Corruption Act. So, merely if investigation is conducted by unauthorized person, it will not be a ground to vitiate the trial unless the accused satisfies the Court that due to act of an unauthorized officer, prejudice has been caused to him.

POWERS GRANTED TO INVESTIGATING OFFICER UNDER THE ACT

As mentioned above, Section 50(1) of the Act authorizes certain officers to conduct investigation. The power which are granted to such officers during investigation are:-

- Power regarding inspection;
- Power regarding search and seizure;

- Power regarding arrest, detention and remand;
- Power regarding interrogation of persons and production of documents;
- Power regarding recording of evidence.

Power of inspection

Section 50(1)(a) empowers the investigating authority, if he has reasonable grounds for believing that any person has committed an offence against this Act, then he may require such person to produce captive animal, wild animal, animal article, meat, trophy, uncured trophy, specified plant or part or its derivative thereof in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act.

Power of search, seizure and Magistrate's jurisdiction to release the seized vehicle

In perusal of Section 50(1)(c) of the Act, empowered officers have power to seize items, either in respect of which an offence has been committed (such as captive animals, animal articles etc.) or which have been used for the commission of an offence (such as traps, tools, vehicles, etc.). Further, according to Section 50(4) of the Act, seized articles are to be taken forthwith before a Magistrate to be dealt with according to law. Under Section 51(2) of the Act, while convicting a person of an offence under the Act, the Court may order that any such item is forfeited to the State Government. Some confusion is caused by Section 39(1) of the Act which states that certain items (such as captive animals, animal articles, etc.) in respect of which an offence has been committed under the Act and certain other items (such as traps, tools, vehicles, etc.) which have been used for the commission of an offence under the Act, shall be the property of the State Government.

On careful reading of Section 39(1)(d) of the Act, the twin conditions for vehicle becoming State Government's property is that the vehicle must have been used for committing an offence and must have been seized. Mere seizure of property without any material to show that the same has been used for committing an offence, does not make the seized property, the property of the Government.

The provision of Section 39(1)(d) would come into play only after a Court of competent jurisdiction finds the accusation and the allegation made against the accused as true and recorded the finding that the seized vehicle was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations levelled by the departmental authorities would bring it to conflict with the constitutional provisions and would render it unconstitutional and invalid. [See: ***State of MP and other v. Madhukar Rao, (2008) 14 SCC 624***] Mere seizure of property including vehicle on the charge of commission of offence under the Act of 1972, would not make the property to be of the State Government under Section 39(1)(d). [Also refer: ***Onkar Prasad Loni v. State of M.P., 2010 (3) MPHT 170***]

Similarly, in ***State of UP and another v. Lalloo Singh, (2007) 7 SCC 334,*** the Supreme Court has held that Magistrate is empowered u/S 451 Cr.P.C. to release the vehicle seized under the Act. Further, the Supreme Court has also contended that Magistrate is required to consider statutory mandate that the seized property becomes the property of the State and application should not be allowed in routine manner. But simply because the Court has the power to order the interim release of property to its owner, does not mean that it is bound to do so in every case. A Magistrate dealing with an application for interim release must keep in mind the statutory mandate of the Act and the gravity of the offence. [See: ***Atibai v. State of MP, 2008 (2) MPHT 76*** and ***Lalloo Singh (supra)***]

Therefore, the aim of the prosecution in a given case is to show good reasons as to why the property in question should not be released to its owner, *i.e.* it has been used for the commission of an offence, and/or that it may be used for further offences. ***State of Maharashtra v. Gajanan D Jambhulkar, 2002 Cr.L.J. 349,*** is an excellent example of such case in which the Bombay High Court had struck down the order passed by the Magistrate allowing release of a jeep to its owner, when it was alleged to have been used in the commission of an offence under the Act. The jeep in this case had a secret compartment, especially designed to conceal and carry weapons. The Court observed that:

> *"Casual and liberal approach in the matter of releasing the seized property or the vehicle by the Courts which is subject to forfeiture at the conclusion of the trial, is uncalled for as the release of the vehicle, according to us, is likely to frustrate the provisions of the Act. Before the Courts allow the application of the accused for releasing the vehicle on Supratnama, the Courts have to give sound reasons which justify such release of the vehicle, to prima facie exclude the possibility of such vehicle being liable for forfeiture as per S.51 of the Wild Life Protection Act at the conclusion of the trial. If the material prima facie does indicate involvement of the vehicle in the commission of the offence under the Wild Life Protection Act, the Magistrate would not be justified in ordering the release of the vehicle as the said vehicle would be liable for forfeiture at the conclusion of the trial."*

From the above discussion it is clear that the Magistrate has discretion to release the vehicle seized under the WLP Act. But, ***whether a Magistrate can impose a condition of furnishing a bank guarantee while releasing the vehicle?*** The Rajasthan High Court has answered the question affirmatively in ***Ayyub v. State of Rajasthan, 2003 CrLJ 2954,*** that the main object of the Act, 1972 is to preserve and protect wild animals, birds and plants. Liberal approach in such matters with respect to the property seized, which is liable to confiscation will frustrate the provisions of the Act and would perpetuate the commission of more offences with respect to wild animals etc. and therefore, the Court may release the vehicle during pendency of the case and furnishing a bank guarantee should be the minimum condition.

But, situation will be different where vehicle is seized for committing an offence which is punishable both under the Indian Forest Act and the Wildlife Protection Act. Section 56 of WLP Act does not prohibit any person from being prosecuted under any other law. For example, offence of hunting is punishable both under the Wild Life Protection Act and under the Indian Forest Act. In such a situation, if an offence is registered against accused under Indian Forest Act and WLPA, then according to provisions of Section 52-C of Indian Forest Act, on receipt of intimation under Section 52(4) of Indian Forest Act about initiation of proceedings for confiscation of property, the jurisdiction of the Magistrate to release the vehicle on interim custody is barred. (See: ***Jakir Khan v. State of M.P., 2018 (2) ANJ (MP) 37)*** Further, if concerned forest officer initiates the confiscation proceeding by invoking provisions of Indian Forest Act, then one has to also keep in mind that confiscation proceedings of vehicle and prosecution for forest offence is different. Confiscation proceedings being independent cannot be stayed by releasing the vehicle till the guilt of the accused is completely established in trial. (Refer: ***State of MP and another v. Smt. Kallo Bai, AIR 2017 SC 2516***)

So, it can be said that where vehicle is seized for committing an offence under WLPA, Magistrate has discretion to release the vehicle u/S 451 Cr.P.C. but, unless the competent Court records finding of commission of offence by said vehicle, property cannot be forfeited to State Government. However, where the vehicle is seized for committing an offence under WLPA along with Indian Forest Act, the jurisdiction of the Magistrate to deal with seized vehicle is barred by virtue of Section 52-C of the Act of 1927.

EFFECT OF DELAYED PRODUCTION OF SEIZED ARTICLE BEFORE MAGISTRATE

Section 50(4) of WLP Act clearly mandates that the seized articles shall be forthwith produced before the concerned jurisdictional Magistrate. This provision in Section 50(4) is unlike the provision in Section 102(3) of the Code, which only insists that the seizure of the article should be forthwith, reported to the Court.

The following table will distinguish between the provisions under the Act of 1972 and Criminal Procedure Code:

Section 50(4) of the WLP Act	**Section 102(3) of the Code**
Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard.	Every police officer acting under sub section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continuous retention

Section 50(4) of the WLP Act	Section 102(3) of the Code
	of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sales.

Thus, under WLP Act, the prosecution is legally bound to produce the seized articles forthwith before the Magistrate. This will maintain the sanctity of the entire process of seizure so that there is adequate and convincing evidence before the Court that the samples which ultimately reached the analyst was in fact taken from the seized articles in a foolproof, safe and proper manner. This will also ensure that evidence produced before the Court is sufficient to sustain any conviction for an offence involving unlawful possession of animal article based on the report of analyst. Further, if there is delay in sending the seized article to the concerned Magistrate, then prosecution is duty bound to explain the reasons for the delay. (See: ***State of Kerala v. Odiase Austin Goubadia (Kerala HC), 2014 (35) R.C.R (Cri.) 224***)

But, the said provisions of Section 50(4) of the Act shall not be applicable to the seized article which cannot be conveniently transported to the Court or there is difficulty in securing proper accommodation of the custody of such property.

Power regarding arrest, detention and remand:

Under Section 50(1) of the Act, empowered officers have power to arrest without warrant any person if he is satisfied that such person will not appear and answer any charge which may be preferred against him and detain him. Further, Section 50(4) of the Act mandates that any person detained shall forthwith be taken before the Magistrate to be dealt with according to law.

Section 41 Cr.P.C. mandates that a police officer may arrest a person against whom reasonable suspicion exists of having committed a cognizable offence punishable with imprisonment upto seven years where he is satisfied that such arrest is necessary for certain reasons, such as to prevent the person from committing further offence, for proper investigation, etc. So the question is ***whether it is mandatory for Forest Officers also to follow the provisions of Section 41 Cr.P.C?*** Though Section 50 (1) of the WLP Act empowers the Forest Officers to arrest the suspect, but the Act is silent regarding how the arrest shall be made by forest officer. The answer to this question lies in Section 51 of the Act wherein nature of offence can be categorised according to its prescribed punishment. Looking at the table (infra), except for subsequent offence committed in core area, no other offence under the Act carries a maximum penalty of more than seven years imprisonment. So, provision of Section 41 Cr.P.C. should also be complied with in offences against Wild Life.

Effect of Non-compliance of Section 41 Cr.P.C.:

In ***Arnesh Kumar v. State of Bihar, 2014 (3) Crimes 40,*** the Supreme Court got an opportunity to issue guidelines regarding compliance of Section 41 Cr.P.C. while dealing with a case in respect to section 498-A IPC but had categorically held that the guidelines shall be followed in every offence which is punishable upto 7 years of imprisonment. The Supreme Court has held that in all cases where the arrest of a person is not required under Section 41(1), Cr.P.C., the police officer is required to issue notice directing the accused to appear before him at a specified place and time. If such an accused complies with the terms of notice, he shall not be arrested, unless for reasons to be recorded, if the police officer is of the opinion that the arrest is necessary. But condition precedent for arrest as envisaged under Section 41 Cr.P.C. has to be complied and shall be subject to the same scrutiny by the Magistrate.

The Supreme Court had categorically highlighted in its case that, non-compliance of provisions of Section 41 of the Code and failure to comply with the directions mandated by the Supreme Court and authorising detention without recording reasons by the Judicial Magistrate concerned, shall be liable for departmental action by the appropriate High Court. Hence, it is necessary for all the Magistrates to comply with the directions given by the Apex Court.

Forest Remand:

Under Section 50(4) of the Act, the accused along with the things seized must be taken forthwith to a Magistrate to be dealt with according to law. The Act is silent about remand of an accused into forest custody for further investigation. But one important question arises here is that if the investigation is not completed within 24 hours of arrest then ***whether forest officer is entitled to seek the accused on remand u/S 167 or only police officers are entitled to seek remand u/S 167*** Cr.P.C.? In the case of ***Directorate of Enforcement v. Deepak Mahajan and***

another, AIR 1994 SC 1775, the Apex Court held that it is not only police officers who can apply for detention of the accused under Section 167 CrPC., under Special Acts, an officer empowered under that Act may also apply for detention of the accused under Section 167 of the CrPC, when the Special Act does not provide for such detention, provided that the Magistrate is satisfied that:

"(1) The arresting officer is legally competent to make the arrest;

(2) The particulars of the offence or the accusation for which the person is arrested or other grounds for such arrest do exist and are well-founded; and

(3) The provisions of the Special Act in regard to the arrest of the persons and the production of the arrestee serve the purpose of Section 167(1) of the Code."

As Forest officers are empowered to arrest any suspect u/S 50 of WLP Act, they are entitled to seek remand of the accused, if investigation is not completed in 24 hours to serve the purpose of Section 167(1) of the Code.

Position of Bail:

Issue which frequently arises before Magistrate while dealing criminal cases is granting or rejecting bail. The moment an accused is arrested and presented before Magistrate, an application to release the accused on bail is presented before the Court. On perusal of WLPA, the Act does not speak whether offences under the Act is bailable or non-bailable. In absence of specific provision under the Act, according to Part II of Schedule I of Criminal Procedure Code, nature of offence, under Wild Life (Protection) Act with its different category is placed below in tabular form for ready reference:-

S. No.	OFFENCE	SECTION	PENALTY	NATURE OF OFFENCE	MODE OF TRIAL	TION FOR FILING COMPLAINT	MODE OF TAKING COGNI-ZANCE	COMPO-UNDA BLE OR NOT
1	Contravention of any provisions of Act or Rules or who commits a breach of any conditions of any licence or permit granted under the Act except Chapter VA and Section 38 J	51 (1)	Imprisonment upto 3 years or fine upto Rs 25,000 or with both	Non Bailable Cognizable	Warrant Trial	3 years	Cognizance on complaint	Compoundable
2	Offence committed in relation to animal specified in Scheduled I or Part II of Schedule II or meat of such animal, trophy or uncured trophy, hunting in Sanctuary or National Park or altering the boundaries of National Park or Sanctuary	Proviso 1 of Section 51 (1)	Imprisonment not less than 3 years may extend upto 7 years and fine not less than Rs 10,000/-	Non Bailable Cognizable	Warrant Trial	No. Limitation	Cognizance on complaint	Non-compoundable

3	Subsequent or second offence committed in relation to animal specified in Scheduled I or Part II of Schedule II or meat of such animal, trophy or uncured trophy, hunting in Sanctuary or National Park or altering the boundaries of National Park or Sanctuary	Provis 2 of Section 51 (1)	Imprisonment not less than 3 years may extend upto 7 years and fine not less than Rs 25,000/-	Non Bailable Cognizable	Warrant Trial	No. Limitation	Cognizance on complaint	Non-compoundable
4	Contravention of Chapter V-A	51 (1A)	Imprisonment not less than 3 years may extend upto 7 years and fine not less than Rs 10,000/-	Non Bailable Cognizable	Warrant Trial	No. Limitation	Cognizance on complaint	Non-compoundable
5	Contravention of provisions of Section 38-J ***i.e.*** teasing, molesting, injuring, feeding or disturbing animals of Zoo	Sec 51 (1B)	Imprisonment may extend up to 6 months or fine may extend to Rs 2,000/- or both	Bailable Non Cognizable	Summons Trial	1 year	Cognizance on complaint	Compoundable
6	Subsequent offence of offences under Section 38-J	Proviso of Section 51(1B)	Imprisonment may extend up to 1 year or fine may extend to Rs 5,000/-	Bailable Non-cognizable	Summons Trial	1 year	Cognizance on complaint	Compoundable
7	Offence committed in core area of tiger reserve or hunting in tiger reserve or altering the boundaries of tiger reserve	Section 51 (1C)	Imprisonment not less than 3 years may extend upto 7 years and fine not less than Rs 50,000/- may extend to Rs 2,00,000/-	Non Bailable Cognizable	Warrant Trial	No. Limitation	Cognizance on complaint	Non-compoundable
8	Subsequent offence committed in core area of tiger reserve or hunting in tiger reserve or altering the boundaries of tiger reserve	Section 51 (1C)	Imprisonment not less than 7 years and fine not less than Rs 5,00,000/- but may extend to Rs. 50,00,000/-	Non Bailable Cognizable	Session Trial	No. Limitation	Cognizance on complaint	Non-compoundable

As per aforementioned table, except for offence punishable under Section 51(1B) of the Act, all offences under WPA are non-bailable in nature. Thus, Magistrate has to decide bail application keeping in mind principles laid down in Section 437 Cr.P.C. for non-bailable offences.

Further, the Magistrate must also keep in mind provision of Section 51A of the Act while granting bail. Section 51A specifically mandates the Court to hear Public Prosecutor in certain circumstances which are:-

- Offences relating to Schedule I or Part II of Schedule II;
- Offences relating to hunting inside the boundaries of National Park or wild life sanctuary;
- Altering the boundaries of such parks and sanctuaries.
- Accused committing subsequent offence.

Section 51A(b) of the Act further states that where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, can release such person on bail. In ***Ramesh v. State of Kerala, Law Finder Doc Id # 464171,*** it has been emphasized by the Kerala High Court that *'every citizen has a duty to protect wildlife. Article 51-A of the Constitution of India enshrines the fundamental duties of citizens. Article 51-A (g) provides that it shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Offences under the Wild Life Protection Act are to be viewed very seriously, even while dealing with the Bail Applications filed by the accused who are involved in grave offences under the Wild Life Protection Act. Each case has to be considered in the light of the facts and circumstances of the case.'*

Default Bail:

According to provisions of Section 167(2) of the Code, if investigation is not completed within a period of 60 days/90 days from date of arrest, then accused is entitled for benefit of default bail. As none of the offence under Wild Life (Protection) Act is punishable for more than 7 years, hence, offences under the Act shall be governed by 60 days. So, endeavor should be made that complaint is filed within 60 days from date of arrest of the accused. If complaint is not filed within 60 days, then accused will be entitled to be released on default bail.

Power regarding recording of evidence:

Under Section 50(8) of the Act, the Assistant Director of Wildlife Preservation and officers of the rank of Assistant Conservator of Forests and above are authorized to receive and record evidence for the purpose of investigation. Under Section 50(9) of the Act, such evidence is admissible in any subsequent trial provided it has been taken in the presence of the accused.

Section 161 Cr.P.C. authorizes the Police Officer to record statements of witnesses during investigation whereas Section 50(8)(d) of the Act empowers the authorised officers to record statement of witnesses during investigation. But scope of statements recorded under both the sections are different.

Statement recorded u/S 161 Cr.P.C *viz-a-viz* u/S 50(8) WLP Act, scope of:

Statement recorded u/S 161 Cr.P.C. are not recorded in presence of accused and it is not a substantive piece of evidence. According to Section 162 of the Code, the statements recorded under Section 161 are used only for limited purpose *i.e.* for contradiction as mentioned u/S 145 of Evidence Act, whereas Section 50(9) of WLPA specifically mandates that evidence recorded during investigation shall be admissible in subsequent trial before a Magistrate but it must be recorded in presence of accused and by person who is authorized under Section 50(8). Hence, statement recorded u/S 50(8) of the Act is substantial piece of evidence, if it has been recorded in presence of accused and accused had an opportunity to cross examine such witness. Similar provisions are mentioned in Section 72(d) and Section 72(2) of Indian Forest Act regarding recording of evidence. In ***Sajjan Singh v. State, 1960 JLJ S.N. 108,*** it was laid down by our own High Court as under:

> *"The statement made before a Forest Officer under clause (d) of section 72 of the Forest Act is admissible in any subsequent trial before a Magistrate, provided it has been taken in the presence of the accused person. Under section 72(2) of the Act, the statements recorded before the Forest Officer by themselves become a substantive piece of evidence when the conditions laid down in Section 72(2) are fulfilled. In the present case the statements before the Forest Officer were taken in the presence of the accused and he had cross-examined them. The statements could be relied upon in the trial."*

Hence, if statements are recorded by authorized Forest Officer during investigation u/S 50(8), such statement can be used in subsequent trial if it has been taken in presence of accused and evidentiary value of such recorded statements cannot be placed at same footage as that of statement recorded under Section 161 Cr.P.C.

OFFENCES BY COMPANIES

According to the provisions of Section 58 of WLP Act, where an offence against this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provisions of similar nature can be found in Section 141 of the Negotiable Instruments Act where offence of dishonour of cheque is committed by companies. So, settled principles of law regarding offence by companies in Negotiable Instruments cases shall be applicable under the WLP Act being *pari materia*.

TRIAL PROCEDURE

Person competent to file complaint

Section 55 of WLP Act mandates that the competent Court shall take cognizance of any offence under the Act except on the complaint of following persons mentioned below:

- Director of Wild Life Preservation;
- Any officer authorized by the Central Government;
- Member-Secretary Central Zoo Authority (for offences of Chapter IV-A);
- Member-Secretary, Tiger Conservation Authority;
- Director of the concerned Tiger Reserve;
- Chief Wild Life Warden, or next officer authorised by the State Government;
- Officer-in-charge of the zoo (for offences under section 38-J);
- Any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorised as aforesaid;
- Station House Officers (***vide notification No. 14-28-76-X-2-74, dated 31st July, 1974*** of State Government are empowered to exercise power granted u/S 55 of the Act);
- Chief Wild Life Wardens, Wild Life Wardens and Forest Range Officers (according to ***Rule 55 of Wildlife (Protection) (MP) Rules, 1974*** are empowered to file complaint u/S 55 of the Act).

Apart this, vide ***notification No. F-15-29-2001-X-2, dated 22.01.2002,*** the State Government has authorized following officers as Wild Life Wardens:

1) All Territorial Conservators
2) All field Directors Projects Tiger
3) All Divisional Forest Officer Territorial/Wild Life
4) All Directors National Parks
5) All Sub-Divisional Forest Officer Territorial
6) All Sanctuary Superintendent

7) All Deputy/Assistant Directors Project Tiger
8) All Assistant Director National Park
9) All Divisional Manager, Forest Development Corporation
10) Project Officer, National Chambal Sanctuary, Morena
11) All Range Officers Territorial/National Parks/Sanctuaries/Forest Development Corporation.

Hence, it is clear that all above mentioned officers are authorized to file complaint before competent Court by virtue of Section 55 of the Act, Rule 55 of Wildlife (Protection) (MP) Rules and notification issued by the State Government.

Effect of filing of complaint by unauthorized person

Section 55 casts a duty upon Court to take cognizance of an offence only upon complaint presented by empowered officer. But, many times a complaint is presented by unauthorized person. Whether Court has power to take cognizance of an offence on complaint filed by unauthorized person? In this regard, firstly, in ***State of Bihar v. Murad Ali Khan, AIR 1989 SC 1,*** it has been laid down by the Supreme Court that cognizance of an offence against the "Act" can be taken by a Court only on the complaint of the officer mentioned in Section 55. Similarly, in ***Mannu Kaduba Gavane v. State of Maharashtra, 2016 (2) Mh.L.J (Cri.) 515, (Bombay)(DB)(Aurangabad Bench),*** Magistrate took cognizance of an offence under WLP Act, on the basis of charge sheet filed by Police Constable. While dealing with such case, Bombay High Court had quashed the proceedings initiated against the accused on the ground that Magistrate had no jurisdiction to take cognizance of an offence under Act unless authorized officers as mentioned in Section 55 had filed complaint and continuation of proceeding would amount to an abuse of the process of the Court.

In ***Sheikh Wahib and another v. State of MP, Miscellaneous Criminal Case No. 18233 of 2017,*** dated 01.03.2018 (Unreported), our own High Court has held that Assistant Ranger is not authorized to file complaint either under Act or under Rules. Hence, Court has no power to register a complaint in such case. Similar view was taken in ***Banshilal and anr v. State of MP, 2014 (2) MPHT 20,*** in respect of complaint filed by Parkshetra Sahayak.

Hence, the position of law is clear that only the authorized person u/S 55 are entitled to file complaint with regard to offences against Wild Life before competent Court and Court shall take cognizance only if aforementioned officers have filed complaint as mandated in Section 55.

Maintainability of second complaint:

As seen above, in order to take cognizance of an offence under Wild Life (Protection) Act, complaint has to be filed by an authorized officer. Another practical aspect which needs discussion is where Magistrate has failed to take

cognizance and discharged the accused due to complaint filed by unauthorized officer. In this condition, ***whether subsequent filing of complaint by authorized officer is hit by Section 300 Cr.P.C.?*** Accused, in order to get benefit of Section 300 of the Code must have faced trial by Court of competent jurisdiction and had either been convicted or acquitted. But Explanation of Section 300 specifically states that a dismissal of complaint or discharge of accused is not acquittal for purpose of this section. Hence, filing of second complaint on same facts by authorised officer is not barred by Section 300 of the Code.

LIMITATION FOR FILING COMPLAINT UNDER WLPA

The WLP Act is silent and does not prescribe any limitation for filing complaint before competent Court. So, in absence of any specific provision with regard to limitation, provisions of Section 468 Cr.P.C. shall prevail. Apart this, Section 469 of the Code deals with the commencement of period of limitation. Further, if the complaint is presented beyond the period of limitation as prescribed u/S 468, the Magistrate while considering the provisions of Section 473 Cr.P.C. must issue notice to the accused to hear him on question of condoning delay before taking cognizance and give an opportunity of hearing to the accused. (See: ***Vinay Sapre v. State of M.P., ILR (2018) MP 815***)

ROLE OF MAGISTRATE WHILE PRESENTATION OF COMPLAINT

The complaint filed u/S 55 of the Act, has to be treated as a complaint filed by a public servant acting or purporting to act in the discharge of his official duties as mentioned in Section 200(a) of Cr.P.C. The Magistrate before taking cognizance has to satisfy himself that the complaint should have full details of the accused and the role played by him in the offence with relevant Sections of the Act. Facts and circumstances connected to the case should be narrated in simple language sequentially. Most importantly, name of the species involved (both local name and scientific name), Schedule in which it is listed, whether the accused is a second time or habitual offender etc, should be mentioned in the complaint. List of witnesses, documents and material objects should be submitted along with the complaint.

