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HIGH COURT OF MADHYA PRADESH, JABALPUR

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FROM EDITOR'S DESK

Sanjeev Kalgaonkar
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At the very outset, I extend warm greetings for a very Happy and Prosperous New Year.

The Amendment of Pleadings has multiple aspects. In order to acquaint the readers with the law dealing with various aspects of amendment, an article on Amendment is being published. The German philosopher **Friedrich Nietzsche** said :

> ***"The snake which cannot cast its skin has to die. As well the minds which are prevented from changing their opinions; they cease to be mind."***

The change in society leads to concomitant change in Law. This issue comprises recent trends in law laid down by the judgments of the Apex Court as well as the High Courts.

As repeatedly held in cases of ***R.R. Chari v. State of Uttar Pradesh, AIR 1951 SC 207, Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986, Devarapalli Lakshminarayana v. V. Narayana Reddy, AIR 1976 SC 1672, Jamuna Singh and others v. Bhadai Sah, AIR 1964 SC 1541 and Tula Ram & ors v. Kishore Singh, AIR 1977 SC 2401,*** the dictum of law has now become stare-decisis that ordering investigation u/s 156 (3) of Cr.P.C. does not amount to taking of cognizance of the offences.

The Constitutional Bench of the Supreme Court in the case of ***A.R. Antulay v. R.S. Nayak, AIR 1984 SC 684*** observed that it is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. It was held that the Special Judge can entertain private complaint under Prevention of Corruption Act, 1947. Same view was reiterated in the case of ***Dr. Subramanian Swamy v. Dr. Manmohan Singh, (2012) 3 SCC 64*** while dealing with an offence under the Prevention of Corruption Act, 1988.

In case of ***Anil Kumar & ors v. M.K. Aiyappa & anr, (2013) 10 SCC 705***, two Judge Bench of Supreme Court held that once it is noticed that there is no previous sanction, the Magistrate cannot order investigation against a public servant while invoking powers u/s 156 Cr.P.C. Recently, in the case of ***L. Narayan Swamy v. State of Karnataka, AIR 2016 SC 4125***, the Supreme Court approving the view laid down in ***Anil Kumar (supra)*** held that an order directing further investigation u/s 156(3) of Cr.P.C. cannot be passed in absence of valid sanction.

The impact of these two judgments is far reaching. The victim/complainant before approaching the Court must apply for sanction u/s 19 of P.C. Act, 1988. Only after grant of sanction from appropriate authority, he may approach the Court and request to invoke jurisdiction u/s 156 (3) of Cr.P.C. The other option available to such a complainant/victim is to get FIR registered with Special Police Establishment i.e. Lokayukta or C.B.I. or Economic Offences Wing. These organizations may investigate into the allegation of corruption without sanction envisaged u/s 19 of the Prevention of Corruption Act. After investigation and before filing of final report, these Special Police Establishments shall apply for sanction from appropriate authority but a Special Court in exercise of its power u/s 156 (3) of Cr.P.C. cannot direct registration of FIR and investigation into allegation of corruption without prior sanction. Thus, the doors of Court are almost shut to the complainant approaching ***directly*** to the Court to seek investigation of his grievance against corruption without prior sanction.

However, in the case of ***L. Narayan Swamy*** (supra), it has been held by the Supreme Court that where the public servant had abused the office which he held in the check period but had ceased to hold “that office” or was holding a different office on transfer or promotion or otherwise, then no sanction for prosecution u/s 19 of P.C. Act is required. The Bench further clarified that where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity for the sanction.

Apart this, issue covers various recent progressive judgments of the Apex Court and High Court of Madhya Pradesh.

Considering the validity of sanction under Section 19 of the Prevention of Corruption Act, 1988, in case of ***Vivek Batra*** it has been held that different opinions of different authorities in administrative notings, before competent authority took decision, cannot be a ground to invalidate the sanction.

In case of ***A. Ayyasamy***, the Apex Court laid down that mere allegation of fraud simplicitor is no ground to nullify the effect of arbitration agreement. Civil Court has to refer the matter to arbitration as per clause in the agreement.

The Supreme Court in case of ***Supreme Court Advocates-on-Record Association*** re-affirming the the ***Pinochet Principle*** explained the circumstances wherein recusal of a Judge is warranted. It was specifically laid down that a Judge is duty bound to hear every matter without fear or favour and must never rescue himself on mere asking of a litigating party.

In case of ***Youth Bar Association of India***, the Apex Court issued certain directions with regard to entitlement of accused to get certified copy of FIR. The Apex Court mandates that copy of FIR should also be ported/uploaded on the website within 24 hours. It is a step towards bringing in transparency at initial stage of criminal investigation. This direction needs to be complied in true spirit.

In case of ***Suresh Chandra Sharma***, Madhya Pradesh High Court has laid down that 'dowry' includes an illegal demand for consideration of marriage even without entering into an agreement after the performance of engagement and before the solemnization of marriage. Prospective bride groom and his relatives cannot escape criminal liability of sections 3 and 4 of Dowry Prohibition Act on the pretext that marriage was not solemnized and only negotiations were going on.

In case of ***Narendra v. K. Meena***, the Supreme Court laid down that persistent efforts of wife to constrain husband to be separated from family constitute cruelty. Further, threat to commit suicide by wife also amounts to mental cruelty entitling the husband for decree of divorce.

In case of ***S.P.S. Rathore***, the Apex Court held that mere knowledge that modesty of woman is likely to be outraged is sufficient to constitute an offence of outraging the modesty of a woman.

In ***Hiral P. Harsora***, the Apex Court examined Section 2 (q) of Protection of Women from Domestic Violence Act, 2005 and struck down the provision and its proviso.

In case of ***Prakash Nagardas Dubal-Shaha***, it was held that second marriage by the husband, despite unsuccessful divorce proceedings, constitutes domestic violence.

I sincerely hope that the content of this issue will enlighten and guide the readers in discharge of their duties. Keep blessing our pursuit for Judicial Excellence.

Wish you a very spirited Happy Republic Day in advance.

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Nothing changes until YOU change.
Everything changes once YOU change!
For better or worse depends on YOU only.

Never blame anyone in your Life.
Good people give you Happiness.
Bad People give you Experience.
Worst people give you a Lesson
&
Best people give you memories.

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

WORKSHOP ON – NEGOTIABLE INSTRUMENT ACT, 1881
(15.10.2016)

WORKSHOP ON – KEY ISSUES AND CHALLENGES UNDER THE SCHEDULED CASTES & SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989
(03.12.2016 & 04.12.2016)

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

WORKSHOP ON – KEY ISSUES OF RECENT LAWS RELATING TO CRIME AGAINST WOMEN & CHILDREN INCLUDING PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (10.12.2016)

REGIONAL WORKSHOP ON – FAMILY LAWS (12.12.2016)

PART – I

AMENDMENT: A BIRD'S EYE VIEW

– Kapil Mehta
OSD

PLEADING – OBJECT & SCOPE:

Plaintiff's pleading is his plaint. A defendant's pleading is his written statement. In ***Bachhaj Nahar v. Nilima Mandal, AIR 2009 SC 1103,*** the Apex Court observed that:

> "The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take."

Under the scheme of Code of Civil Procedure, 1908, different kinds of permissible amendments are as under:-

(i) **Section 152 –** Amendment of clerical and arithmetical mistakes in judgments, decrees and orders

(ii) **Section 153 –** Amendment of proceeding in a suit by the court for the purpose of determining the real issue between the parties

(iii) **Order I Rule 10 –** striking out or adding parties

(iv) **Order VI Rule 16 –** Compulsory amendment in opponent's pleading and

(v) **Order VI Rule 17 –** Voluntary amendment in own pleading

The major challenge being faced in the administration of justice is the backlog and resulting delay in civil cases at every level, from the lowest courts to the apex court and one of the provisions which contribute to it is Order VI Rule 17 of the Code of Civil Procedure which deals with amendment of pleading. An amendment may be by way of altering, modifying or deleting existing pleadings.

Order VI Rule 17 of the Code provides for amendment in pleadings as under:

Amendment of Pleadings.- the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

> Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

It is a settled law that amendments in pleading under Order VI Rule 17 CPC have to be allowed liberally and all amendments are to be allowed which are necessary for determining the real issues in controversy between the parties and to avoid multiplicity of suits. The Court should also consider that such amendment will not cause prejudice to the opposite party and nature of the suit or defense will not change.

It is true that courts have very wide discretion in the matter for amendment of pleading. But wider the discretion, the greater is the possibility of its abuse. In ***Ganga Bai v. Vijay Kumar and others, AIR 1974 SC 1126,*** the Apex Court has held that the power to allow and amendment is undoubtedly wide and at any stage may be exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far reaching discretionary power is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court. Whether in the following cases, leave to amend is to be refused by the court;

(a) When amendment is not necessary for the purpose of determining the real question in controversy between the parties.
(b) If it introduces totally different, new and inconsistent case or changes the fundamental characters of suit or defence.
(c) Where the effect of the previous amendment is to take away from the other side a legal right accrued in his favour
(d) Where application for amendment is not bonafide i.e. amendment is not proposed in good faith

In ***Shree 1008 Parshwanath Digambar Jain, Terapanthi Panchayati Dharamshala, Gwalior v. Darshanlal Hablani (Dr.), 2009 (1) MPLJ 204,*** the High Court of Madhya Pradesh laid down some binding principles as under:

(i) amendments are to be allowed liberally
(ii) while exercising discretion, the Court must think of avoiding multiplicity of proceedings
(iii) amendments which do not totally alter the character of an action, should be allowed.

The High Court further held that care should be taken to see that injustice and prejudice of an irremediable character are not caused to the opposite party unless a party takes prompt steps after commencement of trial and unless establishes that inspite of due diligence, it could not have raised the matter earlier, the application for amendment cannot be allowed.

Order VI Rule 17 of the Code has been amended substantially vide Civil Procedure Code (Amendment) Act, 2002 (22 of 2002) to curb undue and unwarranted amendment applications so that expeditious trial of civil cases may be ensured.

The amended Order VI Rule 7 consists of 2 parts. The first is pre-trial amendment whereas the second part is post-trial amendment. The proviso provides for a rider to the power to leave the amendment that no application for amendment shall be allowed after commencement of trial, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial.

SCOPE:

In ***State Bank of Hyderabad v. Town Municipal Council, (2007) 1 SCC 765,*** the Supreme Court has held that provision of Order VI Rule 17 as amended by the Amending Act, 2002 are not applicable to cases filed before commencement of the Amending Act, 2002.

According to proviso appended to Order VI Rule 17, no amendment can be permitted after the commencement of trial unless the party concerned convince the Court that despite due diligence, he could not have raised the matter earlier.

COMMENCEMENT OF TRIAL:

First question that arises in the mind is when trial commences? The date on which the issues are framed is the date of first hearing and trial commences when the issues are framed and case is set down for recording evidence [See: ***Ajendraprasadji N. Pande & anr. v. Swami Keshavprakeshdasji N. & ors., AIR 2007 SC 806*** and ***Smt. Shakuntala Bai v. Rajendra Kumar and others, 2014 (5) MPHT 417***]

Relying on the definition of the term “commencement of trial” in ***Baldev Singh and others v. Manohar Singh*** and ***another, AIR 2006 SC 2832 and Sushil Kumar Jain v. Manoj Kumar Jain and another, AIR 2009 SC 2544,*** the High Court of Sikkim in ***Shri Dibya Prasad Pradhan and another v. The State of Sikkim, Writ Petition (C) No. 41 of 2009*** (Judgment dated 12.08.2010, “commencement of trial” as used in proviso to Order VI Rule 17 CPC must be understood in the limited sense as meaning (i) the final hearing of the suit; (ii) examination of witnesses; (iii) filing of documents, and (iv) addressing of arguments.

In a series of pronouncements in ***Chander Kanta Bansal v. Rajinder Singh Anand, (2008) 5 SCC 117, Krishnarao Kavdikar*** (dead) through his LRs. ***Ullas Kavdikar v. Smt Sadhna Khanvalkar and another, 2008 (2) MPHT 529, J.P. Rewa***

Cement v. Smt. Krishna & others, ILR (2012) MP 98 SN 98, Sonu Dubey v. Virendra Kumar Rai and others, 2014 (2) MPLJ 433, Manoj Jain v. Smt. Suman Goyal, 2014 RN 410 and ***Pratap and others v. Ganeshram and others, 2014 (2) MPLJ 464,*** the Apex Court and the High Court of Madhya Pradesh have categorically held that it is the incumbent upon whom the party seeking amendment at post trial stage to explain the aspect of due diligence and Court must be satisfied that the application for amendment would not be made at an earlier point of time despite due diligence.

In ***Vidya Bai v. Padmalatha, AIR 2009 SC 1433,*** the Apex Court has referred and reiterated to the law laid down in an earlier decision of ***Rajesh Kumar Aggarwal and others v. K.K. Mody and others, (2006) 4 SCC 385*** wherein it has held that the Court should allow amendments that would be necessary to determine the real question of the controversy between parties but the same indisputably would be subject to the condition that no prejudice is caused to the other side.

However, in ***Vidya Bai*** (supra), the Supreme Court has further held that proviso appended to Order VI Rule 17 of the Code restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. The Court's jurisdiction in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, Court will have no jurisdiction at all to allow the amendment of the plaint.

PROVISO VIS-À-VIS NECESSARY AMENDMENTS:

The Madhya Pradesh High Court in ***Mangilal and others v. Dambarlal and another, 2008 (I) MPWN 13*** has laid down that no doubt it is true that after amendment in the Code of Civil Procedure in the year 2002, the amendments in the pleading should be made at the earliest stage, but there is no embargo to amend the pleadings even if the suit has crossed the stage as contemplated under the proviso to Order VI Rule 17 of the Code. Even after amendment, Order VI Rule 17 is directory and not mandatory. In this case, reliance has been placed on ***Rajesh v. K.K. Mody, (2006) 4 SCC 385***.

If we examine the statutory rules of interpretation, it appears that unless clearly indicated, a proviso would not take away substantive rights given by the section or the sub-section. A section should not be so construed as to defeat the right to possession of property in appropriate cases unless the intention of the Legislature is manifest. [See: ***Madhu Gopal v. VI Additional District Judge and others, AIR 1989 SC 155***]

In ***Shri Dibya Prasad Pradhan*** (supra), after considering the law laid down in ***Vidya Bai*** (supra), ***Baldev Singh*** (supra) and ***Sushil Kumar Jain*** (supra) the High Court of Sikkim has held that the Court's jurisdiction to allow amendment to the pleadings is wide; and the same has to be exercised liberally but not with a hypertechnical approach. The procedure contemplated in this regard should only give way to render substantial justice; but should not defeat the same. Commencement of trial has been repeatedly interpreted by the Apex Court only

from the date of the filing of an affidavit of list of witnesses and recording of evidence; but not merely from the date of framing of issues.

In ***Sushil Kumar Jain*** (supra), the Apex Court relying on ***Baldev Singh*** (supra) interpreted powers of Court conferred under Order VI Rule 17 to amend the pleadings particularly with reference to the language "after the trial has commenced" implied in proviso to Order VI Rule 17 of CPC and has held as follows:

> "14. Similar view has also been expressed in ***Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami & Ors. AIR 2007 SC 1663.*** It is equally well settled that in the case of an amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed.
>
> 14. Before parting with this judgment, a short submission as advanced by the learned counsel for the respondents may be dealt with. Referring to the proviso to Order 6 Rule 17 of the CPC, the learned counsel for the respondents argued that the proviso clearly bars that any application for amendment either of plaint or of written statement can be allowed after trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. Therefore, the learned counsel for the respondents submitted that in view of the proviso to Order 6 Rule 17 of the CPC, the High Court as well as the Rent Controller had acted within their jurisdiction in rejecting the application for amendment of the written statement on the ground that the trial has already commenced and, therefore, no interference can be made in respect of the same.
>
> 15. We are unable to agree with this submission of the learned counsel for the respondents. In this case, in our view, the trial has not yet commenced. In para 17, of ***Baldev Singh*** (supra), this Court observed :-
>
> > "It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil

> Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinafter, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings."

In a 40 year old suit in which earlier claim was made solely on the basis of will and not on the basis of inheritance, an application for amendment for claiming title on the basis of succession was filed. But the High Court rejected the same on the ground of delay and change in the nature of suit. Allowing the amendment application, the Apex Court held that rules of procedure are intended to be handmaid to the administration of justice and party cannot be refused just relief merely on the ground of mistake, negligence, inadvertence or infraction of rules of procedure. [See: ***Ramkali Devi (Mahila) and others v. Nandram (D) through LRs. and others, 2015 (2) JLJ 326 (SC)***]

After relying on the pronouncement of the Apex Court in ***Rukhmabai v. Laxminarayan, AIR 1960 SC 335*** in which it was held that it is a well settled rule of practice not to dismiss suit automatically in the light of proviso to section 37 of the Specific Relief Act, 1963 but to allow plaintiff to make necessary amendments if he seeks to do so, the Madhya Pradesh High Court in ***Kalyan Singh v. Vakilsingh and others, AIR 1990 MP 295*** summed up the legal position that emerged from the above said authority as under:

(i) Further relief than a mere declaration referred to in the proviso to Section 30 of the Specific Relief Act, 1963 contemplates the entitlement of the plaintiff as obtaining on the date of the suit.

(ii) Entitlement of the plaintiff enabling seeking further relief based on an event occurring during the pendency of the suit would not render the suit non-maintainable.

(iii) It is the choice of the plaintiff to rest content by a mere decree for declaration in that suit and then to sue for further relief by bringing an independent suit subject to Law of Limitation or to pray for further relief by making an amendment in the plaint in that suit itself.

(iv) Bar enacted by the proviso does not automatically entail dismissal of the suit but the plaintiff must be afforded an opportunity of amending the plaint if so desired.

(v) Further relief cannot be granted to the plaintiff without the same having been specifically asked for.

In ***Sampath Kumar v. Ayyakannu and another, 2003 (I) MPJR 91 (SC) = 2002 Supp (2) SCR 397,*** the Supreme Court has held that amendment seeking appropriate relief may be allowed to be added later.

PROVISIONS AS TO AMENDMENT UNDER SPECIFIC RELIEF ACT, 1963

Proviso to sub-section (5) of section 21 and proviso appended to sub-section (2) of section 22 of the Specific Relief Act, 1963 mandates that where the plaintiff has not claimed any compensation or relief as to possession or partition and possession, any other relief to which plaintiff may be titled including refund of earnest money or deposit paid or made by him, Court shall at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief. [See: ***Deewan Singh vs Ramniwas, 2015 (4) MPJR 172*** in which it has been held that section 22 of the Specific Relief Act, 1963 will have overriding effect over proviso to Order VI Rule 17 of CPC and although proviso to Order VI Rule 17 of the Code has been inserted in the year 2002, yet there exist a special provision under section 22 of the Act to allow amendment at any stage. It was further held that proviso to Order VI Rule 17 of the Code cannot be an impediment in seeking amendment by the plaintiff even after commencement of trial and proviso to Order VI Rule 17 must give way to amendment sought in proceedings under section 22 of the Specific Relief Act.]

DELAY:

Here it is also pertinent to mention that it is a settled law that delay is not a ground to refuse the prayer for amendment [See: ***Sampath Kumar*** (supra), ***Kamta Prasad v. Sugriv Prasad and others, 2004 (1) MPJR 149 = 2004 (1) MPHT 285 and Usha Balashaheb Swami & others v. Kiran Appaso Swami & others, (2007) 5 SCC 602***]

COUNTER CLAIM AT LATER STAGE:

In ***Ali Hussain (D) by LRs v. Shabbir Hussain and others, 2014 (3) MPHT 423***, the Madhya Pradesh High Court held that it is impermissible to entertain counter claim at fag end of the trial and at the stage of conclusion of defence evidence.

Similarly, in ***Gayathri Women's Welfare Association v. Gowramma and another, AIR 2011 SC 785***, the Apex Court has held that an amendment of written statement at appellate stage seeking to incorporate relief of possession by way of counter claim cannot be allowed.

In ***Sushila Devi v. Khalil Ahmed, 2011 (3) MPHT 387***, the Madhya Pradesh High Court in this regard has held that if the consequence of permitting a counter claim would be for prolonging the trial and complicating the smooth flow of proceedings or causing delay in the progress of the suit, discretion in favour of permitting belated counter claim should not be exercised.

SUBSEQUENT EVENT:

Any proposed amendment if relates to any subsequent event i.e. that has happened after the commencement of trial must also be allowed at any stage as

obviously the party had no opportunity to raise such a plea earlier before commencement of trial.

In view of principles underlined in sub-section (5) of section 21 and proviso appended to sub-section (2) of section 22 of the Specific Relief Act, 1963 and law laid down by the Supreme Court in ***Rajesh v. K.K. Mody, (2006) 4 SCC 385, Ramkali Devi (Mahila) and others v. Nandram (D) through LRs. and others, 2015 (2) JLJ 326 (SC), Sampath Kumar (supra), Baldev Singh (supra) and Sushil Kumar Jain (supra)*** and by the M.P. High Court in ***Mangilal and others v. Dambarlal and another, 2008 (I) MPWN 13*** as also by the Sikkim High Court in ***Shri Dibya Prasad Pradhan and another v. The State of Sikkim, Writ Petition (C) No. 41 of 2009*** (Sikkim High Court), the position of law as embodied in Order VI Rule 17 CPC emerges that all amendments which are necessary for the just decision of the case must be allowed at any point of time i.e. irrespective of the stage of the case subject to such condition as may appear to be just to the court.

DOCTRINE OF RELATION BACK:

According to Black's Law Dictionary it means "an act done at a later time is, under certain circumstances treated as though it occurred at an earlier time". When it relates to amendment, it means that ordinarily an amendment made to a pleading will relate back to the date when the original pleading was filed. It will be deemed by applying the doctrine that the amendment in the plaint was there on the date of institution of the suit.

The doctrine of relation back in relation to the amended pleading has been explained by the High Court of Madhya Pradesh in ***Kanhaiyalal Vishwambherdayal Agrawal v. Muktilal Rameshwardas Naredi, AIR 2007 MP 1 (DB) = 2006 (3) MPHT 552 (DB)*** wherein it has held that amendments in plaint relate back to the date of filing of suit. In view of the doctrine of relation back but with the specific statutory provision of section 3 (2) (b) of the Limitation Act, 1963 provides that counter claim shall be deemed to have been instituted on the date on which it is made in Court, the doctrine of relation back does not get attracted. In ***Muni Lal v. The Oriental Fire& General Insurance Company Ltd. and another, AIR 1996 SC 642*** it has been held that a person cannot be permitted to amend the plaint if relief and plea sought to be introduced by way of amendment has become barred by limitation during the pendency of the proceedings.

In respect of applicability of doctrine of relation back in ***L.C. Hanumanthapa (since dead) represented by LRs v. H.B. Shivakumar, AIR 2015 SC 3364*** in which defendant has denied the title of plaintiff first time in the written statement on 16.05.1990 and the case was remanded back to the Trial Court on 01.04.2002 and amendment application filed by the plaintiff for declaration of his title was allowed by the Court subject to plea of limitation, the Supreme Court has held that the doctrine of relation back would not apply to the facts of the case in hand for the reason that Court which allowed the amendment expressly allowed it to the plea of limitation indicating thereby that there are no specialor extraordinary circumstances in the present case to warrant the doctrine of

relation back so that a legal right that had accrued in favour of the defendant should be taken away.

Similarly, in ***Vasant Balu Patil & Ors. v. Mohan Hirachand Shah & Ors., 2015 AIR SCW 6756,*** the Apex Court observed that the amendment of plaint to incorporate the relief of declaration of title has necessarily to relate back to the date of filing of the suit. Once the said amendments were allowed and were not challenged by the defendants, the issue with regard to limitation has to be decided in favour of the plaintiffs.

In ***Sampath Kumar*** (supra), it was held that an amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of the amendment of pleading is not one of universal application and in appropriate cases, the Court is competent while permitting an amendment to direct that the amendment shall not relate back to the date of the suit and to the extent, permitted by it, shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed.

AMENDMENT AS TO TIME BARRED RELIEF:

As a general rule, amendment barred by limitation on the date of application should not be allowed. In case of amendment of plaint seeking to incorporate time barred claim or relief, normally Court, as a rule, should decline to allow such amendment but it does not affect the power and discretion of the Court in allowing such amendment, keeping in view the bonafides on the part of plaintiff and reasonable explanation of delay. [See: ***T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board, (2004) 3 SCC 392, Pankaja and another v. Yellappa (Dead) by LRs. and others, (2004) 6 SCC 415, Smt. Sita Devi v. Mahendra Kumar and others,*** Judgment dated 24.02.2006 passed by the High Court of Madhya Pradesh (Jabalpur Main Seat) in Writ Petition No. 1593 of 2005, ***Baldev Singh and others v. Manohar Singh and another, (2006) 6 SCC 498 and Shiv Gopal Sah alias Shiv Gopal Sahu v. Sita Ram Saraugi & Ors., AIR 2007 SC 1478***]

In an application for execution of decree passed in a suit for specific performance of agreement to sale and possession of property, amendment application praying for delivery of possession after 12 years from the date of affirmation of decree was filed which was not prayed for earlier. The Madhya Pradesh High Court held that decree for possession is already passed. Therefore, even if prayer for possession is not specifically made, still the relief is implicit and the Court has jurisdiction to deliver the possession even without praying for it. It was further held that the amendment application cannot be said to be barred by limitation because until and unless the sale deed is executed, the decree holder does not get right to enter into possession. [See: ***Sitaram Pal v. Ram Prasad and ors., in 2010 (2) MPLJ 191 (DB)***]

WITHDRAWAL OF ADMISSION:

A party cannot withdraw admission once made by seeking amendment. However, it can be explained or rider or proviso may be added to the admission keeping the admission intact.

Once written statement contains an admission in favour of the plaintiff by amendment, such an admission of the defendant cannot be withdrawn and if allowed, it would amount to totally displacing the case of the plaintiff causing irretrievable prejudice to him [See: ***Dilip Bharti v. Smt. Meerabai, ILR (2011) M.P. 406 (DB), Hiralal v. Kalyanmal, (1998) 1 SCC 278, Usha Balashaheb Swami (supra) and Mahendra Gupta v. Mohd. Yunus, ILR (2014) MP 2284***]

The Supreme Court in the case of ***Gautam Sarup v. Leela Jetly and others, 2008 (4) MPLJ (SC) 113 = (2008) 7 SCC 85*** held that categorical admission cannot be resiled from but in a given case, may be allowed to be explained or clarified. It was further observed that even vague or evasive denial may be treated to be an admission under Order 8 Rule 5 CPC [Also see: ***Sumesh Singh v. Phoolan Devi and others, AIR 2009 SC 2831*** in which it was also held that mere simple denial of plaintiff's averments in written statement cannot be equated with admission of pleading and amendment of written statement seeking totally contrary relief of decreeing plaintiff's suit is liable to be allowed.]

AMENDMENT SEEKING TO INTRODUCE ENTIRELY NEW CASE OR ALTERING BASIC STRUCTURE AND ALTERNATIVE INCONSISTENT PLEADINGS:

In this regard if we observe the trend in existing law, it appears that somehow distinction is wrong between amendments sought to be introduced in plaint by the plaintiff and in written statement by the defendant. It is a settled law that plaintiff cannot base his case on two entirely different plea while defendant can do so and it is possible for the defendant to defend himself even on two inconsistent parallel pleas. [See: ***Usha Balashaheb Swami & Ors. v. Kiran Appaso Swami & Ors., AIR 2007 SC 1663***]

In ***Arvind Kumar Nitin Kumar Memorial Trust v. Nimad Vanita Wishwa Khandwa, 2004 (3) MPJR 176*** it has been held that alternative or inconsistent plea if sought to be added, Court can refuse such prayer if it causes serious prejudice to the other side.

In ***Usha Balashaheb Swami*** (supra), the Apex Court has observed that the Court should be liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bonafide one. The Court also took note of the observation of the Privy Council in the case of ***Ma Shwe Mya v. Maung Mo Hnaung, AIR 1922 PC 249*** and observed as under:

> "All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and

be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

It was further held by the Apex Court:

"It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable."

The Apex Court further observed:

"In the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case."

In case of ***Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (dead), 1995 Supp (3) SCC 179,*** the defendant had initially taken up the stand that he was a joint tenant alongwith others. Subsequently, he submitted that he was a licensee for monetary circumstances who was deemed to be a tenant as per provisions of section 15 (a) of Bombay Rents, Hotel & Lodging House, Rates Control Act, 1947. The Apex Court held that the defendant could have validly taken such an inconsistent defence and also observed :

"….. the Courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order VI Rule 17, Civil Procedure Code by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."

[Also see: ***Hansa Devi Sahu v. Bachachalal Jaisinghani and another, 2002 (1) MPLJ 122***]

In ***Dilip Bharti*** (supra), the defendant filed an application seeking replacement of entire written statement on the ground that the same was filed by his counsel without his knowledge and pleadings are contrary to fact. The Division Bench of the High Court held that in the absence of any allegation of fraud being committed on him, and since each page of written statement bears signature of defendant, he cannot withdraw admission which he had tendered in written statement by substituting such written statement with a fresh one.

In ***Suresh Gupta v. Manoj Dubey, 2014 (IV) MPJR SN 28,*** prayer was made for amendment contrary to the basic pleading made after seeking several adjournments with an aim to procrastinate the trial, the Madhya Pradesh High Court held that such amendment is impermissible.

In ***Bharat Karsondas Thakkar v. M/s Kiran Construction Co. & Ors., AIR 2008 SC 2134,*** suit for specific performance of the contract was sought to be converted into a suit for declaration and the Supreme Court held that if the proposed amendment changes the nature of the suit, the same cannot be allowed.

[Also see: ***Moujilal v. Mallu @ Mukesh and others, 2015 (4) MPLJ 170*** in which application seeking amendment in relief clause was held to be impermissible as it would tantamount to change in the nature of the suit].

In ***Alkapuri Co-operative Housing Society Ltd. v. Jayantibhai Naginbhai (Deceased) Thr. L.Rs., AIR 2009 SC 1948,*** the plaintiffs were in effect and substance seeking to alter basic structure of the suit. Rejection of such an amendment application was held by the Apex Court to be proper.

UNNECESSARY/IRRELEVANT PLEADING:

Pleading sought to be inserted by way of amendment must be relevant and necessary for the just decision of the case and unnecessary and irrelevant pleadings cannot be allowed to be added by way of amendment. [***Madhubala Jain (Smt.) v. Sardar Davinder Singh, ILR (2015) M.P. 1455***]

GENUINENESS OF PLEADINGS & CORRECTNESS/FALSITY OF THE AVERMENTS:

The Court considering the amendment application has to consider the proposed amendment as per the criteria and norms prescribed under Order VI Rule 17.