Complaint should also contain statements of all the witnesses recorded u/S 50(8) of the Act, confession of the accused (if any), Reports of the experts from Forensic Science Laboratory, Wild Life Institute of India, Zoological Survey of India, Botanical Survey of India etc, where the offence is committed in a protected area like National Park or Sanctuary or a Tiger Reserve, certified copy of the Government Notification declaring the area as a National Park, Sanctuary or a Tiger Reserve, in case of unnatural deaths or hunting of animals, the Post Mortem report obtained from the Government Veterinary Surgeon, in case of seizure of fire arms, certified copy of the Ballistic examination report.

While taking cognizance of an offence under this Act, the Magistrate must mention in the order sheet that he is taking cognizance of the offence on the complaint filed by the authorized person as mandated in Section 55 of the Act. The Magistrate must also mention the details of notification in the order sheet where he takes cognizance on the basis of person authorized to exercise power u/S 55 by virtue of notification issued by the Government so as to reflect that the Court has taken judicial notice of the same.

IMPORTANCE OF WRITING LOCAL AND SCIENTIFIC NAME OF ANIMAL IN COMPLAINT AND DURING RECORDING OF EVIDENCE

It is true that animal in different areas are known by their different local names. But these local names of the animal may not find their place in Schedule appended with the Act. Therefore, it is necessary that complainant must mention the scientific name of the Animal, Schedule, Number at which it is mentioned in that particular Schedule and local name of Animal in the complaint as well as during recording of evidence because in absence of scientific name of the animal, it may be difficult for the Magistrate to take cognizance against the accused for that offence. In ***Mohd. Rahamatullah Hussain v. State of A.P., 2006 (3) Crimes 400 (Andhra Pradesh),*** complaint was filed against accused for hunting rabbits on which Magistrate took cognizance upon it. But the Andhra Pradesh High Court while quashing the proceeding against accused under WLP Act held that Part I of Schedule I of the Act deals with mammals and entry no. 11 of the said Schedule deals with Hispid Hare, but rabbit does not find any place in the said Schedule. Apart this, it was held that there is a difference between hare and rabbit. Hence, in absence of mentioning scientific name of specie in complaint, the High Court quashed the proceeding against the accused under WLP Act by invoking inherent powers u/S 482 Cr.P.C.

TRIAL PROCEDURE TO BE ADOPTED BY MAGISTRATE

Trial of a case instituted upon complaint under Section 55 of the WLP Act are to be conducted as per the provision of Sections 244 to 248 of Cr.P.C. *i.e.* Cases instituted otherwise on police report. Since complaint is filed by a public servant in discharge of his official duties, therefore, by virtue of ***proviso*** of Section 200 Cr.P.C., the Magistrate need not examine the complainant and the witnesses and proceed directly for issuance of notice to accused u/S 204 of the Code after taking cognizance.

As seen above, even SHO of police station is authorized to exercise the power granted u/S 55. When the police officer files a charge sheet for offence committed under WLPA, the procedure to be followed by the Magistrate has been aptly discussed by the Patna High Court in ***Kurshid Anwar v. State of Bihar, 1984 BBCJ 183,*** wherein it has been categorically held that Magistrate is not competent to take cognizance of an offence on police report (i.e. report submitted by police u/S 173 of the Code) for the reason that Section 55 emphasize on

taking cognizance only upon complaint. So, even SHO has to file a complaint before Magistrate as mandated u/S 55 of the Act and trial of such cases shall also be done in accordance with cases instituted otherwise on police report. So, even though SHO has been authorized to exercise power u/S 55, but he is only authorized to file complaint and cannot file charge sheet u/S 55 of the Act.

FRAMING OF CHARGE

Framing of charge is the essence of the criminal trial. The trial of the accused is based upon the charges which are framed against the accused. So, it is necessary that correct charges with all necessary ingredients i.e. scientific name of specie, Schedule, notification (if any) should be included while framing charges against the accused. In absence of any charge, the accused cannot be convicted for that offence unless it comes within the purview of Section 222(2) of Cr.P.C. So, provisions as prescribed under Cr.P.C has to be followed while framing charges.

Format of charges

धारा 51 (1) के अधीन आरोप का आदर्श प्रारूप-

मैं ..... (मजिस्ट्रेट का नाम एवं पद) आप (अभियुक्त का नाम) पर निम्नलिखित आरोप लगाता हूँ कि -

आपने दिनांक ..... को ..... बजे या उसके लगभग ..... (स्थान का नाम) या उसके समीप ..... (कार्य का विवरण) कर वन्य जीव (संरक्षण) अधिनियम, 1972 के अध्याय 5-क और धारा 38-ञ को छोड़कर उसके अधीन बनाये गये नियम (नियम का उल्लेख करें) अथवा आदेश का उल्लंघन किया है या किसी अनुज्ञप्ति या अनुज्ञापत्र की शर्तों में किसी का भंग किया है और इस प्रकार ऐसा अपराध किया जो इस अधिनियम की धारा 51 (1) के अधीन दण्डनीय अपराध है, और इस न्यायालय के संज्ञान के अंतर्गत है।

और मैं इसके द्वारा निर्देश देता हूँ कि आपका इस न्यायालय द्वारा उक्त आरोप पर विचारण किया जाए।

धारा 51 (1) के परन्तुक के अधीन आरोप का आदर्श प्रारूप-

आपने दिनांक ..... को ..... बजे या उसके लगभग ..... (स्थान का नाम) या उसके समीप वन्य जीव (संरक्षण) अधिनियम, 1972 के अनुसूची 1 में या अनुसूची 2 के भाग 2 में विनिर्दिष्ट प्राणी (प्राणी का नाम लिखें) का आखेट किया या उक्त प्राणी के माँस या प्राणी वस्तु, ट्रोफी या असंसाधित ट्रोफी को बिना अनुज्ञप्ति के आधिपत्य में रखा या अभ्यारण या राष्ट्रीय उपवन (अभ्यारण या राष्ट्रीय उपवन का नाम लिखें) में आखेट किया या अभ्यारण या राष्ट्रीय उपवन की सीमाओं में परिवर्तन किया और इस प्रकार ऐसा अपराध किया जो इस अधिनियम की धारा 51 (1) के परन्तुक के अधीन दण्डनीय अपराध है, और इस न्यायालय के संज्ञान के अंतर्गत है।

धारा 51 (1क) के अधीन आरोप का आदर्श प्रारूप-

आपने दिनांक ..... को ..... बजे या उसके लगभग ..... (स्थान का नाम) या उसके समीप ..... (कार्य का विवरण) कर वन्य जीव (संरक्षण) अधिनियम, 1972 के अध्याय 5क के किसी उपबंध (उपबंध का नाम विनिर्दिष्ट कीजिए) का उल्लंघन किया है और इस प्रकार ऐसा अपराध किया जो इस अधिनियम की धारा 51 (1क) के अधीन दण्डनीय अपराध है, और इस न्यायालय के संज्ञान के अंतर्गत है।

धारा 51 (1ख) के अधीन अपराध का आदर्श प्रारूप -

आपने दिनांक ..... को ..... बजे या उसके लगभग ..... (स्थान का नाम) या उसके समीप ..... (कार्य का विवरण) कर वन्य जीव (संरक्षण) अधिनियम, 1972 की धारा 38-´ के उपबंधों (उपबंध का नाम विनिर्दिष्ट कीजिए) का उल्लंघन किया है और इस प्रकार ऐसा अपराध किया जो इस अधिनियम की धारा 51 (1ख) के अधीन दण्डनीय अपराध है, और इस न्यायालय के संज्ञान के अंतर्गत है।

धारा 51 (1ग) के अधीन आरोप का आदर्श प्रारूप -

आपने दिनांक ..... को ..... बजे या उसके लगभग ..... (स्थान का नाम) या उसके समीप ..... (कार्य का विवरण) कर व्याघ्र आरक्षित क्षेत्र के .....क्षेत्र (क्षेत्र का नाम विनिर्दिष्ट कीजिए) के संबंध में अपराध कारित किया या व्याघ्र आरक्षित में आखेट किया या व्याघ्र आरक्षित की सीमाओं में परिवर्तन किया और इस प्रकार ऐसा अपराध किया जो इस अधिनियम की धारा 51 (1ग) के अधीन दण्डनीय अपराध है, और इस न्यायालय के संज्ञान के अंतर्गत है।

धारा 51 (1घ) के अधीन आरोप का आदर्श प्रारूप -

आपने दिनांक ..... को ..... बजे या उसके लगभग ..... (स्थान का नाम) या उसके समीप ..... (कार्य का विवरण) कर वन्यजीव (संरक्षण) अधिनियम, 1972 की धारा 51 की उपधारा (1ग) के अधीन दण्डनीय अपराध का दुष्प्रेरण किया और इस प्रकार ऐसा अपराध किया जो इस अधिनियम की धारा 51 (1घ) के अधीन दण्डनीय अपराध है, और इस न्यायालय के संज्ञान के अंतर्गत है।

POINTS FOR DETERMINATION

Rule 240 of M.P. Rules and Order (Criminal) mandates that while delivering judgment, points for determination shall be framed for proper adjudication of the case. Accurate framing of points for determinations help the Magistrate in proper marshaling and appreciation of facts in judgment. In offences against Wild Life, following points for determination may be framed for better disposal of the case:

Following points of determination can be framed where an accused is prosecuted for offence of **hunting:**

1. Whether on the date of incident (name of animal) was hunted?
2. Whether (name of animal) was seized from the possession of the accused?
3. Whether accused hunted (name of animal)?/ Whether (name of animal) was hunted by accused?
4. Conviction if any, and sentence.

Following points of determination can be framed where an accused is prosecuted for **unauthorised possession of animal article:**

1. Whether on the date of incident (name of animal article) was seized from the possession of the accused?
2. Whether accused had kept the possession of (name of animal article) in contravention of provision of WLP Act?
3. Whether accused had hunted (name of animal)?
4. Whether accused has committed any offence?

MENS REA

Actus non facit reum nisi mens sit rea, *i.e.* the act is not culpable unless the mind is guilty is a cardinal doctrine of criminal law. There must be both *actus reus* (guilty act) and *mens rea* (guilty mind) for a person to be guilty of a crime. *Mens rea* is an essential ingredient of a criminal offence. One of the grey areas is involving hunting in the case of accidental deaths of wild animals or cases where there is an absence of *mens rea* to hunt. Despite the fact that such cases are often registered by Forest Departments, it is unlikely that the offence under Section 9 applies to such cases also. In my opinion where the accused had no *mens rea* to commit an offence under the Act, the accused should not be held guilty.

ATTEMPT AND ABETMENT

Under Section 52 of the Act, an attempt or an abetment of an offence under the Act is deemed to be equivalent to committing the offence itself. Further, definition of hunting also includes an attempt to hunt. This is of particular relevance to preventing Wild Life crime before it happens. It often occurs that poachers are caught with animal traps but are rarely prosecuted for it unless it occurs inside a protected area. There is a distinction between preparation to commit a crime and an attempt to commit a crime. While the former is not punishable, the latter is.

The distinction between preparation and attempt is a fine one that is to be applied according to facts of the case. In the right circumstances, if there is enough evidence available, it may be possible to successfully prosecute the possession of traps or weapons even outside protected areas as attempt to hunt. This is especially so since many protected species are found outside protected areas. It may not be necessary for a poacher or a hunter to actually enter a protected area and set a trap.

In ***State of Rajasthan v. Salman Khan and others, 2012 INDLAW RAJ 608,*** the Rajasthan High Court held that unlawful assemblies formed for the purpose of committing crimes under the WLP Act can be prosecuted under Section 141 of the Indian Penal Code, read with Sections 425 and 429 of the Indian Penal Code.

ROLE OF MAGISTRATE DURING RECORDING OF EVIDENCE

Recording of evidence is very crucial in such cases. To establish an offence under WLP Act, the following evidence by way of oral and/ or documentary should be placed on record:

1. How the animal was killed.
2. Where the animal was killed.
3. Possible date and time of killing.
4. Who killed the animal.
5. Local, scientific name of the animal and Schedule to which it belongs.
6. Investigation (*i.e.* recording of statements of witnesses u/S 50(8)) was done in presence of accused.

PROOF OF NOTIFICATION

Another issue which crops up while recording of evidence in Wild Life offences is proof of notification particularly wherein the offences have been committed in Protected Areas like National Park, Sanctuary or Tiger Reserve.

Sections 18 and 35 of the Act authorises the State Government to notify and declare any area within reserve forest as sanctuary or National Park. When offences are committed in such areas, then question which arises before the trial Courts is whether the Court shall take the judicial notice of such notification u/S 57 Evidence Act or the burden is upon prosecution to prove the notification as prescribed u/S 78 Evidence Act.

The notification issued by the State Government by virtue of Sections 18 and 35 as to declaring an area as National Park or Sanctuary has to be proved according to Section 78(1) Evidence Act because the Court will take judicial notice of notification issued by State Government u/S 57 only if the notification is legislative in nature and amounts to law. (See: ***Sate of MP v. Ramcharan, AIR 1977 MP 68***) Since notification issued by Sate Government by virtue of Sections 18 and 35 regarding declaration of the areas as National Park and Sanctuary is of executive in nature and does not amount to law, so Court cannot take judicial notice of the same.

But situation will be altogether different for notification issued by State Government wherein SHO is given to exercise power under provision of Section 55, or issuing notification with respect to who can exercise power of Chief Wild Life Warden or who are Forest Officers because these notifications issued by the State Government acts as legislative in nature and amounts to law. So, Magistrate can take judicial notice u/S 57 of Evidence Act for such notification.

Hence, Court will not take judicial notice u/S 57 of Evidence Act of notification issued by the State Government in respect of declaration of the area as National Park and Sanctuary but Court can take judicial notice of notification which amounts to law and is of legislative nature.

APPRECIATION OF EVIDENCE:

Collection of Forensic evidence and its proof:

During investigation, the investigating officer of Wildlife offences needs the assistance of Forensic/ Scientific experts subject to property seized during investigation. Eg:- If any plant or plant derivative is seized during investigation, in order to establish the genus and species of plant, samples are send to Botanical Survey of India (Kolkata) and similarly, for animal body parts like hair, bones, blood, skin, meat etc, samples are send to Wildlife Institute of India (Dehradun) or Center for Cellular and Molecular Biology (Hyderabad).

When the samples are sent to the aforementioned Scientific Institutions, the procedure to be adopted by Court to prove such scientific report and necessity to examine the scientific expert lies in Section 293 Cr.P.C. Section 293 of the Code, contains special rule of evidence making any document purporting to be a report under the hand of a Government scientific expert upon any matter or any thing duly submitted to him for examination and report is admissible in evidence without calling such expert as a witness. A bare reading of Section 293(1) and (2) of the Code shows that it is not obligatory that an expert who furnishes his opinion on the scientific issue of the chemical examination of a substance, should be of necessity made to depose in proceedings before the Court. (See: ***Rajesh Kumar and another v. State Government of NCT of Delhi, (2008) 4 SCC 493)*** Further, the Supreme Court in ***Phool Kumar v. Delhi Administration, AIR 1975 SC 905,*** has held that the report of an expert is admissible in evidence under Section 293 of the CrPC and can be doubted only by cross-examination of the witness.

Hence, where report of an expert is filed by the prosecution, then Magistrate must take evidence in a formal manner and it is not necessary to examine the scientific expert to prove such report before the Court. But, if the accused wants to challenge such report of the expert then in such situation, on filing of an application by the accused, the expert can be cross-examined. In absence of cross-examination, report of the expert cannot be doubted.

However, in certain cases, a forest officer especially with background in Biology and by virtue of his experience in forest area, is competent to give opinions and for that purpose, forensic evidence is not necessary.

In ***Somnath v. State of Chhattisgarh, 2014 CrLJ 622 (Chhattisgarh),*** the *Chhattisgarh High Court affirming the judgment of the trial Court held "the Forest Range Officer usually has experience by remaining in forest by virtue of his services and having experience to identify the trophy brought before them for identification &*

therefore their testimony cannot be brushed aside merely on ground that no expert has concluded the seized article to be trophy of leopard."

Similar view was taken by our own High Court in ***Bholaram v. State of MP, 2014 (5) MPHT 279,*** in which conviction was affirmed on the basis of statement made by Forest Officers that horns seized from accused were of Sambhar in absence of chemical examination of horns. But, situation will be different if meat/ flesh is seized from possession of accused because to identify the genus and species of meat, chemical examination by the expert at scientific laboratory is necessary.(See: ***Chhanga v. State of MP, 2012 SCC Online MP 6168***)

TESTIMONY OF FOREST OFFICERS:

Another issue is the corroboration by independent witness on the testimony of forest officer. The rule of corroboration is a principle of prudence which should not be applied in rigid or punctilious manner. If a crime is committed in such a manner that no other person could normally have been present in the vicinity, insistence on the rule of corroboration in such case would maul the cause of justice. Forest is an area where human activities are scanty except the clandestine adventures of poachers. It would be pedantic to insist on the rule of corroboration by independent evidence in proof of offence relating to forests and Wildlife. [Refer: ***Forest Range Officer, Chungathara II Range v. Aboobacker and another, 1989 CrLJ 2038 (Kerala HC***)] Apart this, even forest officers are also public servants, therefore, provision of Section 114 Evidence Act are also applicable. Hence, conviction can be granted on the basis of sole testimony of forest officer in absence of testimony of independent eye witnesses.

CONFESSION

A combined reading of Sections 25 and 26 of Evidence Act shows that confession made by accused to Police officer or in police custody are inadmissible in evidence. But admissibility of the confession made to the Forest Officers is different from that made to police officers. To answer this question, one has to firstly know ***whether forest officers are police officers***?

A Constitution Bench of the Supreme Court in ***Romesh Chandra Mehta v. State of West Bengal, AIR 1970 SC 940,*** held that Customs Officer is not a Police Officer for the purpose of Section 25 of the Evidence Act because a Customs Officer under the Sea Customs Act, 1878, has the power to detain, to arrest, obtain a search warrant to produce the person arrested before a Magistrate and to obtain an order for remand and to keep him in custody with a view to collect evidence but he is not a police officer. The test for determining whether an officer of Customs is to be deemed a Police Officer is whether he is invested with all the powers of a Police Officer qua investigation of an offence, including the power to submit a report under Section 173, Criminal Procedure Code.

The Madras High Court in ***E.C. Richard v. Forest Range Officer, AIR 1958 Madras 31,*** has considered whether a Forest Range Officer under the Madras

Forest Act is a Police Officer for the purpose of Section 25 of the Evidence Act? It was held that the Forest Officer is at par with the Customs Officer and hence what applies to the Customs Officer applies to the Forest Officers too that in the absence of a specific provision in the Madras Forest Act conferring on the Forest Officer all the powers of an Officer-in-Charge of a Police Station, he cannot be called a 'Police Officer' and a statement made to him will not be hit by Section 25 of the Evidence Act. Neither the Kerala Forest Act nor the Wild Life Protection Act conferred all the powers of Police Officers on the Forest Officers or wild life protection force even though some of the powers have been conferred on them to be exercised in specified contexts. It is therefore clear that the embargo contained in Section 25 of the Evidence Act cannot be applied to the statements made to a Forest Officer or Range Officer etc.

So, from above discussion, it can be said that forest officers are not police officer and confession made by accused to such forest officers are not hit by Section 25 of Evidence Act. If Court considers such confessions to be reliable, there is no legal bar in acting on such confessions.

REVERSE BURDEN OF PROOF

Under Section 57 of the Act, once the prosecution has proved that an accused is in possession of a captive animal, animal article, meat, trophy, uncured trophy, specified plant, or part or derivative thereof, the burden of proving that he is in legal possession of such item shifts on to accused. This reverse burden of proof applies only to the offence of unauthorized possession and the offences of hunting or illegal trade will have to be proven separately.

In ***Babu Lal and Another v. State (Delhi Adminstration), 1982 Cr.L.J. 41,*** the Delhi High Court was dealing with a case involving the seizure of six leopard skins and one leopard cat skin. The accused contended that in line with the reasoning of the Supreme Court in ***Pabitar Singh v. State of Bihar, 1972 AIR (SC) 1899,*** in order to prove that the accused had a culpable state of mind in cases in which mere possession of an article is an offence, it is necessary to show that there was reason to believe that the accused was aware of the existence of the article. While agreeing with this, the Delhi High Court observed that in view of Section 57 of the Act, as long as simple possession and recovery are proved by the prosecution, the burden would shift upon the accused to prove that he was not in conscious possession of the article and was not aware of its existence.

In ***Rekhchand v. State of M.P., 2008 (72) AIC 436 (MP),*** accused was charged for illegal hunting or killing of a wild animal (leopard). Leather of wild animal was recovered from accused. It was held by our own High Court that through evidence it is clear that leather was not of any animal recently killed, there was no mark of wound on it. In absence of any charge of illegal possession of any animal under Section 39, accused could not be held guilty under Sections 9 and 49-A with Section 51 of Act.

OPERATION OF OTHER LAWS NOT BARRED

Section 56 of the Act has introduced the principle of double jeopardy and ***res judicata***. But if a person is prosecuted and found guilty under any other law for the time being in force for his any act or omission which constitute an offence under the Act, he may be punished under the other law which may prescribe higher punishment or penalty than what is provided under this Act.

In ***State of Bihar v. Murad Ali Khan, AIR 1989 SC 1,*** the Supreme Court held that cognizance under this Act can be taken only on complaint of a particular statutory functionary mentioned in Section 55 of the Act. In these circumstances even if the jurisdictional police purported to register a case for an alleged offence against the Act, Section 210 of the Code would not be attracted having regard to, the position that cognizance of such an offence can only be taken on the complaint of the officer mentioned therein. Even where a Magistrate takes cognizance of an offence instituted otherwise than on a police report and an investigation by the police is in progress in relation to same offence, the two cases do not lose their separate identity. The Section seeks to obviate the anomalies that might arise from taking cognizance of the same offence more than once.

WHETHER BENEFIT OF PROBATION TO BE GRANTED TO ACCUSED?

Sentencing the accused upon conviction is very sensitive issue. Section 6 of the Probation of Offenders Act, 1958 states that any person under 21 year of age if found guilty of having committed an offence punishable with imprisonment (other than Life Imprisonment) shall not be sentenced to imprisonment unless it is justified.

But according to Section 51(5) of the Act, the benefit of Probation of Offenders Act shall not be granted to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of chapter VA unless such person is under 18 year of age. So, it is necessary for the Magistrate to keep in mind provisions of Section 51(5) of the Act while sentencing the accused.

SENTENCING:

Section 51 of the Act sets out the penalties for the violation of its provisions. Penalties vary depending upon:

a) The Schedule of the animal to which the offence relates;
b) the area to which the offence relates (National Park, sanctuary, tiger reserve, core area of tiger reserve);
c) the nature of the offence (hunting/ altering the boundaries/ other offence); and
d) whether the accused is a repeat offender.

While handing out sentence, it is seen that Courts sometimes award less than the minimum punishment prescribed for the offence despite finding the

accused guilty. Section 51 does not give any discretion to the Court to award less than the minimum sentence prescribed in the Section. In regard to sentencing in Wild Life Offences the Gujarat High Court in its judgment ***Sibtehussain Gulame Abbas v. State of Gujarat, Law Finder Doc Id # 771024,*** has said that 'species of wild life are facing extinction or are endangered species. Hunting for hobby or greed is wide spread. Large scale killing of wild animals is causing environmental and ecological imbalance. Call of the day is to suppress such activities with strong hands. Therefore, the punishment under the Act must be deterrent so that the offender desists repeating the offence and the strong message is received by similar offenders'.

In ***Podiyan v. State of Kerala, 2013 (1) Ker.L.J 532,*** the accused was convicted for committing an offence under the Act and trial Court released the accused by giving him the benefit of Probation of Offenders Act. The Kerala High Court held that the Parliament in its wisdom has prescribed the minimum punishment to be awarded to an offender who is found guilty of the offence under Section 51 of the Act. The legislative mandate cannot be simply lost sight of by the Court while awarding the sentence. The offence committed in respect of the Forest laws, especially Wildlife (Protection) Act, has to be considered with that much seriousness bearing in mind the object of the enactment especially the mandatory minimum punishment prescribed. That itself should alert the Court of the social necessities so as to curb acts of trespass into the Forest causing denudation of forest wealth and affecting the natural Flora and Fauna. When the object of the enactment is to protect the wild life and to award deterrent punishment to such offenders with a view to ensuring the ecological and environmental safety and security of the country, the court cannot turn Nelson's eye to such legislative mandates and invoke the provisions of the P.O Act. A clandestine act abetted by illegal practices of poaching which takes away or ruins the wild life of this country should be curbed by awarding proper sentence. It should give a proper message to such potential wrong doers.

Hence, where minimum punishment is prescribed for any offence, the Magistrate must award that prescribed minimum punishment as too lenient as well as too harsh sentences both lose their efficaciousness. [See: ***B.G. Goswami v. Delhi Admn., (1974) 3 SCC 85***]

DISPOSAL OF PROPERTY

A captive or wild animal that has been seized under Section 50(1)(c) may be given on supurdagi to an officer not below the rank of Assistant Director of Wild Life Preservation or Assistant Conservator of Forest with the permission of the Magistrate having jurisdiction to try the offence by virtue of Section 50(3A) of the Act. In ***Ayyub v. State of Rajasthan, 2003 CrLJ 2954,*** it was held by the Rajasthan High Court that the forest officers under sub-section (3A) of Section 50 have got power to give on 'Supardagi' only captive animal or wild-animal and not the vehicle.

Meat, uncured trophy, specified plant or part of derivative that has been seized under the provisions of the Act, it has to be disposed of by the Assistant Director of the Wild Life Preservation or any officer of the Gazetted rank authorised by him in this behalf or by the Chief Wild Life Warden or the authorized officer as may be prescribed by virtue of section 50(6) of the Act.

The remaining articles, *i.e.* animal articles, trophy, trap, tool, vehicle, vessel or weapon must forthwith be taken before the Magistrate u/S 50 (4) to be dealt with according to law under intimation to the Chief Wild Life Warden or the officer authorised by the same in this regard. Provisions of Section 50 makes it clear that the items seized under Section 50(1)(c) has to be dealt with according to the aforesaid three modes. As far as the final disposal of things is concerned, if it is found that the seized animal, animal article, trophy, vehicle is one in respect of which an offence has been committed under the Act, then it will become the property of the Government by virtue of Section 39(1) of the Act.

So, where the Magistrate has exercised his discretion to release the seized vehicle on supurdagi but during the trial the Magistrate finds that seized vehicle was used in commission of offence and convicts the accused, then in such a situation according to provisions of Section 39(1)(d) of the Act, the Magistrate must order that vehicle is forfeited to State Government and liable for confiscation. The accused must be directed to surrender the vehicle to appropriate authority within stipulated time period for initiation of confiscation proceeding. Apart this, an intimation of the same ought to be given to SDO(Forest) along with a copy of judgment that accused has been directed to surrender the vehicle for initiating the confiscation proceeding and if accused does not surrender the vehicle, then appropriate authority is free to initiate the proceeding against the accused.

COMPOSITION OF OFFENCES

Section 54 of the Act empowers certain officers to compound offences in which there is no minimum imprisonment prescribed under the Act. The effect of compounding the offence has been dealt in Section 54(2), which states that on payment of money prescribed under the Act to empowered officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person.

But whether the compounding officer has authority to dispose off the property seized under the Act? In this respect, in ***Principle Chief Conservator of Forest and another v. J.K. Johnson and others, (2011) 10 SCC 794,*** the Supreme Court held that the effect of compounding is not the same as that of a conviction, and that any property seized in respect of the alleged offence must be produced before the competent court to be dealt with according to law as per Section 50(4).

EXPEDITIOUS TRIAL OF WILDLIFE OFFENCE

It has been seen that wildlife cases are not tried expeditiously as compared to regular criminal cases due to many reasons. One of the reason for delay in

trial of such offences is to secure the presence of accused either during investigation or during trial. During investigation, if some or all accused are absconding inspite of taking all efforts, then investigating officer should apply to the Court for issuance of bailable or non-bailable warrant or further for issuing proclamation under Section 82 and attachment of property under Section 83 of the Code. In ***CBI v. Dawood Ibrahim Kaskar, AIR 1997 SC 2494,*** it has been held that warrant of arrest can be issued at the stage of investigation and proclamation can be made with the permission of the Court.

If this procedure is followed at the stage of investigation and before filing of complaint, valuable time of Court would be saved and after getting satisfied that accused is absconding, Court would be in a position to declare him as absconded accused and can proceed u/S 299 of the Code against the absconded accused. If investigation is pending against co-accused the competent authority can also file supplementary complaint against such accused. Filing of supplementary complaint under WLP Act is not barred. (Refer: ***Sansar Chandra v. State of Rajasthan, 2014 (1) Raj.Cri.C. 296***)

If the presence of accused is not being secured during regular trial, in such cases also the Magistrate should follow the aforementioned procedure and declare the accused as absconded and proceed further under section 299 of the Code.

Secondly, in wildlife cases, since the investigation is done by forest officers, securing presence of forest officers for recording evidence is also one reason for delay in trial of such offences. In such situation, the Magistrate must serve the summons upon the forest officer as per the provisions of Section 66 of the Code, through the head of their department. Apart this, the Court may also adopt the provisions of Section 69 of the Code for securing the presence of the witness which states that a Court may also issue summons upon witness by post in addition to regular summons issued by Court.

PLEA BARGAINING IN WILD LIFE OFFENCES

Chapter 21A of the Code deals with Plea Bargaining. Section 265A particularly deals with applicability of plea bargaining which states that plea bargaining is not applicable to offences affecting the socio-economic condition of the country. The Central Government vide ***notification No. 1042(E), dated 11th July, 2006*** has notified offences which affect the socio economic condition of the country which includes ***animals that find place in Schedule I and Part II of Schedule II as well as offences related to altering of boundaries of protected areas under WLPA***.

So, if an application is filed for plea bargaining for offences committed under this Act, one has to see whether such offence is covered in socio economic offence or not.

Hence, trial of the wild life offences can be concluded by seeking help of aforementioned guiding principles.

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PART – II

NOTES ON IMPORTANT JUDGMENTS

51. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 12 and 17

(i) *Bonafide* requirement – Mere fact that son of landlord involved in business, a *bonafide* need of premises cannot be doubted – Son cannot be expected to sit idle till decision in eviction suit – His engagement in business in the meantime cannot be a ground to deny a decree for eviction.

(ii) Eviction and re-entry of tenant – Landlord getting a shop vacated for his another son – If the son does not start his business in that shop, the evicted tenant can claim re-entry – This shop cannot be held alternative accommodation available to the landlord for the purpose of another son.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) - धाराएं 12 एवं 17

(i) सद्भाविक आवश्यकता - मात्र इस आधार पर कि भवन स्वामी का पुत्र व्यवसाय में संलग्न है, परिसर की सद्भाविक आवश्यकता पर संदेह नहीं किया जा सकता है - पुत्र से निष्कासन के वाद में विनिश्चय होने तक खाली बैठे रहने की अपेक्षा नहीं की जा सकती - तत्समय व्यापार से उसकी संलग्नता निष्कासन की आज्ञप्ति को अस्वीकार करने का आधार नहीं हो सकती है।

(ii) अभिधारी का निष्कासन और पुनः प्रवेश - भवन स्वामी ने अपने अन्य पुत्र के लिये दुकान रिक्त करायी - यदि वह पुत्र उस दुकान में व्यापार आरंभ नहीं करता है तो निष्कासित अभिधारी पुनः प्रवेश का दावा कर सकता है - यह दुकान अन्य पुत्र के लिए भवन स्वामी के प्रयोजन हेतु उपलब्ध वैकल्पिक स्थान नहीं अभिनिर्धारित की जा सकती है।

Hukum Chandra (D) v. Nemi Chand Jain

Judgment dated 14.12.2018 passed by the Supreme Court in Civil Appeal No. 3827 of 2014, reported in AIR 2019 SC 60

Relevant extracts from the judgment:

(i) In the present case, mere fact that Rajendra Kumar was involved in the business of utensils - *"Rajendra Bartan Bhandar"* a *bona fide* need of the premises cannot be doubted. It would be inappropriate to expect the son of the respondent - landlord to sit idle without doing any work till the eviction petition is decided on the basis of the *bona fide* requirement. If there is categorical averment by the respondent that the premises is required for his son Rajendra Kumar; engaging in the business of utensils in the meanwhile, cannot be a ground to deny a decree for eviction.

(ii) Admittedly, respondent-landlord obtained vacant possession of the adjacent shop from the other tenant-Babulal on 14.11.2006 in pursuance of an order

dated 01.09.2005 passed by the High Court in Second Appeal No.472 of 2002. But the learned Senior Counsel appearing for the respondent-landlord submitted that the decree for eviction of the said tenant-Babulal was on the ground of *bonafide* requirement of Rajesh Kumar Jain (other son of respondent-landlord) as envisaged under Section 12(1)(f) of the Act. It was submitted that respondent-landlord's another son Rajesh Kumar Jain has occupied the said adjacent shop and doing the business of "Sara". Respondent-landlord has four sons and the other shop vacated by tenant-Babulal is meant for the *bonafide* requirement of another son Rajesh Kumar Jain. If that shop is not actually occupied by the other son Rajesh Kumar Jain, the other tenant Babulal has a right to initiate the proceedings against the landlord for his re-entry in the said adjacent shop in terms of the provisions contained in Section 17 of the Act. Therefore, it cannot be said that alternative accommodation was available for the respondent-landlord's son Rajendra Kumar due to vacation of the said adjacent shop by another tenant Babulal.

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52. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 13

Whether Section 13 confers power on the Court to condone the defaults in payment of rent after filing of suit? Held, No.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) - धारा 13

क्या धारा 13, वाद संस्थापन के पश्चात् भाटक के भुगतान में व्यतिक्रम को क्षमा करने की न्यायालय को शक्ति प्रदान करती है? अभिनिर्धारित, नहीं।

Rasheed Khan v. Shateesh Chandra Bandel

Judgment dated 03.07.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 7107 of 2014, reported in 2018 (3) MPWN 6

Relevant extracts from the judgment:

Plaintiff had filed an application for review in which it was mentioned that since provisions of Section 13(1) are mandatory and tenant is duty bound to deposit the amount for the period for which he is in default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made and thereafter shall continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be. May used in sub-Section 6 of Section 13 is to be read as shall and, therefore, for the default of the tenant application under Section 13(6) could not have been dismissed. Thus, it is submitted that trial Court had erred in dismissing the application under Section 13(6) without appreciating the mandatory provisions. Reliance has been placed on the judgment of Supreme Court in Case of ***Ashok Kumar Mishra and anr. v. Govardhan Bhai (D) through Lrs. and anr., AIR 2017 SC 1819,*** to show that Hon'ble Supreme Court has held that Section 13(5) of the Accommodation Control Act provides as under :-

> "13(5) If a tenant makes deposit or payment as required by sub-Section (1) or sub-Section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord."

Sub-section 13(5) of the Act reiterates the protection by saying that if the tenant makes payment post suit in accordance with the provisions of sub-Section 1 and sub-Section 2 of Section 13 of the Act, he shall not be liable for eviction. This Section does not confer the power on the Court to condone the defaults in payment of rent after the suit is filed and accordingly had set aside the judgment of the High Court in condoning such lapse and directed eviction of the tenant from the scheduled premises.

The issue, which arises in this case for consideration is that whether the trial Court while passing order dated 04.09.2014 exercised its discretion of not striking out the defence correctly and whether it was entitled to say that tenant had made compliance of Section 13 when he had actually not done so. In fact a plain reading of the judgment of Supreme Court in the case of ***Ashok Kumar Mishra*** (supra) reveals that Court has no discretion to refuse passing of a decree of eviction against a tenant irrespective of the fact whether it strikes out the defence against eviction or not. In fact, in the case of ***Basant Singh v. Roman Catholic Mission, 2001 (1) MPLJ 57,*** this Court has held that discretion conferred under Section 13(6) is to be exercised not in arbitrary manner but on sound judicial principles. Section 13(1) specifically provides that tenant has to not only deposit arrears of rent within 30 days of his appearance before the trial Court but has to undertake to pay the rent upto 15th of every month during pendency of the trial. Any default in compliance of this provision will lead to striking out of the defence. Thus, now it is settled that the Court erred in condoning the delay overlooking the principles of law laid down in Section 13(1) and, therefore, it cannot be said that it has arbitrarily exercised its power of review while passing order dated 29.10.2014 and directed for striking out of the defence of the defendant under Section 13(6) of the Act. There is no illegality or arbitrariness in the impugned order calling for any interference, therefore, petition fails and is dismissed.

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***53. ARMS ACT, 1959 – Sections 25 (1AA) and 25 (1B)(a)**

Scope of Section 25 (1AA) – Accused found in possession of country made pistol loaded with live cartridges – No substantial evidence that it was manufactured by the accused – Only amounts to contravention of Section 3 and punishable under Section 25 (1B)(a) – Conviction modified from Section 25 (1AA) to Section 25 (1B)(a).

आयुध अधिनियम, 1959 - धाराएं 25 (1कक) एवं 25 (1ख)(क)

धारा 25 (1कक) का विस्तार - अभियुक्त के पास से जिंदा कारतूसों से भरा देषी कट्टा पाया गया - कोई सारवान साक्ष्य नहीं कि इसे अभियुक्त द्वारा बनाया गया था - धारा 3 का उल्लंघन गठित करता है और धारा 25 (1ख)(क) के अधीन दण्डनीय है - धारा 25 (1कक) के अधीन दोषसिद्धि को धारा 25 (1ख)(क) में उपांतरित किया गया।

Samir Ahmed Rafiq Ahmed Ansari v. The State of Gujarat

Judgment dated 04.10.2018 passed by the Supreme Court in Criminal Appeal No. 993 of 2016, reported in 2018 (4) Crimes 220 (SC)

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***54. CIVIL PROCEDURE CODE, 1908 – Sections 151 and 152**

Amendment of Partition decree – Decree granting respective shares to plaintiff and defendant – Sketch map of disputed property not made part of decree – Held, it is not possible to give effect to partition decree in absence of sketch map – In order to make decree executable, sketch map of disputed property should be made part of a decree.

सिविल प्रक्रिया संहिता, 1908 - धाराएं 151 एवं 152

विभाजन डिक्री का संषोधन - डिक्री के माध्यम से वादी तथा प्रतिवादी को उनका अंश प्रदान किया गया - विवादित संपत्ति के रेखा मानचित्र को डिक्री का भाग नहीं बनाया गया - अभिनिर्धारित, रेखा मानचित्र के अभाव में विभाजन डिक्री का निष्पादन कराया जाना संभव नहीं है - डिक्री को निष्पादन योग्य बनाए जाने हेतु, संपत्ति के रेखा मानचित्र को डिक्री का भाग बनाया जाना आवश्यक है।

Subhash Chandra Sen (Dead) through LRs and others v. Nabin Sain (dead) through L.Rs.

Judgment dated 19.04.2018 passed by the Supreme Court in Civil Appeal No. 3120 of 2009, reported in 2019 (1) MPLJ 292 (SC)

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55. CIVIL PROCEDURE CODE, 1908 – Order 9 Rule 9 and Order 17 Rules 2 and 3

Appeal against dismissal of suit under Order 17 Rule 2 – Maintainability – Appeal lies only when person is aggrieved by a "Decree" – Order of dismissal of suit under Order 17 Rule 2 or 3 is not a decree – Proper remedy is to file application under Order 9 Rule 9 – Order of First Appellate Court holding appeal not maintainable, upheld.

सिविल प्रक्रिया संहिता, 1908 - आदेश 9 नियम 9 एवं आदेश 17 नियम 2 व 3

आदेश 17 नियम 2 के अंतर्गत वाद की खारिजी के विरूद्ध अपील - पोषणीयता - अपील मात्र वहाँ होगी जहां व्यक्ति ''डिक्री'' से व्यथित है - आदेश 17 नियम 2 या

3 के अधीन वाद खारिजी का आदेश ''डिक्री'' नहीं है - उचित उपचार आदेश 9 नियम 9 के अंतर्गत आवेदन प्रस्तुत करना है - प्रथम अपीलीय न्यायालय का अपील को अपोषणीय निर्धारित करने वाला आदेश कायम रखा गया।

Rameshwar v. Govind and another

Judgment dated 19.03.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 397 of 2017, reported in ILR (2018) MP 1512

Relevant extracts from the judgment:

Under Section 96 of the CPC, the appeal shall lie from every decree passed by any Court exercising its original jurisdiction. The word "decree" is defined in Section 2 (2) of CPC, according to which a decree means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint but shall not include any order of dismissal for default.

In case of ***Banarsi and others v. Ram Phal, (2003) 9 SCC 606,*** the Apex Court has held as under:

> "8. Sections 96 and 100 of the CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See ***Phoolchand and anr. v. Gopal Lal, (1967) 3 SCR 153; Smt. Jatan Kanwar Golcha v. M/s Golcha Properties (P) Ltd., (1970) 3 SCC 573; Smt. Ganga Bai v. Vijay Kumar and ors., (1974) 2 SCC 393.***) No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment."

In the present case, the suit has not been dismissed in default but was dismissed in presence of counsel for the plaintiff. In case of ***Hardevinder Singh v. Paramjit Singh and others, (2013) 9 SCC 261,*** the Apex Court has observed that if a judgment and decree prejudicially affects a person needless to emphasize, he can prefer an appeal.

In the present case, by dismissal of the suit, the plaintiff is precluded from filing another suit on the same cause of action, but fact remains that, there is no adjudication of any issue between the parties due to dismissal of the suit,

therefore, the first appeal filed by the appellant was not maintainable and the learned appellate Court has rightly dismissed the same. The appellant had a remedy to apply under Order 9 Rule 9 of the CPC for setting aside the dismissal.

Learned first Appellate Court has rightly held that appeal is not maintainable as the suit was dismissed under Order 17 Rule 2 of the CPC. Order 17 Rule 2 provides that where on any day, the parties fails to appear, the Court may proceed to dispose of the suit in one of the mode provided under Order 9. Order 17 Rule 3 provides that where any party to suit fails to provide his evidence or to cause the attendance of his witness, the Court may either proceed to decide the suit forthwith or if the parties are, or any of them is, absent, may proceed under Order 17 Rule 2 also. The Rule 2 provides for invocation of modes available under Order 9. The Explanation to Rule 2 also provides that where the evidence, or a substantial portion of evidence, of any party has been recorded, and such party fails to appear on such day, the Court may in its discretion proceed further even in absence of such party.

But in the present case, there was no evidence on behalf of the plaintiff. On the very first date fixed by the Court, the plaintiff was not present to give evidence, therefore, under Order 17 Rule 2 or under Order 17 Rule 3 only mode available to the Court was to proceed under Order 9. Order 9 Rule 8 provides dismissal of the suit when the plaintiff does not appear and Order 9 Rule 9 provides filing of an application for setting aside such order of dismissal, therefore, learned First Appellate Court has rightly dismissed the appeal as not maintainable.

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56. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 37 and 40

Execution of money decree through detention in civil prison – Procedure to be adopted; explained – Executing Court cannot directly issue warrant of arrest against judgment debtor – Issuance of show cause notice to judgment debtor under Rule 37 of Order 21 is mandatory - Unless the Court is satisfied by affidavit of decree holder that judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the Court – On appearance of judgment debtor in obedience to notice or after arrest, inquiry by executing Court is necessary as mandated under Rule 40 of Order 21.

सिविल प्रक्रिया संहिता, 1908 - आदेश 21 नियम 37 एवं 40

सिविल कारागार में निरोध के माध्यम से धन डिक्री का निष्पादन - अपनायी जाने वाली प्रक्रिया समझाई गई - निष्पादन न्यायालय निर्णीत ऋणी के विरूद्ध सीधे गिरफ्तारी वारण्ट जारी नहीं कर सकता है - आदेश 21 नियम 37 के अधीन निर्णीत ऋणी को कारण बताओ सूचना पत्र जारी किया जाना आज्ञापक है - जब तक कि डिक्रीदार के शपथपत्र द्वारा न्यायालय का यह समाधान नहीं हो जाता कि निर्णीत ऋणी फरार होने वाला है या न्यायालय की स्थानीय सीमाओं को छोड़ने वाला है - सूचना के पालन में

अथवा उसकी गिरफ्तारी होने पर जब निर्णीत ऋणी न्यायालय के समक्ष उपस्थित होता है, तब निष्पादन न्यायालय को आदेश 21 नियम 40 में यथा समादिष्ट जाँच किया जाना आज्ञापक है।

Alok Khanna v. M/s Rajdarshan Hotel Pvt. Ltd.
Order dated 14.12.2017 passed by the High Court of Madhya Pradesh in M.P. No. 1522 of 2017, reported in ILR (2018) MP 709

Relevant extracts from the order:

Before issuing the warrant of arrest, Court is required to issue show cause notice to the judgment-debtor. Rule 37 provides that notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

X X X

In the present case, the trial Court has not conducted any enquiry as contemplated under Order 21 Rule 40 of the CPC before passing the impugned order. Order 21 Rule 40 of CPC prescribes the procedure on appearance of judgment debtor in obedience to notice or after arrest. The aforesaid provision *inter alia* provides that after appearance of judgment-debtor, executing Court shall proceed to hear the decree holder and take all such evidence produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. In the instant case, the procedure prescribed under Order 21 Rule 40 has not been followed. Thus, the impugned order suffers from procedural illegality as well as error apparent on the face of the record.

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57. CIVIL PROCEDURE CODE, 1908 – Order 26 Rules 9 and 10 and Order 39 Rule 7

Cross Examination of Commissioner appointed under Order 39 Rule 7; Permissibility of – Held, Scope of appointing Commissioner under Order 26 Rule 9 and Order 39 Rule 7 are different – Commissioner report under Order 39 Rule 7 is filed at an early stage to meet a particular exigency – Provisions of Order 26 Rule 10 cannot be applied to Order 39 Rule 7 – Allowing cross-examination would frustrate the very purpose of the provision.

सिविल प्रक्रिया संहिता, 1908 - आदेश 26 नियम 9 तथा 10 एवं आदेश 39 नियम 7

आदेश 39 नियम 7 के अंतर्गत नियुक्त कमिश्नर के प्रतिपरीक्षण की अनुज्ञेयता - अभिनिर्धारित, आदेश 26 नियम 9 तथा आदेश 39 नियम 7 के तहत नियुक्त कमिश्नर का विस्तार भिन्न है - आदेश 39 नियम 7 के अंतर्गत कमिश्नर की रिपोर्ट प्रारंभिक

स्तर पर किसी विशिष्ट आवष्यकता को पूर्ण करने के लिए प्रस्तुत होती है - आदेश 26 नियम 10 के प्रावधान आदेश 39 नियम 7 पर लागू नही किए जा सकते - प्रतिपरीक्षण की अनुमति प्रावधान के वास्तविक उद्देश्य को विफल करेगी।

Radharani Smt. v. Kamlesh Kumar Kathraya and others

Judgment dated 07.03.2018 passed by the High Court of Madhya Pradesh in Writ Petition No. 4048 of 2017, reported in ILR (2018) MP 1408

Relevant extracts from the judgment:

It is apparent that both the provisions *viz*. under Order 26 and Order 39 operate in separate fields. While proceedings under Order 26 Rules 9 and 10 specifically provide for the procedure to be adopted for appointment of commissioner and the manner in which the commissioner's report is admitted in evidence, on the other hand Order 39 has its applicability in the matters of temporary injunctions and interlocutory applications. A plain reading of Order 39 Rules 7 and 8 demonstrates that this provision can be invoked at any stage of the proceedings even without issuing notice to the other party as its purpose is to facilitate the Court to pass an order without any delay.

It is a trite law that the evidence in a suit is led only after the issues are framed, whereas an application for temporary injunction is essentially decided only on the basis of the affidavits filed by the parties. As a natural corollary, when an application under Order 39 rule 7 of CPC is filed at an early stage of the suit, its only purpose is to allow the Court to pass an order to meet a particular exigency and if the provisions of Order 26 rule 9 and 10 are also read into the said application under Order 39 rule 7 of CPC and the cross examination of the Commissioner is also allowed at this stage only, it would frustrate the very purpose for which the Order 39 Rule 7 has been enacted as the same would lead to unnecessary delay in the commencement of the civil suit.

In the considered opinion of this Court if at the time of recording the evidence, the aforesaid report submitted by the commissioner is tried to be proved as evidence, then only the opposite party may be allowed to cross examine the said Commissioner. However, at the initial stage when even the written statement has not been filed by the defendant, to allow him to cross examine would amount to putting the cart before the horse which cannot be allowed.

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***58. COURT FEES ACT, 1870 – Section 7 and Article 17 (iii)**

Suit for declaration that sale deed is void – Court fees, payment of – Plaintiff is neither the executant nor a party to the sale deed – Plaintiff is not required to pay *ad valorem* court fee for simplicitor declaration that sale deed is void – Fixed Court fee is payable in such cases.