It is well settled law that falsity or correctness of proposed averments is not to be considered at the stage of deciding the amendment application as it is to be seen at the time of disposal of suit. [See: ***Rajendra v. Bank of India, 2001 (II) MPWN Note 30 and Rajesh Kumar Aggarwal*** (supra)]

ABSENCE OF MANDATORY AVERMENTS – TYPOGRAPHICAL ERROR, MEANING OF:

In ***J. Samuel and others v. Gattu Mahesh and others, (2012) 2 SCC 800,*** the Supreme Court has held that in the absence of the averment that pleading is

always ready and willing to perform his part of contract, the decree of specific performance cannot be amended.

The Court defined typographical error to be an error made in the printed/typed material during printing/typing process and held to include error due to mechanical failure or slips of hand or finger but does not include error of ignorance. It was further held that omission of mandatory requirement running into 3-4 sentences cannot be typographical error.

AMENDMENT AFFECTING PECUNIARY JURISDICTION OF COURT:

In ***Trilokchand v. Jabbar Khan, 1967 MPLJ Short Note 78 and Indori Lal v. Indore Municipal Corporation, 1976 MPLJ SN 5 and Shri Hanuman Rice Mill, Rajgarh v. G.G. Dhandekar Machine Works Ltd., 1984 MPLJ SN 2,*** the Single Bench of the Madhya Pradesh High Court relying on ***Lalji Ranchhoddas v. Narottam Ranchhoddas, AIR 1953 Nagpur 273*** expressed the view that when question of allowing an amendment would result in a situation where the claim would exceed the pecuniary jurisdiction of the trial Court, the legal procedure for the trial Court would be to return the plaint together with the application for amendment for consideration of that Court which would have jurisdiction to consider the plaint if the amendment was allowed.

In ***Krishna Kumar Khandelwal v. Mangal Prasad*** [Judgment dated 29.06.2006 passed by the High Court of Madhya Pradesh (Jabalpur Main Seat) in Writ Petition No. 393 of 2005], the Division Bench held that law laid down in the decisions rendered in the case of we are inclined to hold that the law laid down in the decisions rendered in the cases of ***Trilokchand*** (supra), ***Indori Lal*** (supra), ***Shree Hanuman Rice Mill, Raigarh*** (supra) and others do not state the correct position of law and the correct position of law is where the effect of the amendment would entail in ouster of jurisdiction of the Court, which it originally had, the proper course would be to allow the amendment and then return the amended plaint for presentation before the proper Court.

AMENDMENT IN EX PARTE PROCEEDINGS:

A question comes to the mind that whether defendant requires to be given opportunity of hearing while deciding amendment application in case ex parte proceedings are initiated against the defendant.

In ***Hari Ram Keer v. State Bank of India, 2005 (3) MPHT 147,*** the Madhya Pradesh High Court has answered the question that defendant is not required to be noticed if amendment is not of substantial nature. Therefore, if amendment is of substantial nature, it is warranted on the part of the Court to provide opportunity of hearing to the defendant against whom the Court has proceeded ex parte.

EXTENSION OF TIME:

The party whose proposed amendment has been accepted by the Court as to incorporate the amendment in his pleading within a time limited for the purpose by the order or if no time is thereby limited, then within 14 days from the date of the order.

Under Order VI Rule 18 of the Code, a party who fails to incorporate amendment in pleadings as aforesaid, may request the Court for the extension of time and the Court may extend the time accordingly.

AMENDMENT – HOW TO BE INCORPORATED:

A party who has obtained an order for leave to amend must incorporate the amendment within a stipulated period and Judge has to certify such amended pleading by appending his signature across the plaint and amendment.

The act of certificate of incorporated amendment must also be stated in the order sheet.

If amendment is sought in plaint, amendment should be incorporated in both the copies of the plaint. The concerned party must also furnish his affidavit in support of his amended pleadings. [See: ***Salem Advocate Bar Association, T.N. v. Union of India, (2005) 6 SCC 344*** (Three Judge Bench)]

CONCLUSION:

The litmus paper test for allowing amendment is where the amendment is necessary for complete and correct adjudication of the controversy involved between the parties. By and large, amendments are to be allowed liberally and while exercising discretion to allow the amendment, the Court must think of avoiding multiplicity of the proceedings and amendment which do not totally alter the character of an action, should be allowed and care should be taken to see that no injustice and prejudice of an irremediable character is caused to the opposite party.

From the above discussion, the position of law emerges that mere delay is no ground to refuse amendment and all such amendments which are necessary for the purpose of determining the real question in controversy between the parties must be allowed on such terms as may be just. If proposed amendment does not appear to be 'absolutely' (wholly) necessary for the purpose of determining real question in controversy between the parties and it is filed after commencement of trial, cannot be allowed unless the Court comes to the conclusion that despite due diligence, the party could not have raised the matter before the commencement of trial.

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PART-II

NOTES ON IMPORTANT JUDGMENTS

313. ARBITRATION AND CONCILIATION ACT, 1996 – Section 8

Mere allegation of fraud simplicitor – Not a ground to nullify the effect of arbitration agreement – Civil Court must refer to Arbitration as per clause – Act must be interpreted to strengthen the institutional efficacy of Arbitration.

माध्यस्थम और सुलह अधिनियम, 1996 – धारा 8

मात्र कपटपूर्ण होने के साधारण आरोप – माध्यस्थम् करार को शून्य करने के आधार नहीं हो सकते – सिविल न्यायालय को खण्ड अनुसार माध्यस्थम् हेतु निर्दिष्ट करना चाहिये – अधिनियम का इस प्रकार निर्वाचन किया जाना चाहिये जिससे कि माध्यस्थम् की संस्थागत प्रभावोत्पादकता मजबूत हो।

A. Ayyasamy v. A. Paramasivam and others

Judgment dated 04.10.2016 passed by the Supreme Court in Criminal Appeal No. 1528-1530 of 2015, reported in AIR 2016 SC 4614

Relevant extracts from the judgment:

..... we are of the opinion that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the Court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence that needs to be produced, the Court can sidetrack the agreement by dismissing application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the arbitration clause or the validity of the arbitration clause itself. Reverse position thereof would be that where there are simple allegations of fraud touching upon the internal affairs of the party ***inter se*** and it has no implication in the public domain, the arbitration clause need not be avoided and the parties can be relegated to arbitration. While dealing with such an issue in an application under Section 8 of the Act, the focus of the Court has to be on the question as to whether jurisdiction of the Court has been ousted instead of focusing on the issue as to whether the Court has jurisdiction or not. It has to be kept in mind that insofar as the statutory scheme of the Act is concerned, it does not specifically exclude any category of cases as non-arbitrable. Such categories

of non-arbitrable subjects are carved out by the Courts, keeping in mind the principle of common law that certain disputes which are of public nature, etc. are not capable of adjudication and settlement by arbitration and for resolution of such disputes, Courts, i.e. public fora, are better suited than a private forum of arbitration. Therefore, the inquiry of the Court, while dealing with an application under Section 8 of the Act, should be on the aforesaid aspect, viz. whether the nature of dispute is such that it cannot be referred to arbitration, even if there is an arbitration agreement between the parties. When the case of fraud is set up by one of the parties and on that basis that party wants to wriggle out of that arbitration agreement, a strict and meticulous inquiry into the allegations of fraud is needed and only when the Court is satisfied that the allegations are of serious and complicated nature that it would be more appropriate for the Court to deal with the subject matter rather than relegating the parties to arbitration, then alone such an application under Section 8 should be rejected.

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The Arbitration and Conciliation Act, 1996, should in my view be interpreted so as to bring in line the principles underlying its interpretation in a manner that is consistent with prevailing approaches in the common law world. Jurisprudence in India must evolve towards strengthening the institutional efficacy of arbitration. Deference to a forum chosen by parties as a complete remedy for resolving all their claims is but part of that evolution. Minimising the intervention of courts is again a recognition of the same principle.

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314. CEILING ON AGRICULTURAL HOLDINGS ACT, 1960 – Sections 4 and 5

Fifteen transfer of land/transactions executed during the relevant time – Burden on transferrer to prove that transfers were not made with intention to defeat the provisions of the Act – Burden must be discharged by credible legal evidence acceptable by preponderance of probabilities – Failure to discharge the burden – Transactions held to be void.

Sections 5 – Prior permission of the collector mandatory – Absence of such permission – Sale to be treated as void.

कृषिक जोत उच्चतम सीमा अधिनियम, 1960 – धाराएं 4 एवं 5

सुसंगत समय में भूमि के संबंध में 15 अंतरण/संव्यवहार निष्पादित किये गये – अंतरक पर यह प्रमाणित करने का भार है कि अंतरण अधिनियम के प्रावधान को विफल करने के उद्देश्य से नहीं किये गये थे – उक्त दायित्व का उन्मोचन विश्वसनीय विधिक साक्ष्य द्वारा किया जाना चाहिये जो कि संभावनाओं की अधिसंभाव्यता को स्वीकार्य हो। दायित्व उन्मोचित करने की विफलता –संव्यवहार शून्य माने जावेंगे। धारा 5 – कलेक्टर की पूर्व अनुमति आज्ञापक है – अनुमति के अभाव में विक्रय शून्य माना जावेगा।

State of Madhya Pradesh v. Jagdish Pandey & Ors.

Judgment dated 29.10.2015 passed by the High Court of M.P. in Writ Petition No. 553 of 1997, reported in 2016 (II) MPJR 253

Relevant extracts of the Judgment:

The Full Bench of this Court in the case of ***Narbada Prasad Raghunandanlal v. State of M.P., 1981 MPLJ 260,*** in paragraph–17 has held as under :

> "Arguments were also addressed as to the ambit of the burden of proof laid on the transferor by sub section (4) of Section 4. In this connection, it was submitted that a mere denial by the transferor that he intended to defeat the provisions of the Act by the transfer or at any rate the giving of a plausible explanation by him should be sufficient to discharge the burden of proof. It was also submitted that the transferor cannot prove anything else in discharging the burden to prove a negative. We are unable to agree. The occasion and reason for making the transfer are specially within the knowledge of the transferor. It is for him to state the facts relating thereto and to prove them by preponderance of probabilities. If the transferor is able to state and establish any good reason for the transfer by preponderance of probabilities, it should be held that the burden of proof laid on him under Section 4(4) is discharged. Looked from this angle it cannot be said that the burden on the transferor is to prove a negative fact. To hold that a mere denial or putting forward of some plausible explanation for the transfer would discharge the burden of proof laid by sub–section (4) would be entirely defeating its provisions for it would be easy for every transferor to deny that he made the transfer with a view to defeat the provisions of the Act and to put forward a plausible explanation which may be entirely false. In this connection, our attention was drawn to ***P. Sambasiva Rao v. Revenue Divnl Officer 1997 (1) ALT 219 = AIR 1977 Andh Par 51*** which was followed by a Division Bench in ***Chandrasekhar v. State of H.P.,1980 RN 467***. The Andhra Pradesh case does lay down that if the transferor gives some plausible explanation, the burden of proof laid on him under Section 7 of the Andhra Pradesh Ceiling on Agricultural Holdings Act is discharged and the explanation given by the transferor must be accepted. To the same effect is the ruling of the Division Bench in Chandrasekhar's case. We are unable to agree with the view taken in these cases. Such a view will reduce sub–section (4) of Section 4 to a dead letter.

A transferor must not only give a plausible explanation for the transfer but also support it by evidence and make it acceptable by preponderance of probabilities. It is only then that it can be said that the burden of proof is discharged."

On a bare reading of the aforesaid judgment, it is seen that the transferor was not only required to give plausible explanation for transfer but also support it by credible legal evidence which can be said to be acceptable by preponderance of probabilities. It is only then, it can be said that the burden of proof is discharged. In the present case, as the holder has failed to produce any documentary evidence regarding treatment of his daughter, therefore, had failed to discharge the burden beyond preponderance of probabilities. Mere production of passport by the holder does not entail in discharging the burden of proof provided by the statute to substantiate the fact asserted by him about the seriousness of the illness of his daughter and more so disposal of surplus land because of necessity of funds therefor.

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As per Section 5 of the Act, no land can be transferred by way of sale or by way of gift, exchange, lease or otherwise except the permission of Collector in writing. Sub section (2) provides that Collector may refuse to give such permission if in his opinion the transfer or sub–division of land is likely to defeat the object of this Act. In the present case, on the basis of the record, it has been categorically held by the Competent Authority that no prior permission of the Collector was obtained by the holder under Section 5 of the Act and, therefore, in the light of the non–compliance of the mandatory provision, as stated above, the sale ought to be treated as void.

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***315. CIVIL PROCEDURE CODE, 1908 – Section 9**

MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006 – Section 18

Section 18 provides for reference to Micro and Small Enterprises Facilitation Council in case of any dispute with regard to amount due – Council empowered to conduct conciliation or seek assistance for conciliation – Effective alernate remedy available – Jurisdiction of Civil Courts – Impliedly barred.

सिविल प्रक्रिया संहिता, 1908 – धारा 9

सूक्ष्म, लघु एवं मध्यम उद्यम विकास अधिनियम, 2006 – धारा 18

धारा 18 देय राशि के संबंध में विवाद को सूक्ष्म, लघु एवं मध्यम उद्यम सुविधा समिति को निर्दिष्ट किये जाने का प्रावधान करती है – समिति को सुलह कराने अथवा सुलह के लिये सहयोग प्राप्त करने की शक्तियाँ प्राप्त हैं – प्रभावी वैकल्पिक उपचार उपलब्ध हैं – व्यवहार न्यायालय का क्षेत्राधिकार विवक्षित रूप से वर्जित हैं।

C.M.D. (EZ) MPPKVVCL & anr. v. Sharad Oshwal

Judgment dated 11.03.2016 passed by the High Court of Madhya Pradesh in Civil Revision No. 100 of 2015, reported in 2016 (2) MPLJ 384

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316. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 16

Order 6 rule 16 – Purpose of the Rule – Parties are entitled to *ex debito justitia* to have the case against them presented in an intelligible form – Each ground specified in clauses (a), (b) and (c) of Rule 16 are distinct.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 16

आदेश 6 नियम 16 – नियम का उद्देश्य – पक्षकारों को यह अधिकार है कि उनके विरूद्ध प्रस्तुत मामले समझने योग्य प्रारूप में प्रस्तुत हो – (क), (ख) एवं (ग) के अधीन बताये गये प्रत्येक आधार भिन्न हैं।

Ajay Arjun Singh v. Sharadendu Tiwari & others

Judgment dated 23.08.2016 passed by the Supreme Court in Civil Appeal No. 8254 of 2016, reported in AIR 2016 SC 4087

Relevant extracts from the judgment:

Before we examine the various questions that arise in this appeal, we think it profitable to examine the scheme of Order VI, Rule 16.

> "***16. Striking out pleadings*** – The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading –
>
> (a) which may be unnecessary, scandalous, frivolous or vexatious, or
>
> (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
>
> (c) which is otherwise an abuse of the process of the Court."

It authorises the court to order that any matter in any pleading before it be struck out on the grounds specified under clauses (a), (b) and (c). Each one of them is a distinct ground. For example, clause (a) authorises the court to strike out the pleadings which may be (i) unnecessary, (ii) scandalous, (iii) frivolous, (iv) vexatious. If a pleading or part of it is to be struck out on the ground that it is unnecessary, the test to be applied is whether the allegation contained in that pleading is relevant and essential to grant the relief sought. Allegations which are unconnected with the relief sought in the proceeding fall under this category. Similarly, if a pleading is to be struck out on the ground that it is scandalous, the court must first record its satisfaction that the pleading is scandalous in the legal sense and then enquire whether such scandalous allegation is called for or necessary having regard to the nature of the relief sought in the proceeding.

The authority of the court under clause (c) is much wider. Obviously, such authority must be exercised with circumspection and on the basis of some rational principles.

The very purpose of the Rule is to ensure that parties to a legal proceeding are entitled ***ex debito justitia*** to have the case against them presented in an intelligible form so that they may not be embarrassed in meeting the case.

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***317. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 10, 99 & 101 and Sections 38 and 47**

Execution of decree – Objections as to identification of land, determination of – An objection was filed by the Judgment Debtor that the map field alongwith plaint does not reflect real location of the land in dispute and that for want of landmarks and proper description, it would not be possible to identify the alleged encroachment and hence decree is not executable – Prayer was also made that the competent Revenue Authorities be directed to conduct a demarcation proceedings and prepare proper map of the disputed piece of land – The Executing Court dismissed the objection holding that the plaint and map contains sufficient description of property to identify the same – Dismissing the Civil Revision in *limine*, it was held that suit land has been sufficiently well described in the plaint and accompanying map – Therefore, there is no need to direct any demarcation proceedings to be conducted for accurate identification of the suit land.

Liberty given to the Executing Court that if during further course of proceedings any such need is felt, the Executing Court shall be free to take recourse to such proceedings in accordance with the principles laid down by the Apex Court in the case of *Pratibha Singh and another v. Shanti Devi Prasad and another, AIR 2003 SC 643*.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 10, 99 एवं 101 और धाराएं 38 एवं 37 डिक्री का निष्पादन – भूमि की पहचान से संबंधित आपत्ति का अवधारण – निर्णय ऋणी द्वारा वादपत्र के साथ संलग्न भूमि के नक्शे पर यह आपत्ति प्रस्तुत की गई कि वह विवादित भूमि की सही स्थिति नहीं दर्शाता है एवं उचित सीमा चिन्हों व विवरण के अभाव में अभिकथित अतिक्रमण की पहचान किया जाना संभव नहीं है एवं फलतः डिक्री निष्पादन याग्य नहीं है – सक्षम राजस्व अधिकारियों से सीमांकन कराये जाने एवं विवादग्रस्त भू भाग का उचित नक्शा बनवाये जाने की प्रार्थना की गई – निष्पादन न्यायालय द्वारा आपत्ति को निरस्त कर यह आदेशित किया गया कि वादपत्र एवं मानचित्र में संपत्ति को निर्धारित किये जाने हेतु पर्याप्त विवरण है – सिविल पुनरीक्षण निरस्त करते हुये यह अभिनिर्धारित किया गया कि वादग्रस्त भूमि को वादपत्र एवं

संलग्न नक्शे में पर्याप्त रूप से दर्शाया गया हैं – फलतः वादग्रस्त भूमि की स्पष्ट पहचान के लिये सीमांकन कराने के लिये निर्देश देने की आवश्यकता नहीं है।

निष्पादन न्यायालय को यह स्वतंत्रता दी गई कि यदि कार्यवाही के दौरान आवश्यकता प्रतीत हो तो, निष्पादन न्यायालय सर्वोच्च न्यायालय द्वारा न्यायदृष्टांत प्रतिभा सिंह एवं अन्य विरूद्ध शांतिदेवी प्रसाद एवं अन्य, ए.आई.आर. 2003 एस.सी. 643 में प्रतिपादित सिद्धांत के आधार पर कार्यवाही करने हेतु स्वतंत्र रहेगा।

Bhupat Patel and another v. State of M.P. and another
Order dated 22.03.2016 passed by the High Court of M.P. in Civil Revision No. 64 of 2016, reported in 2016 RN 344

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***318. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 11**

Execution of Temporary Injunction, sustainability of – Suit for Mandatory Injunction along with relief for temporary injunction – Court granted a conditional temporary injunction that, if plaintiff fails to prove his case, he would be liable to pay compensation of `60,000/– Suit dismissed and the judgment was maintained in second appeal also – Executing court issued warrant of attachment for recovery of `60,000/–

Held:- Application filed under Order 21 Rule 11 of Code is not maintainable – Order passed under Order 39 Rule 1 and 2 of the Code is an interlocutory order and not a decree– Also held that condition imposed was not a part of decree – Order 21 Rule 11 is applicable to execution of decree and not order.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 11

अस्थाई व्यादेश का निष्पादन, पोषणीयता – आज्ञापक व्यादेश के साथ अस्थाई व्यादेश की सहायता के लिए वाद – न्यायालय द्वारा सशर्त अस्थाई व्यादेश पारित किया गया कि यदि वादी अपना मामला प्रमाणित करने में असफल रहता है, तो वह ₹60,000/– प्रतिकर के रूप में अदा करने हेतु दायो होगा – वाद खारिज किया गया एवं निर्णय द्वितीय अपील में भी स्थिर रखा गया – निष्पादन न्यायालय द्वारा ₹60,000/– की वसूली हेतु कुर्की वारंट जारी किया गया।

अभिनिर्धारित – आदेश 21 नियम 11 व्य.प्र.सं. के अंतर्गत प्रस्तुत आवेदन पत्र पोषणीय नहीं है – आदेश 39 नियम 1 एवं 2 व्य.प्र.सं. के अधीन पारित आदेश अंतरिम आदेश हैं एवं डिक्री नहीं है – यह भी अभिनिर्धारित किया गया कि अधिरोपित शर्त डिक्री का भाग नहीं थी – आदेश 21 नियम 11 व्य.प्र.सं. डिक्री के निष्पादन पर लागू होती है एवं आदेश पर नहीं।

Rajnarayan Tiwari v. Smt. Vidhyaawathi
Order dated 02.02.2016 passed by the High Court of M.P. in Civil Revision No. 375 of 2015, reported in I.L.R. (2016) M.P. 1195

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***319. CONSTITUTION OF INDIA – Articles 21 and 14**

Access to justice, significance of – Is a part and parcel of right to life in India and in all civilized societies around the globe – Is so basic and inalienable that no system of governance can ignore its significance – Access to justice is a facet of right to life guaranteed under Articles 21 and 14 of the Constitution of India – State sponsored legal aid programmes under the Legal Services Authorities Act, 1987 takes care of affordability of access to justice.

भारत का संविधान – अनुच्छेद 21 एवं 14

न्याय प्राप्त करने का महत्व – भारत में जीवन के अधिकार का अभिन्न अंग है तथा विश्व में सभी सभ्य समाजों में भी है – इसका स्वरूप सर्वथा मूल प्रकृति का है और इसे किसी भी शासन व्यवस्था द्वारा उपेक्षित नहीं किया जा सकता और न ही इसकी महत्वता को कम आंका जा सकता है – न्याय प्राप्त करना जीवन के अधिकार के ही समान है, जिसे अनुच्छेद 21 तथा 14 भारतीय संविधान सभी नागरिकों के लिये सुनिश्चित कराते है – राज्य द्वारा प्रायोजित विधिक सेवा कार्यक्रम जो कि विधिक सेवा प्राधिकरण अधिनियम 1987 के तहत् कार्य करते हैं, इसका पालन करवाने की देखरेख करते हैं।

Anita Kushwaha v. Pushap Sudan

Judgment dated 19.07.2016 passed by the Supreme Court in Transfer Petition (C) No. 1343 of 2008, reported in 2016 CriLJ 4151 (SC) (Constitutional Bench)

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320. CONTRACT ACT, 1872 – Section 28

Agreement in restraint of legal proceedings – Amendment of the year 1997 – Being substantive law – Prospective effect.

Clause as to limiting the time for demand or claim – Does not curtail period of limitation within which suit may be filed – Assertion of right is different from enforcing it in Court of law – Not hit by Section 28 (unamended).

संविदा अधिनियम, 1872 – धारा 28

कानूनी प्रक्रियाओं के विरूद्ध करार – वर्ष 1997 का संशोधन – मौलिक विधि – भविष्यलक्षी प्रभाव।

मांग या दावे के समय को सीमित करने से संबंधी प्रावधान – वाद प्रस्तुत करने की परिसीमा समयावधि को कम नहीं करता है – अधिकार का दावा करना विधि के न्यायालय में इसे प्रवर्तित करने से भिन्न हैं – धारा 28 (असंशोधित) से अप्रभावित।

Union of India and anr. v. M/s. Indusind Bank Ltd. and anr.

Judgment dated 15.09.2016 passed by the Supreme Court in Civil Appeal No. 9087 of 2016, reported in AIR 2016 SC 4374

Relevant extracts from the judgment:

..... it becomes clear that Section 28, being substantive law, operates prospectively as retrospectivity is not clearly made out by its language. Being remedial in nature, and not clarificatory or declaratory of the law, by making certain agreements covered by Section 28(b) void for the first time, it is clear that rights and liabilities that have already accrued as a result of agreements entered into between parties are sought to be taken away. This being the case, we are of the view that both the Single Judge and Division Bench were in error in holding that the amended Section 28 would apply.

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At this point, it is necessary to set out the exact clause in the bank guarantees in the facts of the present cases. One such clause reads as under:

> "…. Unless a demand or claim under this guarantee is made against us within three months from the above date (i.e. On or before 30.4.97), all your rights under the said guarantee shall be forfeited and we shall be relieved and discharged from all liabilities hereunder."

A similar clause contained in another bank guarantee reads thus:–

> "….Provided however, unless a demand or claim under this guarantee is made on us in writing within 3 months from the date of expiry of this guarantee in respect of export of 416.500 M.T. 2450 Bales of Raw Cotton, we shall be discharged from all liability under this guarantee thereafter."

A reading of the aforesaid clauses makes it clear that neither clause purports to limit the time within which rights are to be enforced. In other words, neither clause purports to curtail the period of limitation within which a suit may be brought to enforce the bank guarantee. This being the case, it is clear that this Court's judgment in Food Corpn. of ***India v. New India Assurance Co. Ltd., (1994) 3 SCC 324,*** would apply on all fours to the facts of the present case.

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***321. COURT FEES ACT, 1870 – Section 7(iv) (c)**

CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11

Suit for declaration and Injunction – Court fees, payment of – Held, sale deed is challenged as void by plaintiff in possession of the suit property and not a party to the sale deed nor he is the representative-in-interest of the person executing sale deed – *Ad valorem* court fees is not required.

Relied on – *Suharid Singh @ Sardool Singh v. Randhir Singh and others, AIR 2010 SC 2807* and *Santosh Chandra and others v. Gyan Sunder Bai and others, 1970 JLJ 290*.

न्यायालय शुल्क अधिनियम, 1870 – धारा 7 (पअ) (सी)

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

घोषणा एवं व्यादेश हेतु वाद – न्यायालय शुल्क का भुगतान – अभिनिर्धारित, वादग्रस्त संपत्ति का आधिपत्य धारक होकर वादी द्वारा विक्रय विलेख के शून्य होने की चुनौती दी गई है तथा वह विक्रय विलेख का पक्षकार नहीं है और न ही निष्पादनकर्ता के हितों का प्रतिनिधि है – मूल्यानुसार न्यायालय शुल्क आवश्यक नहीं है।

Vijay Kumar v. Vinay Kumar

Order dated 31.07. 2015 passed by the High Court of M.P. in W.P. No. 14065 of 2013, reported in I.L.R. (2016) M.P. 1067

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322. COURT FEES ACT, 1870 – Section 16

CIVIL PROCEDURE CODE, 1908 – Section 89, Order 7 Rule10

Plaint rejected with a direction that matter be referred to an arbitrator – Not decided in terms of requirement of Section 89 – Plaintiff not entitled to return of Court Fees.

न्यायालय शुल्क अधिनियम, 1870 – धारा 16

सिविल प्रक्रिया संहिता, 1908 – धारा 89, आदेश 7 नियम 10

वाद इस निर्देश के साथ खारिज किया गया कि मामले को माध्यस्थ को भेजा जाए – धारा 89 के अनुसार निराकृत नहीं किया गया – वादी न्यायालय शुल्क वापस प्राप्त करने का अधिकारी नहीं है।

Shriji Ware House v. Madhya Pradesh State Civil Supplies Corporation Ltd., Bhopal and others

Judgment dated 14.06.2016 passed by the High Court of Madhya Pradesh in Writ Petition No. 2833 of 2010, reported in AIR 2016 MP 187.

Relevant extracts from the judgment:

After hearing the parties, learned 3rd Additional District Judge, Morena had accepted the application under Order 7 Rule 11 of CPC and had dismissed the suit on the ground of suit being not maintainable within the jurisdiction of learned trial Court in terms of the stipulations of the agreement, it is apparent from the order dated 11.11.2009 that the suit was not returned for filing before the arbitrator.

In the present case none of the ingredients of Section 89 of CPC are available as the Civil suit was a contested matter in which objection of the respondent No. 4 has been sustained and upheld by the learned trial Court without there being any consent of the present petitioner to amicably take the matter to arbitration. Therefore, it cannot be said that the order dated 11.11.2009 meet the requirements of Section 89 of CPC. Similarly Order 7 Rule 10 of CPC provides that subject to the provisions to the Order 7 Rule 10 A of CPC the

plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. In the present case it is apparent from the order dated 11.11.2009,annexure P/3 that the plaint was not returned for presenting before the appropriate Court. In the present case objection of the defendant No. 4 was upheld and the suit was dismissed on the ground of lack of jurisdiction due to availability of alternate remedy of arbitration.

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323. COURT FEES ACT, 1870 – Section 17

Plaintiff claimed declaration of title and declaration that various alienations made to different alienees are null and void – Plaintiff has a separate cause of action against each alienees – Plaintiff must pay court fees as if separate suits were instituted in respect of each cause of action.

न्यायालय शुल्क अधिनियम, 1870 – धारा 17

वादी द्वारा स्वत्व की घोषणा एवं विभिन्न क्रेताओं को किए गए अंतरण को शून्य घोषित कराने हेतु सहायता चाही गई – वादी को प्रत्येक क्रेता के संबंध में पृथक वाद हेतुक प्राप्त है – वादी को इस प्रकार से न्यायालय शुल्क प्रस्तुत करना होगा जैसे कि ऐसे प्रत्येक वाद हेतुक के लिए पृथक वाद संस्थित करने पर करना होता।

Halka Kushwaha v. Pyarelal Kachhi

Order dated 06.09.2016 passed by the High Court of Madhya Pradesh in Writ Petition No. 8839 of 2013, reported in AIR 2016 MP 188.

Relevant extracts from the judgment:

..... the question is whether in a suit as the present one wherein the defendant claiming themselves to the owner of suit property has sold the suit property on various dates and the plaintiffs have sought the suit for declaration that the alienation in favour of the different defendants are not binding on them, they have separate cause of action against each of the alienees and each declaration would constitute distinct cause of action. In this context reference can be had of the decision in ***In re. D. Lakshminarayana Chettiar and another, AIR 1954 Madras 594;*** wherein their Lordships while relying decision in ***Gangi v. Ramaswami, 12 Mad LJ 103 (Z.7)*** wherein reliance on a decision in ***Shankar Baksh v. Daya Shankar, 15 Ind App 66 (PC) (Z8)*** holding:

> "Though the ground of title on both suits are founded is one and the same and the causes of action also arose at the same time, yet the properties comprised in the two suits are different and the persons who severally withheld the same are also different. A reference to Section 50, C. P. C. clearly shows that in every suit the plaint must show that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the

plaintiff's demand. This clearly shows that the cause of action is not an abstraction, something independent of the defendant, but that the plaint should disclose a cause of action against the defendant.";

Were pleased to hold:

We respectfully agree with the aforesaid observations of the learned Judge, and this passage clearly brings out the distinction between the ground of title and the cause of action. A cause of action is something more than a ground of title. It not only includes the facts necessary to support the plaintiff's title, but also the facts which entitled him to relief against a particular defendant.