न्यायालय शुल्क अधिनियम, 1870 - धारा 7 एवं अनुच्छेद 17 (iii)

विक्रय विलेख को शून्य घोषित किये जाने बावत् वाद - न्यायालय शुल्क का संदाय - वादी विक्रय विलेख का न तो निष्पादक है और न ही पक्षकार - वादी को मूल्यानुसार न्यायालय शुल्क संदाय करना अपेक्षित नहीं है जहाँ उसके द्वारा विक्रय विलेख को मात्र शून्य घोषित किये जाने की सहायता चाही है - ऐसे मामलों में नियत न्यायालय शुल्क संदेय है।

Gangesh Kumari Kak (Smt.) v. State of MP and others
Order dated 24.01.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in Writ Petition. No. 4995 of 2015, reported in ILR (2018) MP SN 24

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***59. CRIMINAL PROCEDURE CODE, 1973 – Section 125**
EVIDENCE ACT, 1872 – Section 114
HINDU MARRIAGE ACT, 1955 – Section 13 (1) (i)

(i) Adultery – Eligibility of maintenance – Application by husband for conducting DNA test to examine paternity of daughter – Refusal of wife to undergo DNA examination – Adverse inference u/S 114, illustration (h) of Evidence Act can be drawn to the extent that wife had been unfaithful to her husband on one or more occasions – On the basis of such finding, a decree under Section 13 (1) (i) of the Hindu Marriage Act may be granted – Because for it, it is enough if a party to the marriage had voluntary sexual intercourse with any person other than his or her spouse even once – But such inference cannot deprive her to receive maintenance u/S 125 of the Code unless husband proves that she is continuously living in adultery – Even if presumed that child was not born within wedlock and was due to a single instance of sexual intercourse outside the wedlock, wife would not be deprived of maintenance u/S 125 CrPC.

(ii) "Living in adultery"; meaning of – There must be continuous adulterous conduct and not a single or occasional lapse from virtue.

दण्ड प्रक्रिया संहिता, 1973 - धारा 125

साक्ष्य अधिनियम, 1872 - धारा 114

हिन्दू विवाह अधिनियम, 1955 - धारा 13 (1) (i)

(i) जारता - भरणपोषण हेतु पात्रता - पुत्री के पितृत्व के परीक्षण के लिए पति द्वारा डी.एन.ए. परीक्षण कराये जाने हेतु आवेदन - पत्नी द्वारा डी.एन.ए. परीक्षण कराये जाने से इंकार करना - साक्ष्य अधिनियम की धारा 114 के दृष्टांत (ज)

के अधीन इस सीमा तक प्रतिकूल अनुमान लगाया जा सकता है कि पत्नी, पति के प्रति एक या अधिक अवसरों पर विश्वासघाती थी - ऐसे निष्कर्ष के आधार पर, हिन्दू विवाह अधिनियम की धारा 13 (1) (प) के अधीन डिक्री प्रदान की जा सकती है - क्योंकि इसके लिए, यह पर्याप्त है कि विवाह के एक पक्षकार ने अपने पति या पत्नी से भिन्न किसी अन्य व्यक्ति से स्वैच्छिक लैंगिक संभोग किया हो भले एक बार ही - पर ऐसा निष्कर्ष उसे संहिता की धारा 125 के अधीन भरण पोषण प्राप्त करने से वंचित नहीं कर सकता जब तक कि पति यह साबित न कर दे कि वह निरंतर जारता में रह रही है - यदि यह उपधारित भी किया जाता है कि बच्चे का जन्म वैवाहिक संबंधों से नहीं है और विवाह से बाहर लैंगिक संभोग की एकमात्र घटना से हुआ है तब भी पत्नी को धारा 125 के तहत भरण पोषण से वंचित नहीं किया जाएगा।

(ii) ''जारता में रहना'' का अर्थ - निरंतर जारकर्म का आचरण होना चाहिए न कि नैतिकता से एक बार या कभी कभार चूक।

Sukhdev Pakharwal v. Smt. Rekha Okhle and another
Order dated 31.05.2018 passed by the High Court of Madhya Pradesh in Cr.R.No. 3197 of 2015, reported in ILR (2018) MP 1571

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

Maintenance – Quantum of maintenance; factors to be considered – Status of parties, price index, inflation rate and requirement of baby child should be taken into consideration – Apart this, statutory deduction from husband's salary should be considered but voluntarily deductions *i.e.* contribution to co-operative bank, repayment of CPF loan and festival advance cannot be considered.

दण्ड प्रक्रिया संहिता, 1973 - धारा 125

भरणपोषण - भरणपोषण की राशि हेतु विचार योग्य बिन्दु - भरणपोषण मंजूर करते समय पक्षकारों की स्थिति, मूल्य सूचकांक, मंहगाई दर तथा छोटे बच्चे की आवश्यकता को विचार में लिया जाना चाहिए - इसके अतिरिक्त, पति के वेतन से सांविधिक कटौती को विचार में लिया जाना चाहिए किन्तु स्वैच्छिक कटौतियों जैसे सहकारी बैंक में योगदन, सी.पी.एफ. ऋण का पुनर्भुगतान तथा त्यौहार अग्रिम को विचार में नहीं लिया जा सकता।

Meeta Shain (Smt.) v. K.P. Shain
Order dated 18.01.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 636 of 2015, reported in ILR (2018) MP SN 26

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***61. CRIMINAL PROCEDURE CODE, 1973 – Sections 190 and 319**

Whether the discharge of accused earlier, ignoring the supplementary charge-sheet which was in existence then, is a bar to proceed against him u/S 319 CrPC based on the same supplementary charge-sheet again? Held, No – And that too when sufficient material is brought on record against him during the course of trial.

दण्ड प्रक्रिया संहिता, 1973 - धाराएं 190 एवं 319

क्या तत्समय विद्यमान अनुपूरक अभियोग-पत्र को दरकिनार कर अभियुक्त का पूर्व में उन्मोचन, पुनः उसी अनुपूरक अभियोग-पत्र के आधार पर उसके विरूद्ध धारा 319 दंप्रसं के तहत कार्यवाही करने से वर्जित करता है? अभिनिर्धारित, नहीं - और विशेषकर तब जब विचारण के दौरान उसके विरूद्ध अभिलेख पर पर्याप्त सामग्री प्रस्तुत की गई हो।

Deepu @ Deepak v. The State of Madhya Pradesh
Judgment dated 14.12.2018 passed by the Supreme Court in Criminal Appeal No. 1277 of 2010, reported in 2018 (4) Crimes 505 (SC)

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62. CRIMINAL PROCEDURE CODE, 1973 – Sections 200 and 203

(i) Second complaint on same facts – Dismissal of earlier complaint on withdrawal – Held, second complaint on same facts maintainable where the first complaint did not lead to conviction, acquittal or discharge – But not when first complaint dismissed on merits.

(ii) Whether it is necessary to mention the fact of filing earlier complaint or reasons of its withdrawal in subsequent complaint? Held, No – Mentioning the fact of earlier complaint or reasons for its withdrawal in second complaint are not a condition precedent for maintaining second complaint.

दण्ड प्रक्रिया संहिता, 1973 - धाराएं 200 एवं 203

(i) समान तथ्यों पर द्वितीय परिवाद - वापस लिये जाने पर पूर्व परिवाद की खारिजी - अभिनिर्धारित, समान तथ्यों पर दूसरा परिवाद पोषणीय है जहां पूर्व परिवाद में दोषसिद्धी, दोषमुक्ति या उन्मोचन नहीं हुआ - पर तब नहीं जब प्रथम परिवाद गुणागुण पर खारिज किया गया।

(ii) क्या पश्चातवर्ती परिवाद में पूर्व में परिवाद प्रस्तुत करने का तथ्य या उसे वापस लेने के आधार वर्णित करना आवश्यक है? अभिनिर्धारित, नहीं - पश्चातवर्ती परिवाद में पूर्व परिवाद का उल्लेख करना अथवा पूर्व परिवाद के वापसी के कारण वर्णित करना, द्वितीय परिवाद की पोषणीयता हेतु आवश्यक शर्त नहीं हैं।

V. Ravi Kumar v. State, Rep. by Inspector of Police, District Crime Branch, Salem, Tamil Nadu and others

Judgment dated 14.12.2018 passed by the Supreme Court in Criminal Appeal No. 111 of 2011, reported in 2018 (4) Crimes 509 (SC)

Relevant extracts from the judgment:

There is no provision in the Criminal Procedure Code or any other statute which debars a complainant from making a second complaint on the same allegations, when the first complaint did not lead to conviction, acquittal or discharge. In ***Shiv Shankar Singh v. State of Bihar and another, (2012) 1 SCC 130,*** this Court held:

> "Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the Court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

As held by this Court in ***Jatinder Singh and others v. Ranjit Kaur, (2001) 2 SCC 570,*** it is only when a complaint is dismissed on merits after an inquiry, that a second complaint cannot be made on the same facts. Maybe, as contended by the respondents, the first complaint was withdrawn without assigning any reason. However, that in itself is no ground to quash a second complaint.

In ***Pramatha Nath Talukdar and another v. Saroj Ranjan Sarkar, AIR 1962 SC 876,*** this Court dealt with the question whether the second complaint by the respondent should have been entertained when the previous complaint had been withdrawn. The application under Section 482 Cr.P.C. was allowed and the complaint dismissed by the majority Judges observing that an order of dismissal under Section 203 Cr.P.C. was no bar to the entertainment of second complaint on the same facts, but it could be entertained only in exceptional circumstances, for example, where the previous order was passed on an incomplete record or a misunderstanding of the nature of the complaint or the order passed was manifestly absurd, unjust or foolish or where there were new facts, which could not, with reasonable diligence, have been brought on record in previous proceedings.

In ***Poonam Chand Jain and another v. Fazru, (2010) 2 SCC 631,*** this Court relied upon its earlier decision in ***Pramatha Nath*** (supra) and held that an order

of dismissal of a complaint was no bar to the entertainment of second complaint on the same facts, but it could be entertained only in exceptional circumstances, such as, where the previous order was passed on incomplete record, or on a misunderstanding of the nature of the complaint or was manifestly absurd, unjust or foolish or where there were new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

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63. CRIMINAL PROCEDURE CODE, 1973 – Sections 212, 215 and 464
INDIAN PENAL CODE, 1860 – Sections 34, 302 and 323
Effect of omission to frame charge – Absence of charge would vitiate conviction only if it has caused prejudice to accused and failure of justice has been occasioned thereby.

दण्ड प्रक्रिया संहिता, 1973 - धाराएं 212, 215 एवं 464

भारतीय दण्ड संहिता, 1860 - धाराएं 34, 302 एवं 323

आरोप विरचना में लोप का प्रभाव - आरोप की अनुपस्थिति दोषसिद्धि को मात्र तब दूषित करेगी जब यदि उससे अभियुक्त प्रतिकूलतः प्रभावित हुआ हो और उससे न्याय की हानि हुई हो।

Kamil v. State of Uttar Pradesh
Judgment dated 31.10.2018 passed by the Supreme Court in Criminal Appeal No. 1568 of 2015, reported in 2018 (4) Crimes 301

Relevant extracts from the judgment:

Section 464 of the Code relates to the effect of omission to frame, or absence of, or error, in charge. Sub-section (1) thereof provides that no finding, sentence or order of a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

Absence of charge would vitiate the conviction only if it has caused prejudice to the accused and has in fact been occasioned thereby. In ***Willie (William) Slaney v. State of Madhya Pradesh, AIR 1956 SC 116,*** the Constitution Bench explained the concept of "prejudice caused to the accused" and "failure of justice" and held as under:-

> "5. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established

and well-understood lines that accord with our notions of natural justice.

If he does, if he is tried by a competent Court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

The Constitution Bench then examined as to whether the procedure followed by the Court has caused actual injustice to the accused and held as under:-

"12. .....Except where there is something so vital as to cut at the root of jurisdiction or so abhorrent to what one might term natural justice, the matter resolves itself to a question of prejudice. Some violations of the Code will be so obvious that they will speak for themselves as, for example, a refusal to give the accused a hearing, a refusal to allow him to defend himself, a refusal to explain the nature of the charge to him and so forth. These go to the foundations of natural justice and would be struck down as illegal forthwith. It hardly matters whether this is because prejudice is then patent or because it is so abhorrent to well-established notions of natural justice that a trial of that kind is only a mockery of a trial and not of the kind envisaged by the laws of our land, because either way they would be struck down at once. Other violations will not be so obvious and it may be possible to show that having regard to all that occurred no prejudice was occasioned or that there was no reasonable probability of prejudice. In still another class of case, the matter may be so near the border line that very slight evidence of a reasonable possibility of prejudice would swing the balance in favour of the accused.

43. ..... Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done, what we are concerned to see is

whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. If all these elements are there and no prejudice is shown, the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one."

Following the Constitution Bench in ***Willie Slaney*** case (supra), the bench of three Judges of this Court in ***Gurbachan Singh v. State of Punjab, AIR 1957 SC 623,*** observed that the Court is not to look into technicalities, but to the substance and held as under:-

"7. .....in judging a question of prejudice, as of guilt, Courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself....."

After considering the meaning of the expression "failure of justice" and after referring to the Constitution Bench in ***Willie Slaney*** (supra) and ***Gurbachan Singh*** (supra), this Court in ***Main Pal v. State of Haryana, (2010) 10 SCC 130,*** held as under:-

15. In ***Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577,*** this Court considered the meaning of the expression "failure of justice" occurring in Section 464 Cr.PC. This Court held thus:

"22. ... a conviction would be valid even if there is any omission or irregularity in the charge, provided it did not occasion a failure of justice.

23. ... The criminal Court, particularly the superior Court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage....."

16. The above principles are reiterated in several decisions of this Court, including ***State of W.B. and another v. Laisal Haque and others, (1989) 3 SCC 166, State of A.P. v. Thakkidiram Reddy and others, (1998) 6 SCC 554, Dalbir Singh v. State of U.P., (2004) 5 SCC 334, Dumpala Chandra Reddy v. Nimakayala Balireddy and others, (2008) 8 SCC 339*** and ***Sanichar Sahni v. State of Bihar, (2009) 7 SCC 198.***

17. The following principles relating to Sections 212, 215 and 464 of the Code, relevant to this case, become evident from the said enunciations:

(i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(ii) The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.

(iii) In judging a question of prejudice, as of guilt, the Courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself.

In ***Darbara Singh v. State of Punjab, (2012) 10 SCC 476,*** this Court considered the similar issue and came to the conclusion that the accused has to satisfy the Court that there is any defect in framing the charge which has prejudiced the cause of the accused resulting in failure of justice. It is only in that eventuality the Court may interfere. The Court elaborated the law as under:-

"20. The defect in framing of the charges must be so serious that it cannot be covered under Sections 464/465 Cr.P.C, which provide that, an order of sentence or conviction shall

not be deemed to be invalid only on the ground that no charge was framed, or that there was some irregularity or omission or misjoinder of charges, unless the Court comes to the conclusion that there was also, as a consequence, a failure of justice. In determining whether any error, omission or irregularity in framing the relevant charges, has led to a failure of justice, the Court must have regard to whether an objection could have been raised at an earlier stage during the proceedings or not. While judging the question of prejudice or guilt, the Court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge(s).

21. 'Failure of justice' is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The Court must endeavour to find the truth. There would be 'failure of justice'; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and also safeguarded, but they should not be over emphasised to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under the Indian criminal jurisprudence. 'Prejudice' is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their scope. Once the accused is able to show that there has been serious prejudice caused to him, with respect to either of these aspects, and that the same has defeated the rights available to him under criminal jurisprudence, then the accused can seek benefit under the orders of the Court. (Vide ***Rafiq Ahmad alias Rafi v. State of U.P., (2011) 8 SCC 300,*** SCC p. 320, para 36; ***Rattiram and others v. State of M.P. Through Inspector of Police, (2012) 4 SCC 516*** and ***Bhimanna v. State of Karnataka, (2012) 9 SCC 650***)"

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***64. CRIMINAL PROCEDURE CODE, 1973 – Section 313**

Non-framing of question during examination of accused; effect of – Contents of Ballistic expert report not put to accused during examination u/S 313 of the Code – Held, omission to frame question on Ballistic expert report cannot be a ground to brush aside the report if it did not cause any prejudice to accused.

दण्ड प्रक्रिया संहिता, 1973 - धारा 313

अभियुक्त परीक्षण के दौरान प्रश्न के विरचित नहीं करने का प्रभाव - प्राक्षेपिकी विशेषज्ञ प्रतिवेदन की विषयवस्तु के संबंध में अभियुक्त से संहिता की धारा 313 के अंतर्गत परीक्षण के दौरान प्रश्न नहीं पूछा गया - अभिनिर्धारित, प्राक्षेपिकी विशेषज्ञ प्रतिवेदन के प्रश्न के अभाव में उक्त प्रतिवेदन को दरकिनार नहीं किया जा सकता यदि अभियुक्त पर उसका प्रतिकूल प्रभाव न पड़ा हो।

State of U.P. v. Raghuvir and another

Order dated 13.12.2017 passed by the Supreme Court in Criminal Appeal No. 2175 of 2017, reported in 2019 (1) Crimes 40 (SC)

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***65. CRIMINAL PROCEDURE CODE, 1973 – Section 362**

Purpose of Section 362; explained – Held, the whole purpose of Section 362 CrPC is only to correct a clerical or arithmetical error – Correction or rehearing on merits does not come under the scope of Section 362.

दण्ड प्रक्रिया संहिता, 1973 - धारा 362

धारा 362 का उद्देश्य समझाया गया - अभिनिर्धारित, धारा 362 दंप्रसं का पूर्ण उद्देश्य मात्र लिपिकीय या अंक संबंधी त्रुटि को सुधारना है - गुणागुण पर सुधार अथवा पुनःसुनवाई, धारा 362 के विस्तार में नहीं आता।

Mohammed Zakir v. Shabana and others

Judgment dated 23.07.2018 passed by the Supreme Court in Criminal Appeal No. 926 of 2018, reported in 2018 (3) Crimes 491 (SC)

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66. CRIMINAL PROCEDURE CODE, 1973 – Section 394

Leave to continue appeal by near relative – Death of accused-appellant pending appeal – Delay of 91 days in filing of application for substitution – Held, delay can be considered during the pendency of appeal as well – Proviso to Section 394 has given right to near relative of appellant/accused who dies during pendency of appeal, to continue appeal by making application before appellate Court within 30 days of death of appellant – Proviso is made for those exceptional cases where the interest may not be merely sentimental but pecuniary also – It's object is also to remove the

stigma that may attach to appellant by continuing appeal – If delay being found bonafide, it can be condoned and leave granted.

दण्ड प्रक्रिया संहिता, 1973 - धारा 394

निकट नातेदार द्वारा अपील जारी रखने हेतु अनुमति - अपील लंबित रहने के दौरान अभियुक्त-अपीलार्थी की मृत्यु - प्रतिस्थापन का आवेदन प्रस्तुत करने में 91 दिवस का विलंब - अभिनिर्धारित, विलंब पर अपील के लंबित रहने के दौरान भी विचार किया जा सकता है - धारा 394 के परंतुक ने अपील के लंबित रहते दौरान मृत होने वाले अपीलार्थी/अभियुक्त के निकट नातेदारों को, अपीलार्थी की मृत्यु के तीस दिवस के भीतर अपीलीय न्यायालय के समक्ष आवेदन प्रस्तुत कर अपील जारी रखने का अधिकार दिया है - परंतुक उन आपवादिक मामलों के लिए बनाया गया है जहां हित केवल भावनात्मक न होकर आर्थिक भी हों - उसका उद्देश्य अपील जारी रख अपीलार्थी पर लगे दाग को हटाना भी है - यदि विलंब सद्भाविक पाया जाता है तो उसे क्षमा किया जाकर अनुमति प्रदान की जा सकती है।

Binay Chand Ekka v. State of Madhya Pradesh (Through CBI)

Order dated 02.04.2018 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 1641 of 2012, reported in ILR (2018) MPSN 50

Relevant extracts from the order:

In the case of ***State (NCT Of Delhi) v. Ahmed Jaan, 2008 (14) SCC 582,*** the question of condonation of delay was considered and it was held that Section 5 of the Limitation Act should be construed liberally so that substantial justice should be done.

In the case of ***Shrikant Bajpai v. State of Madhya Pradesh, 2013 SCC*** OnLine MP 1764, application filed under Section 5 of the Limitation Act was dismissed by the appellate Court. The High Court of MP setting aside the order condoned the delay in filing the appeal which was filed from jail.

It would be appropriate to note that proviso to Section 394 of the Cr.P.C. provides that the appellant if died during the pendency of the appeal, any of his near relatives may within thirty days of death of the appellant, apply to the appellate Court for leave to continue the appeal and if leave is granted, the appeal shall not abate.

By this new proviso, Legislature has given right to the near relative of the accused who is convicted and sentenced to imprisonment and who dies during pendency of the appeal, to continue the appeal by making an application to the appellate Court within thirty days of the death of the appellant. This proviso is made for those exceptional cases where the interest may apart from merely sentimental but pecuniary also. The object to add this proviso is to remove stigma that may attach to the appellant by continuing the appeal. In this regard, reference can be made to ***Bhugdomal Gangaram v. State of Gujarat, AIR 1983 SC 906***.

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67. CRIMINAL PROCEDURE CODE, 1973 – Sections 468 and 473

Delay in filing Charge-sheet – Condonation of delay – Right of accused to be heard – Held, where charge-sheet or complaint is filed beyond limitation as mandated u/S 468 CrPC, before taking cognizance of an offence, Court must issue notice to the accused to hear him on question of condoning the delay.

दण्ड प्रक्रिया संहिता, 1973 - धाराएं 468 एवं 473

अभियोग-पत्र प्रस्तुत करने में विलंब - विलंब का क्षमा किया जाना - अभियुक्त को सुनवाई का अधिकार - अभिनिर्धारित, जहां अभियोग पत्र या परिवाद, संहिता की धारा 468 में यथा समादिष्ट परिसीमा के पश्चात् प्रस्तुत किया गया है, तब न्यायालय को अपराध का संज्ञान लिये जाने के पूर्व, अभियुक्त को विलंब क्षमा किये जाने के प्रश्न पर उसे सुनवाई हेतु सूचना पत्र जारी करना चाहिए।

Vinay Sapre v. State of M.P.

Order dated 18.01.2018 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 8987 of 2010, reported in ILR (2018) MP 815

Relevant extracts from the order:

Thus, where taking of cognizance in a particular case is delayed on account of the delay in filing of the charge-sheet by the police or in filing of the complaint case by the complainant, the Court without taking cognizance of the offences, must first of all issue notice to the prospective accused and hear him on the issue of condoning the delay in taking cognizance. It is trite law that a case where Section 468 Cr.P.C. becomes applicable, the accused gets a valuable entitlement not to be prosecuted for the said offence. That entitlement, before it is waived by resorting to procedure under section 473 Cr.P.C., the prospective accused must be heard. Else, it would be a violation of natural justice. This right is quite akin to the right of an accused to be heard in a revision petition preferred by a complainant where the complaint has been dismissed under Section 203 Cr.P.C. by the trial Court without issuing process to the accused.

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***68. EVIDENCE ACT, 1872 – Section 3**

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 3 and 4

INDIAN PENAL CODE, 1860 – Section 302

(i) Appreciation of circumstantial evidence – Last seen circumstance of victim aged 8 years going with the accused – Later body of the victim recovered with fatal injuries on various parts of the body – No explanation of the accused as to when they parted company – Such silence leads to adverse inference – Conviction under Section 302 upheld.

(ii) Appreciation of evidence – Charge of penetrative sexual assault – No direct evidence – Post-mortem report revealed injury on body parts but not on the genital organs – Genital organs found to be normal – No sign of sperm ejaculation near genital organs – Absence of evidence of penetration – Conviction under the POCSO Act set-aside.

(iii) Death penalty – Motive of the crime, not on record – Accused was young at the time of offence – Absence of extreme brutality – State failed to show that there is no possibility of reform or rehabilitation – Capital punishment commuted to life imprisonment.

साक्ष्य अधिनियम, 1872 - धारा 3

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 - धाराएं 3 एवं 4

भारतीय दण्ड संहिता, 1860 - धारा 302

(i) परिस्थितिजन्य साक्ष्य का मूल्यांकन - 8 वर्षीय पीड़ित का अभियुक्त के साथ जाते हुए अंतिम बार देखे जाने की परिस्थिति - बाद में शरीर के विभिन्न भागों पर घातक चोटों के साथ पीड़ित का शव बरामद हुआ - अभियुक्त द्वारा इस संबंध में कोई स्पष्टीकरण नहीं कि वे कब अलग हुए - इस प्रकार का मौन, प्रतिकूल अनुमान की अगुआई करता है - धारा 302 के अधीन दोषसिद्धि को कायम रखा गया।

(ii) साक्ष्य का मूल्यांकन - प्रवेशन लैंगिक हमला का आरोप - कोई प्रत्यक्ष साक्ष्य नहीं - शव परीक्षा रिपोर्ट ने शरीर के भागों पर क्षति को प्रकट किया किन्तु गुप्तांगों पर नहीं - गुप्तांग सामान्य पाये गये - गुप्तांगों के समीप वीर्यपात का कोई चिन्ह नहीं - प्रवेशन की साक्ष्य का अभाव - पाक्सो अधिनियम के अधीन दोषसिद्धि अपास्त की गई।

(iii) मृत्यु दण्ड - अभिलेख पर अपराध का हेतु दर्शित नहीं - अपराध के समय अभियुक्त तरूण था - नितांत पाश्विकता का अभाव - राज्य यह दर्शित करने में असफल रहा कि सुधार या पुनर्वास की कोई संभावना नहीं है - मृत्यु दण्ड आजीवन कारावास में परिवर्तित किया गया।

Prahlad v. State of Rajasthan
Judgment dated 14.11.2018 passed by the Supreme Court in Criminal Appeal No. 1794 of 2017, reported in 2018 (4) Crimes 372 (SC)

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***69. EVIDENCE ACT, 1872 – Section 3**
APPRECIATION OF EVIDENCE:
Evidence of injured eye-witness; appreciation of – His evidence stands on higher footing – Presence of injuries upon him lends assurance to his presence and testimony. (*Abdul Sayeed v. State of MP, (2010) 10 SCC 259*, referred)

साक्ष्य अधिनियम, 1872 - धारा 3

साक्ष्य का मूल्यांकनः

आहत चक्षुदर्शी साक्षी की साक्ष्य का मूल्यांकन - उसकी साक्ष्य उच्चतर स्तर पर होती है - चोटों की विद्यमानता उसकी उपस्थिति एवं साक्ष्य का आश्वासन प्रदान करती है। (अब्दुल सय्यद वि. म.प्र. राज्य, (2010) 10 एससीसी 259, संदर्भित)

Bhagirath v. The State of Madhya Pradesh
Judgment dated 23.10.2018 passed by the Supreme Court in Criminal Appeal No. 2301 of 2009, reported in 2018 (4) Crimes 380 (SC)

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***70. EVIDENCE ACT, 1872 – Section 3**
APPRECIATION OF EVIDENCE:
Omission of name of accused in FIR despite being known previously to witness – Subsequently witness deposing in Court about his presence at the time of occurrence – Held, such subsequent naming of accused for the first time in the Court statement is certainly an improvement over earlier statement – Hence, is a material ommission.

साक्ष्य अधिनियम, 1872 - धारा 3

साक्ष्य का मूल्यांकनः

प्रथम सूचना रिपोर्ट में अभियुक्त के नाम का लोप जबकि साक्षी उसे पूर्व से जानता था - पश्चात में साक्षी द्वारा घटना के समय उसकी उपस्थिति के बारे में न्यायालय में कथन - अभिनिर्धारित, इस प्रकार न्यायालय कथन में सर्वप्रथम अभियुक्त का नाम लेना निश्चित ही पूर्व कथन में सुधार है - अतः एक तात्विक लोप है।

Amrish Rana v. State of Himachal Pradesh
Judgment dated 28.09.2018 passed by the Supreme Court in Criminal Appeal No. 1232 of 2018, reported in AIR 2018 SC 4604

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71. EVIDENCE ACT, 1872 – Section 3
APPRECIATION OF EVIDENCE:

(i) Testimony of injured witness; appreciation of – Held, carries great weightage as it is presumed that having been a victim of the same occurence, the witness will speak the truth.

(ii) Testimony of witness closely related to accused; credibility of – Daughter of accused mother deposing evidence against her – Held, normal human behavior of a witness is to shield and protect a closely related accused – It requires great courage for a daughter to depose against her own mother – Evidence of such witness should be given weightage.

(iii) Inconsistencies in testimonies of witnesses; appreciation of – Held, while appreciating the evidence of a witness, the

approach must be whether the evidence of the witness read as a whole inspires confidence – Minor inconsistencies which do not go to the root of the case are insignificant – There is no criminal case free from inconsistencies and discrepencies.

साक्ष्य अधिनियम, 1872 - धारा 3

साक्ष्य का मूल्यांकनः

(i) आहत साक्षी की साक्ष्य का मूल्यांकन - अभिनिर्धारित, अधिक महत्व रखती है क्योंकि यह उपधारित किया जाता है कि उसी घटना का आहत होने के कारण, साक्षी सत्य बोलेगा।

(ii) अभियुक्त के निकट संबंधी साक्षी की साक्ष्य की विश्वसनीयता - अभियुक्त मां के विरूद्ध पुत्री द्वारा साक्ष्य दिया जाना - अभिनिर्धारित, साक्षी का सामान्य मानवीय आचरण निकट संबंधी अभियुक्त को बचाना व रक्षा करना होता है - पुत्री के द्वारा अपनी स्वयं की मां के विरूद्ध साक्ष्य देने में बहुत साहस लगता है - ऐसे साक्षी की साक्ष्य को बल दिया जाना चाहिए।

(iii) साक्षियों की साक्ष्य में असंगतता का मूल्यांकन - अभिनिर्धारित, साक्ष्य का मूल्यांकन करते समय दृष्टिकोण यह होना चाहिए कि क्या साक्षी की संपूर्ण साक्ष्य पढ़ने से भरोसा जागृत हो रहा है - गौण असंगतता जो प्रकरण के मूल को नहीं छूती है, महत्वहीन होती है - ऐसा कोई आपराधिक प्रकरण नहीं है जो असंगतताओं और भिन्नताओं से मुक्त हो।

Smt. Shamim v. State (GNCT of Delhi)

Order dated 19.09.2018 passed by the Supreme Court in Criminal Appeal No. 56 of 2018, reported in AIR 2018 SC 4529

Relevant extracts from the order:

PW2 is an injured witness whose throat was slit in the occurrence causing loss of voice requiring hospitalization for two months. The evidence of an injured witness carries great weight as it is presumed that having been a victim of the same occurrence the witness was speaking the truth.

X X X

In a criminal trial, normally the evidence of the wife, husband, son or daughter of the deceased, is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit. We see no reason why the same principle cannot be applied when such a witness deposes against a closely related accused. According to normal human behavior and conduct, a witness would tend to shield and protect a closely related accused. It would require great courage of conviction and moral strength for a daughter to depose against her own mother who is an accused.

There is no reason why the same reverse weightage shall not be given to the credibility of such a witness. PW4 is the daughter of the appellant. She has

deposed that two days prior to the occurrence the appellant had threatened the witness to leave PW1 else she would get his family members killed. Soon after the occurrence having reached the house of her in laws she stepped out on the verandah. The appellant who was standing on her own verandah told the witness that she had got the deceased killed because the witness did not listen to her and that her husband would be killed next. In cross examination she reiterated the same. The statement, in our opinion, can be considered as a corroborative evidence being a voluntary extra judicial confession, considering the nature of relationship between the witness and the appellant.

X X X

While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal.

The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the Court. Small/Trivial omissions would not justify a finding by Court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

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***72. EVIDENCE ACT, 1872 – Sections 3, 8 and 27**

(i) Identification of accused – Accused was seen following the victim and running after the incident – Presence of witnesses identifying the accused in Court was natural – Witness identified the accused by reference of colour of his t-shirt after the incident – Colour of the t-shirt in reference to the suspected was mentioned to other witnesses also – Accused was a stranger in small village to be identified easily – Identification in Court held to be reliable – Absence of test identification parade – Not fatal.

(ii) Delayed recovery – Disclosure as to place of deceased's clothes after 5 days of arrest – Investigators cannot be faulted if accused volunteers for the same after delay – Recovery cannot be suspected on this ground.

(iii) Presence of scratch marks on the face and neck of accused after the incident – Defence in Court that it has occurred due to assault by 10 to 15 villagers after he was apprehended – Not probable – Such assault would likely result in contusions or abrasions – Relevant scratch marks must have occurred due to resistance of the victim – Found to be another circumstance against the accused.

साक्ष्य अधिनियम, 1872 - धाराएं 3, 8 एवं 27

(i) अभियुक्त की पहचान - अभियुक्त को पीड़ित का पीछा करते हुए तथा घटना के पश्चात् भागते हुए देखा गया - न्यायालय में अभियुक्त की पहचान करने वाले साक्षियों की उपस्थिति स्वभाविक थी - घटना के पश्चात् साक्षी ने अभियुक्त को उसकी टी-शर्ट के रंग के माध्यम से पहचाना - संदिग्ध की टी-शर्ट के रंग के संबंध में अन्य साक्षियों को भी बताया गया था - अभियुक्त एक छोटे गाँव में अजनबी था जिसे आसानी से पहचाना जा सकता था - न्यायालय में की गई पहचान को विश्वसनीय ठहराया गया - पहचान परीक्षा परेड का अभाव - घातक नहीं है।

(ii) विलंबित बरामदगी - गिरफ्तारी के पाँच दिवस पश्चात् पीड़ित के कपड़ों के स्थान के संबंध में प्रकटीकरण - यदि अभियुक्त विलंब के पश्चात् उक्त जानकारी देता है, तब अन्वेषण अधिकारी की त्रुटि नहीं मानी जा सकती - उक्त आधार पर बरामदगी पर संदेह नहीं किया जा सकता।

(iii) घटना के पश्चात् अभियुक्त के चेहरे तथा गले पर खरोंच के निशानों की उपस्थिति - न्यायालय में यह बचाव कि उसके पकड़े जाने के बाद 10 से 15 ग्रामीणों के हमले के कारण यह खरोंचे आई - अधिसंभाव्य नहीं हैं - ऐसे हमले का परिणाम, नीलगू निशान या घर्षण संभाव्य होता है - सुसंगत खरोंच के निशान पीड़ित के प्रतिरोध के कारण उत्पन्न हुए होंगे - अभियुक्त के विरूद्ध एक अन्य परिस्थिति पाई गई।

Viran Gyanlal Rajput v. The State of Maharashtra
Judgment dated 05.12.2018 passed by the Supreme Court in Criminal Appeal No. 1558 of 2018, reported in 2018 (4) Crimes 474 (SC)

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***73. EVIDENCE ACT, 1872 – Sections 3 and 118**
INDIAN PENAL CODE, 1860 – Sections 325 and 326

(i) Testimony of injured child witness; appreciation of – Injured child witness in his cross-examination admitted suggestions put to him by the defense counsel that he was tutored – But, injured

child-witness was examined in the Court sometime after the occurrence – Child-witness not being conversant with the Court's proceedings, has to be necessarily apprised about the Court's proceedings and that he has to speak about the occurrence – It cannot be said that he was tutored about the occurrence itself to depose against the appellant – Same cannot be the reason for discarding the evidence of injured child witness.

(ii) Voluntarily causing grievous hurt by dangerous weapon – Nature of offence – Wooden stick used by accused to cause grievous injury – Absence of material to show that stick is a dangerous weapon – Offence committed by accused falls under Section 325 and not under Section 326.

साक्ष्य अधिनियम, 1872 - धाराएं 3 एवं 118

भारतीय दंण्ड संहिता, 1860 - धाराएं 325 एवं 326

(i) आहत बाल साक्षी की साक्ष्य का मूल्यांकन - आहत बाल साक्षी ने प्रतिपरीक्षपण में बचाव अधिवक्ता द्वारा रखे गये सुझाव को स्वीकार किया कि उसे सिखाया गया था - किंतु, बाल साक्षी को घटना के कुछ समय पश्चात न्यायालय में परीक्षित किया गया था - बाल साक्षी न्यायालय की कार्यवाहियों से परिचित नहीं होने से उसे न्यायालय की कार्यवाहियों से परिचित कराया जाना और यह कि उसे घटना के बारे में बताना है, बताया जाना आवश्यक है - इससे यह नहीं कहा जा सकता है कि उसे स्वयं घटना के बारे में अपीलार्थी के विरूद्ध साक्ष्य देने के बारे में सिखाया गया था - केवल यह, आहत बाल साक्षी की साक्ष्य को अस्वीकार करने का कारण नहीं हो सकता।

(ii) घातक आयुध द्वारा स्वेच्छया गंभीर उपहति कारित करना - अपराध की प्रकृति - अपीलार्थी द्वारा घोर उपहति कारित करने के लिये डंडे का इस्तेमाल किया गया - यह दर्शित करने के लिये सामग्री नहीं थी कि डंडा घातक आयुध था - अभियुक्त द्वारा कारित अपराध धारा 325 के अंतर्गत आता है न कि धारा 326 के अधीन।

C. R. Kariyappa v. State of Karnataka
Judgment dated 05.9.2018 passed by the Supreme Court in Criminal Appeal No. 781 of 2009, reported in AIR 2018 SC 4312

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***74. EVIDENCE ACT, 1872 – Sections 6 and 25**

Extra judicial confession, admissibility of – *Rojnamcha* reveals that on date of incident accused himself came to police station and informed that he committed murder of his wife – Such statement of accused given to Station Incharge is admissible under Section 6 of Evidence Act – Such statement can also be treated as extra judicial confession.

साक्ष्य अधिनियम, 1872 - धाराएं 6 एवं 25

न्यायिकेत्तर संस्वीकृति की ग्राहयता - रोजनामचा यह दर्शित करता है कि घटना दिनांक को अभियुक्त ने स्वयं थाने पर आकर यह सूचित किया कि उसने उसकी पत्नी की हत्या की - अभियुक्त का थाना प्रभारी को दिया हुआ उक्त कथन साक्ष्य अधिनियम की धारा 6 के अंतर्गत ग्राहय है - उक्त कथन को न्यायिकेतर संस्वीकृति के रूप में भी माना जा सकता है।

Khemchand Kachhi Patel v. State of M.P.
Order dated 18.01.2018 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 551 of 1995, reported in ILR (2018) MP 747 (DB)

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***75. EVIDENCE ACT, 1872 – Section 32**

Dying declaration; reliability of – Deceased complained about difficulty in speaking after recording his dying declaration to Doctor – Doctor examining the deceased certified that he was in a fit state of mind at the time of recording statement – Held, dying declaration cannot be brushed aside merely because deceased complained about difficulty in speaking after recording his statement – It cannot be presumed that he was in same condition at the time of recording statement and cannot be equated with total inability to speak.

साक्ष्य अधिनिमय, 1872 - धारा 32

मृत्युकालिक कथन की विश्वसनीयता - मृतक ने डाॅक्टर को अपने मृत्युकालिक कथन अभिलिखित करने के पश्चात बोलने में कठिनाई होने की शिकायत की - मृतक का परीक्षण करने वाले चिकित्सक ने यह प्रमाणित किया कि मृतक के कथन अभिलिखित किए जाते समय वह उचित मानसिक अवस्था में था - अभिनिर्धारित, मात्र मृतक ने उसके कथन अभिलिखित कराने के पश्चात् बोलने में कठिनाई की शिकायत की इस आधार पर मृत्युकालिक कथन दरकिनार नहीं किया जा सकता - यह उपधारित नहीं किया जा सकता कि मृतक कथन अभिलिखित किए जाते समय उसी अवस्था में था और उसे बोलने में पूर्णरूप से असमर्थता के समान नहीं माना जा सकता।

Bholu Shah @ Jameel Shah and another v. State of Madhya Pradesh
Judgment dated 02.05.2018 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 51 of 2002, reported in 2018 CriLJ 4419

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***76. FOOD SAFETY AND STANDARDS ACT, 2006 – Section 55**
INDIAN PENAL CODE, 1860 – Section 188

(i) Whether there can be prosecution for offence only u/S 55 of FSS Act for non-compliance of orders passed under the Act as it is a special enactment or u/S 188 IPC as well? Held, prosecution can be under both.

(ii) Scope of Section 188 IPC – Alleged violation of prohibitory order of the Commissioner, Food and Safety – Under Section 188, order may relate to act which causes or tends to cause danger to human life – Section 188 will apply for violation of such order as well.

खाद्य सुरक्षा एवं मानक अधिनियम, 2006 - धारा 55

भारतीय दण्ड संहिता, 1860 - धारा 188

(i) क्या एफएसएस अधिनियम के तहत पारित आदेशों के अपालन के लिए मात्र इस अधिनियम की धारा 55 के तहत अभियोजन हो सकता है क्योंकि वह विशेष अधिनियम है या धारा 188 भादंसं के तहत भी अभियोजन हो सकता है? अभिनिर्धारित, दोनों अधिनियमों के तहत अभियोजन हो सकता है।

(ii) भारतीय दण्ड संहिता की धारा 188 का विस्तार - आयुक्त, खाद्य एवं सुरक्षा के आदेश के उल्लंघन का अभिकथन - धारा 188 के अंतर्गत, आदेश का संबंध मानव जीवन को संकट कारित करने वाले या कारित करने की प्रवृत्ति रखने वाले कार्य से संबंधित हो सकता है - धारा 188, ऐसे आदेश के उल्लंघन के संबंध में भी लागू होगी।

State of Maharashtra and another v. Sayyed Hassan Sayyed Subhan and others
Judgment dated 20.09.2018 passed by the Supreme Court in Criminal Appeal No. 1195 of 2018, reported in 2018 (4) Crimes 167 (SC)

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77. HINDU MARRIAGE ACT, 1955 – Section 13B

(i) Divorce by mutual consent – Compliance of statutory period of six months – Held, is not mandatory – The Court has discretion to waive waiting period of six months on satisfaction about separate living of parties for more than statutory period, and failure of all efforts at mediation and reconciliation.

(ii) Video conferencing; use of – Held, the Court can use medium of video conferencing where the parties are unable to appear in person for any just and valid reasons.

हिन्दू विवाह अधिनियम, 1955 - धारा 13बी

(i) पारस्परिक सम्मति से विवाह विच्छेद - न्यूनतम छह माह की अवधि का पालन - अभिनिर्धारित, आज्ञापक नहीं है - संविधिक अवधि से अधिक समय तक

पक्षकरों के पृथक रहने और मध्यस्थता तथा पुनर्मिलन के सभी प्रयासों की असफलता के बारे में समाधान होने पर छह माह की प्रतीक्षा अवधि अधित्यक्त करने का न्यायालय को विवेकाधिकार है।

(ii) वीडियो कान्फ्रेसिंग का उपयोग - अभिनिर्धारित, जहां न्याय संगत और वैध कारणों से पक्षकार स्वीय उपस्थिति में अक्षम हों वहां न्यायालय वीडियो कान्फ्रेसिंग के माध्यम का उपयोग कर सकता है।

Smt. Baljeet Kaur v. Harjeet Singh
Order dated 10.05.2018 passed by the High Court of Madhya Pradesh in M. P. No. 2418 of 2018, reported in 2018 (3) MPWN 8

Relevant extracts from the order:

The Apex Court in the case of ***Amardeep Singh v. Harveer Kaur, 2017 (8) SCC 746,*** has dealt with the controversy and earlier decisions of the Apex Court and while reconciling the conflicting views, have given the mandate wherein the Apex Court has directed that concerned Court to exercise their discretion in the facts and circumstances of the each case, where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation. The Court has considered the following questions:

(a) How long parties have been married?
(b) How long litigation is pending?
(c) How long they have been staying apart?
(d) Are there any other proceedings between the parties?
(e) Have the parties attended mediation/conciliation?
(f) Have the parties arrived at genuine settlement which takes care of alimony, custody of child or any other pending issues between the parties?

According to mandate of the Apex Court, the waiver application can be filed one week after the first motion giving reasons for the prayer for waiver and if the condition referred above are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.

Thus, it is clear that the Court must be satisfied about the separate living of the parties for more than the statutory period and all efforts at mediation and reconciliation have been tried and have failed and there is no chance of reconciliation and it is to be seen that further waiting period will only prolong their agony. If these conditions are satisfied then the Court has discretion to waive the waiting period of six months for the second motion.

The Court can also use the medium of video conferencing and can also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reasons as may satisfy the Court, to advance the interest of justice.

Thus, trial Court has wide discretion to take a call in view of said enunciation of law.

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***78. HINDU MARRIAGE ACT, 1955 – Section 13B**

Divorce by mutual consent – Right of minor daughter – Agreement between parties that wife will not claim maintenance for her and her daughter and shall also not claim any share in husband's property – Held, such agreement is not binding on minor daughter – Legal rights of minor child cannot be terminated by an agreement between the parents – Such legal rights would survive – It will be as per discretion of the daughter when she attains majority whether to exercise such rights or not.

हिंदू विवाह अधिनियम, 1955 - धारा 13बी

पारस्परिक सहमति से विवाह विच्छेद - अवयस्क पुत्री के अधिकार - पक्षकारों के मध्य करार कि पत्नी, स्वयं व अपनी पुत्री के लिए भरणपोषण की मांग नहीं करेगी तथा पति की संपत्ति में भी कोई हिस्से की मांग नहीं करेगी - अभिनिर्धारित, ऐसा करार अवयस्क पुत्री पर बंधनकारी नहीं है - अवयस्क बच्चे के विधिक अधिकार, माता-पिता के मध्य करार से समाप्त नहीं किए जा सकते - ऐसे विधिक अधिकार जीवित रहेंगे - यह पुत्री के विवेकाधिकार पर रहेगा कि वयस्कता प्राप्त करने पर वह इन अधिकारों का प्रयोग करेगी या नहीं।

Rakhi Shukla v. Manoj Shukla

Judgment dated 19.12.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in F.A. No. 171 of 2016, reported in 2019 (1) MPLJ 457 (DB)

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***79. INDIAN PENAL CODE, 1860 – Sections 301 and 302**

Doctrine of Transfer of Malice – Murder – Accused person armed with deadly weapon, had common intention to cause death of X but caused death of Y who attempted to rescue X – Held, if accused person had intention to kill one person but killed another, they would be punishable for offence of murder under doctrine of transfer of malice. (*Jaspal Singh and other v. State of Punjab, AIR 1991 SC 982,* relied on)

भारतीय दण्ड संहिता, 1860 - धाराएं 301 एवं 302

द्वेष के अंतरण का सिद्धांत - हत्या - अभियुक्तगण ने घातक आयुद्ध से सुसज्जित होकर X की हत्या कारित करने का सामान्य आशय बनाया परन्तु Y की हत्या की जो X को बचाने के लिए आया था - अभिनिर्धारित, यदि अभियुक्तगण किसी एक व्यक्ति की हत्या कारित करने का सामान्य आशय रखते थे परन्तु किसी अन्य व्यक्ति की हत्या कारित करते हैं, तो वे द्वेष के अंतरण के सिद्वांत के अंतर्गत हत्या का अपराध कारित

करने के लिये दण्डित किये जाने योग्य हैं। (***जसपाल सिंह एवं अन्य विरूद्ध पंजाब राज्य, एआईआर 1991 एससी 982,*** अवलंबित)

Mohammad Faizan and others v. State of M.P.
Order dated 04.01.2018 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 2006 of 2004, reported in ILR (2018) MP 734 (DB)

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80. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Sections 32 and 106

(i) Murder – Deceased died a homicidal death inside matrimonial home – No grave and sudden provocation by deceased – Accused absconded for approximately three months from date of incident till he was taken into custody – Conduct of accused contrary to normal human behaviour – Accused failed to give explanation how deceased had met a homicidal death inside house – Conviction upheld.

(ii) Dying Declaration; reliability of – Third dying declaration blaming accused for setting deceased on fire – Recorded by Special Magistrate in presence of Doctor – Proved by Magistrate and Doctor – Held, such dying declaration is reliable although being third in number.

भारतीय दण्ड संहिता, 1860 - धारा 302

साक्ष्य अधिनियम, 1872 - धाराएं 32 एवं 106

(i) हत्या - मृतिका वैवाहिक गृह के भीतर मानव वध स्वरूप की मृत्यु मरी - मृतिका द्वारा कोई गंभीर और अचानक प्रकोपन नहीं - घटना दिनांक से जब तक उसे अभिरक्षा में लिया गया, तब तक अभियुक्त लगभग तीन माह से फरार था - अभियुक्त का आचरण सामान्य मानव व्यवहार के प्रतिकूल था - घर के भीतर मृतिका की मानव वध स्वरूप की मृत्यु कैसे हुई इस संबंध में अभियुक्त स्पष्टीकरण देने में असफल रहा - दोषसिद्धि की पुष्टि की गई।

(ii) मृत्युकालिक कथन की विश्वसनीयता - तीसरे मृत्युकालिक कथन में अभियुक्त पर मृतका को आग लगाने का आरोप - विशेष न्यायिक मजिस्ट्रेट द्वारा चिकित्सक की उपस्थिति में अभिलिखित किया गया - मजिस्ट्रेट व चिकित्सक द्वारा प्रमाणित किया गया - अभिनिर्धारित, ऐसा मृत्युकालिक कथन विश्वसनीय है यद्यपि संख्या में तीसरा है।

Bhagwat v. State of Maharashtra
Judgment dated 19.9.2018 passed by the Supreme Court in Criminal Appeal No.1046 of 2011, reported in 2018 (4) Crimes 308 (SC)

Relevant extracts from the judgment:

There is absolutely no material on record to suggest any assault under grave and sudden provocation. The conduct of the appellant in absconding for approximately three months from the date of the occurrence, till he was taken into custody, was contrary to normal human behavior and belies his claim to innocence. It is not possible to accept the plea of any burn injuries on his hands three months later. The deceased died a homicidal death inside the matrimonial home. In the circumstances noticed hereinbefore, undoubtedly the appellant owed an explanation under Section 106 of the Evidence Act, 1872 with regard to how the deceased had met a homicidal death inside the house. He failed to discharge the onus completely. The aforesaid, in our opinion, are sufficient to uphold the conviction of the appellant.