It is further held:

"50. If the aforesaid principles are applied to the facts of the instant case, we have no hesitation in holding that the suit comprised distinct causes of action. The appellants' father executed two gift deeds in favour of their mother. The mother sold them under sale deeds on various dates to defendants 1, 2, 3, 4, 5th defendant's husband and 35th defendant. Defendants 6 to 32 are alienees from the 5th defendant's husband. The plaintiffs ask for a declaration that the alienations in favour of the different defendants are not binding on them. The plaintiff has a separate cause of action against each of the alienees in respect of the property alienated in his favour. Each declaration relates to a "distinct subject" within the meaning of Section 17, Court Fees Act. The appellant should, therefore, pay court-fee in respect of each declaration and the total amount of court-fee payable by them on that basis would be Rs. 1400. Two months time granted for the payment of additional court-fee."

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***324. COURT FEES ACT, 1870 – Section 35**

Exemption from ad–valorem court fees – *Prima facie* mere Income certificate document without holding inquiry may be considered by trial court at initial stage – The income certificate has been issued by the Tehsildar under its authority – No contrary documents regarding income has been placed on record by petitioner – Though mere income certificate issued by Tehsildar cannot be treated as gospel truth – Further, directed the trial court to formulate the issue on income as raised in written statement and to adjudicate the same on merits by appreciating the adduced evidence.

न्यायालय शुल्क अधिनियम, 1870 – धारा 35

मूल्यानुसार न्यायालय शुल्क से अभिमुक्ति – विचारण न्यायालय द्वारा प्रारंभिक स्तर पर प्रथम दृष्टया मात्र आय प्रमाण पत्र के दस्तावेज पर जाँच किये बिना विचार किया जा सकता है – आय प्रमाण पत्र तहसीलदार द्वारा अपने प्राधिकार के अंतर्गत जारी किया

गया – याचिकाकर्ता द्वारा अभिलेख पर आय के संबंध में कोई अन्य विपरीत दस्तावेज नहीं रखा गया – तहसीलदार द्वारा जारी किया गया आय प्रमाण पत्र पूर्ण सत्य नहीं माना जा सकता – विचारण न्यायालय को आय के संबंध में लिखित कथन में उठाये गये बिन्दु पर वादप्रश्न बनाये जाने एवं प्रस्तुत साक्ष्य के मूल्यांकन उपरांत गुणदोष पर विनिश्चय करने हेतु निर्देशित किया गया।

Mohd. Ali v. Munnilal Ahirwar & ors.

Order dated 01.08.2014 passed by the High Court of M.P. in Writ Appeal No. 10596 of 2014, reported in I.L.R. (2016) M.P. 979

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***325. COURTS, TRIBUNALS AND JUDICIARY:**

NATURAL JUSTICE:

Doubt as to impartiality of a Judge – Recusal, when warranted? Explained – A Judge is duty bound to hear every matter without fear or favour and must never recuse himself on the asking of a litigating party, unless justified – In case of financial interest of Judge in outcome of case or in case where a Judge is interested in a cause being promoted by one of the parties, he is automatically disqualified from hearing the case (*Pinochet Principle*) – In case where interest of Judge is other than financial or where *Pinochet Principle* does not apply, disqualification of a Judge is not automatic, but reasonable apprehension of bias test is to be applied.

न्यायालय, न्यायाधिकरण/ट्रिब्यूनल एवं न्यायपालिका :

प्राकृतिक न्याय :

न्यायाधीश की निष्पक्षता पर संदेह – मामले से अलग होना, औचित्य– एक न्यायाधीश का यह कर्तव्य है कि वह प्रत्येक मामले को बिना भय या पक्षपात के सुने एवं जब तक कि औचित्यपूर्ण न हो, तब तक मात्र पक्षकार के कहने पर मामले से अलग नहीं होना चाहिये – जहाँ किसी मामले के परिणाम में न्यायाधीश का आर्थिक लाभ हो अथवा जहाँ न्यायाधीश का किसी एक पक्षकार द्वारा प्रस्तुत हेतुक में हित हो, वहाँ वह मामले को सुनने से स्वमेव अयोग्य हो जाता है – ऐसे मामले में जहाँ न्यायाधीश का हित आर्थिक से भिन्न होता है अथवा जहाँ ''पिनोचेट प्रिसिंपल'' लागू नहीं होते हैं, वहाँ न्यायाधीश स्वमेव अयोग्य नहीं होता हैं, अपितु पक्षपात की युक्तियुक्त आशंका के सिद्धांत को लागू किया जा सकता हैं।

Supreme Court Advocates-on-Record Association and another v. Union of India (Recusal Matter)

Judgment dated 16.10.2015 passed by the Supreme Court in Writ Petition (C) No. 13 of 2015, reported in (2016) 5 SCC 808 (Constitutional Bench)

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326. CRIMINAL PROCEDURE CODE, 1973 – Sections 31 and 427

INDIAN PENAL CODE, 1860 – Sections 53 and 300

Sentence of imprisonment for life – Is a sentence for remainder of the life of the offender unless commuted or remitted by the competent authority – Multiple sentences for life imprisonment cannot be directed to run consecutively.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 31 एवं 427

भारतीय दण्ड संहिता, 1960 – धाराएं 53 एवं 300

आजीवन कारावास का दंड – अभियुक्त के शेष जीवनकाल तक के लिये दंड होता है, जब तक कि उसका सक्षम प्राधिकरण द्वारा परिहार या लघुकरण न कर दिया जावे – एक से अधिक आजीवन कारावास की सजाएँ क्रमानुगत चलने के निर्देश नहीं दिये जा सकते।

Muthuramalingam and others v. State Rep. by Insp. of Police

Judgment dated 19.07.2016 passed by the Supreme Court in Criminal Appeal No. 231 of 2009, reported in 2016 CriLJ 4165 (SC) (Constitutional Bench)

Relevant extracts from the Judgment:

The legal position is, fairly well settled that imprisonment for life is a sentence for the remainder of the life of the offender unless of course the remaining sentence is commuted or remitted by the competent authority. That being so, the provisions of Section 31 under Cr.P.C. must be so interpreted as to be consistent with the basic tenet that a life sentence requires the prisoner to spend the rest of his life in prison. Any direction that requires the offender to undergo imprisonment for life twice over would be anomalous and irrational for it will disregard the fact that humans like all other living beings have but one life to live. So understood Section 31 (1) would permit consecutive running of sentences only if such sentences do not happen to be life sentences. That is, in our opinion, the only way one can avoid an obvious impossibility of a prisoner serving two consecutive life sentences.

We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.

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327. CRIMINAL PROCEDURE CODE, 1973 – Section 53A

CRIMINAL TRIAL – NECESSITY OF DNA TEST, RAREST OF THE RARE CASE.

Case relating to Rape – Availability of other evidence – Mere absence of DNA test – Not fatal – DNA test not mandatory.

Perennial tear and position of uterus of the victim showed that it was smashed like vegetable – Injuries caused to the deceased showed the gruesome manner in which she was subjected to rape – Monstrous act on innocent and helpless child – Case falls within the purview of rarest of the rare case – Death sentence confirmed.

दंड प्रक्रिया संहिता, 1973 – धारा 53 क

आपराधिक विचारण – डी.एन.ए. परीक्षण की आवश्यकता, बिरले से बिरले मामले में बलात्संग से संबंधी मामला – अन्य साक्ष्य की उपलब्धता – मात्र डी.एन.ए. परीक्षण का अभाव – घातक नहीं है – डी.एन.ए. परीक्षण आज्ञापक नहीं हैं।

पीड़ित की चोटें एवं गर्भाशय की स्थिति यह दर्शित करती है कि उसे सब्जी की तरह कुचल दिया गया – पीड़ित को आयी चोटें भयावह तरीके से किये गये बलात्संग को दर्शित करती हैं – मासूम एवं असहाय बच्ची के साथ अमानवीय कृत्य – मामला बिरले से बिरले मामले की परिधि में आता है – मृत्युदंड की पुष्टि की गई।

State of Madhya Pradesh & anr. v. Veerendra and anr.,

Judgment dated 14.07.2016 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 39 of 2015 with Criminal Reference case 01 of 2015, reported in 2017 (1) Crimes 219 (M.P.)

Relevant extracts from the judgment:

Learned counsel for the appellant has also invited attention of this Court to the provisions of Section 53–A of Cr.P.C. that DNA test of the accused with vaginal swab was to be done and it was mandatory. In the absence of that DNA report, the accused cannot be held guilty. Actually, Section 53–A of Cr.P.C., gives a duty on the prosecution to examine the accused of rape by medical practitioner.

Perusal of sub–section (2) of Section 53–A of Cr.P.C., it appears that the medical practitioner is directed to give the particulars as mentioned in sub–section 2 if he had taken any material from the person of the accused for DNA profiling then such particulars should be given. In this provision, it is not mentioned that DNA test is mandatory.

In this connection, the judgment passed by the Apex Court in the case of ***"Krishan Kumar Malik Vs. State of Haryana, (2011) 7 SCC 130"*** may be perused in which it is held that after the incorporation of Section 53 (A) in Cr.P.C., it has become necessary for the prosecution to go in for DNA test in cases, facilitating the prosecution to prove its case against the accused. But such necessity was

shown to make the case full proof but it is not observed that in absence of any DNA test the remaining evidence of the prosecution shall be thrown away.....

Hence, after considering the factual position of this case in the light of the aforesaid judgments passed by the Apex Court, the appellant being a near relative of the deceased/prosecutrix used his relations upon the innocent child. He is a matured youth of 25 years of age. Looking to the perennial tear and position of the uterus almost smashed like vegetable, it is clear that in order to execute his diabolical and grotesque desire, the appellant proceeded towards a lonely place of one Jagdish @ Jagan (PW–6). The girl was about eight years who was incapable of arousing lust in normal situation. Appellant had won the trust of the child and she did not understand the desire of the appellant, hence, while she was being taken away by the appellant no protest was made by the innocent child. The injuries caused to the deceased/ prosecutrix show the gruesome manner in which she was subjected to rape. The victim of crime is an innocent child who did not provide even an excuse, much less a provocation for murder. Such cruelty towards a young child is appalling. The act of the appellant is his monstrous self on the innocent, helpless and defenceless child. This act, no doubt, had invited extreme indignation of the community and shocked the collective conscience of the society. Due to that act, a message has gone in the public that girls of such age even are unsafe while moving in the locality and a crowd was collected when the appellant had accepted his guilt and went to show the dead body of the deceased. Thereafter, when the deceased child had already suffered a great pain with a crushed childhood, she was killed by throttling.

Under these circumstances, the present case falls within the purview of “rarest of the rare case”. Looking to the overt act of the appellant, a deterrent sentence is necessary to be passed so that a message should go to the society that such crime should not be repeated by anyone and such heinous crime is highly deprecated and therefore the trial court has rightly punished the appellant with death sentence for the offence of murder. We confirm the recording of death sentence against the appellant for the offence under Section 302 of IPC.

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328. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 207

Entitlement of accused to get certified copy of F.I.R. at earlier stage – Accused who suspects to be roped in criminal case – Entitled to receive certified copy of F.I.R. within 24 hours of filing application from concerned Police Officer and within 2 days from the concerned Court.

Copy of the F.I.R. of offences other than sensitive offences – To be uploaded within 24 hours – A Certified Copy of F.I.R. relating to sensitive offences – May be obtained from the concerned court within 3 days from filing application – Directions issued.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154 एवं 207

अभियुक्त का प्रारंभिक स्तर पर प्रथम सूचना प्रतिवेदन की प्रमाणित प्रतिलिपि प्राप्त करने का अधिकार – अभियुक्त जिसे आपराधिक प्रकरण में संलिप्त किये जाने की आशंका है, संबंधित पुलिस अधिकारी से आवेदन प्रस्तुत करने के चौबीस घंटे के भीतर तथा संबंधित न्यायालय से दो दिवस के भीतर प्रमाणित प्रतिलिपि प्राप्त करने का अधिकारी है।

संवेदनशील अपराध से अन्यथा अपराध से संबंधित प्रथम सूचना रिपोर्ट की प्रति – 24 घंटे के भीतर अपलोड (न्चसवंक) की जानी हैं – संवेदनशील अपराध से संबंधित प्रथम सूचना रिपोर्ट की प्रति संबंधित न्यायालय से आवेदन के तीन दिन के भीतर प्राप्त की जा सकती हैं – निर्देश जारी किये गये।

Youth Bar Association of India v. Union of India and others

Judgment dated 07.09.2016 passed by the Supreme Court in Writ petition (CRL.) No. 68 of 2016, reported in 2016 (4) Crimes 1 (SC)

Relevant extracts from the judgment:

Having heard learned counsel for the parties, we think it appropriate to record the requisite conclusions and, thereafter, proceed to issue the directions:–

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C.

(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty–four hours.

(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C.

(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty–four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other

unavoidable difficulty, the time can be extended up to forty–eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

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(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/his authorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.

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***329. CRIMINAL PROCEDURE CODE, 1973 – Sections 156 (3) and 154**

Power under section 156 (3) CrPC, exercise of – To enable police to start investigation in a matter, the Magistrate can direct police to register an FIR – Even in absence of such direction, the police must register an FIR [*Mohd. Yousuf v. Afaq Jahan, (2006) 1 SCC 627* relied on].

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 156(3) एवं 154

धारा 156 (3) के अंतर्गत शक्तियों का प्रयोग – किसी मामले में पुलिस को अनुसंधान प्रारंभ करने हेतु सशक्त कराने हेतु मजिस्ट्रेट द्वारा पुलिस को प्रथम सूचना रिपोर्ट दर्ज करने के निर्देश दिये जा सकते हैं – निर्देश के अभाव में भी पुलिस द्वारा प्रथम सूचना रिपोर्ट लिखा जाना अनिवार्य हैं। (मो. युसुफ अफाक जहान, (2006) 1 एस.सी.सी. 627, अनुसरित)

Hemant Yashwant Dhage v. State of Maharashtra and others

Judgment dated 10.02.2016 passed by the Supreme Court in Criminal Appeal No. 110 of 2016, reported in (2016) 6 SCC 273

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330. CRIMINAL PROCEDURE CODE, 1973 – Sections 174 and 313

CRIMINAL TRIAL : BEYOND REASONABLE DOUBT

(i) Beyond all reasonable doubt – Not all the doubts – Benefit of doubt does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations.

(ii) Purpose of Sec 313 CrPC – Only to bring the attention of the accused to all the inculpatory piece of evidence – Non-compliance – *Per se* not a ground for acquittal.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 174 एवं 313

दाण्डिक विचारण : युक्तियुक्त संदेह से परे

(i) युक्तियुक्त संदेह से परे – न की सभी संदेहों से परे–अनुमानो, अटकलों एवं काल्पनिक आधारां पर अभियुक्त को संदेह का लाभ देकर दोषमुक्त नहीं किया जा सकता।

(ii) धारा 313 दं.प्र.सं. का उद्देश्य – मात्र अभियुक्त का ध्यान समस्त दोषारोपक साक्ष्य की ओर लाया जाना है – पालन न किया जाना स्वयं में दोषमुक्ति का आधार नहीं हैं।

Yogesh Singh v. Mahabeer Singh & ors.

Judgment dated 20.10.2016 passed by the Supreme Court in Criminal Appeal No. 1482 of 2013, reported in 2016 (4) Crimes 121 (SC)

Relevant extracts from the judgment:

It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts. Here, it is worthwhile to reproduce the observations made by ***Venkatachaliah, J., in State of U.P. v. Krishna Gopal and anr., (1988) 4 SCC 302***:

> "25. ... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.
>
> 26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice." [See ***also Krishnan v. State, (2003) 7 SCC 56; Valson and anr. v. State of Kerala, (2008) 12 SCC 24 and Bhaskar Ramappa Madar andors. v. State of Karnataka, (2009) 11 SCC 690***]."

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It was further contended by the learned counsel for the respondents that material questions regarding marriage, on which the prosecution had allegedly relied upon, were not put to the accused under Section 313 Cr.P.C., thereby

causing great prejudice to them. We feel that there is no weight in this submission of the learned counsel for the respondents since the purpose of Section 313 is only to bring the attention of the accused to all the inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. As has been succinctly held by this Court in ***Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan, (2013) 5 SCC 722***:

> "In a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice i.e. audi alterum partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation."

We feel that no such prejudice has been caused to the accused on account of the failure of this Court to examine them under Section 313 on the facts alleged by the prosecution since they were not incriminating in nature. In any case, ***Nar Singh v. State of Haryana, (2015) 1 SCC 496***, is an authority for the proposition that accused is not per se entitled for acquittal on the ground of non–compliance of mandatory provisions of Section 313 Cr.P.C.

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331. CRIMINAL PROCEDURE CODE, 1973 – Sections 301 and 302

Section 301 of the Code, applicability of – The provision under section 301 of the Code applies to the trials before Magistrates as well as Court of Sessions whereas, section 302 CrPC is intended only for Magistrate Courts – Prosecution in a Sessions Court can be conducted only by a Public Prosecutor and Counsel for private person can act only under instructions of Public Prosecutor.

Under section 302 of the Code, any Magistrate may permit the prosecution to be conducted by the complainant himself on his filing of an application.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 301 एवं 302

संहिता की धारा 301 –प्रयोज्यता – संहिता की धारा 301 के अंतर्गत प्रावधान मजिस्ट्रेट एवं सत्र न्यायालय के समक्ष विचारण पर लागू होते हैं, जबकि धारा 302 दं.प्र.सं. मात्र मजिस्ट्रेट न्यायालय के लिये आशयित हैं – सत्र न्यायालय में अभियोजन मात्र लोक अभियोजक द्वारा संचालित किया जा सकता हैं एवं निजी व्यक्ति के अधिवक्ता मात्र लोक अभियोजक के निर्देश के अंतर्गत कार्य कर सकते हैं।

संहिता की धारा 302 के अंतर्गत, किसी मजिस्ट्रेट द्वारा परिवादी को आवेदन प्रस्तुत करने पर स्वयं अभियोजन संचालित करने की अनुमति दी जा सकती हैं।

Dhariwal Industries Limited v. Kishore Wadhwani & ors.

Judgment dated 06.09.2016 passed by the Supreme Court in Criminal Appeal No. 859 of 2016, reported in 2016 (3) Crimes 405 (SC)

Relevant extracts from the Judgment:

In ***ShivKumar v. Hukum Chand and another, (1999) 7 SCC 467***, the Court has clearly held that the said provision applies to the trials before the Magistrate as well as Court of Session.

Section 302 CrPC which is pertinent for the present case reads as follows:-

> "***Permission to conduct prosecution*** – (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission: Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted. (2) Any person conducting the prosecution may do so personally or by a pleader."

In ***Shiv Kumar*** (supra) interpreting the said provision, the Court has ruled:-

> "8. It must be noted that the latter provision is intended only for magistrate courts. It enables the magistrate to permit any person to conduct the prosecution. The only rider is that magistrate cannot give such permission to a police officer below the rank of Inspector. Such person need not necessarily be a Public Prosecutor.
>
> 9. In the Magistrate's Court anybody (except a police officer below the rank of Inspector) can conduct prosecution, if the Magistrate permits him to do so. Once the permission is granted the person concerned can appoint any counsel to conduct the prosecution on his behalf in the Magistrate's Court.
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> xxx xxx xxx
>
> 11. The old Criminal Procedure Code (1898) contained an identical provision in Section 270 thereof. A Public Prosecutor means any person appointed under Section 24 and includes any person acting under the directions of the Public Prosecutor, [vide Section 2(u) of the Code].
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> 12. In the backdrop of the above provisions we have to understand the purport of Section 301 of the Code. Unlike its succeeding provision in the Code, the application of

which is confined to magistrate courts, this particular section is applicable to all the courts of criminal jurisdiction. This distinction can be discerned from employment of the words any court in Section 301. In view of the provision made in the succeeding section as for magistrate courts the insistence contained in Section 301(2) must be understood as applicable to all other courts without any exception. The first sub-section empowers the Public Prosecutor to plead in the court without any written authority, provided he is in charge of the case. The second sub-section, which is sought to be invoked by the appellant, imposes the curb on a counsel engaged by any private party. It limits his role to act in the court during such prosecution under the directions of the Public Prosecutor. The only other liberty which he can possibly exercise is to submit written arguments after the closure of evidence in the trial, but that too can be done only if the court permits him to do so."

It is apt to note here that in the said decision it has also been held that from the scheme of CrPC, the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by anyone other than the public prosecutor. It is because the legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a Sessions Court. The Court has further observed that a public prosecutor is not expected to show the thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case.

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332. CRIMINAL PROCEDURE CODE, 1973 – Sections 320 and 321

LEGAL SERVICES AUTHORITIES ACT, 1987 – Sections 20 and 21

(i) Withdrawal of cases by prosecution in Lok Adalat, validity of – Under section 321, withdrawal of prosecution – Can be allowed only in regular court in interest of justice – Same cannot be exercised by Lok Adalat.

(ii) Disposal of cases by Lok Adalat relates to only settlement between the parties by compromise – No case can be disposed of without compromise or settlement between the parties.

दंड प्रक्रिया संहिता, 1973 – धाराएं 320 एवं 321

विधिक सेवा प्राधिकरण अधिनियम, 1987 – धाराएं 20 एवं 21

(i) लोक अदालत में अभियोजन द्वारा मामले वापस लिये जाने की वैधता – धारा 321 के अंतर्गत अभियोजन का वापस लिया जाना – मात्र नियमित न्यायालय में न्यायहित में स्वीकार किया जा सकता है – लोक अदालत द्वारा यह कार्यवाही नहीं की जा सकती।

(ii) लोक अदालत में मात्र सुलह करने वाले पक्षकारों के मध्य समझौते से संबंधित प्रकरणों का निराकरण किया जा सकता है – पक्षकारों के मध्य सुलह या समझौते के बिना किसी प्रकरण को निराकृत नहीं किया जा सकता।

Rammilan Dubey v. Vandana Jain

Order dated 22.08.2016 passed by the High Court of M.P. in Criminal Revision No. 2239 of 2015, reported in 2017 (1) M.P.L.J. 593

Relevant extracts from the Order:

The withdrawal of prosecution can be allowed only in regular Court in exercise of powers under Section 321 Cr.P.C and after examining the merits of the case, in the interest of justice. Without adverting to the merits of the application under Section 321 Cr.P.C, suffice, it to say that adjudication by the Court in exercise of its power under Section 321 of Cr.P.C could only be examined by a regular Court. The same cannot be exercised by a Lok Adalat as has been earlier stated in the case of State of ***Punjab v. Ganpat Raj, 2007 (1) M.P.L.J. (S.C.) 472***.

The inevitable result in the present revision is, therefore, order of the learned J.M.F.C has rightly been set aside by the order of learned A.S.J in Criminal Revision No. 60/2014, as the powers of disposal of cases by LoK Adalat relates to only "settlement" between the parties by 'compromise' and no case can be disposed of without 'compromise' or 'settlement' between the parties.

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333. CRIMINAL PROCEDURE CODE, 1973 – Section 340

INDIAN PENAL CODE, 1860 – Section 193

(i) Person filing complaint under Section 340 Cr.P.C. need not be an aggrieved person – Complaint cannot be discarded only on that ground.

(ii) Section 193 IPC – Prosecution of – Only in cases of deliberate falsehood where conviction is highly likely to result – Also when it is expedient in the interest of justice to take such action.

दण्ड प्रक्रिया संहिता, 1973 – धारा 340

भारतीय दण्ड संहिता, 1860 – धारा 193

(i) धारा 340 दं.प्र.सं. क अंतर्गत परिवाद प्रस्तुत करने वाले व्यक्ति का व्यथित व्यक्ति होना आवश्यक नहीं हैं – केवल इस आधार पर परिवाद निरस्त नहीं किया जा सकता।

(ii) धारा 193 भा.दं.सं. – अभियोजन मात्र ऐसे मामलों में अनुमत, जहाँ कि जानबूझकर असत्यता हो तथा दोषसिद्धि अधिसंभाव्य परिणाम है – ऐसे मामलों में भी जहाँ न्यायहित में ऐसी कार्यवाही किया जाना समीचीन होगा, अभियोजन होगा।

Rajendra Bharti v. Narottam Mishra & ors.

Judgment dated 17.03.2016 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 856 of 2013, reported in 2016 (3) MPJR 117.

Relevant extracts from the judgment:

One more question has been raised by learned Senior Advocate for the respondent Nos. 1 & 2 that the applicant was not at all an aggrieved person and, therefore, he could not file a complaint under section 340 of Cr.P.C.. However, that question has already been answered by the trial court by referring to the judgment of the Apex Court in the case of ***A.R. Antulay v. Ramdas Sriniwas Nayak and Anr., AIR 1984 SC 718***. In the light of judgment passed by the Apex Court in the case of ***A.R. Antulay*** (supra), the complaint under section 340 of Cr.P.C filed by the applicant could not be discarded only on the ground that he was not personally aggrieved by filing of the alleged false or fabricated document. However, the grievance of the respondent Nos. 1 & 2 may be considered while considering the question that whether the complaint was filed in expedient in the interest of justice, but the complaint could not be discarded only on the ground that the applicant was not aggrieved by filing of such documents. Both the Courts below have rightly entertained the complaint as well as the appeal filed by the applicant.

In this connection, the respondents have referred so many judgments of the Apex Court namely ***K. Sudhakaran v. State of Kerala, (2009) 4 SCC 168, Pritish s. State of Maharashtra &ors., 2002 SCC (Cri.) 140, Santokh Singh v. Izhar Hussain and anr., 1973 SCC (Cri.) 828*** and ***Iqbal Singh Marwah and anr. v. Meenakshi Marwah and anr., 2005 SCC (Cri) 1101***. In all the aforesaid judgments, it is laid down that only in glaring cases of deliberate falsehood where conviction is highly possible then the Court should direct for prosecution. In this connection a little portion of para 11 of ***Santokh Singh*** (supra) is reproduced as under :-

> "Every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the court should direct prosecution."

It is settled view of the Apex Court that the prosecution should be done on finding that it is expedient in the interest of justice to lodge the prosecution, otherwise, prosecution is not to be undertaken to satisfy the private grudge of a

litigant. In this connection, the judgment passed by the Apex Court in the case of ***K.T.M.S. Mohd. and Anr. v. Union of India, (1992) 3 SCC 178*** may be referred in which a judgment of the Apex Court in the case of ***K. Karunakaran v. T.V. Eachara Warrier, (1978) 1 SCC 18*** is referred in which it is held that two pre conditions are that the materials produced before the High Court make out a ***prima facie*** case for a complaint and secondly it is expedient in the interest of justice to permit the prosecution under section 193 of IPC. It is also held that an enquiry held by the Court under section 340(1), Cr.P.C, irrespective of the result of the main case, the only question is whether a ***prima facie*** case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action.

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334. CRIMINAL PROCEDURE CODE, 1973 – Section 372

Amendment with regard to right to complainant or a victim to file the appeal – Came into force w.e.f. 31.12.2009 – Prospective effect – Will only accrue if the offence has taken place after that date.

Relied upon – ***National Commission of Women v. State of Delhi, (2010) 2 SCC 599***

दण्ड प्रक्रिया संहिता, 1973 – धारा 372

परिवादी अथवा पीड़ित के अपील प्रस्तुत करने के अधिकार के संबंध में किया गया संशोधन – दिनांक 31.12.2009 से लागू – भविष्यलक्षी प्रभाव – मात्र तभी प्राप्त होगा, जब अपराध उपरोक्त दिनांक के पश्चात का होगा।

न्यायदृष्टांत नेशनल कमीशन ऑफ वुमेन विरूद्ध दिल्ली राज्य, (2010) 2 एससीसी 599 का अवलंब लिया गया।

Radheshyam Mali v. Ashish Chakrabarti and anr.

Judgment dated 11.02.2016 passed by the High Court of Madhya Pradesh in Criminal Revision No. 2303 of 2015 (unreported case)

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335. CRIMINAL PROCEDURE CODE, 1973 – Sections 372 proviso and 378(4)

Forum of Appeal – Case Instituted upon complaint – Complainant has right to prefer appeal before the High Court u/s 378(4) against the judgment of acquittal whereas, in case instituted upon police report the victim can prefer appeal before the Court of Session u/s 372 proviso against the order of acquittal or convicting for a lesser offence or imposing inadequate compensation.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 372 का परंतुक एवं 378 (4)

अपील हेतु अधिकरण – परिवाद पर संस्थित प्रकरण – परिवादी को दोषमुक्ति के विरूद्ध धारा 378 (4) दं.प्र.सं. के अधीन उच्च न्यायालय में अपील प्रस्तुत करने का अधिकार है जबकि पुलिस प्रतिवेदन पर संस्थित प्रकरण में धारा 372 के परन्तुक के अधीन पीड़ित दोषमुक्ति अथवा लघुत्तर अपराध के अंतर्गत दोषसिद्धि अथवा अपर्याप्त प्रतिकर के आदेश के विरूद्ध सत्र न्यायालय में अपील प्रस्तुत कर सकता है।

Meenadevi (Smt) v. Omprakash & others

Order dated 13.07.2015 passed by the High Court of M.P. in Criminal Appeal. No. 1954 of 2014, reported in ILR (2016) M.P. 1167

Facts of the case:

Complainant/appellant filed a private complaint, wherein ACJM, Indore took cognizance for offence u/s 341, 323 or 323/34 & 506 II I.P.C and acquitted the respondents. Aggrieved by the judgment appellant/ Complainant filed this appeal u/s 378(4) of Cr.P.C. Respondents have raised a preliminary objection that present appeal is not maintainable u/s 378(4) and as per proviso to section 372, the appeal is maintainable before the Court of session.

Held:– A case instituted on complaint and a case instituted on a police report is different. In a case instituted on complaint, complainant has right to file appeal against the order of acquittal as per the provisions of 378(4) of the Code but in a case instituted on a police report the victim had no such right. Therefore, the legislation by way of amendment inserted the proviso to section 372 of the Code so as to enable the victim to appeal against such order of acquittal or convicting for a lesser offence or imposing inadequate compensation.

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336. CRIMINAL PROCEDURE CODE, 1973 – Section 397

FOREST ACT, 1927– Sections 2(3) and 2(4)

(i) Distinction between powers of appellate authority and revisional authority – An appellate authority can re-appreciate the evidence whereas in revisional jurisdiction Court has power to examine the records for the purpose of satisfying as to the legality and regularity of any proceeding – Normally, revisional jurisdiction must be excercised on a question of law – Factual appreciation is allowed only in cases of perverse finding.

(ii) "Forest produce" under Section 2(4) – Includes produce found in or brought from forest – Merely because produce was seized outside the forest area – It will not absolve the liability – If it is brought from forest area it will come under the definition of "forest offence".

दण्ड प्रक्रिया संहिता, 1973 – धारा 397

वन अधिनियम, 1927 – धाराएं 2 (3) एवं 2(4)

(i) अपीलीय प्राधिकरण एवं पुनरीक्षण प्राधिकरण के मध्य अंतर – एक अपीलीय प्राधिकरण साक्ष्य का पुनर्मूल्यांकन कर सकता है जबकि पुनरीक्षण क्षेत्राधिकार में न्यायालय द्वारा अभिलेख की जाँच, कार्यवाही की वैधानिकता एवं नियमितता की संतुष्टि के उद्देश्य से की जानी है – साधारणतः पुनरीक्षण क्षेत्राधिकार का प्रयोग विधि के प्रश्न पर करना चाहिये – तथ्यात्मक मूल्यांकन मात्र विपर्यस्त निष्कर्षों वाले मामलों में अनुज्ञेय हैं।

(ii) ''वन उपज'' अंतर्गत धारा 2 (4) – वन में पायी वाले एवं वन से लाये जाने वाले उपज सम्मिलित हैं – मात्र चूंकि वन उपज वन क्षेत्र से बाहर जप्त की गई हैं – दायित्व से मुक्ति प्रदान नहीं होगी – यदि उसे वन क्षेत्र से लाया गया है तो वह ''वन अपराध'' की परिभाषा में आयेगा।

State of Madhya Pradesh v. Manish Kumar Garg

Judgment dated 06.11.2015 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 5828 of 2015, reported in 2016 (1) MPJR 25.

Relevant extracts from the judgment:

The question is whether these findings given by the court below in revisional jurisdiction are justifiable? This is trite law that there is marked distinction between powers of appellate authority and revisional authority. The appellate authority can re-appreciate the evidence and on said re-appreciation can come to a different conclusion. However, in revisional jurisdiction Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case.

In ***State of Kerala v. Puttumanaillath Jathavedan Namboodiri, (1999) 2 SCC 452*** the Apex court in para 5 held as under :-

> "In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court not can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it could not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.
>
> The object of revisional jurisdiction is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding

recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. Normally a revisional jurisdiction should be exercised on a question of law. However,when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

The scope of jurisdiction of revisional authority is considered by the Supreme Court in catena of judgments. In ***Amit Kapoor v. Ramesh Chandra and Anr. reported in (2012) 9 SCC 460*** has taken the aforesaid view mentioned in para 14 above. If the impugned judgment is examined on the anvil of aforesaid principles laid down by the Supreme Court, it will be crystal clear that said authority has acted as an appellate authority. In absence of any manifest impropriety or palpable perversity, it was not open for the revisional authority to come to a different conclusion. Even if two views are possible, revisional authority cannot interfere on a plausible view. Revisional authority cannot base its finding on surmises and conjunctures.

Apart from this, the definition of 'forest produce' makes it clear that when it is found in or brought from the forest it should be treated as forest produce. The forest officials have deposed their statements that stones were brought from the notified forest area but defence could not effectively cross-examine the same nor it could demolish the correctness of such statements of prosecution witnesses. Genuineness of their statements could not be doubted unless effective cross-examination is done on them. There was no justification for the revisional court for disbelieving the statement of forest officials and disturb the concurrent findings of authorities below.

In the considered opinion of this court, even if no 'Panchnama' is prepared at a place from where the stones were brought, fact remains that there is sufficient evidence on record to show that the stones were brought from the 'forest area'. Merely because the truck was seized outside the forest area, that will not give any benefit to the respondent because definition of 'forest offence' is wide enough to include the produce brought from the forest.

Justice Deepak Mishra (as his Lordship then was) in ***Hadiya Begum v. State of M.P. & Ors)*** reported in ***2008 (2) MPLJ 644*** considered the issue whether the forums constituted under the Forest Act have committed any illegality by not accepting the transit pass. In the said case also the transit pass could not be produced at the time of seizure of the truck and it was produced later on. The facts of said case have glaring similarity with the present case in as much as

production of transit pass at the time of seizure is concern. In the present case, as noticed above, revisional authority has interfered despite the fact that transit pass was not produced at the time of seizure and it was produced later on. In ***Hadiya Begum*** (supra) also oral evidence was there to show that vehicle carrying boulders was chased by the forest officials and truck was caught up on the road afterwords and opined that since loading of boulders is originated in forest, it is sufficient to hold that boulders were forest produce.

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337. CRIMINAL PROCEDURE CODE, 1973 – Section 433-A

INDIAN PENAL CODE, 1860 – Section 302 – Sentencing

Accused convicted under Section 302 – Sentenced by Trial Court for Life Imprisonment – High Court confirmed the conviction and modified the sentence for Life Imprisonment which shall be 25 years without remission – Held – High Court and Supreme Court can award Life Imprisonment for minimum fixed term – Accused will not get benefit of remission till imprisonment of 25 years.

Sentencing – "Honour killing" – Offence committed while on bail in other case – Tampering of evidence – Conduct during trial not proper – Imposition of Life Imprisonment with minimum fixed term justified.

दण्ड प्रक्रिया संहिता, 1973 – धारा 433–ए

भारतीय दण्ड संहिता, 1860 – धारा–302 (दण्डादेश)

अभियुक्त को धारा 302 के अंतर्गत दोषसिद्धि – विचारण न्यायालय द्वारा आजीवन कारावास का दंड दिया गया – उच्च न्यायालय द्वारा दंडादेश की पुष्टि की गई एवं आजीवन कारावास को संशोधित कर बिना परिहार के 25 वर्ष किया गया – अभिनिर्धारित – उच्च न्यायालय एवं उच्चतम न्यायालय न्यूनतम नियत समय के लिये आजीवन कारावास दे सकती है – अभियुक्त को 25 वर्ष के कारावास की समाप्ति तक परिहार का लाभ नहीं मिलेगा।

दंडादेश – ''ऑनर किलिंग'' – अपराध दूसरे मामले में जमानत पर रहने के दौरान कारित किया गया – साक्ष्य से छेड़खानी – विचारण के दौरान आचरण भी उचित नहीं – न्यूनतम नियत समय के साथ आजीवन कारावास का दंड उचित पाया गया।

Vikas Yadav v. State of U.P. and others

Judgment dated 03.10.2016 passed by the Supreme Court in Criminal Appeal No. 1528-1530 of 2015, reported in AIR 2016 SC 4614

Relevant extracts from the judgment:

Learned senior counsel appearing for the State, in his turn, has commended us to three passages from ***Union of India v. V. Sriharan alias Murugan and others, (2016) 7 SCC1 : 2015 AIR SCW 6605***. They read as under:-

> "103. In fact, while saying so we must also point out that such exercise of power in the imposition of death penalty or life imprisonment by the Sessions Judge will get the

scrutiny by the Division Bench of the High Court mandatorily when the penalty is death and invariably even in respect of life imprisonment gets scrutinised by the Division Bench by virtue of the appeal remedy provided in the Criminal Procedure Code. Therefore, our conclusion as stated above can be reinforced by stating that the punishment part of such specified offences are always examined at least once after the Sessions Court's verdict by the High Court and that too by a Division Bench consisting of two Hon'ble Judges.

104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

105. We, therefore, reiterate that, the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court".

Thus analyzed, we find that the imposition of fixed term sentence on the appellants by the High Court cannot be found fault with. In this regard a reference may be made to a passage from ***Gopal Singh v. State of Uttarakhand, (2013) 7 SCC 545:AIR2013 SC 3048*** wherein while discussing about the concept of appropriate sentence, the Court has expressed thus:-

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

Judged on the aforesaid parameters, we reiterate that the imposition of fixed terms sentence is justified.

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338. DOWRY PROHIBITION ACT, 1961 – Sections 3 and 4

Dowry includes an illegal demand for consideration of marriage even without entering into an agreement after the performance of engagement and before the solemnization of marriage – Bride or bridegroom and his/her family and relatives can be charged with the offence under sections 3 and 4 of the Dowry Prohibition Act.

Relied on – *L.V. Jadhav v. Shankarrao Abasaheb Pawar and others, AIR 1983 SC 121* and *Baldev Singh v. State of Punjab, AIR 2009 SC 913.*

दहेज प्रतिषेध अधिनियम, 1961 – धाराएं 3 एवं 4

'दहेज' में सगाई के पश्चात् एवं विवाह के पूर्व, करार के बिना भी विवाह हेतु प्रतिफल की अवैध मांग सम्मिलित होती है – वधू अथवा वर एवं उनके परिवार एवं रिश्तेदारों के विरूद्ध धारा 3, 4 दहेज प्रतिषेध अधिनियम आरोप विरचित किये जा सकते हैं।

(एल.बी. जाधव विरूद्ध 'शंकरराव अबसाहेब पवार एवं अन्य, ए.आई.आर. 1983 एस.सी. 1219 एवं बलदेव सिंह विरूद्ध पंजाब राज्य, ए.आई.आर. 2009 एस.सी. 913 अनुसरित)

Suresh Chand Sharma & ors. v. State of M.P. & anr.

Order dated 10.03.2015 passed by the High Court of M.P. in M.Cr.C No. 332 of 2013, reported in I.L.R. (2016) M.P. 1207

Facts of the case:

Complaint was filed by complainant/ respondent no:2 Dr. Subra Bhatta before Mahalia Thana with allegation that her engagement was performed on 28.03.12 with accused/ Petitioner no:3 Romesh Dubey and the marriage was to be solemnized on 29.11.12. On 1.10.12, accused/petitioner no 1 Suresh chand Sharma & Smt. Nirmala Sharma, who are the father and mother of respondent no 3 came to the residence of complainant and made demand of 20 lakh Rupees and one car in dowry. On 2/10/12, the petitioner no 1 informed the father of the complainant that proposed marriage had been broken. Therefore, some negotiations were made between the parties and after that both the parties agreed to marriage of their children. On 8/10/12, petitioner no 1 called the father of complainant Suresh chand and demanded car of worth Rs 5 lakh and 11 lakh rupee in cash during Faldan ceremony and was also threatened. Due to the failure of fulfilling the illegal demand, marriage was broken by petitioner. Questions raised by petitioners in this petition was that the offence of Dowry u/s 4 of the said Act could be made only at the time of marriage and not during negotiations of marriage.

Held:- that an illegal demand even without entering into an agreement for consideration of marriage after the performance of engagement and before the solemnization of marriage leads for the offence u/s 3,4 Dowry Prohibition Act.

Relevant extracts from the order:

Having taken into consideration the law enunciated by the Hon. Apex Court, it can be safely held that even in a case where the marriage has not been

performed and only engagement was performed, in that case also, if an illegal demand has been made in regard to dowry even without entering into an agreement, for consideration of marriage, then also the bride or bridegroom and his/her family and relatives can be charged with the offence punishable under section 3/4 of the Dowry Prohibition Act, as the case may be. Suffice it to observe that the Act is piece of social ligislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideraton of marriage.

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339. ESSENTIAL COMMODITIES ACT, 1955 – Sections 3 and 7

Non-mention of the details of the order under Section 3 in First Information Report as well as charge sheet which is alleged to be violated – Accused cannot be discharged merely on that ground – It is a defect which can be cured – Prosecution must be directed to show the order – If prosecution fails to show any order, then charge may not be framed.

आवश्यक वस्तु अधिनियम, 1955 – धाराएं 3 एवं 7

प्रथम सूचना रिपोर्ट एवं अभियोग पत्र में धारा 3 के आदेश का उल्लेख नहीं था– अभियुक्त को मात्र उपरोक्त आधार पर उन्मोचित नहीं किया जा सकता – यह ऐसी त्रुटि है जिसे कि सुधारा जा सकता है – अभियोजन को निर्देशित किया जाना चाहिए कि वह सुसंगत आदेश प्रस्तुत करे – यदि अभियोजन ऐसा आदेश प्रस्तुत करने में असफल होता है, तब आरोप विरचित नहीं किया जा सकता हैं।

Savita Devi v. State of Madhya Pradesh

Judgment dated 02.09.2015 passed by the High Court of M.P. in Criminal Revision No. 265 of 2010, reported in 2016 (1) MPJR 280

Relevant extracts from the judgment:

The conundrum is, whether a charge sheet should be set aside at this stage because it does not mention about the “Order”. The Apex Court in ***Prakash Babu Raghuvanshi v. State of MP, (2004) 7 SCC 490,*** considered an interesting point whether a charge can sustain judicial scrutiny when the ‘order’ is not mentioned therein. The Apex Court opined that for bringing an application under section 7 of the EC Act, essential requirement is an ‘order’, the violation of which is alleged. However, in the said case, the Apex Court found that the said ‘order’ was neither shown before the trial court nor before the High Court. The Apex Court did not set aside the charge for the said reason. The Apex Court remitted the matter to the High Court to hear the matter afresh. The parties were permitted to place materials in support of their respective stand. The State was given liberty to file materials to show as to which “order” was violated. It was

further observed that if such material is placed, it must be examined in accordance with law. This judgment of Apex Court in ***Prakash Babu Raghuvanshi*** (supra) has not been considered by this Court while deciding the cases of ***Hema Bhadoriya, (2008 1 EFR 198)***.

The matter may be examined from yet another angle. In ***Santosh Kumari v. State of Jammu and Kashmir and others, (2011) 9 SCC 234,*** the Apex Court opined that Criminal Procedure Code is a procedural law. It is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but other not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable cases. The Apex Court opined that for this reason provisions like Sections 215 and 464 are there in CrPC. It is thus clear that absence of a charge is a curable defect. The object of framing charge is also considered in ***Santosh Kumari*** (supra). It is held that object of the charge is to give the accused notice of the matter he is charged. Therefore, if necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formla of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for.

In view of the principle laid down by Supreme Court, it can be safely concluded that if particular of “Order” is not mentioned in the charge, the charge should not be mechanically set aside. The necessary directions may be issued to specify the ‘order’ in order to give a clear picture to the accused about the allegations mentioned against him. This is necessary to attract section 7 of the EC Act. It being a curable defect may be permitted to be corrected. In ***Chandra Prakash v. State of Rajasthan, (2014) 8 SCC 340***, the Apex Court again opined that the purpose of framing of charges is that the accused should be informed with certainty and accuracy of the charge brought against him. There should not be vagueness. The accused must know the scope and particulars in detail.

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In the result, in my view, if “order” is not mentioned in charge No.3, charge sheet cannot be set aside on this ground. I deem it proper to direct the court below to reframe charge No.3 by mentioning “order”, which is allegedly violated by the petitioner. In the interest of justice, it is made clear that if prosecution is unable to show any order, which is allegedly violated by the petitioner, it will be open for the court below to exonerate the petitioner from the charge No.3 without putting him to any further trial.

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340. EVIDENCE ACT, 1872 – Section 3

(i) Appreciation of evidence – Motor Accident Claims Tribunal – Distorted version by Informant in the court in context to F.I.R. lodged by him – F.I.R. lodged by informant is not in dispute – F.I.R. was lodged within a close proximity of the accident by informant – The version of F.I.R is reliable than the distorted version given in court.

(ii) Admissibility of document, objection – Must be raised at appropriate time – Document marked at instance of a party, proved with the consent of the opposite party – Opposite party cannot be permitted to raise contention that contents of documents were not proved.

साक्ष्य अधिनियम, 1872 – धारा 3

(i) साक्ष्य का मूल्यांकन – मोटर दुर्घटना दावा न्यायाधिकरण – सूचनाकर्ता द्वारा न्यायालय के समक्ष प्रथम सूचना रिपोर्ट का विकृत विवरण प्रस्तुत किया जाना – सूचनाकर्ता द्वारा प्रथम सूचना रिपोर्ट दर्ज कराया जाना विवादित नहीं हैं – प्रथम सूचना रिपोर्ट घटना के निकट दर्ज करायी गयी थी – प्रथम सूचना रिपोर्ट का विवरण, न्यायालय में दिये गये विवरण से विश्वसनीय हैं।

(ii) दस्तावेज की ग्राह्यता के संबंध में आपत्ति – उचित समय पर उठाई जानी चाहिये – दस्तावेज प्रस्तुत करने वाले पक्षकार की ओर से विपक्षी पक्षकार की सहमति से प्रदर्शित किया गया – विपक्षी पक्षकार को दस्तावेज की अंर्तवस्तु प्रमाणित न होने का तर्क करने की अनुमति नहीं दी जा सकती।

Bablu @ Netram @ Netraj v. Smt.Abhilasha

Order dated 30.07.2015 passed by the High Court of M.P. in M.Cr.C No. 394 of 2015, reported in I.L.R. (2016) M.P. 1138

Relevant extracts from the Judgment :

It is observed that while entering in witness box he gave a different version that the deceased was standing by the road side, however, this witness does not dispute of having lodged the FIR. Though it is contended by learned counsel for appellant that the Claims Tribunal committed gross error in solely relying on the FIR, however, taking into consideration that the FIR was lodged within a close proximity of the accident having taken place and as witnessed by PW–2 Bheem Singh, the Tribunal is justified in relying upon the same rather a distorted version by him when he entered into the witness box.

In this context reference can be had of a decision in ***Oriental Insurance Co.Ltd. v. Premlata Shukla (2007) 3 MPHT 225;*** wherein, Their Lordships were pleased to hold :

> "However, the factum of an accident could also be proved from the First Information Report. It is also to be noted that once a part of the contents of the document is admitted in

evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part there of had not been proved. Both the parties have relied there upon. It was marked as an Exhibit as both the parties intended to rely upon them.

Once a part of it is relied upon by both the parties, the learned Tribunal cannot be said to have committed any illegality in relying upon the other part, irrespective of the contents of the document been proved or not. If the contents have been proved, the question of reliance thereupon only upon a part thereof and not upon the rest, on the technical ground that the same had not been proved in accordance with law, would not arise.

A party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon."

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***341. EVIDENCE ACT, 1872 – Sections 3, 8, 24 and 27**

Last seen theory – Circumstantial evidence, appreciation of – Chain of circumstances must be established to have completed – In the absence of proof as to homicidal or otherwise death of the deceased, conviction on the basis of non-cogent last seen theory only, cannot be recorded – Further held, last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime, becomes impossible.

साक्ष्य अधिनियम, 1872 – धाराएं 3, 8, 24 एवं 27

अंतिम बार साथ देखे जाने का सिद्धांत – पारिस्थितिजन्य साक्ष्य का मूल्यांकन – परिस्थितियों की श्रृंखला पूर्ण होना, स्थापित करना आवश्यक है – मानव वध अथवा मृतक की अन्य प्रकार से मृत्यु के संबंध प्रमाण के अभाव में, मात्र अंतिम बार साथ देखे जाने के सिद्धांत के आधार पर दोषसिद्धि नहीं की जा सकती हैं – अंतिम बार साथ देखे जाने का सिद्धांत तब लागू होता है जब मृतक व अभियुक्त को साथ में जीवित देखे जाने के समय एवं मृतक की मृत्यु होना, पाये जाने के समय के मध्य का अंतर इतना छोटा है कि अभियुक्त से अन्यथा किसी अन्य व्यक्ति द्वारा अपराध कारित किया जाना असंभव हो जाता हो।

Rambraksh alias Jalim v. State of Chhattisgarh

Judgment dated 12.05.2016 passed by the Supreme Court in Criminal Appeal No. 462 of 2016, reported in 2016 (2) Crimes 231(SC)

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342. EVIDENCE ACT, 1872 – Section 6

CRIMINAL PROCEDURECODE, 1973 – Section 313

***Res-gestae* – The statement must be contemporaneous with the act or at least immediately thereafter – Spontanity and continuity are essential for admissibility.**

Six members of the family killed in house – During statement under Section 313 CrPC accused simple reply was that he did not know how the incident happened, Held– Non–disclosure as to how his family members died – one of the imporatant reason to believe prosecution.

साक्ष्य अधिनियम, 1872 – धारा 6

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

''रेसजस्टे'' – कथन का कृत्य से समकालीन होना अथवा उसके तुरंत पश्चात् का होना आवश्यक है – त्वरितता एवं निरंतरता ग्राह्ता हेतु आवश्यक है।

परिवार के छः सदस्यों की घर में हत्या – धारा 313 दं.प्र.सं. के कथनों के दौरान अभियुक्त द्वारा साधारण रूप से, घटना कैसे हुई, इसकी जानकारी न होना कहा गया – अभिनिर्धारित – अभियुक्त द्वारा परिवार के सदस्यों की मृत्यु किस प्रकार हुई, यह खुलासा नहीं किया जाना – अभियोजन पर विश्वास करने का महत्वपूर्ण कारण है।

Dhal Singh Dewangan v. State of Chhattisgarh

Judgment dated 23.08.2016 passed by the Supreme Court in Criminal Appeal No. 162 of 2014, reported in 2016 (4) Crimes 17 (SC)

Relevant extracts from the Judgment :

The general rule of evidence is that hearsay evidence is not admissible. However, Section 6 of the Evidence Act embodies a principle, usually known as the rule of ***res gestae*** in English Law, as an exception to hearsay rule. The rationale behind this Section is the spontaneity and immediacy of the statement in question which rules out any time for concoction. For a statement to be admissible under Section 6, it must be contemporaneous with the acts which constitute the offence or at least immediately thereafter. The key expressions in the Section are "...so connected... as to form part of the same transaction". The statements must be almost contemporaneous as ruled in the case of ***Krishan Kumar Malik v. State of Haryana, 4 (2011) 7 SCC 130*** and there must be no interval between the criminal act and the recording or making of the statement in question as found in ***Gentela Vijayvardhan Rao and another v. State of Andhra Pradesh, (1996) 6 SCC 241.*** In the latter case, it was accepted that the words sought to be proved by hearsay, if not absolutely contemporary with the action or event, at least should be so clearly associated with it that they are part of such action or event. This

requirement is apparent from the first illustration below Section 6 which states .... "whatever was said or done.... at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact."

Normally, it is not the duty of the accused to explain how the crime has been committed. But in the matters of unnatural death inside the house where the accused had his presence, non–disclosure on his part as to how the other members of his family died, is an important reason to believe as to what has been shown by the prosecution through the evidence on record is true. It is nobody's case that any dacoity or robbery had taken place in the fateful night of the incident. There are six members of the family who have been killed brutally. Simple reply by the accused in his statement under Section 313 CrPC that he did not know as to how the incident happened, particularly when he was in the house, does certainly make easier to believe the truthfulness of the evidence that has been adduced by the prosecution in support of charge against him.

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343. EVIDENCE ACT, 1872 – Sections 63 and 65

Admissibility of photocopies as secondary evidence – Must be tested on the anvil of the statutory provisions mentioned u/s 63(2) read with section 65(c) of Indian Evidence Act – Unless it is established- a) copies are made from the original by mechanical process and b) copies are compared with original documents will not be included under the expression secondary evidence.

साक्ष्य अधिनियम, 1872 – धाराएं 63 एवं 65

फोटो प्रतिलिपि की द्वितीयक साक्ष्य के रूप में ग्राह्ता – धारा 63 (2) सहपठित धारा 65 (सी) के वैधानिक प्रावधानों के आधार पर परीक्षित की जानी चाहिये – जब तक कि यह स्थापित नहीं होता कि (क) प्रतियों को मूल से यांत्रिक प्रक्रिया द्वारा बनाया गया एवं (ख) प्रतियों का मूल से मिलान किया गया, दस्तावेज द्वितीयक साक्ष्य की परिधि में सम्मिलित नहीं होंगे।

Ravi Kumar Bajpai v. Shakuntala Devi and others

Order dated 25.11.2016 passed by the High Court of M.P. in Writ Petition No. 12719 of 2012, reported in 2017 (1) M.P.L.J. 692

Relevant extracts from the Order:

Section 63, Indian Evidence Act, 1872 defines secondary evidence to mean and include (1) Certified copies given under the provisions hereinafter contained; (2) Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies; (3) Copies made from or compared with the original; (4) Counterparts of documents as against the parties who did not execute them; and (5) Oral accounts of the contents of a document given by some person who has himself seen it. Section 63 Sub-section (2) of Section 63 which is relevant in the case at hand specifies that, copies made from the original by mechanical processes which in themselves

insure the accuracy of the copy, and copies compared with such copies are the secondary evidence. Thus, unless it is established that (a) the copies are made from the original by mechanical process and (b) copies are compared with original documents will not be included under the expression secondary evidence.

Coming to the decision relied upon on behalf of respondent. In ***Nawab Singh v. Inderjit Kaur, (1999) 4 SCC 413***, their Lordships while dwelling upon the issue were testing an order passed by the Trial Court, which rejected the application for taking photocopy of rent receipt on the ground that the same is of doubtful veracity. Present is not the case where the document is required to be produced by secondary evidence is being rejected on the ground of it being a doubtful veracity. (Merely because one of the ground raised by the party that the documents are forged will not in itself make it admissible). The admissibility of secondary evidence has to be tested on the anvil of the statutory provisions contained under Section 63 (2) read with Section 65 (c) of Evidence Act, 1872. Therefore, the decision in ***Nawab Singh*** (supra) is of no assistance to the respondents.

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344. EVIDENCE ACT – Sections 63 and 65

Photocopy – Prepared from the original by mechanical process – Secondary evidence.

Conditions for secondary evidence under Section 65(c) – Existence of the original and it has been lost or destroyed must be proved *prima facie* – Circumstances relating to preparation of photocopy must be explained by submitting affidavit or other documents.

साक्ष्य अधिनियम, 1872 – धाराएं 63 एवं 65

मूल से यांत्रिक प्रक्रिया द्वारा तैयार की गई (तैयार की गई) प्रतिलिपि – द्वितीयक साक्ष्य –धारा 65 (ग) के अंर्तगत द्वितीयक साक्ष्य हेतु शर्तें – मूल का अस्तित्व में होना एवं उसका खो जाना या नष्ट हो जाना प्रथम दृष्ट्या प्रमाणित करना चाहिये – प्रतिलिपि तैयार किये जाने से संबंधित परिस्थितियाँ शपथ पत्र अथवा अन्य दस्तावेजों के माध्यम से स्पष्ट करनी चाहिये।

Balkrishna Chourasiya v. Rajesh Vaidhya

Judgment dated 09.11.2016 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 15002 of 2016 [Unreported Case]

Relevant extracts from the judgment:

Section 63 (2) of Evidence Act prescribes that the copies made from the original by mechanical process which in themselves ensure the accuracy of the copy comes in the purview of secondary evidence. A document in the form of photocopy is a product of mechanical process and, if it is prepared from the original document then it comes into the purview of secondary evidence. Therefore, a photocopy which is prepared from the original by mechanical process comes in the purview of secondary evidence as defined under Section 63 (2) of the Evidence Act.

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This Court in case of ***Aneeta v. Saraswati, 2012 (4) MPLJ, 561*** has observed in Para 12 as under:

> "(12) So far as the applicability of Clause (2) of Section 63 of Evidence Act placed reliance by the learned counsel for the petitioner is concerned, according to me, it can be said that by some mechanical process a photocopy of original receipt was obtained, but, there cannot be any surety of its correctness and accuracy in absence of supporting material on record. Again in this regard there is no averment in the application that the photocopy which has been obtained by mechanical process was never tampered and it ensures its accuracy. Even if accurate photocopy is obtained by a mechanical process, it is a matter of common parlance that after inserting some words on a document which is already a photocopy and by interpolating the same, another photocopy of the said interpolated photocopy may be obtained and thus the accuracy of photocopy is always surrounded by dark clouds of doubt. In the present case since there is no averment in the application under Section 65 that photocopy was compared with the original and it is an accurate photocopy of the original and further by not filing any affidavit of person who obtained the said photocopy is on record, it is difficult to hold the hallmark and authenticity and accuracy of the photocopy."

In view of the aforesaid case law, first of all it is must for the party who seek permission to lead the secondary evidence to prove ***prima facie*** that there was an existence of the original and the same has been lost or destroyed and other original copy is also not in existence. Thereafter, the party concern is also required to establish prima facie that the photocopy has been prepared from the relevant original document by mechanical process. In this regard it has to be explained as to what was the circumstances under which the photostate copy was prepared and who was in possession of the original document at the time when photostat copy was prepared, and by whose or under whose direction and presence it was prepared. The party may seek permission with a view to establish prima facie the aforesaid facts and submit an affidavit or other relevant document for satisfaction of the Court and the Court after considering the affidavit or other relevant document on satisfaction may allow the photostate copy of original document as secondary evidence. In absence of aforesaid satisfaction or reasonable suspicion about the genuineness of the photocopy of the original document the Court may disallow the prayer.

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345. EVIDENCE ACT,1872 – Sections 64 and 65

(i) Proof of document – Documents need to be proved by primary evidence – In the absence of primary evidence, documents can be proved by secondary evidence – Pre-conditions for leading secondary evidence is that party is unable to produce the original document inspite of best efforts and is beyond his control – Party has to lay down the factual foundation before producing secondary evidence.

(ii) Mere marking an exhibit on document does not dispense with its proof – Admission of a document in evidence does not amount to its proof – Document needs to be proved in accordance with law.

साक्ष्य अधिनियम, 1872 – धाराएं 64 एवं 65

(i) दस्तावेज को साबित किया जाना – प्राथमिक साक्ष्य द्वारा साबित किया जाना चाहिये – प्राथमिक साक्ष्य के अभाव में, दस्तावेज को द्वितीयक साक्ष्य के द्वारा साबित किया जा सकता है – द्वितीयक साक्ष्य प्रस्तावित करने के लिये यह पूर्व शर्त हैं कि पक्षकार अपने सर्वश्रेष्ठ प्रयासों एवं उसके नियंत्रण से बाहर की परिस्थितियों के कारण मूल दस्तावेज प्रस्तुत करने में असमर्थ है।

(ii) दस्तावेज पर मात्र प्रदर्श अंकित किया जाना उसे साबित करने से छूट नहीं देता हैं – किसी दस्तावेज को साक्ष्य में ग्राह्य किया जाना उसे साबित करना नहीं होता है – दस्तावेज को विधि अनुसार प्रमाणित करना आवश्यक है।

Rakesh Mohindra v. Anita Beri and others

Judgment dated 06.11.2015 passed by the Supreme Court of India in Civil Appeal No. 13361 of 2015, reported in 2016 (II) MPJR (SC) 137

Relevent extracts from the Judgment:

As a general rule, documents are proved by leading primary evidence. Section 64 of the Evidence Act provides that documents must be proved by the primary evidence except in cases mention in Section 65 of the Evidence Act. In the absence of primary evidence, documents can be proved by secondary evidence as contemplated under Section 63 of the Act.

The pre–conditions for leading secondary evidence are that such original documents could not be produced by the party relied upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non–production of primary evidence. Unless, it is established that the original documents if lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot accepted.