Since an argument has been made with regard to three inconsistent dying declarations, we consider it only proper to deal with them also. The first dying declaration, Exh.10 was recorded by a police officer at the hospital. It speaks of an accidental fire. Though it bears a seal of a medical officer below the certification of fitness, it is not signed by anyone. Except for the policeman who recorded the same, no doctor has been examined in support of the same. The second dying declaration stated to have been made orally before her relatives PW's- 2, 3 and 6 blamed the appellant for having set her on fire, with an additional statement of a dowry demand. The third dying declaration Exh.27 also blamed the appellant for having set the deceased on fire. It was recorded by PW-7, a Special Judicial Magistrate who proved the same. PW-8, the Doctor who certified the fitness and was present during the same has also testified. We consider the dying declaration, in the facts and circumstances of the case, a corroborative material. The dying declaration recorded by PW7 and proved by him certainly commends to us for acceptance.

The first dying declaration is not only a suspicious document, but it is also considered a self-serving statement by the appellant, attributed to the deceased for saving himself. If the statement had been recorded in the hospital there is no reason why the doctor in whose presence it may have been recorded, not to have initialed it and deposed in support of the same. The 2nd dying declaration is oral in nature made before the relatives of the deceased, which may be considered self-serving. In any event the appellant has been acquitted of the charge under Section 498A. The third dying declaration has been duly proved by PW-7 and PW-8. We see no reason why it cannot be relied upon as the truth.

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***81. INDIAN PENAL CODE, 1860 – Sections 302 and 120B**
EVIDENCE ACT, 1872 – Sections 3, 138 and 139

(i) Criminal conspiracy to murder; essentials of – Appreciation of evidence – Held,

(a) Meeting of mind of two or more persons to do an illegal act or an act by illegal means is a must.

(b) However, it is not necessary that all conspirators must know each and every detail of conspiracy nor it is necessary to prove the active part/role of conspirator in such meeting.

(c) Mere presence and participation of conspirator in such meeting is sufficient.

(d) Since criminal conspiracies are always hatched in secrecy, its existence coupled with the object for which it was hatched has to be gathered on the basis of circumstantial evidence, such as conduct of the conspirators and the chain of circumstances leading to holding of such meeting till the commission of the offence.

(ii) Cross-examination of witnesses on contradictions – Accused did not avail his right of cross-examining such witnesses, but adopted the cross-examination done by other accused – Held, now accused cannot be permitted to find fault in evidence of such witnesses and rely upon contradictions.

भारतीय दण्ड संहिता, 1860 - धाराएं 302 एवं 120बी

साक्ष्य अधिनियम, 1872 - धाराएं 3, 138 एवं 139

(i) हत्या हेतु आपराधिक षड़यंत्र के आवश्यक तत्व - साक्ष्य का मूल्यांकन - अभिनिर्धारित,

(क) दो या अधिक व्यक्तियों का किसी अवैध कार्य को करने या किसी कार्य को अवैध साधनों द्वारा करने के लिए मस्तिष्कों का मिलन आवश्यक है।

(ख) हालांकि, यह आवश्यक नहीं है कि सभी षड़यंत्रकारियों को षड़यंत्र के प्रत्येक ब्यौरे के बारे में जानकारी हो और इस प्रकार के मिलन में प्रत्येक षड़यंत्रकारी की सक्रिय भूमिका को साबित किया जाना आवश्यक नहीं है।

(ग) षड़यंत्रकारी का ऐसे मिलन में मात्र उपस्थित होना तथा भाग लेना पर्याप्त है।

(घ) चूंकि आपराधिक षड़यंत्र हमेषा गुप्तता में रचे जाते हैं, उसके अस्तित्व व उसे किस उद्देश्य के लिए रचा गया था, को परिस्थितिजन्य साक्ष्य के आधार पर ही अनुमानित किया जा सकता है, जैसे षड़यंत्रकारियों का आचरण व परिस्थितियों की कड़ियां, जो ऐसे मिलन के आयोजन से अपराध के कारित होने तक ले जाती हैं।

(ii) विरोधाभासों पर साक्षियों का प्रतिपरीक्षण - ऐसे साक्षियों के प्रतिपरीक्षण के अपने अधिकार का अभियुक्त ने प्रयोग नहीं किया, पर अन्य अभियुक्त द्वारा किए गए प्रतिपरीक्षण को ग्रहण किया - अभिनिर्धारित, अब अभियुक्त को ऐसे साक्षियों की साक्ष्य में त्रुटि ढूंढने एवं विरोधाभासों पर निर्भर करने की अनुमति नहीं दी जा सकती।

Bilal Hajar alias Abdul Hameed v. State Represented by Inspector of Police

Order dated 10.10.2018 passed by the Supreme Court in Criminal Appeal No. 1305 of 2008, reported in AIR 2018 SC 4780

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***82. INDIAN PENAL CODE, 1860 – Section 304-B**

EVIDENCE ACT, 1872 – Section 113-B

Dowry death – Presumption u/S 113-B; nature of – Where all three ingredients of offence of dowry death are proved and established by prosecution, presumption under Section 113-B of Evidence Act has to be drawn against the accused in absence of any rebuttal defence evidence.

भारतीय दण्ड संहिता, 1860 - धारा 304-ख

साक्ष्य अधिनियम, 1872 - धारा 113-ख

दहेज मृत्यु - धारा 113-ख के अधीन उपधारणा की प्रकृति - जहाँ अभियोजन द्वारा दहेज हत्या के अपराध के तीनों तत्वों को साबित तथा स्थापित किया गया है, वहाँ न्यायालय साक्ष्य अधिनियम की धारा 113-ख के अधीन खंडनीय बचाव साक्ष्य के अभाव में अभियुक्त के विरूद्ध उपधारणा करेगा।

Jagdish Chand and another v. State of Haryana

Judgment dated 07.01.2019 passed by the Supreme Court in Criminal Appeal No. 767 of 2012, reported in 2019 (1) Crimes 16 (SC)

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83. INDIAN PENAL CODE, 1860 – Section 306

Abetment of suicide – Accused had lent some money as loan to deceased – Accused demanded his own money back from the deceased and because of that pressure, the deceased committed suicide – No evidence that the accused was demanding an additional amount even after repayment of the entire loan amount by deceased – Held, accused was demanding his own money back from the deceased – Hence, it cannot be said that the accused had in any manner abetted the deceased to commit suicide.

भारतीय दण्ड संहिता, 1860 - धारा 306

आत्महत्या का दुष्प्रेरण - अभियुक्त ने मृतक को कुछ राशि ऋण के रूप में दी थी - अभियुक्त ने मृतक से स्वयं के पैसे वापस मांगे और उस दबाव के कारण, मृतक ने आत्महत्या कर ली - ऐसी कोई साक्ष्य नहीं कि मृतक द्वारा पूरी ऋण राशि अदा कर देने के बाद भी अभियुक्त द्वारा अतिरिक्त राशि की मांग की जा रही थी - अभिनिर्धारित, अभियुक्त द्वारा स्वयं की राशि मृतक से वापस मांगी जा रही थी - अतः, यह नहीं कहा जा सकता कि अभियुक्त ने किसी भी प्रकार से मृतक को आत्महत्या के लिए दुष्प्रेरित किया।

Motilal v. State of Madhya Pradesh

Judgment dated 20.08.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 689 of 1999, reported in 2018 CrLJ 4493

Relevant extracts from the judgment:

Further, it is the case of prosecution that the deceased Kailash had paid an additional amount of Rs. 3,00,000/- by selling his agricultural land. However, the prosecution has not filed copy of such sale-deed showing that the deceased Kailash had sold his agricultural land. Even the purchaser has not been examined as witness. Thus, it is clear that although it is the prosecution case that the deceased Kailash had taken loan from the appellant Motilal but except the oral evidence to the effect that the entire loan amount was repaid and in order to pay the additional amount of Rs. 3,00,000/-, the deceased had sold his property, the prosecution has not filed any documentary evidence to corroborate the ocular evidence, although the registration and execution of sale-deed is necessary, if the value of the immovable property is more than Rs. 100/-. When the documentary evidence is available and if the prosecution had decided not to rely on the best evidence available with it, then an adverse inference can always be drawn against the prosecution. Thus, it is clear that although the interested witnesses have stated that the entire loan amount was repaid and additional amount of Rs. 3,00,000/- was also paid and since the appellant Motilal was demanding further amount of Rs. 2,00,000/- and as such the deceased Kailash was being harassed by the appellant Motilal but in view of lack of any corroborative piece of evidence, which could have been made available by the prosecution, this Court is of the considered opinion that in absence of any documentary evidence in support of the allegation of prosecution, it cannot be held, that the appellant Motilal was demanding an additional amount of Rs. 2,00,000/- inspite of the fact that the entire loan amount was already repaid by the deceased Kailash. Thus, it is clear that the appellant Motilal was demanding his own money back from the deceased Kailash and because of that pressure, the deceased Kailash committed suicide.

Thus, in order to consider that whether the act of the appellant in asking for refund of his money, would amount to abetment or not, it would be appropriate to consider the provisions of Section 107 and 306 of I.P.C. Sections 306 and 107 of I.P.C. reads as under :

> "306. Abetment of suicide:– If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
>
> 107 – Abetment of a thing:– A person abets the doing of a thing, who—-

First.— Instigates any person to do that thing; or Secondly.— Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission lakes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.— A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

From a reading of the Clause Firstly of Section 107 of I.P.C., it is clear that a person who instigates another to do a thing, abets him to do that thing. A person is said to instigate another when he goads, provokes, incites, urges forwards or encourages another to commit a crime. A serious question that has arisen in this case is whether there is any material suggesting that the petitioner had incited the deceased to commit suicide? The allegations that the appellant had demanded his money back, cannot be said that the appellant had goaded, provoked, incited, urged or encouraged the deceased to commit suicide.

The Supreme Court in the case of ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605,*** while dealing with the term "instigation" held as under:

"16. ... instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of 'instigation', though it is not necessary that actual words must be used to that effect or what constitutes 'instigation' must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goading' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action; provoke to action or

reaction' ... to keep irritating or annoying somebody until he reacts...."

The Supreme Court in the case of ***Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC 734,*** held as under :

"17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: ***State of Punjab v. Iqbal Singh, (1991) 3 SCC 1, Surender v. State of Haryana, (2006) 12 SCC 375, Kishori Lal v. State of M.P., (2007) 10 SCC 797*** and ***Sonti Rama Krishna v. Sonti Shanti Sree, (2009) 1 SCC 554***)

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a Court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC."

The Supreme Court in the case of ***Sanju @ Sanjay Singh Sengar v. State of M.P., (2002) 5 SCC 371,*** has held as under :

"6. Section 107 IPC defines abetment to mean that a person abets the doing of a thing if he firstly, instigates any person to do that thing; or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing."

Further, in para 12 of the judgment, it is held as under:

"The word "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea,* therefore, is the necessary concomitant of instigation."

The Supreme Court in the case of ***Gangula Mohan Reddy v. State of A.P., (2010) 1 SCC 750,*** needs mentioned here in which Hon'ble Apex Court has held that:

"abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing – Without a positive act on part of accused to instigate or aid in committing suicide, conviction cannot be sustained – In order to convict a person under section 306 IPC, there has to be a clear *mens rea* to commit offence – It also requires an active act or direct act which leads deceased to commit suicide seeing no option and this act must have been intended to push deceased into such a position that he commits suicide – Also, reiterated, if it appears to Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to society to which victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, conscience of Court should not be satisfied for basing a finding that accused charged of abetting suicide should be found guilty – Herein, deceased was undoubtedly hypersensitive to ordinary petulance, discord circumstances of case, none of the ingredients of offence under Section 306 made out – Hence, appellant's conviction, held unsustainable".

In the case of ***State of W.B. v. Orilal Jaiswal, 1994 (1) SCC 73,*** the Supreme Court has held as under:-

"This Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide,

the conscience of the Court should not be satisfied for basing a finding that accused charged of abetting the offence of suicide should be found guilty"

The Supreme Court in the case of ***M. Mohan v. State represented by the Deputy Superintendent of Police, AIR 2011 SC 1238,*** has held as under :

"Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature is clear that in order to convict a person under Section 306, IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

The Supreme Court in the case of ***Kishori Lal vs. State of M.P., (2007) 10 SCC 797,*** has held in para 6 as under:-

"6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. "Abetted" in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

In the case of ***Amalendu Pal @ Jhantu vs. State of West Bengal, (2010) 1 SCC 707,*** the Supreme Court has held as under:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under

Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

14. The expression 'abetment' has been defined under Section 107 IPC which we have already extracted above. A person is said to abet the commission of suicide when a person instigates any person to do that thing as stated in clause firstly or to do anything as stated in clauses secondly or thirdly of Section 107 IPC. Section 109 IPC provides that if the act abetted is committed pursuant to and in consequence of abetment then the offender is to be punished with the punishment provided for the original offence. Learned counsel for the respondent State, however, clearly stated before us that it would be a case where clause 'thirdly' of Section 107 IPC only would be attracted. According to him, a case of abetment of suicide is made out as provided for under Section 107 IPC.

15. In view of the aforesaid situation and position, we have examined the provision of clause thirdly which provides that a person would be held to have abetted the doing of a thing when he intentionally does or omits to do anything in order to aid the commission of that thing. The Act further gives an idea as to who would be intentionally aiding by any act

of doing of that thing when in Explanation 2 it is provided as follows:

"Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

16. Therefore, the issue that arises for our consideration is whether any of the aforesaid clauses namely firstly alongwith Explanation 1 or more particularly thirdly with Explanation 2 to Section 107 is attracted in the facts and circumstances of the present case so as to bring the present case within the purview of Section 306 IPC."

The Supreme Court in the case of ***Amit Kapur v. Ramesh Chander, (2012) 9 SCC 460,*** has held as under :

"35. The learned counsel appearing for the appellant has relied upon the judgment of this Court in ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), (2009) 16 SCC 605,*** to contend that the offence under Section 306 read with Section 107 IPC is completely made out against the accused. It is not the stage for us to consider or evaluate or marshal the records for the purposes of determining whether the offence under these provisions has been committed or not. It is a tentative view that the Court forms on the basis of record and documents annexed therewith. No doubt that the word "instigate" used in Section 107 IPC has been explained by this Court in ***Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618,*** to say that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, an instigation may have to be inferred. In other words, instigation has to be gathered from the circumstances of the case. All cases may not be of direct evidence in regard to instigation having a direct nexus to the suicide. There could be cases where the circumstances created by the accused are such that a person feels totally frustrated and finds it difficult to continue existence."

In the case of ***Ghusabhai Raisangbhai Chorasiya v. State of Gujarat, (2015) 11 SCC 753,*** the Supreme Court has held as under :

"21. Coming to the facts of the present case, it is seen that the factum of divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that

the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the "Holi" festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498-A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in ***Pinakin Mahipatray Rawal, (2013) 10 SCC 48,*** but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with Appellant 4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A IPC which includes cruelty to drive a woman to commit suicide, would not be attracted."

Therefore, it is clear that a person can be said to have instigated another person, when he actively suggests or stimulates him by means of language, direct or indirect. Instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

If the facts of the case are considered in the light of the law laid down by the Supreme Court in the above mentioned cases, then it would appear that the appellant had lend certain money to the deceased and he was demanding his money back from the deceased, as a result of which, the deceased committed suicide. In absence of any corroborative piece of evidence, the evidence of the witnesses to the effect that the entire loan amount was already repaid by the deceased, but still the appellant had overcharged Rs. 3,00,000/- from the deceased and still the appellant was demanding further amount of Rs. 2,00,000/- cannot be accepted. Thus, if a person has demanded his money back from the deceased, then it cannot be said that the accused had in any manner abetted the deceased to commit suicide.

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***84. INDIAN PENAL CODE, 1860 – Section 306**

Abetment to suicide – Deceased 'B' borrowed money from accused 'A' by way of debt – 'A' demanded from 'B' principal amount with interest – In the presence of some witnesses, 'B' stated that he would discharge the entire loan amount, but failed to pay him back

as he was facing financial difficulty – 'B' committed suicide – Whether alleged act of insulting 'B' by using abusive language by 'A', will, by itself, constitute abetment of suicide? Held, No – There should be evidence capable of suggesting that accused intended by such act to instigate deceased to commit suicide – Unless ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.

भारतीय दण्ड संहिता, 1860 - धारा 306

आत्महत्या का दुष्प्रेरण - मृतक 'बी' ने अभियुक्त 'ए' से ऋण स्वरूप धन उधार लिया - 'ए' ने 'बी' से ब्याज सहित मूलधन की मांग की - कुछ साक्षियों के समक्ष, 'बी' ने व्यक्त किया कि वह सम्पूर्ण ऋण राशि का भुगतान कर देगा परंतु वित्तीय कठिनाई का सामना करने के कारण उसे वापस करने में असफल रहा - 'बी' ने आत्महत्या कर ली - क्या अपमानजनक भाषा के उपयोग द्वारा 'बी' को अपमानित करने का 'ए' का अभिकथित कार्य, स्वतः, आत्महत्या के लिये दुष्प्रेरण गठित करता है? अभिनिर्धारित, नहीं - ऐसा संकेत करने में समर्थ साक्ष्य होनी चाहिए कि अभियुक्त ऐसे कार्य द्वारा मृतक को आत्महत्या कारित करने को उकसाने को आशयित था - जब तक आत्महत्या कारित करने के लिए उकसाने/दुष्प्रेरण के संगठक संतुष्ट नहीं होते, अभियुक्त धारा 306 भा.दं.सं. के अधीन दण्डित नहीं किया जा सकता है।

M. Arjunan v. State Represented by its Inspector of Police
Judgment dated 30.10.2018 passed by the Supreme Court in Criminal Appeal No. 1568 of 2015, reported in AIR 2019 SC 45

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***85. INDIAN PENAL CODE, 1860 – Sections 326A and 326B**

(i) Whether Section 326A of IPC is attracted in a case of acid attack in which simple injury is caused? Held, Yes – The nature of injury does not make any difference, be it simple or grievous – If the injury falls under the specified types under Section 326A on account of use of acid, the offence under Section 326A is attracted.

(ii) Section 326A and Section 326B; difference between – The basic difference is the presence of actual injury – Presence of actual injury attracts the offence under Section 326A – The mere act of throwing or attempt to throw or attempt to administer or attempt to use any other means with the intention of causing any of the prescribed injuries is sufficient to attract Section 326B – Merely because the title to Section 326A of IPC speaks about grievous hurt by use of acid, it is not a requirement under the Section that the injuries caused should be invariably grievous.

भारतीय दण्ड संहिता, 1860 - धाराएं 326क एवं 326ख

(i) क्या अम्ल हमले के ऐसे मामलों में जिनमें साधारण उपहति कारित हुई हो भा.दं.सं. की धारा 326क आकर्षित होती है? अभिनिर्धारित, हाँ - उपहति की प्रकृति कोई भेद नहीं करती है, चाहे यह साधारण हो या घोर - यदि उपहति अम्ल के अनुप्रयोग के कारण धारा 326क के अधीन विनिर्दिष्ट प्रकारों में आती है, तो धारा 326क के अधीन अपराध आकर्षित होता है।

(ii) धारा 326क तथा धारा 326ख में भेद - वास्तविक उपहति की उपस्थिति ही मूलभूत भिन्नता है - वास्तविक उपहति की उपस्थिति धारा 326क के अधीन अपराध आकृष्ट करती है - विहित उपहतियों में से किसी को कारित करने के आषय से अम्ल फेंककर या अम्ल फेंकने या देने या उपयोग करने का प्रयत्न का कार्य मात्र धारा 326ख आकर्षित करने के लिए पर्याप्त है - मात्र इस कारण कि भा.दं.वि. की धारा 326क का शीर्षक अम्ल के उपयोग द्वारा घोर उपहति का उल्लेख करता है, इस धारा के अधीन यह आवश्यक नहीं है कि कारित उपहतियां सदैव घोर ही होना चाहिए।

Maqbool v. State of Uttar Pradesh and another
Judgment dated 07.09.2018 passed by the Supreme Court in Criminal Appeal No. 1143 of 2018, reported in AIR 2018 SC 5101

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***86. INDIAN PENAL CODE, 1860 – Section 499**

Whether inaccurate and selective reporting of Court proceedings is protected under Exception 4 of Section 499 of the Code? Held, No – A report which substantially deals with contentions of both the parties even though the author and newspaper records its own opinion about the entire controversy does not amounts to defamation – But publication of report with version of only one side and completely omitting the defence of other side with false caption amounts to defamation.

भारतीय दण्ड संहिता, 1860 - धारा 499

क्या न्यायालय की कार्यवाहियों की त्रुटिपूर्ण एवं चुनिंदा रिपोर्टिंग संहिता की धारा 499 के अपवाद 4 के आधार पर संरक्षित है? अभिनिर्धारित, नहीं - एक प्रतिवेदन जो सारतः दोनों पक्षकारों के तर्कों से संबंधित है तथा यदि लेखक एवं समाचार पत्र विवाद के बारे में अपनी राय अभिलिखित करते हैं, तो वह मानहानि की कोटि में नहीं आता है - परन्तु झूठे अनुशीर्षक सहित केवल एक पक्ष के विवरण को संदर्भित करते हुए एवं दूसरे पक्ष के बचाव का पूर्ण रूप से लोप करते हुए प्रतिवेदन का प्रकाशन मानहानि की कोटि में आता है।

M.P. Mansinghka v. Dainik Pratah Kaal and others
Order dated 15.02.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in M.Cr.C. No. 7890 of 2013, reported in ILR (2018) MP 821

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***87. LAND ACQUISITION ACT, 1894 – Sections 4, 6, 11 and 16**
CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 27

(i) Acquisition of land – All ownership rights in the land stand vested in the state once acquisition proceedings are completed under the Act – Suit for declaration of title and permanent injunction over such land is then not maintainable – Only remedy available is to either challenge the acquisition proceedings as being against the provisions of the Act or to claim compensation payable under the Act.

(ii) Production of Additional Evidence in appeal; permissibility of – Held, Appellate Court can allow filing of documents if they are relevant and also necessary for deciding the rights of the parties involved in the suit/appeal, and satisfactory explanation is given for not filing such documents in suit.

भू-अर्जन अधिनियम, 1894 - धाराएं 4, 6, 11 तथा 16

सिविल प्रक्रिया संहिता, 1908 - आदेश 41 नियम 27

(i) भूमि का अर्जन - अधिनियम के तहत एक बार अर्जन कार्यवाहियां पूर्ण हो जाने पर भूमि में सभी स्वामित्व संबंधी अधिकार राज्य में विहित हो जाते हैं - तब ऐसी भूमि के संबंध में स्वत्व घोषणा व स्थाई निषेधाज्ञा का दावा प्रचलनीय नहीं होता - एकमात्र उपचार या तो अर्जन कार्यवाहियों को अधिनियम के प्रावधानों के विरूद्ध होने से चुनौती देना या अधिनियम के अधीन देय प्रतिकर का दावा करना है।

(ii) अपील में अतिरिक्त साक्ष्य प्रस्तुत करने की अनुज्ञेयता - अभिनिर्धारित, अपीलीय न्यायालय दस्तावेज प्रस्तुत करने की अनुमति दे सकता है यदि वे सुसंगत हैं और दावा/अपील में पक्षकारों के अधिकारों के विनिश्चय हेतु आवश्यक भी हैं और ऐसे दस्तावेज दावे में प्रस्तुत न करने का संतोषजनक स्पष्टीकरण दिया जाता है।

Y. P. Sudhanva Reddy and others v. Chairman and Managing Director, Karnataka Milk Federation and others
Judgment dated 25.04.2018 passed by the Supreme Court in Civil Appeal No. 4412 of 2018, reported in 2019 (1) MPLJ 316 (SC)

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***88. MOTOR VEHICLES ACT, 1988 – Section 50 read with Section 2 (30)**

Transfer of vehicle – Liability of Registered Owner – Possession handed over to transferee on sale after receiving consideration – But change of ownership not entered in certificate of registration – Held, the person in whose name the Motor vehicle stands registered in RTO records, is to be treated as 'owner' – Merely because the vehicle is transferred, does not absolve the registered owner of his liability to pay compensation so long as his name continues in RTO records.

मोटरयान अधिनियम, 1988 - धारा 50 सहपठित धारा 2 (30)

वाहन का अंतरण - पंजीकृत स्वामी का दायित्व - विक्रय कर प्रतिफल प्राप्त करने के बाद अंतरिति को आधिपत्य सौंपा गया - किंतु पंजीकरण प्रमाण पत्र में स्वामित्व में बदलाव दर्ज नहीं किया गया - अभिनिर्धारित, जिस व्यक्ति के नाम पर मोटरयान, आरटीओ अभिलेखों में पंजीकृत होता है, उसे ही 'स्वामी' माना जाएगा - मात्र कि वाहन का अंतरण हो गया है, पंजीकृत स्वामी को उसके क्षतिपूर्ति अदा करने के दायित्व से उन्मोचित नहीं करता, जब तक कि उसका नाम आरटीओ अभिलेखों में बना रहता है।

Prakash Chand Daga v. Saveta Sharma and others

Judgment dated 14.12.2018 passed by the Supreme Court in Civil Appeal No.11369 of 2018, reported in 2019 ACJ 1

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89. MOTOR VEHICLES ACT, 1988 – Section 147

INSURANCE ACT, 1938 – Section 64VB

Effect of Section 64VB of the Insurance Act and Section 147 of Motor Vehicle Act – Accident occurred on 31/10/2000 at about 10:30 am – A cover note was issued by the Insurance Company on 30/10/2000 – Pursuance to that vehicle was insured from 31/10/2000 to 30/10/2001 – Cover note indicates the time at 4:40 pm from 31/10/2000 – Held, the insurer cannot postpone the assumption of liability after receipt of premium – Therefore, by the effect of Section 64VB of the Insurance Act and Section 147 of Motor Vehicle Act, the Insurance Company is liable to pay the compensation to the victim.

मोटरयान अधिनियम, 1988 - धारा 147

बीमा अधिनियम, 1938 - धारा 64VB

बीमा अधिनियम की धारा 64VB एवं मोटर यान अधिनियम की धारा 147 का प्रभाव - दुर्घटना दिनांक 31.10.2000 की सुबह 10: 30 बजे हुई - बीमा कम्पनी द्वारा दिनांक 30.10.2000 को कवर नोट जारी किया गया था - उसके आधार पर दिनांक 31.10.2000 से 30.10.2001 तक वाहन को बीमित किया गया था - कवर नोट से दिनांक 31.10.2000

को 4: 40 बजे शाम से बीमा होना दर्शित होता था - अभिनिर्धारित, प्रीमियम भुगतान प्राप्त करने के बाद बीमा कंम्पनी दायित्व को स्थगित नहीं कर सकती है - अतः, बीमा अधिनियम की धारा 64VB एवं मोटर यान अधिनियम की धारा 147 के प्रभाव से, बीमा कम्पनी आहत को प्रतिकर अदा करने के दायित्वाधीन है।

United India Insurance Company v. Sanny @ Sanjay and others

Judgment dated 27.04.2017 passed by the High Court of Madhya Pradesh (Gwalior Bench) in M.A. No.859 of 2003, reported in 2018 ACJ 2764

Relevant extracts from the judgment:

Fact of the case in brief are that due to an accident occurred on 31/10/2000 at about 10:30 am, victim-Sunny @ Sanjay sustained injuries and therefore, a claim case has been filed for compensation under the provisions of Motor Vehicle Act, 1988 (for short Act of 1988).

The owner of vehicle (Sonalika Tractor) bearing Engine No.4095F2FO1578, chassis No.00052221546 took the shelter of Insurance Company on the ground that on 30/10/2000, a cover note was issued by the Insurance Company and in pursuance to that vehicle (Tractor) was insured from 31/10/2000 to 30/10/2001. Because of the fact that cover note indicates the time at 4:40 pm from 31/10/2000 therefore, according to counsel for appellant, insurance policy started w.e.f. 4:40 pm on 31/10/2000 and as the accident/incident happened prior to 4:40 pm on 31/10/2000, therefore, does not entail any liability over the Insurance Company and therefore, Insurance Company is not liable to pay any compensation in respect of injuries sustained by respondent No.1/victim.

The first question for consideration before this Court is; whether insurer *i.e.* appellant/Insurance Company is liable to pay compensation in the light of the fact that the cover note specifically denotes the commencement of Insurance policy and its coverage w.e.f. 4:40 pm on 31/10/2000.

Before adverting to the legal pronouncement in this regard Section 64VB and its effect is to be seen. The said provision categorically stipulates that no risk to be assumed unless premium is received in advance. No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. It further stipulates that in the case of risk for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid by cash or the cheque to the insurer. The said provisions is further unfolded through explanation. Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

Considering the contents of Section 64VB of the Insurance Act 1938 (for short "1938 Act") as well as while considering the said provisions in relation to relevant provisions of Act of 1988 which are part of social welfare legislature, as well as judgments of Hon'ble Apex Court as referred above, the picture emerges regarding liability of the Insurance Company for compensation. Because considering the said provisions, the Hon'ble Apex Court in the matter of ***Oriental Insurance Co. Ltd. v. Dharam Chand and others, 2010 (4) ACJ 2659,*** has held that insurance must be deemed to have commenced from the time, when cheque was received and insurance company is liable to pay compensation, in case accident took place after the receipt of cheque and before issuance of policy.

The Division Bench of Karnataka High Court in the matter of ***Zameer Ahamed v. B.R. Narayan Shetty, 2012 ACJ 1322,*** while considering the said aspect has also held that Insurance Company cannot postpone assumption of liability after receipt of premium on the pretext of verification of vehicle and documents which should be done before receipt of premium. The relevant para reads as follows:

> "(8) ..... The coverage of insurance for a motor vehicle would virtually stand on a different footing unlike in other types of contract of insurance. It is mandatory that the third party risk should be covered when a vehicle has to ply in a public place. The insurance company being a State authority doing business of insurance is duty-bound to honour and implement the provisions of law. Section 64-VB declares that insurer can assume the risk only upon the receipt of premium. Maybe, that in other types of contracts where insurance is sought, the insurer may have the discretion to enter into a contract or not. But in respect of motor vehicles there is no discretion on the part of the insurer. The insurance company has to enter into the contract and issue policy in accordance with law, if proper premium is paid. In the context of the said factual and legal situation, it is to be held that in contract of insurance in respect of motor vehicles, the issuance of policy becomes effective when premium is received. The insurer cannot postpone the assumption of liability after receipt of premium. The necessary verification of vehicle and the documents should be done before receipt of premium. However, under the said pretext the insurer cannot postpone the assumption of risk, other than from the date and time of receipt of premium."

Similarly, in the matter of ***Oriental Insurance Company v. Dharmchandra*** (supra) the order has been passed on the graceful concession of counsel for

the Insurance Company. The said graceful concession connotes wider ramifications.

This Court cannot ignore the important aspect that the provisions of Motor Vehicle Act, 1988 which govern third party compensation to victims is a piece of benevolent legislation and/or social welfare measure. Therefore, whole controversy has to be seen in that perspective also.

Judgment relied upon by counsel for the appellant in respect of renewal of policy wherein policy contains a particular time for becoming effective but in the present case, cover note Ex.D-1 contains the time as 4:40 pm and the reference of time is missing in the policy Ex.D-2, therefore, in the present case, it appears that cover note Ex.D-1 contains the time and at that time amount of Rs.548/- have been paid by the insured to the insurer therefore, from perusal of cover note it is apparent that payment of premium has been received by the Insurance Company and therefore, by the effect of Section 64VB of the Insurance Act and Section 147 of Motor Vehicle Act, 1988, the Insurance Company is liable to pay the compensation to the victim/injured.

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90. MOTOR VEHICLES ACT, 1988 – Section 147

Pay and recover – Claimant travelled in the tractor as a passenger in breach of policy – Insurer is not liable to pay for loss – Insurance Company directed to pay the compensation amount to the claimant with liberty to recover the same from the tractor owner.

मोटर यान अधिनियम, 1988 - धारा 147

भुगतान और वसूल करो - दावेदार पाॅलिसी की शर्त के उल्लंघन में ट्रेक्टर में यात्री के रूप में यात्रा कर रहा था - बीमाकर्ता क्षति अदा करने के दायित्वाधीन नहीं है - बीमा कंम्पनी को निर्देशित किया गया कि ट्रेक्टर स्वामी से प्रतिकर वसूल करने की स्वतंत्रता के साथ दावेदार को क्षतिपूर्ति की राशि का भुगतान करे।

Shivaraj v. Rajendra and another

Judgment dated 05.09.2018 passed by the Supreme Court in Civil Appeal No. 8278 of 2018, reported in 2018 ACJ 2755

Relevant extracts from the judgment:

Thus, it would follow that the appellant travelled in the tractor as a passenger, even though the tractor could accommodate only one person namely the driver. As a result, the Insurance Company (respondent No.2) was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. That conclusion reached by the High Court, in our opinion, is unexceptionable in the fact situation of the present case.

At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount

to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in ***National Insurance Co. Ltd. v. Swarna Singh and others, 2004 ACJ 1 (SC), Mangla Ram v. Oriental Insurance Co. Ltd., 2018 ACJ 1300 (SC), Rani and others v. National Insurance Co. Ltd. and others, 2018 ACJ 2430 (SC)*** and including ***Manuara Khatun and others v. Rajesh Kumar Singh and others, 2017 ACJ 1031 (SC).*** In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner (respondent No.1).

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***91. MOTOR VEHICLES ACT, 1988 – Section 147**

Vehicle taken on hire – Liability to pay compensation – Accident by vehicle taken on hire by State Corporation – Agreement between owner and Corporation that driver shall be appointed by the owner and conductor would be provided by the Corporation – Held, registered owner, Corporation and insurance company are liable to pay compensation jointly and severally – Further, Corporation would be entitled to recover the amount paid from the owner of vehicle as per the agreement entered into between them.

मोटरयान अधिनियम, 1988 - धारा 147

वाहन किराए पर लिया गया - क्षतिपूर्ति अदा करने का दायित्व - राज्य निगम द्वारा किराए पर लिए गए वाहन से दुर्घटना - स्वामी व निगम के मध्य करार कि चालक की नियुक्ति स्वामी द्वारा की जाएगी और परिचालक निगम द्वारा प्रदान किया जाएगा - अभिनिर्धारित, पंजीकृत स्वामी, निगम व बीमा कंपनी संयुक्ततः व पृथकतः क्षतिपूर्ति अदा करने हेतु दायी हैं - आगे यह भी कि, निगम, अदा की गई राशि, वाहन के स्वामी से उनके मध्य हुए करार के आधार पर वसूल करने का हकदार होगा।

U.P. State Road Transport Corporation v. National Insurance Co. Ltd and others

Judgment dated 27.03.2018 passed by the Supreme Court in C A No. 3315 of 2018, reported in 2019 ACJ 269

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***92. MOTOR VEHICLES ACT, 1988 – Section 166**

Contributory negligence – Does driving the vehicle by the deceased driver without a driving licence, amounts to contributory negligence on his part? Held, No – Driving a vehicle without a driving licence may make the person liable to other liabilities but no inference of contributory negligence can be drawn on that basis.

मोटरयान अधिनियम, 1988 - धारा 166

योगदायी उपेक्षा - क्या मृतक चालक द्वारा बिना चालन अनुज्ञप्ति के वाहन चलाना उसकी स्वयं की ओर से योगदायी उपेक्षा है? अभिनिर्धारित, नहीं - बिना चालन अनुज्ञप्ति के वाहन चलाना, उस व्यक्ति को अन्य दायित्वों के अधीन दायी कर सकता है किन्तु इस आधार पर योगदायी उपेक्षा के संबंध में कोई निष्कर्ष नहीं निकाला जा सकता।

Saraswati Palariya and others v. New India Assurance Co. Ltd. and others Judgment dated 31.08.2018 passed by the Supreme Court in Civil Appeal No. 9114 of 2018, reported in 2019 ACJ 42 (3 Judge Bench)

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***93. MOTOR VEHICLES ACT, 1988 – Section 168**

Compensation – Deceased aged 34 years and being an agriculturist and doing other work also at the time of accident – Whether claimant entitled to future prospects? Held, in view of the decision of Constitution bench in case of *National Insurance Co. Ltd. v. Pranay Sethi, 2017 ACJ 2700 (SC),* claimant's are entitled for an addition of 40% of the established income of deceased as future prospects.

मोटर यान अधिनियम, 1988 - धारा 168

क्षतिपूर्ति - घटना के समय मृतक 34 वर्षीय होकर कृषक था तथा अन्य काम भी करता था - क्या दावेदार भविष्यवर्ती लाभ प्राप्त करने के हकदार हैं? अभिनिर्धारित, ***नेशनल इश्योरेन्स् कं. लिमिटेड वि. प्रणय सेठी, 2017 ACJ 2700 (SC)*** के प्रकरण में संविधान पीठ द्वारा दिये गये निर्णय के अनुरूप दावेदार, मृतक की स्थापित आय का 40%, भविष्यवर्ती लाभ जोड़े जाने के हकदार हैं।

Savita and others v. Divisional Manager, Maharashtra State Road Transport Corporation
Judgment dated 05.12.2017 passed by the Supreme Court in Civil Appeal No. 21822 of 2017, reported in 2018 ACJ 2863

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94. MOTOR VEHICLES ACT, 1988 – Section 168

(i) Future Prospects – Law laid down in *National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680,* case should be followed.

(ii) Deduction from the income of the deceased – Where the bachelor deceased was earning member of large family and widowed mother and large number of younger non-earning sisters or brothers were dependent in his income - His personal and living

expenses may be restricted to one-third. (*Sarala Verma v. Delhi Transport Corporation, 2009 ACJ 1298 (SC),* followed)

(iii) Aged father and non-earning brother/sister dependent on deceased would be entitled to compensation as his dependents.

(iv) Consortium – The term includes 'spousal consortium', 'parental consortium', and 'filial consortium'.

मोटर यान अधिनियम, 1988 - धारा 168

(i) भविष्यवर्ती लाभ - ***नेशनल इंश्योरेंस कंपनी लिमिटिड विरूद्ध प्रणय सेठी, (2017) 16 SCC,*** प्रकरण में प्रतिपादित विधि का अनुसरण किया जाना चाहिये।

(ii) मृतक की आय से की जाने वाली कटौती - जहां अविवाहित मृतक, बड़े परिवार का कमाऊ सदस्य था और विधवा मां व बड़ी संख्या में गैर कमाऊ छोटे भाई-बहन उसकी आय पर आश्रित थे - वहां उसके व्यक्तिगत जीवन निर्वाह व्यय को एक तिहाई तक सीमित किया जा सकता है। (***सरला वर्मा विरूद्ध दिल्ली ट्रांसपोर्ट कारपोरेशन, 2009 एसीजे 1298 (एससी),*** अनुसरित)

(iii) मृतक पर आश्रित वृद्ध पिता व गैर कमाऊ भाई-बहन आश्रित के रूप में प्रतिकर पाने के हकदार हैं।

(iv) सहचर्य - अभिव्यक्ति में 'दाम्पत्यिक सहचर्य', 'पैतृक सहचर्य' एवं 'सन्तान संबंधी सहचर्य' शामिल हैं।

Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram and others

Judgment dated 08.09.2018 passed by the Supreme Court in Civil Appeal No. 9581 of 2018, reported in 2018 ACJ 2782

Relevant extracts from the judgment:

With respect to the issue of future prospects, Constitution Bench of this Court in ***National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680,*** has held that in case the deceased was self employed or on a fixed salary, and was below 40 years of age, an addition of 40% of the established income should be granted towards Future Prospects.

Future Prospects are to be awarded on the basis of:

i. the nature of the deceased's employment; and

ii. the age of the deceased.

X X X

With respect of the issue of deduction from the income of the deceased. - - -

This issue has been dealt with in paragraph 32 of the judgment in ***Sarla Verma v. Delhi Transport Corporation, 2009 ACJ 1298 (SC),*** wherein this Court took the view that where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and

large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third, as contribution to the family will be taken as two-third.

X X X

The insurance company has submitted that the father and sister of the deceased could not be treated as dependents, and it is only a mother who can be a dependent of her son. This contention deserved to be repelled. The deceased was a bachelor, whose mother had predeceased him. The deceased's father was about 65 years old, and is unmarried sister. The deceased was contributing a part of his meager income to the family for their sustenance and survival. Hence, they would be entitled to compensation as his dependents.

X X X

A Constitution Bench of this Court in ***Pranay Sethi*** (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. (***Rajesh and ors. v. Rajbir Singh and ors., (2013) 9 SCC 54***)

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation."(BLACK'S LAW DICTIONARY (5th ed. 1979))

Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

X X X

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in ***Pranay Sethi*** (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium.

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***95. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138**

Whether amendment can be made in a complaint filed u/S 138 of N.I. Act? Held, Yes – Criminal Court has inherent power to allow amendment application for typographical error. (*State of M.P. v. Awadh Kishore Gupta, 2004 (2) JLJ 234,* relied on)

परक्राम्य लिखत अधिनियम, 1881 - धारा 138

क्या परक्राम्य लिखत अधिनियम की धारा 138 के अधीन प्रस्तुत परिवाद में संशोधन किया जा सकता है? अभिनिर्धारित, हाँ - दण्ड न्यायालय को लेखन संबंधी त्रुटियों के लिए संशोधन आवेदन स्वीकार करने की अन्तर्निहित शक्ति है। (***म.प्र. राज्य वि. अवध किशोर गुप्ता, 2004 (2) जे.एल.जे. 234,*** अवलंबित)

Shyama Patel (Smt) v. Mehmood Ali and another
Order dated 10.01.2018 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 5602 of 2017, reported in ILR (2018) MP 812

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***96. PREVENTION OF CORRUPTION ACT, 1988 – Section 13**
INDIAN PENAL CODE, 1860 – Section 409
CRIMINAL PROCEDURE CODE, 1973 – Section 300
CONSTITUTION OF INDIA – Article 20

Invalid sanction – First charge-sheet filed against accused for offence punishable under Section 13 (1)(c)(d)(e) read with Section 13 (2) of Prevention of Corruption Act and Section 409 IPC – Special Court discharged the accused on ground of invalid sanction of prosecution – Filing of new charge-sheet after obtaining valid prosecution sanction is not barred by Section 300 Cr.P.C and principle of double jeopardy will not apply – Further, once Special Court found that there is no valid sanction, it should have directed

prosecution to do needful – Also that, Special Court erred in refusing to take cognizance of case even after production of valid prosecution sanction obtained from competent authority.

भ्रष्टाचार निवारण अधिनियम, 1988 - धारा 13

भारतीय दण्ड संहिता, 1860 - धारा 409

दण्ड प्रक्रिया संहिता, 1973 - धारा 300

भारत का संविधान - अनुच्छेद 20

अविधिमान्य मंजूरी - अभियुक्त के विरूद्ध प्रथम अभियोग-पत्र भ्रष्टाचार निवारण अधिनियम की धारा 13 (1)(c)(d)(e) सहपठित धारा 13 (2) तथा धारा 409 भादंसं के तहत प्रस्तुत किया गया - विशेष न्यायालय ने अभियोजन की अविधिमान्य मंजूरी के आधार पर अभियुक्त को उन्मोचित कर दिया - विधिमान्य मंजूरी प्राप्त करने के पश्चात् नवीन अभियोग-पत्र प्रस्तुत करना धारा 300 दं.प्र.सं के तहत वर्जित नहीं है और दोहरे दण्ड का सिद्धांत लागू नहीं होगा - आगे कि, एक बार जब विशेष न्यायालय ने यह पाया कि विधिमान्य मंजूरी नहीं है, तब उसे अभियोजन को आवश्यक कार्यवाही करने हेतु निर्देश देने चाहिए थे - यह भी कि, विशेष न्यायालय ने सक्षम प्राधिकारी से प्राप्त वैध मंजूरी की प्रस्तुति के उपरांत भी संज्ञान लेना अस्वीकार कर त्रुटि की है।

State of Mizoram v. Dr. C. Sangnghina

Judgment dated 30.10.2018 passed by the Supreme Court in Criminal Appeal No. 1322 of 2018, reported in AIR 2018 SC 5342

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97. REGISTRATION ACT, 1908 – Sections 17, 49 and 50
CONTRACT ACT, 1872 – Section 16
MUSLIM LAW:

(i) Burden of proof – A registered document carries with it a presumption that it was validly executed – Burden of proving that the document is vitiated due to undue influence lies upon the party who is challenging the documents.

(ii) Undue influence; presumption as to – No presumption of undue influence can arise merely because the parties are related to each other or merely because the executant was old or of weak character.

(iii) Gift under Muslim Law – Conditions for making valid and complete oral gift discussed.

रजिस्ट्रीकरण अधिनियम, 1908 - धाराएं 17, 49 एवं 50

संविदा अधिनियम, 1872 - धारा 16

मुस्लिम विधि:

(i) सबूत का भार - पंजीकृत दस्तावेज अपने साथ यह उपधारणा वहन करता है कि वह वैध रूप से निष्पादित किया गया है - यह प्रमाणित करने का भार कि, दस्तावेज असम्यक असर के कारण दूषित है, उस पक्ष पर होता है जो उस दस्तावेज को चुनौती देता है।

(ii) असम्यक् असर के बारे में उपधारणा - मात्र इस आधार पर कि पक्षकार एक दूसरे से संबंधित हैं या मात्र इस आधार पर कि निष्पादक वृद्ध था या दुर्बल स्वभाव का था, असम्यक् असर की कोई उपधारणा उत्पन्न नहीं होती।

(iii) मुस्लिम विधि में दान - वैध एवं पूर्ण मौखिक दान करने की शर्तें विवेचित।

Jamila Begum (D) through LR's. v. Shami Mohd. (D) through LR's
Judgment dated 14.12.2018 passed by the Supreme Court in Civil Appeal No. 1007 of 2013, reported in AIR 2019 SC 72

Relevant extracts from the judgment:

(i) A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law. In ***Prem Singh and others v. Birbal and others, (2006) 5 SCC 353,*** it was held as under:-

> "27. There is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."

The above judgment in ***Prem Singh's case*** (supra) has been referred to in ***Vishwanath Bapurao Sabale v. Shalinibai Nagappa Sabale and others, (2009) 12 SCC 101***.

Contention of the respondent-plaintiff is that at the time of the execution of the sale deed, Wali Mohd. was mentally weak and therefore, he was not in a position to understand and that the sale deed was not executed out of his free will and volition. To substantiate their case, respondent No.1-plaintiff has examined Dr. Wasim (PW-5) who has stated that he has treated Wali Mohd. from the period 15.11.1970 to 25.12.1970 and produced the medical certificate-Ex.50 Kha. From the evidence of Dr. Wasim (PW-5) and from his medical certificate-Ex.50 Kha., respondent-plaintiff has thus tried to show that at the time of the execution of the sale deed, Wali Mohd. was not in such a position to apply his mind and understand the contents of the sale deed. As pointed out by the trial Court, Dr. Wasim was doing private practice from the year 1969 and that at the time of issuing medical certificate, he had experience of medical practice for only two years. Dr. Wasim has admitted that he was not knowing Wali Mohd. from before. By way of clarification from Dr. Wasim, it is brought in

evidence that Dr. Wasim did not prepare the medical certificate-Ex.50 Kha. after seeing the prescriptions written and maintained by him during illness of Wali Mohd.; but he prepared the same only on the basis of his memory. Dr. Wasim also clarified that about 10-15 days prior to the treatment of Wali Mohd., Dr. K.N. Srivastava and Dr. Sikka also treated Wali Mohd; but the other two doctors were not examined, though Dr. Sikka was stated to be in Kanpur.

The trial Court also referred to Exs.44 Kha. to 49 Kha. and Ex.51 Kha. filed by the respondent-plaintiff to show about the illness of Wali Mohd., all of which relate to the period from March 1971 to June 1971. The prescriptions relate to the period from March 1971 to June 1971. After referring to these documents, trial Court observed that the condition of Wali Mohd. started deteriorating after March, 1971. From the evidence of Dr. Wasim and the medical certificate -Ex.50 Kha. issued by him, it cannot be said that Wali Mohd. was not mentally fit at the time of execution of the sale deed dated 21.12.1970 and that the same was not validly executed.