It is well settled that if a party wishes to lead secondary evidence the Court is obliged to examine the probative value of the document produce in the Court

or their contents and decide the question of admissibility of a document in secondary evidence. At the same time, the party has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. It is equally well settled that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispense with its proof, which is otherwise required to be done in accordance with law.

After considering the entire facts of the case and the evidence adduced by the appellant for the purpose of admission of the secondary evidence, we are of the view that all efforts have been taken for the purpose of leading secondary evidence. The trial court has noticed that the photocopy of the Exhibit DW - 2/B came from the custody of DEO Ambala and the witness, who brought the record, has been examined as witness. In that view of the matter, there is complaince of the provisions of section 65 of the Evidence Act. Merely because the signatures in some of the documents were not legible and visible that cannot be a ground to reject the secondary evidence. In our view, the trial court correctly appreciated the efforts taken by the appellant for the purpose of leading secondary evidence.

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***346. EVIDENCE ACT, 1872 – Section 73**

CRIMINAL PROCEDURE CODE, 1973 – Section 311-A

Power under section 311-A CrPC, nature and scope of – Provision is prospective – Magistrate is authorized to take specimen signature of witnesses/accused persons.

साक्ष्य अधिनियम, 1872 – धारा 73

दण्ड प्रक्रिया संहिता, 1973 – धारा 311–क

धारा 311–क दं.प्र.सं. के अंतर्गत शक्तियाँ, प्रकृति एवं परिधि – प्रावधान भविष्यलक्षी हैं – मजिस्ट्रेट साक्षी अथवा अभियुक्त के नमूना हस्ताक्षर लेने हेतु अधिकृत हैं।

Sukhram v. State of Himachal Pradesh

Judgment dated 25.07.2016 passed by the Supreme Court in Criminal Appeal No. 224 of 2012, reported in 2016 (3) Crimes 346 (SC)

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***347. GOVANSH VADH PRATISHEDH RULES (M.P.), 2012 – Rules 5 and 6**

CRIMINAL PROCEDURE CODE,1973 – Section 451

(i) Confiscation of vehicle by District Magistrate – District Magistrate is at liberty to initiate proceedings for confiscation of vehicle after conclusion of trial by the concerned Magistrate, if found that vehicle in question was used in commission of crime.

(ii) Interim custody of seized vehicle – During pendency, interim custody of seized vehicle is to be given to the applicants, if they are registered owner after imposing conditions.

गौवंश वध प्रतिषेध नियम (म.प्र.), 2012 – नियम 5 एवं 6

दण्ड प्रक्रिया संहिता, 1973 – धारा 451

(i) जिला मजिस्ट्रेट द्वारा वाहन का अधिहरण – जिला मजिस्ट्रेट को यह स्वतंत्रता हैं कि वह विचारण के निष्कर्ष के पश्चात् वाहन के अधिहरण की कार्यवाही प्रारंभ करे यदि यह पाया जाता हैं कि प्रश्नगत वाहन अपराध कारित करने में प्रयुक्त था।

(ii) जप्त वाहन की अंतरिम अभिरक्षा – विचारण के लंबन के दौरान जप्त वाहन की अंतरिम अभिरक्षा सशर्त आवेदक को दी जा सकती है, यदि वह वाहन का पंजीकृत स्वामी हैं।

Sarvan & anr. v. State of M.P.

Order dated 24.08.2015 passed by the High Court of M.P. in M.Cr.C No. 593 of 2015, reported in I.L.R. (2016) M.P. 1214

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348. HINDU MARRIAGE ACT, 1955 – Section 13(1)(ia)

Persistent effort of wife to constrain husband to be separated from family – Constitutes "Cruelty" – Husband entitled to decree of divorce.

Unsubstantiated allegations regarding extra-marital affair – Also threat to commit suicide by wife – Amounts to mental cruelty – Husband entitled to decree of divorce.

हिन्दू विवाह अधिनियम, 1955 – धारा 13 (1) (ia)

पत्नी द्वारा पति को परिवार से अलग करने के लगातार प्रयास – ''क्रूरता'' गठित करते हैं – पति विवाह विच्छेद की आज्ञप्ति प्राप्त करने का अधिकारी है।

विवाहेतर संबंधों के बारे में निराधार आरोप – आत्महत्या करने की धमकी – मानसिक क्रूरता गठित करते हैं – पति विवाह विच्छेद की आज्ञप्ति प्राप्त करने का अधिकारी है।

Narendra v. K. Meena

Judgment dated 06.10.2016 passed by the Supreme Court in Civil Appeal No. 3253 of 2008, reported in AIR 2016 SC 4599

Relevant extracts from the judgment:

First of all, let us look at the incident with regard to an attempt to commit suicide by the Respondent. Upon perusal of the evidence of the witnesses, the findings arrived at by the trial Court to the effect that the Respondent wife had locked herself in the bathroom and had poured kerosene on herself so as to commit suicide, are not in dispute. Fortunately for the Appellant, because of the noise and disturbance, even the neighbours of the Appellant rushed to help and the door of the bathroom was broken open and the Respondent was saved. Had she been successful in her attempt to commit suicide, then one can foresee the consequences and the plight of the Appellant because in that event the

Appellant would have been put to immense difficulties because of the legal provisions. We feel that there was no fault on the part of the Appellant nor was there any reason for the Respondent wife to make an attempt to commit suicide. No husband wouldnever be comfortable with or tolerate such an act by his wife and if the wife succeeds in committing suicide, then one can imagine how a poor husband would get entangled into the clutches of law, which would virtually ruin his sanity, peace of mind, career and probably his entire life. The mere idea with regard to facing legal consequences would put a husband under tremendous stress. The thought itself is distressing. Such a mental cruelty could not have been taken lightly by the High Court. In our opinion, only this one event was sufficient for the Appellant husband to get a decree of divorce on the ground of cruelty. It is needless to add that such threats or acts constitute cruelty. Our aforesaid view is fortified by a decision of this Court in the case of ***Pankaj Mahajan v. Dimple @ Kajal (2011) 12 SCC 1,*** wherein it has been held that giving repeated threats to commit suicide amounts to cruelty.

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As stated hereinabove, in a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary consideration of the Respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the Respondent wife to constrain the Appellant to be separated from the family would be torturous for the husband and in our opinion, the trial Court was right when it came to the conclusion that this constitutes an act of ‘cruelty’.

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True, it is very difficult to establish such allegations but at the same time, it is equally true that to suffer an allegation pertaining to one’s character of having an extra-marital affair is quite torturous for any person – be it a husband or a wife. We have carefully gone through the evidence but we could not find any reliable evidence to show that the Appellant had an extra-marital affair with someone. Except for the baseless and reckless allegations, there is not even the slightest evidence that would suggest that there was something like an affair of the Appellant with the maid named by the Respondent. We consider levelling of absolutely false allegations and that too, with regard to an extra-marital life to be quite serious and that can surely be a cause for metal cruelty.

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349. INDIAN PENAL CODE, 1860 – Sections 383 and 384

Offence of extortion, constitution of.

Facts of the case:

Accused persons threatened the wife of one of the accused persons to give an express undertaking to consent for divorce – Petition pending before the Court – Neither such undertaking was given by the wife nor any liability was incurred or any right was given up by wife due to the alleged threat – Held, since valuable security did not come into existence, mere threat or fear of injury which has not led to creation of valuable security cannot constitute offence of extortion.

भारतीय दण्ड संहिता, 1860 – धाराएं 383 एवं 384

उद्दापन के अपराध का गठन – अभियुक्तगण द्वारा एक अभियुक्त की पत्नी को इस बात की धमकी दी गई कि वह विवाह विच्छेद के लिये लिखित सहमति दे देंवे – याचिका न्यायालय के समक्ष लंबित थी – पत्नी द्वारा इस प्रकार की कोई सहमति नहीं दी गई और न ही धमकी के फलस्वरूप उसने किसी अधिकार का त्याग किया अथवा उसके विरूद्ध दायित्व सृजित हुआ– अभिनिधारित – जबकि किसी भी प्रकार की मूल्यवान प्रतिभूति अस्तित्व में नहीं आयी, केवल ऐसी धमकी देना अथवा उपहति कारित करने का भय होना जिससे मूल्यवान प्रतिभूति का सृजन नहीं होता है, उद्दापन का अपराध गठित नहीं करती हैं।

Smt. Dipti Gupta and others v. Smt. Shweta Parmar

Order dated 21.04.2016 passed by the High Court of M.P. in Misc. Criminal Case No. 2302 of 2013, reported in 2016 CriLJ 4451 (MP)

Relevant extracts from the Order:

Valuable security can come into existence only when it has all the basic requisites recognized by law for a document to graduate into a valuable security. One of the essential features is that document should be signed by the maker since an unsigned document does not mature into a valuable security despite containing script pertaining to creation, extension, transfer, restriction, extinction or release of any legal right or acknowledgment of legal liability or absence of any right. The decision in the case of ***Dhananjay alias Dhananjay Kumar Singh v. State of Bihar and another, (2007) 14 SCC 768*** is worthy of reference in this context. Paras 5 and 6 of the said decision being relevant are reproduced below:-

> "5. Section 384 provides for punishment for extortion. What would be an extortion is provided under Section 383 of the Indian Penal Code in the following terms:
>
> "***383. Extortion:-*** Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything

signed or sealed which may be converted into a valuable security, commits “extortion”.”

6. A bare perusal of the aforementioned provision would demonstrate that the following ingredients would constitute the offence :

1. The accused must put any person in fear of injury to that person or any other person.
2. The putting of a person in such fear must be intentional.
3. The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security.
4. Such inducement must be done dishonestly.”

Testing the factual matrix attending the present case on the anvil of the legal provisions and decision (supra), it is seen that the petitioners threatened the respondent/wife to give an express undertaking to consent for divorce with her husband Dr. Subhash Parmar in the divorce petition filed by the husband, which is pending before the court. Reading of the prosecution story contained in pleadings in the complaint and the supportive statements recorded, do not disclose that any such undertaking was ever written much less signed by the respondent/wife. There is not even an iota of material/evidence to show that any such undertaking was given by which any liability was incurred or any right was given up by the respondent/wife due to the threat extended to her by the petitioners. Thus, “valuable security” as defined in section 30 of I.P.C. did not come into existence at all. The absence of valuable security coming into existence renders the offence of extortion untenable. Mere threat or fear of injury which has not led to creation of a valuable security cannot constitute offence of extortion as defined in section 383 of I.P.C.

Consequently, in the absence of any material to demonstrate the existence of any valuable security coming into being in the entire prosecution story, there arises no question of extortion being made out even on prima facie basis.

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350. INDIAN PENAL CODE, 1860 – Section 149

Once membership of unlawful assembly is proved – Prosecution is not required to establish that any overt act has been assigned to any accused – Mere membership is sufficient for the vicarious liability for the acts of the others.

भारतीय दण्ड संहिता, 1860 – धारा 149

एक बार अभियोजन द्वारा विधि विरूद्ध जमाव की सदस्यता साबित कर दी गई – अभियोजन द्वारा अभियुक्त का प्रत्यक्ष कृत्य स्थापित किया जाना आवश्यक नहीं हैं – दूसरों के कृत्यों के प्रतिनिधिक दायित्व हेतु मात्र सदस्यता पर्याप्त हैं।

Bharwad Navghanbhaj Jakshibhai & ors. v. State of Gujarat

Judgment dated 29.08.2016 passed by the Supreme Court in Criminal Appeal No. 783 of 2016, reported in 2016 (4) Crimes 4 (SC)

Relevant extracts from the judgment:

We have gone through the record and considered rival submissions. As regards the findings of conviction by the Courts below, we do not find anything on record warranting any different view. The conclusion arrived at by the High Court rightly sums up the matter in following words:

> "So far as the submission on behalf of the original accused that only 8 injuries were found and as per the case of prosecution 13 persons caused the injuries and, therefore, there is exaggeration and/or over–implication is concerned, it is required to be noted that all the accused were members of unlawful assembly with a common object. All of them attacked the original complainant–injured eye witness at his place. All of them were charged for the offence underSection 149 of the IPC also and they are in fact convicted with the aid of Section 149 of the IPC. As per catena of decisions of the Hon'ble Supreme Court as well as this Court, to attract the provisions of section 149 of the IPC, once membership of an unlawful assembly is established, it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. In other words, mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in the prosecution of the common object of the unlawful assembly or such which the members of the unlawful assembly knew were likely to becommitted."

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351. INDIAN PENAL CODE, 1860 – Section 300

EVIDENCE ACT, 1872 – Section 32

(i) Multiple dying declarations – Dying declarations before Police Officer and Executive Magistrate vis-à-vis oral dying declaration – In a dying declaration before Police Officer and Executive Magistrate, the deceased stated that person who poured kerosene on her and set her afire was unknown and also that there was no involvement of her in-laws or accused persons in the incident – In her oral dying declaration to her father, she implicated accused persons – Held, statements made before Police Officer and Executive Magistrate are consistent as to role of accused persons and are not contradictory – Oral dying declaration appears to be after

thought and cannot be relied upon – Further held, mechanical approach to law of dying declaration has to be shunned and Court must weigh all attending circumstances in finding whether dying declaration was properly recorded and whether it was voluntary and truthful.

(ii) Burden of proof, extent and degree of – The prosecution has to prove the guilt of the accused beyond all reasonable doubt – If two views are possible on the evidence adduced, one pointing to the guilt of the accused and other towards his innocence, the view favourable to the accused should be adopted.

भारतीय दण्ड संहिता, 1860 – धारा 300

साक्ष्य अधिनियम, 1872 – धारा 32

(i) एकाधिक मृत्युकालीन कथन – पुलिस अधिकारी एवं कार्यपालक मजिस्ट्रेट के समक्ष मृत्युकालीन कथन एवं मौखिक मृत्युकालीन कथन – पुलिस अधिकारी व कार्यपालक मजिस्ट्रेट के समक्ष के मृत्युकालीन कथन में अज्ञात व्यक्ति द्वारा केरोसिन डाला जाना एवं आग लगाया जाना बताया गया – मौखिक मृत्युकालीन कथन में उक्त कृत्य अभियुक्तों द्वारा किया जाना बताया गया – अभिनिर्धारित – पुलिस अधिकारी एवं कार्यपालक मजिस्ट्रेट के समक्ष कथनों में अभियुक्त के कृत्य समान हैं एवं विरोधाभासी नहीं हैं – मौखिक मृत्युकालीन कथन पश्चात्वर्ती सोच पर आधारित होना प्रतीत होता है – मृत्युकालीन कथन के संबंध में यांत्रिक दृष्टिकोण नहीं होना चाहिये एवं न्यायालय द्वारा आस–पास की समस्त परिस्थितियों को तौल कर यह ढूंढना चाहिये कि क्या मृत्युकालीन कथन सही तरीके से लेखबद्ध हुआ था एवं क्या वह स्वैच्छिक एवं सत्य हैं।

(ii) सबूत के भार की परिधि एवं सीमा – अभियोजन द्वारा अभियुक्त का दायित्व समस्त युक्तियुक्त संदेह से परे साबित करना चाहिये – यदि प्रस्तुत साक्ष्य पर दो अभिमत् संभव है, एक अभियुक्त के दायित्व के संबंध में एवं एक उसके निर्दोष होने के संबंध में, तो अभियुक्त के हित के अभिमत को अपनाया जाना चाहिये।

State of Gujarat v. Jayrajbhai Punjabhai Varu

Judgment dated 11.07.2016 passed by the Supreme Court in Criminal Appeal No. 1236 of 2010, reported in 2016 CriLJ 4185 (SC)

Relevant extracts from the Judgment:

The courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross-examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to

find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration. In the case on hand, there are two sets of evidence, one is the statement/declaration made before the police officer and the Executive Magistrate and the other is the oral dying declaration made by the deceased before her father who was examined as PW-1. On a careful scrutiny of the materials on record, it cannot be said that there were contradictions in the statements made before the police officer and the Executive Magistrate as to the role of the respondent herein in the commission of the offence and in such circumstances, one set of evidence which is more consistent and reliable, which in the present case being one in favour of the respondent herein, requires to be accepted and conviction could not be placed on the sole testimony of PW-1. A number of times the relatives influence the investigating agency and bring about a dying declaration. The dying declarations recorded by the investigating agencies have to be very scrupulously examined and the court must remain alive to all the attendant circumstances at the time when the dying declaration comes into being. In case of more than one dying declaration, the intrinsic contradictions in those dying declarations are extremely important. It cannot be that a dying declaration which supports the prosecution alone can be accepted while the other innocent dying declarations have to be rejected. Such a trend will be extremely dangerous. However, the courts below are fully entitled to act on the dying declarations and make them the basis of conviction, where the dying declarations pass all the above tests.

The court has to weigh all the attendant circumstances and come to the independent finding whether the dying declaration was properly recorded and whether it was voluntary and truthful. Once the court is convinced that the dying declaration is so recorded, it may be acted upon and can be made a basis of conviction. The courts must bear in mind that each criminal trial is an individual aspect. It may differ from the other trials in some or the other respect and, therefore, a mechanical approach to the law of dying declaration has to be shunned.

On appreciation of evidence on record, we are of the considered view that the dying declarations of the deceased recorded by the police officer as well as the Executive Magistrate are fully corroborated and there is no inconsistency as regards the role of the respondent herein in the commission of offence. From a perusal of the statement recorded by Bhiku Karsanbhai, P.S.O., the thumb impression of Rekhaben (since deceased) which had been identified by her father-Sri Vala Jaskubhai Suragbhai as also his cross-examination in which he admitted that police had already come there and he had identified her thumb impression and Mamlatdar had gone inside to record statement, there is no reason as to why Rekhaben would give names of her husband and her in-laws in the alleged statement given to her father. A dying declaration is entitled to great weight. The conviction basing reliance upon the oral dying declaration made to the father of the deceased is not reliable and such a declaration can

be a result of afterthought. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

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352. INDIAN PENAL CODE, 1860 – Sections 300 and 376

DNA report – Seminal stains matched with blood sample of the accused – Blood of the victim was found on the clothes of the accused – No scope for any doubt as to the liability of the accused – Rape committed on the victim who had already suffered extreme injuries – Life imprisonment is just.

Intention to kill – Medical evidence showed that death of the victim was due to injuries suffered and keeping in supine position for sexual assualt – Absence of evidence to show that accused was responsible for fall of deceased from train – The intention to keep the victim in supine position was for the purpose of rape and not murder – Absence of requisite knowledge that act is likely to cause death as well – Conviction under Section 302 of the Code set aside.

भारतीय दण्ड संहिता, 1860 – धारा 300 एवं 376

डी.एन.ए. रिपोर्ट – वीर्य के दागों का अभियुक्त के रक्त नमूने से मिलान होना – पीड़ित के रक्त का अभियुक्त के कपड़ों पर पाया जाना – अभियुक्त के दायित्व के संबंध में किसी संदेह की गुंजाईश नहीं – ऐसे पीड़ित के साथ बलात्संग जिसे पूर्व से कई गहरी चोटें आ चुकी थी – आजीवन कारावास उचित पाया गया।

मृत्यु कारित करने का आशय – चिकित्सीय साक्ष्य द्वारा पीड़ित की मृत्यु का कारण आयी हुई चोटों एवं यौन हमले के दौरान चेहरे को ऊपर रख कर लेटाना (नचपदम च्वेपजपवद) बताया गया – मृतक के रेल से गिरने के संबंध में अभियुक्त के दायित्व की साक्ष्य का अभाव – पीड़ित को चेहरा ऊपर रख लेटाये जाने (नचपदम च्वेपजपवद) का आशय बलात्संग था ना कि मृत्यु कारित करना – कृत्य के मृत्यु कारित करने के संबंध में आवश्यक ज्ञान का भी अभाव – धारा 302 के अंतर्गत दोषसिद्ध अपास्त की गई।

Govindaswamy v. State of Kerala

Judgment dated 15.09.2016 passed by the Supreme Court in Criminal Appeal No. 1584 of 2016, reported in AIR 2016 SC 4299

Relevant extracts from the judgment:

So far as the offence under Section 376 IPC is concerned, from a consideration of the postmortem report (Exhibit P–69) D.N.A. Profile (Exhibit P–2) and the evidence of P.W. 64 and P.W. 70, there can be no manner of doubt that it is the accused appellant who had committed the said offence. The D.N.A. profile, extracted above, clinches the issue and makes the liability of the accused explicit leaving no scope for any doubt or debate in the matter. We, therefore, will find no difficulty in confirming the conviction of the accused under Section 376 IPC. Having regard to the fact that the said offence was committed on the deceased who had already suffered extreme injuries on her body, we are of the view that not only the offence under Section 376 IPC was committed by the accused, the same was so committed in a most brutal and grotesque manner which would justify the imposition of life sentence as awarded by the learned trial Court and confirmed by the High Court.

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Keeping of the deceased in a supine position for commission of sexual assault has been deposed to by P.W. 64 as having a bearing on the cause of death of the deceased. However, to hold that the accused is liable under Section 302 IPC what is required is an intention to cause death or knowledge that the act of the accused is likely to cause death. The intention of the accused in keeping the deceased in a supine position, according to P.W. 64, was for the purposes of the sexual assault. The requisite knowledge that in the circumstances such an act may cause death, also, cannot be attributed to the accused, inasmuch as, the evidence of P.W. 64 itself is to the effect that such knowledge and information is, in fact, parted with in the course of training of medical and para–medical staff. The fact that the deceased survived for a couple of days after the incident and eventually died in Hospital would also clearly militate against any intention of the accused to cause death by the act of keeping the deceased in a supine position. Therefore, in the totality of the facts discussed above, the accused cannot be held liable for injury no.2. Similarly, in keeping the deceased in a supine position, intention to cause death or knowledge that such act may cause death, cannot be attributed to the accused. We are, accordingly, of the view that the offence under Section 302 IPC cannot be held to be made out against the accused so as to make him liable therefor. Rather, we are of the view that the acts of assault, etc. attributable to the accused would more appropriately attract the offence under Section 325 IPC.

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353. INDIAN PENAL CODE, 1860 – Section 326

Interpretation of words "any instrument" used in Section 326 – Must be read with heading of the section which talks about causing grievous hurt by dangerous weapons and means – Grievous hurt caused as a result of kicks and fists – The expression "any instrument" cannot be treated to include kick, fists or blow given by any other body part – An instrument has to be an outside mean/weapon.

भारतीय दण्ड संहिता, 1860 – धारा 326

धारा 326 के अंतर्गत प्रयुक्त शब्द ''कोई उपकरण'' का निर्वचन – धारा के शीर्षक के साथ पढ़ा जाना चाहिये जो कि खतरनाक आयुधों या साधनों के संबंध में बात करता हैं – पैर एवं मुक्कों से कारित घोर उपहति – ''कोई उपकरण'' में पैर, मुक्के या शरीर के किसी अन्य अंग द्वारा मारा जाना सम्मिलित होना नहीं माना जा सकता –'उपकरण' कोई बाहरी साधन या आयुध होना चाहिये।

Kamla Bai v. Naresh & ors.

Judgment dated 26.08.2015 passed by the High Court of Madhya Pradesh in Criminal Revision No. 698 of 2015, reported in 2016 (I)MPJR 322.

Relevant extracts from the judgment:

The Apex Court considered the expression "any instrument" in relation to section 324 IPC in ***Anwarul Haq v. State of UP, (2005) 10 SCC 581***. The Apex Court opined that the section prescribes a severe punishment where an offender voluntarily causes hurt by dangerous weapon or other means stated in the section. The expression "any instrument which, used as a weapon of offence, is likely to cause death" when read in the light of marginal note to Section 324 means dangerous weapon which if used by the offender is likely to cause death. This para shows that expression "any instrument" is used in relation to a weapon of offence. The authors of IPC observed as under:-

> "Bodily hurt may be inflicted by means the use of which generally indicates great malignity. A blow with the fist may cause as much pain, and produce as lasting an injury, as laceration with a knife, or branding with a hot iron. But it will scarecely be disputed that, in the vast majority of cases, the offender who has used a knife or a hot iron for the purpose of wreaking his hatred is a far worse and more dangerous member of a society than who has only used his fist. It appears to us that many hurts which would not, according to our classification, be designated as grievous ought yet, on account of the mode in which are inflicted, to be punished more severely than many grievous hurts."

This above observation of the authors was also considered by ***Supreme Court in Anwarul Haq*** (supra). 9. In ***Mathai v. State of Kerala, (2005) 3 SCC 260***, the Apex Court opined that the expression "any instrument which, used as a weapon of offence, is likely to cause death" has to be gauged taking note of the heading of the section.

What would constitute a "dangerous weapon" would depend upon the facts of each case and no generalisation can be made. In view of the judgments of Supreme Court in ***Anwarul Haq*** and ***Mathai*** (supra), it is clear that the heading of Section 326 IPC is important. The heading talks about causing grievous hurt

by dangerous weapons or means. In view of the text and context, in which the words "any instrument" are employed in Sec. 326, in my opinion, it cannot be treated as body part. The language used in the said section is "voluntarily causes grievous hurt" by means of any instrument for shooting, stabbing or cutting or any instrument which is used as a weapon of offence. Thegrievous hurt is the result of blow given by an instrument. The nature and gravity of injury alone is not sufficient to attract Sec. 326 unless it is shown that such grievous hurt is by means of any instrument or weapon mentioned in the section. Precisely, for this reason, the Apex Court in ***Anwarul Haq*** and ***Mathai*** (supra) has taken assistance from Sec.324 and marginal note and heading. Thus, the judgments cited by Shri Rathi in the case of ***H. Mansel Pleydell [1926 AIR (LAH) 313]*** cannot be relied upon because it deals with impact of a blow. Apart from this, the said judgment is related to Sec. 304 IPC. The judgment of Chaurasi Manjhi (AIR 1970 Pat 322) cannot be relied upon in view of direct Supreme Court judgments on this point quoted above. Considering the aforesaid, I am unable to accept the contention of Shri Rathi.

In ***Parahu v. State 1961 MPLJ SN 77,*** this Court opined that the instrument by virtue of its very nature should be such that one could reasonably predicate that by its use as a weapon of offence, death would be probable. It was something inherent in the instrument which rendered death probable.

In view of aforesaid, it is clear that as per language employed in section 326 IPC, the body part cannot be treated as an instrument. An instrument has to be an outside mean/weapon and cannot be a body part.

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354. INDIAN PENAL CODE, 1860 – Section 354

Outraging modesty of woman – Mere knowledge that modesty of woman is likely to be outraged is sufficient – Deliberate intention of having such 'outrage' alone for its object – Not necessary.

Intention to outrage modesty – cannot be proved by direct evidence – To be inferred from the attending circumstances.

भारतीय दण्ड संहिता, 1860 – धारा 354

किसी स्त्री की लज्जा भंग किया जाना – किसी स्त्री की लज्जा भंग कारित होने की संभावना का ज्ञान मात्र पर्याप्त हैं – 'भंग' मात्र कारित करने के उद्देश्य का विचारपूर्वक आशय आवश्यक नहीं हैं।

लज्जा भंग कारित करने का आशय – प्रत्यक्ष साक्ष्य द्वारा प्रमाणित नहीं किया जा सकता – उपस्थायीन परिस्थितियों से अनुमानित किया जाना होगा।

S.P.S. Rathore v. C.B.I. & Anr.

Judgment dated 23.09.2016 passed by the Supreme Court in Criminal Appeal No. 2126 of 2010, reported in 2016 (4) Crimes 40 (SC)

Relevant extracts from the judgment:

In order to constitute the offence under Section 354 of the IPC, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under Section 354 IPC are as under:

(i) that the person assaulted must be a woman;
(ii) that the accused must have used criminal force on her; and
(iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

This Court, in ***Vidyadharan v. State of Kerala (2004) 1 SCC 215***, held as under

> "10. Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. Avictim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight ....."

It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being state of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case. The sequence of events which we have detailed earlier indicates that the appellant-accused had the requisite culpable intention.

This Court, in ***Tarkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560***, held as under:-

> "39. So far as the offence under Section 354 IPC is concerned,intention to outrage the modesty of a woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence.
>
> 40. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence

is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex."

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***355. INDIAN PENAL CODE, 1860 – Sections 409, 467, 471 and 477-A**
CRIMINAL PROCEDURE CODE, 1973 – Section 309
CRIMINAL TRIAL:

(i) Expeditious trial – Adjournment, grant of – Second proviso to section 309 CrPC aims at putting an end to the process of granting adjournment – Adjournment must not be granted except for a strong and reasonable ground and when it becomes unavoidable for pressing circumstances.

(ii) Criminal trial – Pre-trial conference, holding of – Must be held to thrash out many unexpected situations well in advance – Not to be a mere formality, but a useful exercise as mandated in section 309 of the Code.

(iii) Misappropriation and criminal breach of trust – Appreciation of evidence – Mere seriousness of allegation would be insufficient unless they are established not only by preponderance of probability but also by adducing proof beyond reasonable doubt.

भारतीय दण्ड संहिता, 1860 – धाराएं 409, 467, 471 एवं 477–क

दंड प्रक्रिया संहिता, 1973 – धारा 309

आपराधिक विचारण :

(i) शीघ्र विचारण – स्थगन दिया जाना – धारा 309 दं.प्र.सं. के द्वितीय परंतुक का उद्देश्य स्थगन दिये जाने की प्रक्रिया को खत्म करने का है –प्रबल एवं युक्तियुक्त आधार एवं टाली न जाने वाली अत्यावश्यक परिस्थितियों के अतिरिक्त स्थगन नहीं दिया जाना चाहिये।

(ii) आपराधिक विचारण – विचारण पूर्व विचार–विमर्श – अप्रत्याशित स्थितियों को हटाये जाने हेतु अग्रिम रूप से आयोजित किया जाना चाहिये – मात्र औपचारिकता नहीं होना चाहिये बल्कि संहिता की धारा 309 के द्वारा आवश्यक उपयोगी प्रक्रिया होनी चाहिए।

(iii) दुर्विनियोग एवं न्यासभंग – साक्ष्य का मूल्यांकन – मात्र आरोपों की गंभीरता अपर्याप्त हैं जब तक कि उन्हें मात्र अधिसंभाव्यता की प्रबलता से नहीं बल्कि युक्तियुक्त संदेह से परे साक्ष्य प्रस्तुत कर स्थापित नहीं किया जाता है।

N.R. Bhat v. State by CBI/SPE, Bangalore
Judgment dated 06.04.2016 passed by the High Court of Karnataka in Criminal Appeal No. 2191 of 2006, reported in 2016 CriLJ 3317

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***356. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Section 7A**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007 – Rule 12

Age of juvenile, determination of – If the matriculation or equivalent certificates are available and there is no other material to prove the correctness, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused – However, if there is any doubt or a contradictory stand is taken by the accused which raises a doubt on the correctness of the date of birth, an enquiry for determination of the age of the accused is permissible.

किशोर न्याय (बच्चों की देख–भाल एवं संरक्षण) अधिनियम, 2000 – धारा 7–क

किशोर न्याय (बच्चों की देख–भाल एवं संरक्षण) नियम, 2007 – नियम 12

किशोर की आयु का अभिविनिश्चयन – यदि मैट्रिक या समकक्ष के प्रमाण पत्र उपलब्ध हैं एवं अन्य कोई सामग्री सही आयु साबित करने हेतु नहीं हैं, तब मैट्रिक के प्रमाण पत्र में उल्लेखित जन्म तिथि को निश्चायक साक्ष्य माना जाना चाहिये – परंतु, यदि कोई संदेह है अथवा अभियुक्त द्वारा विरोधाभासी आधार लिये गये हैं जो कि जन्म तिथि के सही होने के बारे में संदेह उत्पन्न करते हैं, अभियुक्त की आयु अभिनिश्चित करने के लिये जाँच किया जाना अनुज्ञेय है।

Parag Bhati (Juvenile) thrgh. Legal Guardian–Mother Smt. Rajni Bhati v. State of Uttar Pradesh and anr.

Judgment dated 12.05.2016 passed by the Supreme Court in Criminal Appeal No. 486 of 2016, reported in 2016 (2) Crimes 268 (SC)

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357. MUNICIPAL CORPORATION ACT, 1956 (M.P.) – Sections 308A,308B, 203 (2), 302, 307, 308, 403 and 421

(i) Applicability – Section 308A was incorporated in the Act w.e.f. 30.05.1994, section 308B provides for relaxation from section 308A, which was inserted w.e.f. 25.08.2003 – The said provisions shall not be applicable for the construction of building completed before the insertion of these sections.

(ii) Appellant being a builder, received the notice to immediately stop the illegal construction – Ignored the notice and continued the illegal construction – Object of the construction changed from residential to commercial – Merely compounding the offence for illegal construction does not absolve the builder from demolition of the illegal construction.

(iii) Order passed by appeal committee under section 403(2) of the said Act without jurisdiction is *per se* illegal.

Relied on – *Friends Colony Development v. State of Orisa, 2004 AIR SCW 5932*

मध्यप्रदेश नगर पालिक निगम अधिनियम (म.प्र.), 1956 – धाराएं 308–क, 308–ख, 203 (2), 302, 307, 308, 403 एवं 421

(i) धारा 308–क अधिनियम में दिनांक 30.05.1994 के प्रभाव से सम्मिलित की गयी हैं, जबकि धारा 308–ख, जो कि धारा 308–क से राहत देती हैं, दिनांक 25.08.2003 को सम्मिलित की गई हैं – उक्त प्रावधान धाराओं को सम्मिलित किये जाने के पूर्व किये गये निर्माण पर लागू नहीं होते हैं।

(ii) अपीलार्थी जो कि एक बिल्डर था, उसके द्वारा अवैध निर्माण तुरंत रोके जाने का सूचना पत्र प्राप्त किया गया – सूचना पत्र को अनदेखी कर अवैध निर्माण जारी रखा गया – निर्माण के उद्देश्य को निवासीय से व्यवसायिक में परिवर्तित किया गया – मात्र अवैध निर्माण के अपराध को शमन किया जाना बिल्डर को अवैध निर्माण गिराये जाने से नहीं बचा सकता है।

(iii) अपील समिति द्वारा अधिनियम की धारा 403 (2) के अंतर्गत पारित आदेश क्षेत्राधिकार से बाहर होने से अवैध हैं।

न्यायदृष्टांत *फ्रेंडस कालोनी डेवलपमेन्ट विरूद्ध ओड़िसा राज्य, 2004 एआईआर एससीडब्ल्यू 5932* का अवलंब लिया गया।

MSJ Colonizing & Leasing Company Ltd. v. Indore Municipal Corporation, Indore & ors.

Judgment dated 27.07.2015 passed by the High Court of M.P. in Writ Appeal No. 93 of 2015, reported in I.L.R. (2016) M.P. 967

Relevant extracts of the Judgment:

... Hon'ble the Apex Court in the case of ***Friends Colony Development v. State of Orisa, 2004 AIR SCW 5932*** while examining the issue of deviation from sanctioned construction being regularised by compounding, held as under:

> "Though the Municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of timeand frequent exercise of the discretionary powerconferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and

compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footingfrom an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and there from develop a welfare fund which can be utilisedfor compensating and rehabilitating such Innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

In the present case, the appellant who is a builder, after receiving the notice dated 31.3.1993 that has made unauthorised construction and he was directed to stop the work immediately, even though he ignored the notice and continued the illegal construction work. In such a situation, when the appellant has altogether changed the purpose of the building from residential to commercial, such construction cannot be regularised.

Now, we have considered the objection in regard to Section 308–B of the Act. Section 308– A has been inserted in the Act w.e.f. 30.05.1994 and Section 308–B which is a relaxation from the provisions of Section 308–A, inserted w.e.f. 25.8.2003. These provisions have no application to the present case as the construction of building in question was already completed in the year 1993. Thus, there is no force in the argument of learned counsel for the appellant that appellant is entitled for the benefit of Section 308–B of the Act.

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358. N.D.P.S. ACT, 1985 – Section 8

CRIMINAL TRIAL : TESTIMONY OF A POLICE OFFICER

Sole testimony of the Police Officer – Bare denial by *Panch* witnesses without reasons – Conviction can be based upon the testimony of Police Officer, provided such witness is trustworthy.

Conscious Possession – Contraband seized from the motorcycle registered in the name of accused – He was also driving the motorcycle at the time of seizure – Another co–accused was pillion rider – Accused can be considered to be in conscious possession whereas co-accused cannot be said to be in conscious possession in absence of other evidence.

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 – धारा 8

आपराधिक विचारण : पुलिस अधिकारी की परिसाक्ष्य

पुलिस अधिकारी की एकल परिसाक्ष्य – पंच साक्षीगण का बिना किसी कारण के मात्र अस्वीकार करना – पुलिस अधिकारी की परिसाक्ष्य पर दोषसिद्ध आधारित की जा सकती हैं, बशर्ते उक्त साक्षी विश्वसनीय हैं।

भान आधिपत्य – प्रतिबंधित वस्तु का अभियुक्त के नाम से पंजीकृत मोटर साइकल से जप्त किया जाना – जप्ती के समय उसी के द्वारा मोटर साइकल चलाई जा रही थी – सह – अभियुक्त पोछे बैठा हुआ था – अभियुक्त को भान आधिपत्य में होना माना जा सकता है परंतु सह–अभियुक्त को अन्य साक्ष्य के अभाव में भान आधिपत्य में होना नहीं कहा जा सकता है।

Ghanshyam Laxminarayan Patidar and anr. v. State of M.P.

Judgment dated 20.09.2016 passed by the High Court of M.P. in Criminal Appeal No. 16 of 2009, reported in 2016 CRILJ 4937

Relevant extracts from the judgment:

As regards evidential value of the testimony of police officer(s), though it has been contended by the learned counsel for the appellants that such testimony in absence of corroboration from an independent source cannot be relied upon to record conviction , however, the settled position of law is that conviction can be based on the testimony of a police officer, provided the court is of opinion that the witness is truthful and trustworthy. In this connection the law laid down by Hon'ble the apex Court in ***Lopchand Naruji Jat & Anr. vs. State of Gujarat, (2004) 7 SCC 566, Abdul Majid abdul Hak Ansari vs. State of Gujarat, (2003) 10 SCC 198 and P.P. Beeran vs. State of Kerala, (2001) 9 SCC 57*** can usefully be referred.

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It has been strongly contended by learned Counsel for the appellants that panch witnesses Pawan Singh (P.W.7) and Rajendra Singh (P.W.8) have not supported the prosecution version hence, the prosecution case becomes suspicious. In this connection it is noticeable that Pawan Singh (P.W.7) and Rajendra Singh (P.W.8) have not denied their signatures on various document i.e. Ex.P/6 to Ex.P/11. They have not come out with a satisfactory explanation as to why they had put their signatures on a number of documents. It is not their case that they were forced to put their signatures on these papers. Had it been the case they could have complained to the Superior Police Officers but in absence of any such complaint, a bare denial by these witnesses, that nothing happened before them, is not quite trustworthy. It clearly transpires from the conduct of these witnesses that they are not interested in revealing true facts. Both these witnesses have been declared hostile by the prosecution and have been contradicted by their police statement recorded under Section 161 of 'the Code' In such premises, simply because panch witnesses have not supported the prosecution case, it cannot be said that the police has concocted various documents and framed a false case to persecute the appellants.

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From the information provided by the RTO, District – Mandsaur, vide Ex P/28 (dated 26 /05/2000), the motorcycle in question was found to be registered in the name of appellant No.1 – Ghanshyam. The defense raised by appellant Ghanshyam that his motorcycle was lying in an open place, has not been found plausible and acceptable, therefore, he being the owner of motorcycle, it logically flows that he was in conscious possession of the contraband.

However, as regards appellant Puranchand, who was a pillion rider, it cannot be said beyond reasonable doubt that he was also in conscious possession of the alleged contraband because, firstly, he is not the owner of the motorcycle, secondly – there is no specific evidence to show that he had the knowledge of the contraband being kept in the motorcycle. It is further not clear as to from which place he took lift on the motorcycle. The learned trial Court has not considered these aspects, therefore, the finding regarding culpability of Puranchand, in absence of proof beyond reasonable doubt, with regard to his conscious possession, cannot be sustained and benefit of doubt must be given to him.

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359. N.D.P.S. ACT, 1985 – Sections 15 r/w/s 8 (c), 42 and 67

(i) Offence under section 15 r/w/s 8 (c) – Burden of proof – Sale of contraband by accused without license to a person having no license to purchase, established by prosecution – Held, since connection of contraband with accused having been established, it is for the accused to show that he had effected sale to an authorized person.

(ii) Section 42 of the Act, applicability of – In case of recovery of contraband in open public place, section 42 will have no application, instead section 43 will come into play – Further held, adequate compliance rather than strict compliance of section 42 of the Act would suffice.

(iii) Statement under section 67 of the Act, requirement of – The Court has to satisfy itself that the statement was made voluntarily and at a time when the person making such statement had not been made an accused.

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 – धारा 15 सहपठित धारा 8 (ब), 42 एवं 67

(i) अपराध अंतर्गत धारा 15 सहपठित धारा 8 (ब) – सबूत का भार – अभियुक्त द्वारा बिना अनुज्ञप्ति के प्रतिषेधित पदार्थ का बिना क्रय अनुज्ञप्तिधारी के व्यक्ति को विक्रय किया जाना अभियोजन द्वारा स्थापित किया गया – अभिनिर्धारित, जबकि प्रतिषेधित पदार्थ का अभियुक्त से संबंध स्थापित किया जा चुका है, अभियुक्त द्वारा यह दर्शित किया जाना चाहिये कि उसके द्वारा प्राधिकृत व्यक्ति को विक्रय किया जा रहा था।

(ii) अधिनियम की धारा 42 की प्रायोज्यता – खुले लोक स्थान से प्रतिषेधित पदार्थ को पाये जाने पर धारा 42 लागू नहीं होगी, अपितु धारा 43 प्रभाव में आयेगी – पर्याप्त अनुपालन ना कि कठोर अनुपालन अधिनियम की धारा 42 हेतु उपयुक्त होगा।

(iii) धारा 67 के अंतर्गत कथन आवश्यकता – न्यायालय को यह संतुष्टि करना चाहिये कि कथन स्वेच्छया किये गये थे एवं उस समय कथन देने वाला व्यक्ति अभियुक्त नहीं बनाया गया था।

Girish Raghunath Mehta v. Inspector of Customs and another

Judgment dated 07.09.2016 passed by the Supreme Court in Criminal Appeal No. 1020 of 2009, reported in 2016 (3) Crimes 410 (SC)

Relevant extracts from the Judgment:

After due consideration, we do not find any merit in the submissions on behalf of the appellant. Both the courts below have concurrently held that the appellant was found to have sold the contraband to the co-accused without any licence. The said finding, inter alia, is based on the evidence of PW1- Bhaskar Shetty, Inspector of Customs who seized the contraband from the co-accused- Karim Patel. Further, the evidence in the form of statement of the appellant himself (Ex.-20) under Section 67 of the Act before his arrest clearly shows that the appellant had sold the contraband to the co-accused Karim Patel who did not have any licence to purchase thereof. Even otherwise, the connection of contraband with the appellant was clearly established after which the burden was on appellant to show that he had effected sale to an authorized person. Recovery from the co-accused was from an open place to which Section 42 of the Act is not attracted. At the time of production of gunny bag no objection was raised on behalf of the appellant that the bag did not carry any label or sign of identity. Thus, the absence of label and sign of identity could not be presumed. The samples were duly tested by the chemical analyzer and were found to be intact. There is, thus, no serious infirmity in the findings recorded by the courts below in convicting and sentencing the appellant.

The contention raised on behalf of the appellant on the basis of judgments of this Court in ***Abdul Rashid Ibrahim Mansuri v. State of Gujarat, (2000) 2 SCC 513, State of Rajasthan v. Jag Raj Singh, (2016) 6 SCALE 32 and Sukhdev Singh v. State of Haryana, (2013) 2 SCC 212*** cannot be accepted. As already noticed, Section 42 of the Act has no application to the fact situation of the present case. The said section applies when the contraband recovered from a building, conveyance or enclosed place. Where recovery is from a public place, Section 43 applies. This Court reconciled the view taken in ***Abdul Rashid Ibrahim Mansuri (supra) and Sajan Abraham v. State of Kerala, (2001) 6 SCC 692*** in larger bench judgment in ***Sukhdev Singh*** (supra). It was held that in view of technological advancements, it may not be possible to record information as per the requirement of Section 42. Strict compliance by the investigating agency should not be required in an

emergency situation so as to avoid misuse by wrongdoers/ offenders/ drug peddlers. Whether there is adequate substantial compliance is a question of fact in each case. Apart from the finding that present case is governed by Section 43, there is no ground to interfere with the concurrent finding of the Courts below that there is adequate compliance of Section 43 of the Act.

Similarly, the contention on the basis of the judgments in ***Tofan Singh v. State of Tamil Nadu, (2013) 16 SCC 31, Raju Premji v. Customs NER Shillong Unit, (2009) 16 SCC 496 and Noor Aga v. State of Punjab, (2008) 16 SCC 417*** also cannot be accepted. There can be no doubt that the Court has to satisfy itself that the statement under Section 67 was made voluntarily and at a time when the person making such statement had not been made an accused. Whether the statement is voluntary and free from encumbrance has to be judged from the facts and circumstances of each case. In ***Tofan Singh*** (supra), the question whether the investigating officer investigating the matter under the Act is a police officer and whether the statement recorded by the investigating officer under Section 67 of the Act can be treated as a confessional statement has been referred to the larger Bench. It is not necessary to go into this aspect in the present case as there is adequate evidence to prove the sale of the contraband by the appellant for which co-accused has been convicted and sentenced. The prosecution version is based not only on the statement under Section 67 but also on the evidence of recovery of the contraband immediately after sale and the circumstances showing that the contraband was sold by the appellant to the co-accused, without any authorization. Thus, we do not find any ground to interfere with the conviction and sentence awarded to the appellant.

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360. N.D.P.S. ACT, 1985 – Sections 20, 42, 43 and 53

(i) Conviction for illegal possession of contraband (*charas*) of commercial quantity, validity of.

Facts of the case:

On receipt of information that a boy is travelling in a jeep carrying a bag containing *charas*, the jeep was checked – It was found that the accused was sitting in the middle seat with a bag on his lap – It was felt that the bag contained heavy material with foul smell of charas – Thereafter, he was asked as to which Gazetted Officer or of which magistrate's presence he wanted search of his bag – Thereafter, he was taken to the office of SDM which was nearby – But neither the SDM nor the Tehsildar was available so he was taken to Naib Tehsildar and in his presence, search was made and inside the said bag, *charas* of2 kg and 100 gms were found (i.e. commercial quantity) – Accused failed to adduce any evidence in defence except to record his statement under section 313 CrPC taking therein a plea of denial – Affidavit relied upon by him was not proved in

evidence inasmuch as deponent was neither examined nor cross-examined – Held, search was made in public place that too in presence of Gazetted Officer after giving an offer as required under the Act – Therefore, requirement of sections 42 and 43 r/w/s 50 was properly complied with – Dismissing the appeal, it was further held that conviction can be sustained on the evidence adduced.

(ii) Examination of all the witnesses cited, necessity of – If the evidence adduced by the prosecution is found sufficient to warrant conviction, then it is not necessary to examine all the witnesses cited by the prosecution – Further held, it is for the prosecution to decide as to how many witnesses they consider it necessary to prove their case and whether their evidence would be sufficient to warrant conviction.

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 – धाराएं 20, 42, 43 एवं 53

(i) प्रतिबंधित पदार्थ (चरस) की व्यवसायिक मात्रा के अवैध आधिपत्य के संबंध में दोषसिद्धि की वैधता।

(ii) उल्लखित सभी साक्षीगण को परिक्षित कराये जाने की आवश्यकता – यदि अभियोजन द्वारा प्रस्तुत साक्ष्य दोषसिद्धि हेतु पर्याप्त है, तब अभियोजन द्वारा प्रस्तावित सभी साक्षीगण का परीक्षण कराया जाना आवश्यक नहीं है – यह अभियोजन द्वारा निर्णय लिया जाना है कि वह कितने साक्षीगण को मामला साबित करने हेतु उचित समझते हैं एवं क्या उनकी साक्ष्य दोषसिद्धी हेतु पर्याप्त होगी।

Mahiman Singh v. State of Uttarakhand

Judgment dated 29.06.2016 passed by the Supreme Court in Criminal Appeal No. 957 of 2015, reported in 2016 CriLJ 4407 (SC)

Relevant extracts from the Judgment:

We find from the record of the case that the prosecution proved with the aid of evidence that the search was made in public place. It has also come in evidence that it was carried out in the presence of gazetted officer and was done after giving an offer to the appellant as required under the NDPS Act. It has also come in evidence that quantity of the contraband recovered from the appellant was commercial in nature as prescribed in the Schedule to the NDPS Act.

It is also not in dispute that the appellant failed to adduce any evidence in defence except to record his statement in Section 313 proceedings taking therein a plea of denial. It is also not in dispute that the affidavit relied upon by the appellant of one Maan Singh (Annexure-A/3) was not proved in evidence in as much as Maan Singh was neither examined nor cross-examined.

In these circumstances, in our view, the two Courts below rightly did not consider such affidavit as evidence, which was of no use and could not be construed as piece of evidence for deciding the rights of the parties.

In our opinion, if the evidence adduced by the prosecution was found sufficient to warrant the conviction then it was not necessary for the prosecution to examine all the witness cited by them. It is for the prosecution to decide as to how many witnesses they consider it proper to examine to prove their case against the accused and whether their evidence would be sufficient to warrant the conviction of the accused. Thereafter it is for the Court to assess and appreciate the evidence adduced to see as to whether it is sufficient to sustain conviction with the aid of such evidence or not.

In this case, we find that the witnesses examined by the prosecution were able to prove the prosecution case beyond reasonable doubt and hence even if one or two witnesses though cited initially were later given up by the prosecution, the same did not adversely affect the prosecution case in any manner. In other words, the conviction could be sustained on the evidence adduced and was rightly held to sustain in this case.

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361. N.D.P.S. ACT, 1985 – Sections 21, 42 and 50

Sections 42 and 50 of the Act, compliance of – Search and seizure of accused, if carried out by Gazetted Officer himself, there is no need to ensure compliance of section 42 of the Act – If offer to search the accused was given to him in writing and he was searched after obtaining his consent, it will amount to just legal and proper compliance of section 50.

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 – धाराएं 21, 42 एवं 50

अधिनियम की धारा 42 एवं 50 की पालना – यदि अभियुक्त की तलाशी एवं जप्ती राजपत्रित अधिकारी द्वारा स्वयं की जाती हैं तो धारा 42 की पालना होना सुनिश्चित करना आवश्यक नहीं हैं – यदि अभियुक्त को तलाशी का प्रस्ताव लिखित में दिया गया था एवं उसकी तलाशी उसकी सहमति प्राप्त करने के बाद ली गयी थी, तो यह धारा 50 की विधिक एवं उचित पालना होगी।

Sekhar Suman Verma v. Superintendent of N.C.B. and another

Judgment dated 29.06.2016 passed by the Supreme Court in Criminal Appeal No. 317 of 2006, reported in 2016 CriLJ 4182 (SC)

Relevant extracts from the Judgment:

We are in complete agreement with the a finding of the High Court as, in our opinion, it is just, legal and proper calling no interference in this appeal.

Firstly, the High Court has recorded the finding keeping in view the law laid down by this Court in ***State of Haryana v. Jarnail Singh & Ors., (2004) SAR***

(Criminal) 535. Secondly, since PW-7 himself was the gazetted officer, it was not necessary for him to ensure compliance of Section 42 as held by this Court in ***Prabha Shankar Dubey v. State of M.P. (2003) 8 Supreme 565 = (2004) 2 SCC 56*** and lastly, so far as compliance of the requirement of Section 50 is concerned, it was found and indeed rightly that the offer to search the appellant was given to him in writing and on his giving consent, he was accordingly searched.

The High Court was, therefore, right in upholding the procedure followed by the raiding party for ensuring compliance of Section 50 and rightly held against the appellant on this issue.

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362. N.D.P.S. ACT, 1985 – Section 37

CRIMINAL PROCEDURE CODE, 1973 – Section 437

Bail – Principles of parity, applicability – It cannot be the sole ground for grant of bail.

Parity cannot be the sole ground for grant of bail – There is no absolute hidebound rule that bail must necessarily be granted to the co-accused, where another co-accused has been granted bail – Even the stages of subsequent bail applications when the bail application of the co-accused whose bail had been earlier rejected is allowed and co-accused is released on bail, even then also the Court has to satisfy itself that, on consideration of more material placed, further development in the investigation or otherwise and other different consideration, there are sufficient grounds for releasing the applicant on bail – A judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains no cogent reasons or if the same has been passed in flagrant violation of well settled principle of law and ignores to take into consideration the relevant factors essential for granting bail.

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 – धारा 37

दण्ड प्रक्रिया संहिता, 1973 – धारा 437

जमानत – समानता के सिद्धांत – जमानत का एक मात्र आधार नहीं हो सकता। ऐसा आत्यांतिक नियम नहीं है कि जहाँ सह–अभियुक्त जमानत पर है, वहाँ दूसरे सह–अभियुक्त को जमानत देना आवश्यक है।

Brajesh Yadav v. State of Rajasthan

Judgment dated 26.02.2016 passed by the High Court of Rajasthan in S.B. Criminal Misc. Second Bail Application No. 13073 of 2015, reported in 2016 CriLJ 3169 (Rajasthan)

Relevant extracts from the judgment:

It is well settled legal position that if an accused deals with a narcotic drug or psychotropic substance involving commercial quantity benefit of bail cannot

be granted to him unless on the basis of material available on record the twin conditions as contemplated under Section 37 of the Act are fulfilled to the satisfaction of the Court and reasons are specifically required to be recorded to extend such benefit.

In the case of ***Yunis & anr. v. State of U.P., 1999 CriLJ 4094 (All.)***, learned Single Bench of the Allahabad High Court has held that the law of parity is a desirable rule. In matter of release of bail to the co-accused may be applied where the case of the co-accused is identically similar, but cannot be applied for rejecting the bail application of co-accused. A co-accused cannot be denied bail merely on the ground that the bail of another accused has been rejected by the Court earlier, the obvious reason being that while the earlier bail order denying bail to another co-accused was passed, the latter co-accused applying for bail was not heard.

A Single Bench of Hon'ble Allahabad High Court in the case of ***Mumtaj v. State of U.P. & anr., 2000 Cr.L.J.4497*** has held that the parity is not a compelling ground to grant bail. In this case Hon'ble Single Bench refused to grant bail to accused Shri Mumtaj merely on the ground that benefit of bail has been granted to a similarly situated co-accused. A Division Bench of Hon'ble Allahabad High Court in the case of ***Chander alias Chandra v. State of U.P., 1998 Cr.L.J. 2374,*** has held that if the order granting bail to an accused is not supported by reasons, the same cannot form the basis of granting bail to an accused on the ground of parity. It was further held that a Judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reasons, if the same has been passed in flagrant violation of well settled principle and ignores to take into consideration the relevant factors essential for granting bail.

In the case of ***Nanha v. State of U.P., 1993 Cr.L.J.938,*** another Division Bench of Hon'ble Allahabad High Court has held that the parity cannot be sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail applications of the co-accused whose bail application had been earlier rejected are allowed and co-accused is released on bail. Even then the court has to satisfy itself that, on consideration of more materials placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the applicant on bail. Thus, the case of an accused has to be examined individually. Simply because the co-accused has been granted bail cannot be the sole criteria for granting bail to the main accused. Even at the stage of second or third bail the Court has to examine whether on facts, the case of the applicant before the Court is distinguishable from other released co-accused and the role played by the applicant is such which may disentitle him to bail. It was also held that the principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a judge in a tight and straight jacket to grant bail automatically. There may be case which may require an exception; where a

judge may not simply take a different view from the judge who granted bail earlier to a co-accused but where the conscience of the judge revolts in granting bail. In such a situation the judge may choose to depart from the rule recording his reasons. However, such cases would be very few.

In the case of ***Sita Ram v. State of Rajasthan, 1993 (1) RLR 335*** (Rajasthan High Court) it was held by the learned Division Bench that as far as possible parity must be maintained if the cases are identical or the matter arises out of the same facts as different judgments in the same case or identical cases lead to a situation which is known as “glorious uncertainty” as the phrase used by their Lordship of the Supreme Court. We may not be mistaken as given remarks for any individual learned brother Judge but we intend to make an observation with all respects that as far as possible if one Bench has passed an order, a contrary order should not be passed by another learned Judge and in case be chooses to differ a reference in that respect may be made to larger Bench. Inconsistent decisions or different views in the matter of admissions or otherwise, lead to several misgivings to the litigating public and the lawyers. Predictability and certainty of decisions are matters of eminent public importance.

In the case of ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav, 2005 AIR SCW 536***, it has been observed by the Hon’ble Apex Court that the judicial principle requires that the uniformity and parity should be normally observed and the earlier decisions of the Co-ordinate Benches or the larger Benches must be followed, otherwise there would be uncertainty in justice delivery system and forum hunting, which would not be in the interest of the society at large and the institution itself.

The well settled legal position appears to be that parity cannot be the sole ground for grant of bail. It is one of the grounds for consideration of the question of bail. There is no absolute hidebound rule that bail must necessarily be granted to the co-accused, where another co-accused has been granted bail. Even at the stage of subsequent bail application when the bail application of the co-accused whose bail had been earlier rejected is allowed and co-accused is released on bail, even then also the Court has to satisfy itself that, on consideration of more materials placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the applicant on bail. If on careful scrutiny in a given case, it transpires that the case of the applicant before the Court is identically similar to the accused on facts and circumstances, who has been bailed out then the desirability of consistency will require that such an accused should also be released on bail. A Judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains no cogent reasons or if the same has been passed in flagrant violation of well settled principle of law and ignores to take into consideration the relevant factors essential for granting bail. Such an order can never form the basis for a claim of parity. It will be open to the Judge to reject

the bail application of the applicant before him as no Judge is obliged to pass orders against his conscience merely to maintain consistency. The grant of bail is not a mechanical act. Merely because some of the co-accused, whom similar role has been ascribed, has been released on bail earlier and State has not moved the higher Court against the order in question for cancellation, the power of the Court cannot be fettered to act against conscience.

It is also well settled legal position that a decision rendered overlooking or in ignorance or without taking into consideration a statutory provision shall be treated as ***per incurium*** and cannot be regarded as a binding precedent.

In the present case, a commercial quantity to the extent of about 20 Kg. of narcotic drug (***charas***) was found to be carried in a vehicle of which the petitioner was also one of the occupant. The order by which benefit of bail has been granted to co-accused-Shri Ranupal does not indicate that while granting bail to him, Section 37 of the Act was taken into consideration and learned Co-ordinate Bench was satisfied from the material available on record that the twin conditions contemplated in the aforesaid provision are satisfied. In my view as per the requirement of Section 37 of the Act burden is on the petitioner to satisfy the Court that there are reasonable grounds to believe that he is not guilty of the offence for which he has been charged and that he is not likely to commit any offence if benefit of bail is extended to him but no material has been placed on record for the fulfillment of these conditions. I am of the considered view that principle of parity cannot be applied in a case in which an order has been passed in favour of a similarly situated co-accused if the same has been passed overlooking the relevant provision of law.

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363. PERSONAL LAWS : SUCCESSION AND INHERITANCE

Nomination of a name in relation to a house in co-operative society – Binding only against that co-operative society for transfer purpose – No relevance for issue of title.

वैयक्तिक विधियाँ : उत्तराधिकार एवं विरासत

मकान के संबंध में सहकारी संस्था में किसी को नामित किया जाना – मात्र सहकारी संस्था के विरूद्ध अंतरण के प्रयोजन के लिये बंधनकारी है – स्वत्व के प्रश्न हेतु सुसंगत नहीं हैं।

Indrani Wahi v. Registrar of Co-operative Societies and others

Judgment dated 10.03.2016 passed by the Supreme Court in Civil Appeal No. 4646 of 2006, reported in (2016) 6 SCC 440

Relevant extracts from the Judgment:

Having recorded the conclusion, it is imperative for us to deal with the conclusion recorded in paragraph 6 (already extracted above) of the judgment of this Court in the ***Usha Ranjan Bhattacharjee v. Abinash Chandra Chakraborty, (1997) 10 SCC 344***. In this behalf, it is necessary to clarify that transfer of share

or interest, based on a nomination under Section 79 in favour of the nominee, is with reference to the concerned Cooperative Society, and is binding on the said society. The Cooperative Society has no option whatsoever, except to transfer the membership in the name of the nominee, in consonance with Sections 79 and 80 of the 1983 Act (read with Rules 127 and 128 of the 1987 Rules). That, would have no relevance to the issue of title between the inheritors or successors to the property of the deceased.

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364. PREVENTION OF CORRUPTION ACT, 1988 – Sections 3 and 4

Trial of cases relating to National Rural Health Mission Scam – Special Judge, jurisdiction and powers of – Special Judge appointed under the Act has jurisdiction to try a person other than public servant if the public servant dies before the commencement of the trial – He can also try a non Prevention of Corruption Act case when his appointment is to try all cases of the category which covers Scam case.