On the contrary, the appellant-defendant has examined Advocate Ahmad (DW-3) who has prepared the sale deed and the scribe of sale deed dated 21.12.1970. At the time of writing the sale deed, Advocate Ahmad (DW-3) was having Bar experience of nine years. In his evidence, DW-3- Shri Ahmad has stated that on the instruction of Wali Mohd., he had prepared the sale deed and that sale deed was validly executed by Wali Mohd. out of his free will and consent. As pointed out by the trial Court, DW-3 - Advocate Ahmad was personally knowing Wali Mohd. and that being the scribe of the sale deed, Ex.75 Kha. contains the signature of DW-3 - Shri Ahmad, Advocate.

The trial Court upon consideration and weighing the evidence of Advocate Ahmad (DW-3) and Dr. Wasim (PW-5) held that

> ".....the evidence of Shri Ahmad, Advocate is comparatively more acceptable and believable."

Upon appreciation of oral evidence, when the trial Court has recorded the findings that the evidence of Advocate Ahmad (DW-3) is credible and acceptable, in our considered view, the first appellate Court and the High Court ought not to have interfered with the findings recorded by the trial Court; more so, when the sale deed dated 21.12.1970 was a registered document. The first appellate Court and the High Court were not right in holding that the sale deed Ex.75 Kha. (21.12.1970) was not validly executed.

In the suit, respondent-plaintiff has challenged the mortgage deed dated 21.11.1967 as well as sale deed dated 21.12.1970 executed by his father Wali Mohd on the ground that they were not executed by him out of his free will and volition. The burden of proving that the documents were vitiated due to undue influence is upon the respondent-plaintiff who is challenging the documents. By examination of Dr. Wasim (PW-5) and Ex.50 Kha., it cannot be said that the

burden cast upon respondent-plaintiff is said to have been discharged, so as to shift the burden to the appellant-defendant. From the evidence of Shami Mohd. (PW-1), it is seen that Wali Mohd. was in service in Power House till 1943 and he left his service in the year 1943. As discussed earlier, the sale deed was registered and Wali Mohd. has received part consideration that is Rs.8,000/- before the Sub-Registrar, Kanpur. Having worked in the Power House way back in the year 1943, Wali Mohd. must have been worldly wise and knowledgeable.

(ii) Merely because the parties are related to each other or merely because the executant was old or of weak character, no presumption of undue influence can arise. Court must scrutinise the pleadings to find out that such plea has been made out before examining whether undue influence was exercised or not.

While considering the aspect of plea of undue influence and *onus-probandi*, in ***Subhas Chandr Das Mushib v. Ganga Prasad Das Mushib and others, AIR 1967 SC 878,*** it was held as under:-

> "4. Under Section 16(1) of the Indian Contract Act, a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This shows that the Court trying a case of undue influence must consider two things to start with, namely, (1) are the relations between the donor and the donee such that the donee is in a position to dominate the will of the donor and (2) has the donee used that position to obtain an unfair advantage over the donor?
>
> 7. The three stages for consideration of a case of undue influence were expounded in the case of ***Raghunath Prasad v. Sarju Prasad and others, AIR 1924 PC 60***, in the following words:
>
> > "In the first place the relations between the parties to each other must be such that one is in a position to dominate the will of the other. Once that position is substantiated the second stage has been reached - namely, the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the *onus probandi*. If the transaction appears to be unconscionable, then the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other. Error is almost sure to arise if the

order of these propositions be changed. The unconscionableness of the bargain is not the first thing to be considered. The first thing to be considered is the relations of these parties. Were they such as to put one in a position to dominate the will of the other?"

(iii) Under the Mohammedan law, no doubt, making oral gift is permissible. The conditions for making valid oral gift under the Mohammedan law are:

1. There should be wish or intention on the part of the donor to gift;
2. Acceptance by the donee; and
3. Taking possession of the subject matter of the gift by the donee.

The essentials of a valid and complete gift under Mohammedan law have been succinctly laid down in ***Abdul Rahim and others v. Sk. Abdul Zabar and others, (2009) 6 SCC 160,*** as under:

"13. The conditions to make a valid and complete gift under the Mohammadan law are as under:

(a) The donor should be sane and major and must be the owner of the property which he is gifting.

(b) The thing gifted should be in existence at the time of hiba.

(c) If the thing gifted is divisible, it should be separated and made distinct.

(d) The thing gifted should be such property to benefit from, which is lawful under the Shariat.

(e) The thing gifted should not be accompanied by things not gifted i.e. should be free from things which have not been gifted.

(f) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor.

14. It is also well settled that if by reason of a valid gift the thing gifted has gone out of the donee's ownership, the same cannot be revoked. The donor may lawfully make a gift of a property in the possession of a lessee or a mortgagee. For effecting a valid gift, the delivery of constructive possession of the property to the donee would serve the purpose. Even a gift of a property in possession of trespasser is permissible in law provided the donor either obtains and gives possession of the property to the donee or does all that he can to put it within the power of the donee to obtain possession."

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98. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3 (1) (x)

(i) Insult or intimidation – Must be with an intention to humiliate the victim in a public place for being a member of SC/ST community.

(ii) Whether word "Adiwasin" is abusive enough to constitute offence u/S 3(1)(x) of the Act? Held, No – "Adiwasin" means a female Adiwasi or a female member of ST community beyond which no other meaning deserves to be ascribed to it.

अनुसूचित जाति तथा अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 3(1)(10)

(i) अनादर अथवा अभित्रास - पीड़ित को एससी/एसटी समुदाय का सदस्य होने से अपमानित करने के आशय से लोक स्थान पर होना चाहिए।

(ii) क्या शब्द ''आदिवासिन'' अधिनियम की धारा 3(1)(10) के अधीन अपराध गठित करने के लिए पर्याप्त अपमानजनक है? अभिनिर्धारित, नहीं - ''आदिवासिन'' का अर्थ है महिला आदिवासी या एसटी समुदाय की महिला सदस्य जिसके अतिरिक्त इस शब्द को अन्य कोई अर्थ देना उचित नहीं।

Monu @ Saurabh Kumar Chaturvedi v. State of M.P. and another

Order dated 25.04.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Cr. R. No. 588 of 2017, reported in ILR (2018) MP 1565

Relevant extracts from the order:

The offence punishable u/S 3(1)(x) of 1989 Act which relates to insult and intimidation extended by non-SC/ST against SC/ST arises only when allegation demonstrates intention to humiliate the member of SC and ST in a place within public view. Meaning thereby that if the insult/intimidation, by gesture or by words do not reflect that the same were made to humiliate the victim in his/her capacity as an SC/ST and only because that victim belongs to SC and ST community, the said offence u/S 3(1)(x) will not be made out.

It is true that this subtle difference between Section 3(1)(x) of 1989 Act and Section 294 and 506 relates to the element of intention as enumerated above but the said intention ought to be reflected from the allegation in the FIR/charge sheet to enable the Court of competent jurisdiction to take cognizance of the offence. If the allegations and the surrounding circumstances in the prosecution story do not reflect this intention then the offence u/S 3(1)(x) of 1989 Act would not be made out even on *prima facie* basis. It may not be out of place to mention here that the Act of 1989 has been made more stringent w.e.f. 26.01.2016 by introducing rampant changes *inter alia* in Section 3 of 1989 Act with the object of plugging the loopholes in the unamended act, including the

obligation on the prosecution to *prima facie* establish that the intention was to humiliate the victim just because the victim was a member of SC and ST community and was not directed against any other capacity which the victim assumed at the time of the incident.

However, in the case at hand the offence took place on 15.09.2014 which is prior to the amendment in the Act of 1989 and therefore, adjudication herein would be governed by the unamended provisions of 1989 Act.

The factual allegation is that on the fateful day of 15.09.2014 petitioner for making request to allow joining of his sister-in-law Smt. Vandana Chaturvedi as Aanganwadi Worker, approached the competent authority i.e. Project Officer, who happened to be the victim. It appears that petitioner was anxious and disturbed by the fact of authorities not allowing his sister-in-law to join as Aanganwadi Worker and this anxiety became aggravated when the Project Officer sought certain documents to verify the credentials of the sister-in-law of the petitioner. The petitioner got enraged and in the heat of the moment uttered abusive words against the Project Officer. It is thus clear that insult and intimidation were extended against the Project Officer and not against a member of SC and ST community to which the victim happened to belong. The anger of the petitioner was directed towards the project officer and not against a member of SC and ST community.

True it is that the petitioner uttered the word "Aadiwasin" but that by itself does not reflect any intention of insult to the victim just because she belongs to SC and ST community. It appears that petitioner knew that the victim was member of SC and ST community and therefore, in the fit of rage when he was abusing the Project Officer, he uttered the expression 'Aadiwasin'. Even otherwise the expression 'Aadiwasin' cannot be termed as an abusive word. Aadiwasin means a female Aadiwasi or a female member of ST community beyond which no other meaning deserves to be ascribed to the expression "Adiwasin".

This Court has no manner of doubt that the intention of the petitioner reflected from the allegations made and the surrounding circumstances, does not appear to make out an offence punishable u/S 3(1)(x) of 1989 Act even on *prima facie* basis. Thus, the charge framed against the petitioner so far as it relates to offence punishable u/S 3(1)(x) of the 1989 Act is untenable.

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***99. TRANSFER OF PROPERTY ACT, 1882 – Section 58 (c)**
REGISTRATION ACT, 1908 – Section 17
Redemption of mortgage; suit for – On basis of document which is registered sale deed – But conditions of mortgage or of conditional sale not mentioned in the sale deed – Although subsequently, agreement of mortgage executed after registration of sale-deed

converting transaction into that of a conditional sale or mortgage but it was not registered – Held, such document is not admissible in evidence and cannot be relied upon.

संपत्ति अंतरण अधिनियम, 1882 - धारा 58 (सी)

रजिस्ट्रीकरण अधिनियम, 1908 - धारा 17

बंधक के विमोचन के लिए दावा - ऐसे दस्तावेज के आधार पर जो पंजीकृत विक्रय विलेख है - पंरतु विक्रय विलेख में बंधक अथवा सशर्त विक्रय की शर्तें वर्णित नहीं - हालांकि बाद में, विक्रय विलेख के पंजीकरण के पश्चात बंधक का करार निष्पादित किया गया जिससे संव्यवहार को सशर्त विक्रय या बंधक में परिवर्तित कर दिया गया परंतु वह पंजीकृत नहीं था - अभिनिर्धारित, ऐसा दस्तावेज साक्ष्य में ग्राह्य नहीं है और निर्भरित नहीं किया जा सकता।

Rajendra Kumar v. Gomati Devi and another

Judgment dated 19.07.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in F.A. No. 238 of 2001, reported in 2019 (1) MPLJ 450

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***100. URBAN LAND (CEILING AND REGULATION) ACT, 1976 – Section 10(3)**

Third party purchaser, purchasing property after issuance of notification under Section 10(3) of the Act, has no locus standi to claim the right in land. (*State of Uttar Pradesh and others v. Adarsh Seva Sahkari Samiti Limited, (2016) 12 SCC 493* and *State of Uttar Pradesh v. Surendra Pratap and others, (2010) 12 SCC 497,* relied on)

शहरी भूमि (अधिकतम सीमा एवं विनियमन) अधिनियम, 1976 - धारा 10(3)

अधिनियम की धारा 10(3) के अधीन अधिसूचना जारी होने के बाद संपत्ति क्रय करने वाले व्यक्ति के पास उस भूमि पर दावा करने की कोई हैसियत नहीं है। (***उ.प्र. राज्य व अन्य विरूद्ध आदर्श सेवा सहकारी समिति लि., (2016) 12 SCC 493*** एवं ***उ.प्र. राज्य विरूद्ध सुरेन्द्र प्रताप व अन्य, (2010) 12 SCC 497,*** अवलंम्बित)

Ambrish and another v. State of Madhya Pradesh and another

Order dated 08.03.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in W.P. No. 9293 of 2010, reported in 2018 (4) MPLJ 52.

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PART – IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE HIGH COURT OF MADHYA PRADESH
(DESIGNATION OF SENIOR ADVOCATES) RULES, 2018

In exercise of the powers conferred by sub-section (1) of section 34 read with sub-section (2) of section 16 of the Advocates Act, 1961 (Act No. 25 of 1961), the High Court of Madhya Pradesh, hereby, makes the following Rules namely:-

1. **Short Title. –** These Rules shall be called the High Court of Madhya Pradesh (Designation of Senior Advocates) Rules, 2018.
2. **Commencement. –** These Rules shall come into force on the date of their publication in the Official Gazette.
3. All matters related to designation of Senior Advocate(s) in the High Court of Madhya Pradesh shall be dealt with by a Permanent Committee known as "Committee for Designation of Senior Advocates."
4. The Permanent Committee shall comprise, the Chief Justice of the High Court and two Senior-most Judges of the High Court nominated by the Chief Justice, Advocate General of the State and such four Members shall nominate the fifth Member from the Bar.
5. There shall be a Permanent Secretariat of the Permanent Committee which shall be constituted by the Chief Justice in consultation with the other Members of the Permanent Committee.
6. All applications including written proposal by the Hon'ble Judge(s) shall be submitted to the Secretariat.
7. An application or a recommendation shall be placed by the Secretary for consideration before Permanent Committee.
8. The Full Court may designate an advocate as Senior Advocate, if in its opinion, by virtue of his ability, standing at the bar, special knowledge, legal acumen, experience in law and high ethical standards; the said advocate deserves conferral of such distinction.
9. **Qualifications for being Designated a Senior Advocate. –**
   (1) An advocate shall be considered for being designated as a Senior Advocate only if –
      (a) he has actually practiced as an advocate for not less than 15 years and,
      (b) his gross income from the profession is not less than Rs.10 lacs per annum as shown in the previous 3 years Income Tax Returns:

Provided that the High Court may, in exceptional cases, relax any of the aforesaid qualifications and designate an advocate as senior advocate, having regard to his experience at bar, knowledge of law and performance in the Court.

10. Where the name of an advocate for designation as Senior Advocate is to be considered by the Permanent Committee constituted under Rule 4; the Secretary of the Secretariat constituted under Rule 5 shall obtain the following particulars in respect of such advocate:
    (1) Name.
    (2) Qualification.
    (3) Date of Birth.
    (4) Permanent address.
    (5) Address to which communications are to be sent.
    (6) Name of Bar Council and Date of enrollment as an advocate.
    (7) Number in the roll of advocates maintained by the State Bar Council.
    (8) Whether he is/was a member of any association of lawyers? If so, the details.
    (9) Number of years, name of place and Court(s) where practiced.
    (l0) Specialization in any field of law such as Constitutional Law, Criminal Law, Arbitration Law, Corporate Law, Family Law, Human Rights, Public Interest Litigation, International Law, Law relating to Women, Inter-state Water Disputes etc. If so, details.
    (11) Whether a junior to any lawyer(s) is present? If so, the details.
    (12) Whether any junior lawyer is practising with him? If so, names of such lawyers and the period.
    (13) Whether he is an assessee under the Income Tax Act in respect of professional income? If so, details of income assessed for the last three years accompanied by a copy of the Permanent Account Number Card.
    (14) Whether he is/was in the panel of the State or Central Government or whether holds any office under the State or Central Government?
    (15) (a) Reference to any important matter in which appeared.
        (b) Reported judgments in which the concerned Advocate(s) had appeared in last five years.
    (16) Whether he has written any book on law or made any contribution to a law publication or journal? If so, the details. .
    (17) Whether he attended or participated in any seminar/conference relating to law?
    (18) Whether he is/was connected with any faculty of law?

(19) Whether any application for designation as senior advocate had been made in the past to the High Court of Madhya Pradesh or any other Court? If so, when and with what result?

(20) Whether ordinarily practising within the jurisdiction of the High Court of Madhya Pradesh.

(21) Whether he has ever been personally involved, in any civil or criminal litigation or contempt proceedings or any disciplinary proceedings against him-by the Bar Council. If so the details thereof.

(22) Details of participation in pro-bono work.

(23) Other information/particulars, if any, including legal services and as Legal aid counsel.

11. The Secretary of the Secretariat shall publish the proposal of designation of particular Advocate in the official website of the High Court inviting the suggestions/views of other stakeholders in the proposed designation:

12. After collecting the information, the Secretary of the Secretariat shall compile the relevant data and information with regard to the reputation, conduct, integrity of the Advocate(s) concerned and all such other information as may be specifically directed by the Permanent Committee. The Secretariat shall put-up the case before the Permanent Committee for scrutiny.

13. The Permanent Committee shall examine each case in the light of the data provided by the Secretariat of the Permanent Committee; interview the concerned Advocate; and make its overall assessment on the basis of a point-based format indicated below:

S. No.	Matter	Points
1.	Number of Years of practice of the Applicant Advocate from the date of enrolment. (10 points for 10-20 Years of practice; 20 points for practice beyond 20 Years)	20 Points
2.	Judgments (Reported and Unreported) which indicate the legal formulations advanced by the concerned Advocate in the course of the proceedings of the case; pro-bono work done by the concerned Advocate; domain Expertise of the Applicant Advocate in various branches of law such as Constitutional Law, Criminal Law, Arbitration Law, Corporate Law, Family Law, Human Rights, Public Interest Litigation, International Law, Law relating to Women, Inter-state Water Disputes etc.	40 Points
3.	Publications by the Applicant Advocate.	15 Points
4.	Test of Personality & Suitability on the basis of Interview/ Interaction	25 Points

14. The list prepared by the Permanent Committee shall be placed before the Full Court for consideration.
15. Ordinarily, in the case of difference of opinions in respect of a Candidate, except when unavoidable, voting by secret ballot shall not be resorted to by the Full Court. In case of voting by secret ballot, decisions will be carried by a majority of the Judges who have chosen to exercise their preference/ choice.
16. On approval by the Full Court, the concerned advocate shall be designated as Senior Advocate by the High Court. On such conferral the Secretary shall notify the fact to the Secretary General, Supreme Court, the Bar Council of Madhya Pradesh, the Bar Council of India as also to all the District and Sessions Judges subordinate to the High Court.
17. **The name not to be reconsidered for next 2 years. –** If the name of an advocate has been considered and not approved by the Full Court, it shall not be reconsidered for next 2 years. After two years, it can be reviewed/ reconsidered, following the manner indicated above as if the proposal is being considered afresh.
18. The final decision of the Full Court will be communicated to the applicants individually.
19. In the event a Senior Advocate is found guilty of misconduct which according to the Full Court disentitles the Senior Advocate concerned to continue to be worthy of the designation, the Full Court may review its decision to designate the concerned person and recall the same.

    Provided that before reviewing the decision mentioned in Rule 18, the Permanent Committee shall issue a notice to the concerning advocate of not less than 30 days to show cause and after receiving the reply, if any, place it before Permanent Committee who shall examine it and after examination, with his opinion, place it before Full Court.
20. All questions relating to interpretation/application of these Guidelines, shall be referred to the Chief Justice, whose decision thereon shall be final.
21. **Restrictions on Senior Advocates. –** A senior advocate shall not-
    (1) file a vakalatnama or memo of appearance or act in any Court or Tribunal;
    (2) appear before a Court or Tribunal without an instructing advocate;
    (3) accept instructions to draw pleadings or affidavits, advise on evidence or do any drafting work of an analogous kind in any Court or Tribunal or undertake conveyancing work of any kind whatsoever;

    – but these prohibitions shall not extend to settling any such matter as aforesaid in consultation with an instructing advocate;

(4) accept directly from a party any brief or instructions to appear in any Court or Tribunal.

(5) be a standing counsel of any government, public sector undertaking, institution or local or corporate body and if he holds such a position, he shall resign or relinquish the same upon being designated a senior advocate: .

Provided that, tor the purpose of this sub-rule, holding of the office of the Advocate General, Additional Advocate General, Attorney General, Solicitor General or Additional Solicitor General shall not amount to be a standing counsel;

(6) shall not enter into direct professional correspondence with a litigant except for the purpose of giving opinion .

Explanation. – In this rule. –

(I) "Act in" means filing an appearance or any pleadings or applications in any Court, Tribunal or Authority in India, or any act (other pleading) required or authorized by law to be done by a party in such court or tribunal either in person or by his recognized agent or by an advocate or attorney on his behalf.

(II) "Tribunal" includes any authority or person legally authorized to take evidence and before whom advocates are by or under any law for the time being in force, entitled to practise:

(III) "Instructing Advocate" means an advocate other than a senior advocate, who has been instructed by party in the matter.

22. **Intimation of cancellation of Designation.-** On withdrawal of status of senior Advocate, the Secretary of the Secretariat shall notify the fact to the Secretary General, Supreme Court, the Secretary, Bar Council of Madhya Pradesh, the Secretary, Bar Council of India, the Secretaries of Bar Councils of other States in India and also all the District and Sessions Judges subject to jurisdiction of the High Court. The notification shall also be published in the official website of the High Court and a copy thereof shall be communicated to the Judges of the High Court of Madhya Pradesh.

23. **A Record of Designations to be Maintained.** A record of all such designations and withdrawals shall be maintained in the Secretariat constituted under Rule 5.

24. **Repeal.-**

(1) On coming into force of these rules, the rule framed by the High Court of Madhya Pradesh under Section 16(2) of the Advocates Act, 1961, Published in Madhya Pradesh Gazette, (Extraordinary) dated 11th April, 2012, p. 379-380 (1) shall stand repealed.

(2) Notwithstanding the fact that these Rules have come into force and repeal under sub-rule (1) has taken effect. –

(a) anything duly done or suffered; or

(b) any right, obligation or liability, accrued, imposed or incurred; or any proceedings taken or to be taken, in respect of such right, obligation or liability; – under the repealed Rules, before such enforcement, shall not be affected.

25. All pending applications for designation shall be returned to the applicants concerned for applying afresh in accordance with these Rules. All pending proposals/recommendations for designation shall also be likewise returned.

26. Nothing contained in these rules shall stand in the way of an Advocate who has been designated by the High Court of Madhya Pradesh as a Senior Advocate, from submitting an application to withdraw or recall his/her designation as a Senior Advocate. In the event of such an application addressed to the Secretary to the Secretariat being submitted, the same shall be placed before the Permanent Committee for appropriate action.

REGISTRAR GENERAL
High Court of Madhya Pradesh

"It is a sad plight in the trial Courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial Courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty. No sadistic pleasure, in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers, can be a persuading factor for granting such adjournments lavishly, that too in a casual manner."

K.T. Thomas, J. in ***State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667,*** para 9

THE PERSONAL LAWS (AMENDMENT) ACT, 2019

(NO. 6 OF 2019)

[21st February, 2019]

The following Act of Parliament received the assent of the President on the 21st February, 2019, and is hereby published for general information:—

An Act further to amend the Divorce Act, 1869, the Dissolution of Muslim Marriages Act, 1939, the Special Marriage Act, 1954, the Hindu Marriage Act, 1955 and the Hindu Adoptions and Maintenance Act, 1956.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. ***Short title and commencement.*** **–** (1) This Act may be called the Personal Laws (Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II

AMENDMENT TO THE DIVORCE ACT, 1869

2. ***Amendment of section 10 of Act No. 4 of 1869.*** **–** In the Divorce Act, 1869, in section 10, in sub-section (1), clause (iv) shall be omitted.

CHAPTER III

AMENDMENT TO THE DISSOLUTION OF MUSLIM MARRIAGES ACT, 1939

3. ***Amendment of section 2 of Act No. 8 of 1954.*** **–** In the Dissolution of Muslim Marriages Act, 1939, in section 2, in ground (vi), the words "leprosy or" shall be omitted.

CHAPTER IV

AMENDMENT TO THE SPECIAL MARRIAGE ACT, 1954

4. ***Amendment of section 27 of Act No. 43 of 1954.*** **–** In the Special Marriage Act, 1954, in section 27, in sub-section (1), clause (g) shall be omitted.

CHAPTER V

AMENDMENT TO THE HINDU MARRIAGE ACT, 1955

5. ***Amendment of section 13 of Act No. 25 of 1955.*** **–** In the Hindu Marriage Act, 1955, in section 13, in sub-section (1), clause (iv) shall be omitted.

CHAPTER VI

AMENDMENT TO THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

6. ***Amendment of section 18 of Act No. 78 of 1956.*** **–** In the Hindu Adoptions and Maintenance Act, 1956 in section 18, in sub-section (2), clause (c) shall be omitted.

DR. G. NARAYANA RAJU
Secretary to the Govt. of India.

> ***"Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice."***
>
> **K. Ramaswamy, J.** in ***State of W.B. v. Atul Krishna Shaw, 1991 Supp (1) SCC 414, para 7***

> ***"It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to subvert the legal process. No citizen should go away with the feeling that he could not get justice from the Court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law."***
>
> **P.N. Bhagwati, J.** in ***Sunil Kumal Pal v. Phota Sk., (1984) 4 SCC 533,*** para 9


मध्यप्रदेश उच्च न्यायालय, जबलपुर

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