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 3 एवं 4

राष्ट्रीय ग्रामीण स्वास्थ्य मिशन घोटाले से संबंधित मामलों का विचारण – विशेष न्यायाधीश का क्षेत्राधिकार एवं शक्तियाँ – यदि विचारण के पूर्व लोक सेवक की मृत्यु हो गयी हो तब अधिनियम के अंतर्गत नियुक्त विशेष न्यायाधीश लोक सेवक के अतिरिक्त अन्य व्यक्तियों का विचारण कर सकता हैं – उनके द्वारा भ्रष्टाचार निवारण अधिनियम के अतिरिक्त मामले भी विचारण के लिये जा सकते हैं जबकि उनकी नियुक्ति घोटाले के मामले में आने वाले सभी मामलों के लिये की गई हो।

M/s HCL Infosystem Ltd. v. Central Bureau of Investigation

Judgment dated 09.08.2016 passed by the Supreme Court in Criminal Appeal No. 751 of 2016, reported in 2016 CriLJ 4400 (SC)

Relevant extracts from the Judgment:

In the present case, the Special Court in question has been constituted not only to deal with the cases of PC Act but also other cases relating to the NRHM scam. Procedure of Code of Criminal Procedure is applicable to trial before Special Judge and there is no prejudice to trial that is taking place before Special Judge duly appointed to deal with non PC cases when the object of doing so was to try connected cases before same court. Undoubtedly, while Special Judge alone could deal with cases under the PC Act, non- PC Act could also be allowed to be tried by the Special Judge under Section 26 of the Code of Criminal Procedure. There is no legal bar to do so, as held by this Court in ***M/s. Essar Teleholdings Limited v. Registrar General, Delhi High Court and others, AIR 2013 SC 2300***.

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365. PREVENTION OF CORRUPTION ACT, 1988 – Section 19

CRIMINAL PROCEDURE CODE, 1973 – Section 156(3)

Complaint relating to corruption against Public Officer – Order directing investigation under Section 156(3) – Cannot be passed in absence of valid sanction.

Alleged misconduct in one capacity – Accused holding different office than the abused one on the date of congnizance – Sanction not necessary.

भष्टाचार निवारण अधिनियम, 1988 – धारा 19

दण्ड प्रक्रिया संहिता, 1973 – धारा 156 (3)

लोक सेवक के विरूद्ध भ्रष्टाचार से संबंधित परिवाद – धारा 156 (3) के अंतर्गत अन्वेषण हेतु आदेश – वैध स्वीकृति के अभाव में पारित नहीं किया जा सकता है।

एक हैसियत में रहते हुये कथित कदाचरण – संज्ञान की दिनांक को अभियुक्त का किसी अन्य पद पर होना – स्वीकृति की आवश्यकता नहीं हैं।

L. Narayana Swamy v. State of Karnataka & others

Judgment dated 06.09.2016 passed by the Supreme Court in Criminal Appeal No. 721/722 of 2016, reported in AIR 2016 SC 4125

Relevant extracts from the judgment:

Second judgment in the case of ***Anil Kumar& ors. v. M.K. Aiyappa & anr., (2013) 10 SCC 705 : AIR 2014 SC (Supp) 1801*** referred to above is directly on the point. In that case, identical question had fallen for consideration viz. whether sanction under Section 19 of the P.C. Act is a pre–condition for ordering investigation against a public servant under Section 156(3) of Cr.P.C. even at pre–cognizance stage? Answering the question in the affirmative, the Court discussed the legal position in the following manner:

" xxx xxx xxx

> 15. The judgments referred to hereinabove clearly indicate that the word "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre–cognizance stage and cannot be equated with post–cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre–cognizance stage.

xxx xxx xxx

21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub–section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in ***State of U.P. v. Paras Nath Singh, (2009) 6 SCC 372 : AIR 2009 SC (Supp) 1615 and Dr. Subramanian Swamy v. Dr. Manmohan Singh and Anr., AIR 2012 SC 1185*** ."

Having regard to the ratio of the aforesaid judgment, we have no hesitation in answering the question of law, as formulated in para 7 above, in the negative. In other words, we hold that an order directing further investigation under Section 156(3) of the Cr.P.C. cannot be passed in the absence of valid sanction.

In the case of the present appellants, there was no question of the appellants' getting any protection by a sanction. The High Court was absolutely right in relying on the decision in ***Prakash Singh Badal v. State of Punjab, AIR 2007 SC 1274*** to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19, P.C. Act. Where the public servant had abused the office which he held in the check period but had ceased to hold "that office" or was holding a different office, then a sanction would not be necessary. Where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction.

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366. PREVENTION OF CORRUPTION ACT, 1988 – SECTION 19

Different opinions of different authorities in administrative notings before competent authority took decision – Sanction not invalid only on that ground.

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 19

सक्षम प्राधिकारी द्वारा निर्णय लिये जाने के पूर्व प्रशासनिक टीप में भिन्न प्राधिकारियों द्वारा भिन्न मत – मात्र उक्त आधार पर स्वीकृति अमान्य नहीं हो जाती हैं।

Vivek Batra v. Union of India and others.

Judgment dated 18.10.2016 passed by the Supreme Court in Criminal Appeal No. 2491 of 2014, reported in AIR 2016 SC 4770

Relevant extracts from the judgment:

In ***Sethi Auto Service Station and another v. Delhi Development Authority and others, AIR 2009 SC 904,*** this Court observed as under: -

> "14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

In view of the law laid down by this Court, as above, we are of the opinion that the sanction cannot be held invalid only for the reason that in the administrative notings different authorities have opined differently before the competent authority took the decision in the matter. It is not a case where the Finance Minister was not the competent authority to grant the sanction. What is required under Section 19 of the Prevention of Corruption Act, 1988 is that for taking the cognizance of an offence, punishable under Sections 7, 10, 11, 13 and 15 of the Act committed by the public servant, is necessary by the Central Government or the State Government, as the case may be, and in the case of a public servant, who is neither employed in connection with affairs of the Union or the State, from the authority competent to remove him.

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367. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Section 2(q)

Object of the Act – Effective protection of rights of women who are victims of violence – Perpetrators and abettors of such offence can be women themselves.

Constitutionality of the word 'adult male' in the definition of 'respondent' under Section 2(q) – Classification does not disclose intelligible differentia in relation to the object of the Act – Struck

down – Proviso having no independent existence – Being rendered otiose, also stands deleted.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धारा 2 (q)

(i) अधिनियम का उद्देश्य – हिंसा से पीड़ित महिलाओं के अधिकारों का प्रभावी संरक्षण – उक्त अपराध की षड्यंत्रकर्ता एवं दुष्प्रेरक स्वयं महिलायें हो सकती हैं।

(ii) धारा 2 (q) के अंतर्गत 'प्रतिप्रार्थी' की परिभाषा के 'वयस्क पुरूष' शब्दों की

संवैधानिकता – वर्गीकरण अधिनियम के उद्देश्य के संबंध में उचित नहीं हैं – असंवैधानिक होने से निरस्त – परंतुक का स्वतंत्र अस्तित्व न होने एवं निरर्थक रह जाने से उसे भी हटाया गया।

Hiral P. Harsora & Ors. v. Kusum Narottamdas Harsora & Ors.

Judgment dated 06.10.2016 passed by the Supreme Court in Civil Appeal No. 10084 of 2016, reported in 2016 (4) Crimes 91 (SC)

Relevant extracts from the judgment:

The preamble of the statute is again significant. It states:

Preamble:

> "An Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto."

What is of great significance is that the 2005 Act is to provide for effective protection of the rights of women who are victims of violence of any kind occurring within the family. The preamble also makes it clear that the reach of the Act is that violence, whether physical, sexual, verbal, emotional or economic, are all to be redressed by the statute. That the perpetrators and abettors of such violence can, in given situations, be women themselves, is obvious.

When Section 3 of the Act defines domestic violence, it is clear that such violence is gender neutral. It is also clear that physical abuse, verbal abuse, emotional abuse and economic abuse can all be by women against other women. Even sexual abuse may, in a given fact circumstance, be by one woman on another. Section 3, therefore, in tune with the general object of the Act, seeks to outlaw domestic violence of any kind against a woman, and is gender neutral. When one goes to the remedies that the Act provides, things become even clearer. Section 17(2)makes it clear that the aggrieved person cannot be evicted or excluded from a shared household or any part of it by the "respondent" save in accordance with the procedure established by law. If "respondent" is to be read as only an adult male person, it is clear that women who evict or exclude the aggrieved person are not within its coverage, and if that is so, the object of the Act can very easily be defeated by an adult male person not standing in the forefront, but putting forward female persons who can therefore evict or exclude

the aggrieved person from the shared household. This again is an important indicator that the object of the Act will not be sub–served by reading “adult male person” as “respondent”.

When we come to Section 26 of the Act, the sweep of the Act is such that all the innovative reliefs available under Sections 18 to 22 may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the respondent. The proceeding in the civil court, family court or criminal court may well include female members of a family, and reliefs sought in those legal proceedings would not be restricted by the definition of “respondent” in the 2005 Act. Thus, an invidious discrimination will result, depending upon whether the aggrieved person chooses to institute proceedings under the 2005 Act or chooses to add to the reliefs available in either a pending proceeding or a later proceeding in a civil court, family court or criminal court. It is clear that there is no intelligible differentia between a proceeding initiated under the 2005 Act and proceeding initiated in other fora under other Acts, in which the self–same reliefs grantable under this Act, which are restricted to an adult male person, are grantable by the other fora also against female members of a family. This anomaly again makes it clear that the definition of “respondent” in Section 2(q) is not based on any intelligible differentia having any rational relation to the object sought to be achieved by the 2005 Act. The restriction of such person to being an adult male alone is obviously not a differentia which would be in sync with the object sought to be achieved under the 2005 Act, but would in fact be contrary to it.

Also, the expression “adult” would have the same effect of stultifying orders that can be passed under the aforesaid sections. It is not difficult to conceive of a non–adult 16 or 17 year old member of a household who can aid or abet the commission of acts of domestic violence, or who can evict or help in evicting or excluding from a shared household an aggrieved person. Also, a residence order which may be passed under Section 19(1)(c) can get stultified if a 16 or 17 year old relative enters the portion of the shared household in which the aggrieved person resides after a restraint order is passed against the respondent and any of his adult relatives. Examples can be multiplied, all of which would only lead to the conclusion that even the expression “adult” in the main part is Section 2(q) is restrictive of the object sought to be achieved by the kinds of orders that can be passed under the Act and must also be, therefore, struck down, as this word contains the same discriminatory vice that is found with its companion expression “male”.

A conspectus of these judgments also leads to the result that the microscopic difference between male and female, adult and non adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial nor does it have any rational relation to the object of the legislation. In fact, as per the principle settled in the Subramanian Swamy judgment, the words “adult male person” are contrary to the object of affording protection to

women who have suffered from domestic violence “of any kind”. We, therefore, strike down the words “adult male” before the word “person” in Section 2(q), as these words discriminate between persons similarly situate, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act.

An application of the aforesaid severability principle would make it clear that having struck down the expression “adult male” in Section 2(q) of the 2005 Act, the rest of the Act is left intact and can be enforced to achieve the object of the legislation without the offending words. Under Section 2(q) of the 2005 Act, while defining ‘respondent’, a proviso is provided only to carve out an exception to a situation of “respondent” not being an adult male. Once we strike down ‘adult male’, the proviso has no independent existence, having been rendered otiose.

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368. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Section 12

Application under section 12 of the Act by woman whose marriage has been declared void, maintainability of – Application for maintenance by such woman is maintainable; not under section 125 CrPC but under section 12 of the Act of 2005, it being special beneficial legislation to protect rights of women expanding limited scope of section 125 of the Code.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धारा 12

अधिनियम की धारा 12 के अंतर्गत आवेदन – ऐसी महिला जिसके विवाह को शून्य घोषित किया जा चुका है – उक्त महिला का भरण–पोषण हेतु प्रस्तुत आवेदन हालांकि धारा 125 दं.प्र.सं. के अंतर्गत पोषणीय नहीं है परंतु अधिनियम की धारा 12 के अंतर्गत महिलाओं के अधिकार के संरक्षण का विशेष हितकारी विधान होने से पोषणीय हैं।

Priti Dey (Chandra) v. Subhashish Dey and another

Judgment dated 06.04.2016 passed by the Calcutta High Court in C.R.R. No. 3963 of 2013, reported in 2016 CriLJ 4329 (Cal)

Relevant extracts from the Judgment:

In my opinion, an application by an ‘aggrieved person’ or a Protection Officer is essential for maintaining a proceeding in view of the provisions of Section 12 of the P.W.D.V. Act. Here petitioner filed the application as ‘aggrieved person’. Question is whether her right to claim herself as aggrieved person was ceased with effect from 23.04.2012. ‘Aggrieved person’ has been defined in Section 2(a) of the P.W.D.V. Act as- “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. In her application petitioner alleged that she had been subjected to physical as well as mental torture by her husband during her living with the O.P. No. 1 in a shared household as wife of the opposite party no. 1 which attracts the definition

of “domestic violence” as per Section 3 of the Act. Undisputedly petitioner was wife of the opposite party no. 1 till the passing of the decree of nullity of marriage on 23.04.2012. In order to establish herself as aggrieved person any woman must prove first that she is or has been in a domestic relationship with the respondent. As per definition in Section 2 (f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. According to factual matrix in this case the petitioner and opposite party no. 1 have lived together in a shared household till petitioner’s departure from that house during her pregnancy stage as the petitioner and opposite party no. 1 were related each other by marriage. Significantly, it is mentioned that out of their such joint living a child has born. Therefore, as per definition of “domestic relationship” it can be said that even after passing the decree of nullity of marriage the domestic relationship between petitioner and the opposite party no. 1 for the purpose of P.W.D.V. Act subsists out of their past joint living as legally wedded couple. In this connection I like to note that petitioner’s application cannot be treated as an application under Section 125 of the Cr.P.C. The P.W.D.V. Act is a special beneficial legislation to protect the rights of women expanding the limited scope of Section 125 Cr.P.C. Such wider scope is required to be kept in mind in course of dealing with any matter under the provisions of the P.W.D.V. Act but certainly within the ambit of the language used in the statute. Be it noted that in a judgment in the case of ***D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469 = AIR 2011 SC 479*** (cited by learned counsel for the petitioner) extended scope in the P.W.D.V. Act has been discussed. Said case, though not similar according to facts to this case, but it throws light to understand the legal position on the subject.

In the instant case, petitioner alleged physical and mental torture upon her by opposite party no. 1 during continuation of their marital relationship. She also alleged that opposite party no. 1 kept her ‘Stridhana’ property with him and she was not provided maintenance for herself and her child by the opposite party although the petitioner is unable to maintain herself and her child. Since her marital relation with opposite party no. 1 has been declared a nullity with effect from 23.04.2012, her right to claim maintenance from opposite party no. 1 may not be proper under Section 125 of the Cr.P.C. But she cannot be debarred from seeking reliefs against the opposite party no. 1 ventilating her grievances against opposite party no. 1 who is engaged in legal profession as an advocate. In my opinion, the P.W.D.V. Act is the proper enactment for her redress. In this regard the latin maxim, ***“Ubi jus ibi remedium”*** (wherever there is a right there is a remedy) may be mentioned.

In conclusion, I find and hold that learned Sessions Judge, Purulia has failed to consider the facts and circumstances properly and his finding against the maintainability of the petitioner’s application under Section 12 of the P.W.D.V.

Act is neither correct nor legal. As such, the impugned judgment is liable to be set aside. Accordingly, the judgment dated 30.08,2013 passed by learned Sessions Judge, Purulia in Criminal Appeal No. 22 of 2012 is hereby set aside. The order dated 25.09.2012 passed by learned Judicial Magistrate, 3rd Court, Purulia is left without interference.

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***369. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 20 and 21**

(i) Domestic violence – Second marriage by husband – Despite unsuccessful divorce proceedings, constitutes domestic violence.

(ii) Unsuccessful divorce proceedings, effect of – On account of unsuccessful divorce proceedings, marital relationship continues, therefore, such proceedings cannot adversely affect maintainability of application under the Act.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धाराएं 20 एवं 21

(i) घरेलू हिंसा का गठन – पति द्वारा द्वितीय विवाह – असफल विवाह विच्छेद कार्यवाही के बावजूद, घरेलू हिंसा गठित होती हैं।

(ii) विवाह विच्छेद की कार्यवाही की असफलता का प्रभाव – विवाह विच्छेद की कार्यवाही की विफलता के दौरान वैवाहिक संबंध जारी रहते हैं, अतः उक्त कार्यवाही अधिनियम के अंतर्गत आवेदन की पोषणीयता को प्रतिकूल रूप से प्रभावित नहीं कर सकती हैं।

Prakash Nagardas Dubal-Shaha v. Sou. Meena Prakash Dubal Shah and others

Judgment dated 22.04.2016 passed by the Supreme Court in Criminal Appeal No. 320 of 2016, reported in 2016 CriLJ 4198 (SC)

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***370. REGISTRATION ACT, 1908 – Section 47**

Registered Document – Operates from the date of execution and not from the date of registration.

रजिस्ट्रेशन अधिनियम, 1908 – धारा 47

पंजीकृत दस्तावेज – निष्पादन की दिनांक से प्रभावी होता है न कि पंजीयन की दिनांक से।

Principal Secretary, Government of Karnataka and anr v. Ragini Narayan and anr.

Judgment dated 20.09.2016 passed by the Supreme Court in Civil Appeal No. 8895 of 2012, reported in AIR 2016 SC 4545

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371. SPECIFIC RELIEF ACT, 1963 – Section 20

Sale of shares belonging to other co-sharer – Specific Performance can be granted atleast for the share of executor co-sharer.

Undivided share of a coparcener can be transferred – But, possession cannot be handed over to the vendee unless partitioned.

विर्निदिष्ट अनुतोष अधिनियम, 1963 – धारा 20

(i) अन्य सह–अंशधारी के अंश का विक्रय – कम से कम निष्पादक अंशधारी के अंश तक का विर्निदिष्ट अनुपालन प्रदान किया जा सकता है।

(ii) सहदायिक के अविभाजित अंश का अंतरण किया जा सकता है – परंतु, विभाजन होने तक क्रेता को आधिपत्य हस्तांतरित नहीं किया जा सकता है।

Syscon Consultants P. Ltd. v. M/s. Primella Sanitary Prod. P.Ltd. And others. Judgment dated 19.09.2016 passed by the Supreme Court in Civil Appeal No. 2909-2912 of 2013, reported in AIR 2016 SC 4564

Relevant extracts from the judgment:

In ***Gajara Vishnu Gosavi v. Prakash Nanasaheb Kamble and others, (2009) 10 SCC 654,*** at paragraphs- 9 to 13, it has been held that:

> "9. Be that as it may, three courts have recorded the concurrent findings of fact that partition had never been given effect to in respect of the suit property. Therefore, Housabai could transfer her share. But the question does arise as to whether without partition by metes and bounds, she could put her vendee Anjirabai in possession.
>
> 10. In ***Kartar Singh v. Harjinder Singh, (1990) 3 SCC 517 : AIR 1990 SC 854,*** this Court held that where the shares are separable and a party enters into an agreement even for sale of share belonging to other co-sharer, a suit for specific performance was maintainable at least for the share of the executor of the agreement, if not for the share of other co-sharers. It was further observed:
>
> "6. As regards the difficulty pointed out by the High Court, namely, that the decree of specific performance cannot be granted since the property will have to be partitioned, we are of the view that this is not a legal difficulty. Whenever a share in the property is sold, the vendee has a right to apply for the partition of the property and get the share demarcated."
>
> 11. In a recent judgment in ***Ramdas v. Sitabai and Ors. (2009) 7 SCC 444 : JT (2009) 8 SC 224*** to which one of us (Dr. B.S. Chauhan J.) was a party placing reliance upon two earlier

judgments of this Court in ***M.V.S. Manikayala Rao v. M. Narasimhaswami and Ors. AIR 1966 SC 470; and Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh and Ors. AIR 1953 SC 487*** this Court came to the conclusion that a purchaser of a coparcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property.

12. There is another aspect of the matter. An agricultural land belonging to the coparceners/co-sharers may be in their joint possession. The sale of undivided share by one co-sharer may be unlawful/ illegal as various statutes put an embargo on fragmentation of holdings below the prescribed extent.

13. Thus, in view of the above, the law emerges to the effect that in a given case an undivided share of a coparcener can be a subject matter of sale/transfer, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds, either by the decree of a Court in a partition suit, or by settlement among the co-sharers."

The vehement contention, advanced by learned Senior Counsel Shri Dhruv Mehta, based on Article 2177 of the Portuguese Civil Code, 1867 that there was an absolute bar for transfer of any portion of the estate or a specific item of the estate, need not detain us both on account of factual matrix and on law. As we have already noted hereinabove, Defendants 1-8 had already given up on their right in the suit property by not taking steps to avoid the distress sale at the instance of the Bank. Though, there are different translated versions of the provision, we may extract Article 2177 as provided by Defendants 7 and 8 in their Appeal:

> "It is not lawful to a co-owner, however, to dispose a specific part of the thing held indivisibly, without the same being allotted to him in partition; and a transfer of the right, which he has to the share belonging to him, may be restricted in accordance with the law."

Suffice it to say, Article 2177 does not prohibit alienation of undivided interest, which is in tune with the principle underlying Section 44 of the Transfer of Property Act, 1882.

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372. TRANSFER OF PROPERTY ACT, 1882 – Sections 106 and 107

Unregistered Document of lease – Effect – Month to month tenancy deemed to be created – Can be used to prove factum of tenancy – Condition of a tenancy dealing with termination of tenancy only in case of non-payment of rent for three consecutive months – Contrary to the express provision of S. 106 – Parties cannot contract to defeat the very intent of S. 106.

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 106 एवं 107

पट्टे का अपंजीकृत दस्तावेज – प्रभाव – मासिक किरायेदारी का सृजित होना माना जावेगा – किरायेदारी का तथ्य साबित करने हेतु उपयोग किया जा सकता हैं – किरायेदारी की शर्त कि किरायेदारी का अवसान मात्र तीन लगातार माह का किराया न दिये जाने पर ही होगा – धारा 106 के अभिव्यक्त प्रावधान के विपरीत हैं – पक्षकार धारा 106 के आशय को निष्फल करने हेतु संविदा नहीं कर सकते।

M/s. Park Street Properties (Pvt) Limited v. Dipak Kumar Singh & another

Judgment dated 29.08.2016 passed by the Supreme Court in Civil Appeal No. 8361 of 2016, reported in AIR 2016 SC 4038

Relevant extracts from the judgment:

It is also a well settled position of law that in the absence of a registered instrument, the courts are not precluded from determining the factum of tenancy from the other evidence on record as well as the conduct of the parties. A three Judge bench of this Court in the case of ***Anthony v. KC Ittoop & Sons [AIR 2000SC 3523]***, held as under:

> "A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication. Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first paragraph has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein. The third paragraph can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within the ambit of the second paragraph. Thus, dehors the instrument parties can create a lease as envisaged in the second paragraph of Section 107 which reads thus.....

> When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed. Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains un–rebutted."
>
> (emphasis laid by this Court)

Thus, in the absence of registration of a document, what is deemed to be created is a month to month tenancy, the termination of which is governed by Section 106 of the Act.

Thus, the question of remanding the matter back to the Trial Court to consider it afresh in view of the fact that the same has been admitted in evidence, as the High Court has done in the impugned judgment and order, does not arise at all. While the agreement dated 07.08.2006 can be admitted in evidence and even relied upon by the parties to prove the factum of the tenancy, the terms of the same cannot be used to derogate from the statutory provision of Section 106 of the Act, which creates a fiction of tenancy in absence of a registered instrument creating the same. If the argument advanced on behalf of the respondents is taken to its logical conclusion, this lease can never be terminated, save in cases of breach by the tenant. Accepting this argument would mean that in a situation where the tenant does not default on rent payment for three consecutive months, or does not commit a breach of the terms of the lease, it is not open to the lessor to terminate the lease even after giving a notice. This interpretation of the clause 6 of the agreement cannot be permitted as the same is wholly contrary to the express provisions of the law. The phrase 'contract to the contrary' in Section 106 of the Act cannot be read to mean that the parties are free to contract out of the express provisions of the law, thereby defeating its very intent. As is evident from the cases relied upon by the learned senior counsel appearing on behalf of the appellant, the relevant portions of which have been extracted supra, the contract between the parties must be in relation to a valid contract for the statutory right under Section 106 of the Act available to a lessor to terminate the tenancy at a notice of 15 days to not be applicable.

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GUIDELINE SECTION ON THE CLAIMS TRIBUNAL AGREED PROCEDURE

The Claims Tribunal Agreed Procedure has been formulated and approved by the Delhi High Court in the judgment dated 16.12.2009 passed in FAO No. 843 of 2003 in ***Rajesh Tyagi & Ors. v. Jaibir Singh & Ors.*** The Apex Court in ***Jai Prakash v. National Insurance Company Limited and others, (2010) 2 SCC 607*** has directed that until Parliament enacts appropriate law, the procedure would be adopted by all the Motor Accidents Claims Tribunal in India.

THE CLAIMS TRIBUNAL AGREED PROCEDURE
(As approved by Delhi High Court)
CHAPTER 1- SCOPE AND DEFINITIONS

1. Scope: This procedure shall be applicable for all claims filed before the Claims Tribunals in the NCT of Delhi.

2. Definitions. – (1) In this procedure, unless the context otherwise requires,-

(a) "Act" means the Motor Vehicles Act, 1988 (59 of 1988);

(b) "accident" means an accident involving use of motor vehicle at a public place;

(c) "Claims Tribunal" means a Motor Accidents Claims Tribunal constituted under section 165 of the Act;

(d) "Clause" shall refer to the Clauses of this Agreed procedure;

(e) "Form" means a form appended to The Delhi Motor Accident Claims Tribunal Rules, 2008;

(e) "insurance company" means the insurance company with which a motor vehicle involved in an accident was insured on the date of the accident;

(f) "investigating police officer" means the station house officer of a police station within whose jurisdiction an accident involving a motor vehicle occurs, and includes any police officer subordinate to him entrusted with the investigation of the case;

(g) "legal representative" shall have the same meaning assigned to it under clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908).

(h) "Rule" or "2008 Rules" shall bear reference to The Delhi Motor Accident Claims Tribunal Rules, 2008.

(2) All other words and expressions used herein but not defined and defined in Motor Vehicles Act, 1988 or The Delhi Motor Accident Claims Tribunal Rules, 2008, shall have the meanings respectively assigned to them in that Act, or the Rules as the case may be.

CHAPTER 2- RECEIPT OF INFORMATION, VERIFICATION AND THE DETAILED ACCIDENT REPORT

3. Receipt of information of an accident and duties of the investigating police officer -

(1) The Investigating Police Officer may receive information from one or more source including but not limited to:

(a) The driver/owner of the vehicle involved in the accident, by way of a report as contemplated under Section 134 of the Act;

(b) The Claimant;

(c) A witness to the accident or any other informant or source of information;

(d) The hospital or medical facility where the Deceased or Injured may have been taken to for medical attention.

(2) On receipt of the above information, it shall be the duty of the investigating police officer, as expeditiously as possible not later than 48 hours to –

(a) Intimate the factum of the accident to the Claims Tribunal within whose territorial jurisdiction the accident has occurred, which shall be entered in a register for such purpose;

(b) If the insurance particulars are available by that time, the Investigating Officer shall also send the intimation to the concerned Insurance Company by e-mail.

(c) The factum of the accident shall also be uploaded by Delhi Police on its website.

(d) The intimation of the accident shall contain all relevant particulars including the date, time and place of accident, registration number of the offending vehicle, policy particulars, names and addresses of the owner and driver of the offending vehicle and the name and mobile number of the Investigating Officer.

(e) In terms of Rule 3(1)(a) have the scene of accident photographed from such angles as to clearly depict, the lay-out and width, etc. of the road(s) or place, as the case may be, the position of vehicle(s), or person(s), involved, and such other facts as may be relevant so as to preserve the evidence in this regard, inter-alia for purposes of proceedings before the Claims Tribunal;

(f) Gather full particulars, and seek the following documents from the parties as under:

(A) From the owner/driver, in terms of Section 133/134 and 158 of the Act and Rule 3 of the Rules:

i. The circumstances of the occurrence, including the circumstances if any for not taking reasonable steps to secure medical attention to the injured person in terms of Section 134(a) of the Act;
ii. the date, time and place of the accident;
iii. particulars of the persons injured or deceased in the accident;
iv. name and address of the driver and the owner, and the driving license of the driver and that of the conductor in the case of a stage carriage, passenger or goods vehicle;
v. the Insurance Policy or in the alternative a valid cover note provided that such cover note should not be more than sixty days old;
vi. the certificate of insurance;
vii. the certificate of registration;
viii. in the case of a transport vehicle, the fitness certificate referred to in Section 56 of the Act and the permit.

(B) From the Claimant(s), victims of an accident or their legal representatives, as the case may be:

(i) In case of death;

(a) Proof of age and a photo- ID of the deceased at the time of accident;

(b) Death certificate and post mortem report;

(c) Proof of income of the deceased at the time of the accident,

a. in the form of pay slip/salary certificate in the case of a government/semi- government employee,

b. certificate of the employer and bank statements of the last six months of the deceased reflecting payment of salary in the case of a private employee,

c. I.T. returns in the case of a self-employed person;

(d) Details of the dependents, i.e. their age, occupation and marital status and proof of dependency in the form of affidavits, address and other contact details;

(e) Details and copies of medical bills and expenses;

(f) A brief statement of the facts surrounding and quantum of compensation intended to be claimed;

(g) Details of the claims tribunal, where the Claimants have preferred an application under Section 163A or Section 166, if any, as on the date of such verification or investigation by the investigating police officer;

(ii) In case of an injury case

(a) Proof of age and a Photo- Insured, address and other contact details of the injured at the time of accident;

(b) Proof of income of the Injured at the time of the accident,

a. in the form of pay slip/salary certificate in the case of a government/semi- government employee,

b. certificate of the employer and bank statements of the last six months of the injured reflecting payment of salary in the case of a private employee,

c. I.T. returns in the case of a self-employed person;

(c) Disability certificate issued by a Government Hospital or a recognized private hospital;

(d) MLC/accident register extract of the hospital and MLR

(e) Details and copies of medical bills and expenses; in case of long term treatment the Investigating Police officer shall record the details of the same and the Claimant may furnish such bills before the Claims Tribunal;

(f) Proof of absence from work [where loss of income on account of injury is being claimed] i.e. certificate from the employer and extracts from the attendance register or log record or like records;

(g) A brief statement of the facts surrounding and quantum of compensation intended to be claimed;

(h) Details of the claims tribunal, where the Claimants have preferred an application under Section 163A or Section 166, if any, as on the date of such verification or investigation by the investigating police officer; and thereupon the police investigating officer shall either to the above documents in possession against receipt, or retain the photocopies of the same, after attestation thereof by the person producing the same;

(3) The investigating police officer shall verify the genuineness of the documents mentioned in Clause 3(2) by obtaining confirmation in writing from the office or authority or person purporting to have issued the same or by such further investigation or verification as may be necessary for arriving at a conclusion of genuineness of the document or information in question, including but not limited to verifying the license of the driver and permit of the vehicle, where applicable, from the registering authority;

(4) The investigating police officer shall not release and shall impound the vehicle involved in the accident, when:

a. it is found that it is not covered by policy of insurance of third party risks, taken in the name of the registered owner, or

b. when the registered owner fails to furnish copy of such insurance policy, or where the driver fails to furnish the driving license and shall bring this to the notice of the Magistrate having jurisdiction over the area, where the accident occurred. He shall further report to the Magistrate, as to why the registered owner has not been prosecuted for offence punishable under section 196 of the Act, where such prosecution has not been preferred, despite existence of facts constituting such an offence.

(5) In all cases where no driving license has been furnished by the driver, or permit and insurance policy by the owner the investigating police officer shall take a statement in the form of an affidavit from the driver and or the owner, as the case may be as to the details of such driving license including the class and type of vehicle he is licensed to drive, permit and or Insurance Policy in case of the owner and the validity thereof as on the date of the accident. In such cases the investigating police officer shall proceed to investigate into the properties and assets of the owner of the vehicle and append the same to his report.

4. Preparation and forwarding of the Detailed Accident Report (DAR): (1) After completion of the above collection and verification of the documents and investigation as may be required, the investigating police officer shall complete the preparation of a detailed accident report [hereinafter referred to as DAR] in Form "A" not later than thirty days from the date of the accident. In terms of Rule 3 (1)(c) such DAR shall be accompanied by requisite documents which shall include copy of the report under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), medico legal certificate, post- mortem report (in case of death), first information report, photographs, site plan, mechanical inspection report, seizure memo, photocopies of documents mentioned in Clause 3(2) above, as also a report regarding confirmation of genuineness thereof, if received, or otherwise action taken.

(2) Immediately on completion of the above DAR, the investigating police officer shall forward a copy of the DAR, under its seal, duly receipted:

(i) To the Claims Tribunal, under a duly attested affidavit of the investigating police officer-

- where a claim has already been preferred by the Claimant to such Claims Tribunal or
- where no such claim has been preferred, then before the Claims Tribunal in whose territorial jurisdiction the accident has occurred.

(ii) To the Claimant (s) or victims of the accident or their legal representative(s), as the case may be at the address supplied by the Claimant to the investigating police officer, free of charge;

(iii) To the owner/driver at the addressed supplied by the owner /driver to the police investigating officer, at a cost of Rs. Five per page;

(iv) To the nodal officer of the concerned Insurance Company at a cost of Rs. ten per page.

(3) The Investigating Officer of the Police shall also furnish a copy of Detailed Accident Report along with complete documents to Secretary, Delhi Legal Services Authority, Central Office, Pre-Fab Building, Patiala House Courts, New Delhi. Delhi Legal Services Authority shall examine each case and assist the Claims Tribunal in determination of the just compensation payable to the claimants in accordance with law.

(4) Where the Investigating Officer is unable to complete the investigation of the case within 30 days for reasons beyond his control, such as cases of hit and run accidents, cases where the parties reside outside the jurisdiction of the Court cases, where the driving licence is issued outside the jurisdiction of the Court, or where the victim has suffered grievous injuries and is undergoing treatment, the Investigating Officer shall approach the Claims Tribunal for extension of time whereupon the Claims Tribunal shall suitably extend the time in the facts of each case.

(5) The Investigating Officer shall produce the driver, owner, claimant and eye- witnesses before the Claims Tribunals along with the Detailed Accident Report. However, if the Police is unable to produce the owner, driver, clamant and eye-witnesses before the Claims Tribunal on the first date of hearing for the reasons beyond its control, the Claims Tribunal shall issue notice to them to be served through the Investigating Officer for a date for appearance not later than 30 days. The Investigating Officer shall give an advance notice to the concerned Insurance Company about the date of filing of the Detailed Accident Report before the Claims Tribunal so that the nominated counsel for the Insurance Company can remain present on the first date of hearing before the Claims Tribunal.

(6) The duties enumerated in Clause (3) and (4) above shall, as per Rule 3(2) of the 2008 Rules be construed as if they are included in Section 60 of the Delhi Police Act 1978 (34 of 1978) and any breach thereof shall entail consequences envisaged in that law, as provided for under Rule 3 (2).

5. Duties of the registering authority.- It shall be the duty of the concerned registering authority to-

(a) submit a detailed report in Form “D” to the Claims Tribunal regarding a motor vehicle involved in an accident or licence of the driver thereof within fifteen days of the receipt of direction in Form “E”;

(b) furnish within fifteen days, the requisite information in Form “D” on receiving the application in Form “F”, by the person who wishes to make an application for compensation or who is involved in an accident arising out of use or his next of kin, or to the legal representative of the deceased or to the insurance company, as the case may be; Provided that information shall be given to the insurance company on payment of rupees ten only per page.

(c) assist the police in verification process set out in Procedure Clause 3 and 4 above and furnish to the investigating police officer a report in

Form ‘D’ within 15 days of a request from the police investigating officer regarding verification or genuineness of any document regarding a motor vehicle involved in an accident or the license of the driver thereof.

CHAPTER 3 - CLAIMS INSTITUTED ON THE BASIS OF DETAILED ACCIDENT REPORT

6. Procedure on receipt of the detailed accident report: (1) The Claims Tribunals shall examine whether the Detailed Accident Report is complete in all respects and shall pass appropriate order in this regard. If the Detailed Accident Report is not complete in any particular respect, the Claims Tribunal shall direct the Investigating Officer to complete the same and shall fix a date for the said completion.

(2) The Claims Tribunals shall treat the Detailed Accident Report filed by the Investigating Officer as a claim petition under Section 166(4) of the Motor Vehicles Act. However, where the Police is unable to produce the claimants on the first date of hearing, the Claims Tribunal shall initially register the Detailed Accident Report as a miscellaneous application which shall be registered as a main claim petition after the appearance of the claimants.

(3) The Claims Tribunal shall grant 30 days time to the Insurance Company to examine the Detailed Accident Report and to take a decision as to the quantum of compensation payable to the claimants in accordance with law. The decision shall be taken by the Designated Officer of the Insurance Company in writing and it shall be a reasoned decision. The Designated Officer of the Insurance Company shall place the written reasoned decision before the Claims Tribunal within 30 days of the date of complete Detailed Accident Report.

(4) The compensation assessed by the Designated Officer of the Insurance Company in his written reasoned decision shall constitute a legal offer to the claimants and if the claimants accept the said offer, the Claims Tribunal shall pass a consent award and shall provide 30 days time to the Insurance Company to make the payment of the award amount. However, before passing the consent award, the Claims Tribunal shall ensure that the claimants are awarded just compensation in accordance with law. The Claims Tribunal shall also pass an order with respect to the shares of the claimants and the mode of disbursement.

(5) If the claimants are not in a position to immediately respond to the offer of the Insurance Company, the Claims Tribunals shall grant them time not later than 30 days to respond to the said offer.

(6) If the offer of the Insurance Company is not acceptable to the claimants or if the Insurance Company has any defence available to it under law, the Claims Tribunal shall proceed to conduct an inquiry under Sections 168 and 169 of the Motor Vehicles Act and shall pass an award in accordance with law within a period of 30 days thereafter.

(7) Where the Claims Tribunal finds that the D.A.R. and in particular the report under Section 173, The Criminal Procedure Code, 1974 annexed to such D.A.R. has brought a charge of rash and negligent driving, or the causing of hurt or grievous hurt the Claims Tribunal shall register the claim case under Section 166 of The Motor Vehicles Act,1988. In cases where the DAR does not bring a charge of negligence or despite the charge of negligence the Claimant(s) before the court chose to claim on a no-fault basis, the Claims Tribunal shall register a claim case under Section 163A, The Motor Vehicles Act,1988;

(8) Provided that in cases where the accident in question involves more than one vehicle and persons connected to all such vehicles stake a claim for compensation, the D.A.R. shall be treated as an application for compensation claim case shall be presumed to be a claim case preferred by each of them.

CHAPTER 4 - CLAIMS INSTITUTED BY WAY OF AN APPLICATION BY THE CLAIMANT

7. Applications for compensation.- (1) Every application for payment of compensation shall be made in Form "G" and shall be accompanied by as many copies, as may be required, to the Claims Tribunal having jurisdiction to adjudicate upon it, in terms of Section 165 of the Act.

(2) In terms of Rule 8, there shall be appended to every such application:-

(a) an affidavit of the applicant(s) to the effect that the statement of facts contained in the application is true to the best of his/her knowledge/belief, as the case may be, details of previous claims preferred by the applicant(s) with regard to the same cause of action, or any other accident and if so, what was the result thereof;

(b) all the documents and affidavits for the proof thereof, and affidavits in support of all facts on which the applicant relies in context of his/her claim, entered in a properly prepared list of documents and affidavits:

Provided that the Claims Tribunal may not allow the applicant to rely in support of his/her claim, on any document or affidavit not filed with the application, unless it is satisfied that for good or sufficient cause, he/she was prevented from filing such document or affidavit earlier;

(c) proof of identity of the applicant (s) to the satisfaction of the Claims Tribunal, unless exempted from doing so for reasons to be recorded in writing by it;

(C) passport size photograph(s) of the applicant(s) duly attested;

(D) reports obtained in Form "C" and Form "D" from investigating police officer, and registering authority; and if no such report(s) have been obtained, the reasons thereof;

(E) medical certificate of injuries, or the effect thereof, other than those included in Form "C".

(3) The Claims Tribunal may also require the applicant to furnish the following information to satisfy itself that spurious or a collusive claim has not been preferred:-

(a) full particulars of all earlier accidents in which the applicant or the person deceased, as the case may be, has been involved;

(b) nature of injuries suffered and treatment taken;

(c) the amount of compensation paid in such earlier accidents, name and particulars of the victim, and of the person who paid the damages; and

(d) Relationship of the applicant(s), if any, with the persons mentioned in clause (b), and the owner and the driver of the vehicle.

(4) Any application which is found defective on scrutiny may be returned by the Claims Tribunal for being re-submitted after removing the defects within a specified period not exceeding two weeks. Every application for compensation shall be registered separately in appropriate register prescribed as per rule 36.

8. Examination of applicant.- On receipt of an application under Rule8, the Claims Tribunal may examine the applicant on oath, and the substance of such examination, if any, shall be reduced to writing.

9. Summary disposal of application.- The Claims Tribunal may, after consideration of the application and statement, if any, of the applicant recorded under Rule 10, dismiss the application summarily, if for reasons to be recorded, it is of the opinion that there are no sufficient grounds for proceeding therewith.

10. Notice to parties involved- If the application for claim is found admissible in terms of Clause 6(4) and Clause 9 above, the Claims Tribunal shall send to the opposite parties accompanied by a copy of the application along with all the documents and affidavits filed by applicant under Rule 8 together, with a notice in Form “I” of the date on which it will hear the application, and may call them upon to file on that date a written statement as per Rule 14 in answer to the application.

CHAPTER 5- DUTY OF THE INSURANCE COMPANY ON RECEIPT OF NOTICE AND PRE-TRIAL SETTLEMENT PROCESS AND COSTS

11. Duties of the insurance company: (1) Immediately upon receipt of intimation, the Insurance Company shall appoint a Designated Officer for each case. The Designated Officer shall be responsible for dealing/processing of that case and for taking decision for the amount of compensation payable in accordance with law after the Detailed Accident Report by the police.

(2) Without prejudice to its rights and contentions, where in the opinion of the Insurance Company, a claim is payable it shall confirm the same to the Claims Tribunal within thirty days of the receipt of complete Detailed Accident Report, by way of an offer of settlement of claim, with a supporting computation/calculation, under a duly attested affidavit of the Divisional Officer/ Officer appointed for such purpose.

(3) When on the date of hearing of such application and on receipt of such offer from the Insurance Company, the Claimant(s) agree to the offer of settlement of the Insurance Company, the Claims Tribunal shall record such settlement by way of a consent decree and payment shall be made by the Insurance Company within a maximum period of thirty days from the date of receipt of a copy of the consent decree which shall be made available to the parties by the Claims Tribunal within a maximum period of seven working days from the passing of such decree.

(4) The Insurance Company shall be at liberty to file an application under Section 170, The Motor Vehicles Act, 1988 at any stage of the proceedings and shall be considered and adjudicated upon by the Claims Tribunal on its own merits.

CHAPTER 6-APPLICATIONS UNDER SECTION 140 OF THE MOTOR VEHICLES ACT, 1988

12. Application for claim on principle of no fault liability:- (1) Every application in case of claim under Chapter X of the Act, shall be made in part II of Form "G". The Claims Tribunal shall, for the purpose of adjudication of the application mentioned in this rule shall follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall not reject any application made as per the provisions of Chapter X of the Act on ground of any technical flaw, but shall give notice to the applicant and get the defect rectified.

(3) Where the application is not accompanied by reports in From "A" and Form "D", the Claims Tribunal shall obtain whatever information is necessary from the police, medical and other authorities and proceed to adjudicate upon the claim whether the parties who were given notice appear or not on the appointed date.

(4) Subject to the rights of the Insurance Company to prove breach of the Insurance Policy in terms of Section 149, The Motor Vehicles Act,1988 the Claims Tribunal shall expeditiously proceed to award the claims on the basis of reports in Form "A" and Form "D" and further documents relating to injuries or treatment, if any filed with affidavit, and report or certificate, if any, issued in compliance with directions under rule 18 The Claims Tribunal in passing an award on such application, shall also issue directions for apportionment, if required and for securing the interests of the claimants, following the provisions of rules 26 and 27.

CHAPTER 7- TRIAL AND AWARD

13. Framing of issues.- After considering the application, the written statements, the examination of the parties, if any, and the result of any local inspection, if made, the Claims Tribunal shall proceed to frame and record the issues upon which the decision of the case appears to it to depend.

14. Determination of issues.- (1) After framing the issues the Claims Tribunal shall proceed to decide them after allowing both parties to cross examine each other and the deponents, whose affidavits have been filed by the parties,

on such affidavits filed with the application and the written statement and in doing so, it shall follow provision of Order XIX of the Code of Civil Procedure, 1908 (5 of 1908). (2) The Claims Tribunal may, if it appears to it to be necessary for just decision of the case, allow the parties to adduce such further evidence as each of them may desire to produce:

Provided that no such further opportunity shall be permitted unless it is shown that the affidavit of the witness sought to be examined at such stage could not be obtained and filed earlier, despite exercise of due diligence by, or that such evidence was not within the knowledge of the party relying on it.

15. Summoning of witnesses.- Subject to the provisions of rule 22, if an application is presented by any party to the proceeding for the summoning of witnesses, the Claims Tribunal shall, on payment of the expenses involved, if any, issue summons for the appearance of such witness unless it considers that their appearance is not necessary for a just decision of the case:

Provided that if, in the opinion of the Claims Tribunals, the party is financially poor, it may not insist on the payment of the expenses involved and the same shall be borne by the Government:

Provided further that in case where the party succeeds in whole or in part, the expenses so incurred by the Government shall be directed to be paid to the Government by the judgment debtor and so directed at time of passing of the final award..

16. Method of recording evidence.- The Claims Tribunals shall, as examination of witnesses proceeds, make brief memorandum of the substance of the evidence of each witness and such memorandum shall be written and signed by the Presiding Judge of the Claims Tribunal and shall form part of the evidence.

Provided that evidence of any expert witness shall be taken down, as nearly as may be, word for word.

17. Obtaining of supplementary information and documents.- The Claims Tribunal shall obtain whatever supplementary information and documents, which may be found necessary from the police, medical and other authorities and proceed to adjudicate upon the claim whether the parties who were given notice appear or not on the appointed date.

18. Judgment and award of compensation.- (1) The Claims Tribunal in passing orders shall record concisely in a judgment, the findings on each of the issues framed and the reasons for such findings and make an award specifying the amount of compensation to be paid by the opposite party or parties and also the person or persons to whom compensation shall be paid.

(2) The procedure of adjudicating the liability and award of compensation may be set apart from the procedure of disbursement of compensation to the legal heirs in a case of death, and where the Claims Tribunal feels that the actual payment to the claimant is likely to take some time because of the identification and determination of legal heirs of the deceased, the Claims

Tribunal may call for the amount of compensation awarded to be deposited with it, and, then, proceed with the identification of the legal heirs for disbursing payment of compensation to each of the legal heirs equitably.

(3) Where the Claims Tribunal finds that false or fabricated documents have been filed by or relied upon by the Claimant(s) to support its claim for compensation, the Claims Tribunal shall award costs of Rs.10,000 for every such false or fraudulent document filed and further direct the police to launch a prosecution against such claimant (s) in accordance with the provisions of law.

CHAPTER 8- OTHER PROVISIONS

19. Prohibition against release of motor vehicle involved in accident.- (1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy, at the time of seizure, despite demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident. Where the owner does not furnish such a copy of the Insurance Policy at the time of seizure, but agrees to furnish it or so furnishes it at a reasonable time thereafter, the release of the vehicle shall be subject to and only after due verification of the said Insurance Policy/cover note by the Insurance Company

(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in sub-rule (1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.

20. Presumption about reports.- The contents of reports submitted to the Claims Tribunal in Form “A” and Form “D” by investigating police officer and concerned registering authority respectively, and confirmation under clause (b) of rule 5 by the insurance company shall be presumed to be correct, and shall be read in evidence without formal proof, till proved to the contrary.

21. Transfer of claim cases.- (1) Where two or more claims, arising out of the same cause of action, fall within the jurisdiction of the District Judge, he shall have the power to transfer an application for claim from the file of one Claims Tribunal, before whom the application is pending, to any other Claims Tribunal, if-

(a) the Claims Tribunal before whom the application is pending makes such a request on grounds, personal or otherwise; or

(b) upon consideration of the application for transfer by any party to the application, the District Judge is satisfied, for reasons to be recorded in writing, that there are sufficient grounds to do so.

(2) Where two or more claims arising out of the same cause of action, are pending before different Claims Tribunal in the same State, the High Court of such State may transfer the application from the file of one Claims Tribunal to the other Claims Tribunal for any sufficient reasons, on the application of any party to such proceedings..

(3) Where two or more claims arise before different Claims Tribunals in different States then an application will lie to either of the High Courts of the two states and such High Court may transfer the application from the file of one Claims Tribunal to the other Claims Tribunal for any sufficient reasons.

(4) While considering an application for transfer of a claim, the Claims Tribunal which has first issued notice in point of time shall be deemed to be the appropriate Claims Tribunal for the purpose of such transfer. .

22. Inspection of the vehicle.- The Claims Tribunal may, if it thinks fit, require the motor vehicle involved in the accident to be produced by the owner for inspection at a particular time and place to be mentioned by it, in consultation with the owner.

23. Power of summary examination.- The Claims Tribunal during the local inspection or at any other time at a formal hearing of a case pending before, it may, examine summarily any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness in the case or not and whether any or all of the parties are present or not.

24. Power to direct medical examination.- The Claims Tribunal may, if it considers necessary, direct, in Form "J", any medical officer or any board of medical officers in a government or municipal hospital to examine the injured and issue certificate indicating the degree and extent of the disability, if any, suffered as a result of the accident, and it shall be the duty of such medical officer or board to submit the report within fifteen days of receipt of direction.

25. Securing the interest of claimants.- (1) Where any lump-sum amount deposited with the Claims Tribunal is payable to a woman or a person under legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman or such person during this disability in such manner as the Claims Tribunal may direct to be paid to any dependent of the injured or heirs of the deceased or to any other person whom the Claims Tribunal thinks best fitted to provide for the welfare of the injured or the heir of the deceased.

(2) Where on application made to the Claims Tribunal in this behalf or otherwise, the Claims Tribunal is satisfied that on account of neglect of the children on the part of the parents, or on account of the variation of the circumstances of any dependent, or for any other sufficient cause, an order of the Claims Tribunal as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be

invested applied or otherwise dealt with, ought to be varied, the Claims Tribunal may make such further orders for the variation of the former order as it thinks just in the circumstances of the case.

(3) The Claims Tribunal shall, in the case of minor, order that amount of compensation awarded to such minor be invested in fixed deposits till such minor attains majority. The expenses incurred by the guardian or the next friend may be allowed to be withdrawn by such guardian or the next friend from such deposits before it is deposited.

(4) The Claims Tribunal shall, in the case of illiterate claimants, order that the amount of compensation awarded be invested in fixed deposits for a minimum period of three years, but if any amount is required for effecting purchase of any moveable or immoveable property for improving the income of the claimant, the Claims Tribunal may consider such a request after being satisfied that the amount would be actually spent for the purpose and the demand is not a ruse to withdraw money.

(5) The Claims Tribunal shall, in the case of semi-literate person resort to the procedure for the deposit of award amounts set out in sub-rule(4) unless it is satisfied, for reasons to be recorded in writing that the whole or part of the amount is required for the expansion of any existing business or for the purchase of some property as specified and mentioned, in sub- rule (4) in which case the Claims Tribunal shall ensure that the amount is invested for the purpose for which it is prayed for and paid.

(6) The Claims Tribunal may in the case of literate persons also resort to the procedure for deposit of awarded amount specified in sub-rule (4) and (5) if having regard to the age, fiscal background and state of society to which the claimant belongs and such other consideration, the Claims Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded, thinks it necessary to order.

(7) The Claims Tribunal, may in personal injury cases, if further treatment is necessary, on being satisfied which shall be recorded in writing, permit the withdrawal of such amount as is necessary for the expenses of such treatment.

(8) The Claims Tribunal shall, in the matter of investment of money, have regard to a maximum return by ways of periodical income to the claimant and make it deposited with public sector undertakings of the State or Central Government which offers higher rate of interest.

(9) The Claims Tribunal shall, in investing money, direct that the interest on the deposits be paid directly to the claimants or the guardian of the minor claimants by the institutions holding the deposits under intimation to the Claims Tribunal.

26. Adjournment of hearing.- If the Claims Tribunal finds that an application cannot be disposed of at one hearing, it shall record the reasons which necessitate the adjournment and also inform the parties present of the date of adjourned hearing.

27. Enforcement of award of the Claims Tribunal.- Subject to the provisions of section 174 of the Act, the Claims Tribunal shall, for the purpose of enforcement of its award, have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908(5 of 1908), as if the award where a decree for the payment of money passed by such court in a civil suit.

28. Vesting of powers of Civil Court in the Claims Tribunal.- Without prejudice to the provisions of section 169 of the Act every Claims Tribunal shall exercise all the powers of a Civil Court, and in doing so for discharging its functions it shall follow the procedure laid down in the Code of Civil Procedure, 1908(5 of 1908).

29. Receipt of compensation paid upon payment.- The Claims Tribunal shall, obtain a receipt from the claimant in duplicate, one copy to be issued to the person who makes the payment and the other to be retained on the record while handing over the payment.

30. Registers.- (1) The Claims Tribunal shall maintain in addition to all registers required to be maintained by a court of Additional District Judge in Delhi, the following registers:-

(i) Register of intimation of factum of accident

(ii) Register for applications for interim award on principle of no fault liability;

(iii) Register for deposit of payments in the Tribunal through cheques, etc.

(2) Claim petitions on the ground of death, permanent disability, injury and damage to property shall be entered in a separate register.

31. Custody and preservation of the records.- The necessary documents and records relating to the cases shall be preserved in the record room for a period of six years of the satisfaction of the award, if any granted, or for a period of twelve years after the judgment and award become final, whichever is earlier.

CHAPTER 9 – APPEAL

32. Appeal against the judgment of the Claims Tribunal.– (1) Subject to the provisions of Section 173, every appeal against the judgment of the Claims Tribunal shall be preferred in the form of a memorandum signed by the applicant or the advocate duly empowered by him in this behalf, and presented to the High Court and shall be accompanied by a copy of the judgment.

(2) The memorandum shall set forth concisely and under distinct heads, the grounds of objections to the judgment appealed from without any argument or narrative, and such grounds shall be numbered consecutively.

(3) Save as provided in sub-rules (1) and (2) , the provisions of Order XLI XXI in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall mutatis mutandis apply to appeals preferred to High Court under section 173 of the Act.

33. Certified copies.- The rules relating to the issue of certified copy as in force in Delhi for the courts subordinate to the High court shall mutatis mutandis apply in the case of the Claims Tribunal.

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PART - III
CIRCULARS/NOTIFICATIONS

संचालनालय कोष एवं लेखा, मध्यप्रदेश

क्रमांक/संकोले/ साय. ट्रे/2014/408 भोपाल, दिनांक 19.12.2016

प्रति,

समस्त कोषालय अधिकारी,

मध्यप्रदेश।

विषय – न्यायालयों से संबंधित राशियाँ साईबर कोषालय में जमा करने के संबंध में।

विषयांतर्गत यह ध्यान में लाया गया है कि मान्नीय न्यायालय द्वारा पक्षकारों से जमा कराई जाने वाली राशि को साईबर कोषालय में जमा करने के संबंध में स्पष्टतः नहीं है। यहाँ यह स्पष्ट किया जाता है कि सी.सी.डी. एवं माननीय न्यायालयों द्वारा आदेशित अन्य समस्त जमायें साईबर कोषालय के माध्यम से जमा की जा सकती है। इस हेतु निम्नांकित नेवीगेशन का उपयोग किया जाये www.mptreasury.org साईबर ट्रेजरी लॉडिपार्टमेंट (Court Deposits)।

2. इस संबंध में आपके जिले से संबंधित जिला न्यायाधीश के समक्ष जाकर प्रक्रिया से अवगत करायें और अनुरोध करें कि साईबर कोषालय का इस हेतु अधिकाधिक उपयोग किया जाये। न्यायालय द्वारा पूछे जाने पर उन्हें प्रक्रिया से अवगत भी करायें।

3. किसी बिन्दु पर अस्पष्टता हैं तो तत्काल इस कार्यालय से संपर्क किया जा सकता है परन्तु अपने स्तर पर साईबर कोषालय में जमा हेतु उपलब्ध है।

4. सभी विभागों/कार्यालय प्रमुखों को इस संबंध में अवगत कराया जाये और लेख किया जाये कि वह विभाग से संबंधित प्राप्तियों को साईबर कोषालय के माध्यम से प्राप्त करने हेतु आवश्यक कार्यवाही करें।

अपर संचालक
कोष एवं लेखा

पृ. क्रमांक/संकोले/साय. ट्रे/2014/409 भोपाल, दिनांक 19.12.2016

प्रतिलिपि

1. अपर मुख्य सचिव, मध्यप्रदेश शासन, वित विभाग, मंत्रालय, भोपाल।
2. प्रमुख सचिव, विधि एवं विधायी विभाग, भोपाल।
3. रजिस्ट्रार जनरल, उच्च न्यायालय, मध्य प्रदेश जबलपुर।
4. समस्त जिला एवं सत्र न्यायाधीश, मध्यप्रदेश।
5. समस्त कलेक्टर्स मध्यप्रदेश।
6. समस्त संभागीय संयुक्त संचालक, कोष एवं लेखा, मध्यप्रदेश।

परिशिष्ठ ''अ''

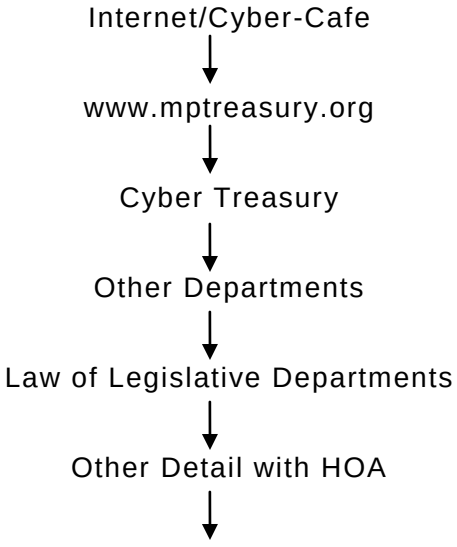
MAJOR/SUB-MAJOR HEADS		MINOR HEADS	
8443	CIVIL DEPOSITS	101	REVENUE DEPOSITS (1)
		102	CUSTOMS AND OPIUM DEPOSITS (2)
		103	SECURITY DEPOSITS (3)
		104	CIVIL DEPOSITS (4)
		105	CRIMINAL COURTS DEPOSITS
0070	OTHER ADMINISTRATIVE SERVICE 01 ADMINISTRATION OF JUSTICE		
		102	FINES AND FORFEITURE (2)
		501	SERVICES AND SERVICE FEES (1)
		800	OTHER RECEIPTS (3)
		115	RECEIPTS FROM GUEST HOUSES, GOVERNMENT HOSTELS ETC. (9)

राशि (चालान जमा) करने की प्रक्रिया

- न्यायालय राशि जमा करने के आदेश में लेखा शीर्ष जिसमें ऑनलाईन चालान जमा किया जाता है, का उल्लेख करेंगे।
- जमाकर्ता अपने घर/दफ्तर या अन्य कोई स्थान जहाँ कम्प्यूटर एवं इन्टरनेट उपलब्ध है या ऐंड्राइड फोन जिस पर इन्टरनेट उपलब्ध है पर बेवसाईट www.mptreasury.org सर्च करेगा।
- बेवसाइट खुलने पर mptreasury का स्क्रीन खुलेगा जिसके मध्य में "Cyber Treasury" हिन्दी में ''सायबर कोषालय'' बटन दिखेगा।
- सायबर कोषालय बटन पर क्लिक करने पर सायबर कोषालय पेज खुलेगा।

- पेज पर विभागों के नाम दिये गये हैं इस पर other Departments या ''अन्य विभाग'' बटन पर क्लिक करना है।
- क्लिक करने पर प्रथम लाइन में विभाग सर्च करने हेतु बजट दबाये और Law and Legislative ''विधि विधायी विभाग'' को चयन करें।
- अपने नाम/ पता आदि भरें।
- लेखाशीर्ष में न्यायालय द्वारा दिये गये शीर्ष का चयन करें।
- विवरण के पश्चात् ''भुगतान करें'' बटन क्लिक करें।
- अब जमाकर्ता बैंक जिसमें जमाकर्ता का खाता है तथा इन्टरनेट बैंकिंग सुविधा साईट खुल जायेगी और लॉगिन पासवर्ड पूछा जायेगा।
- लॉगिन पासवर्ड डाले राशि भरें। पुनः सत्यापित करें एवं भुगतान करें।
- भुगतान करने के 5 सेकेन्ड तक बैंक की रसीद/चालान होने पर ''चालान सर्च'' में जाकर रसीद पुनः प्रिंट की जा सकती है।
- कुछ प्रकरणों में नेटवर्क फेल होने पर यह संभव है कि रसीद तत्काल न मिल पाये ऐसी स्थिति में अगले कार्य दिवस को चालान से जाकर प्रिंट ले सकते हैं।
- न्यायालय अधिकारी mptreasury.org पर जाकर CIN no/Chalan दव से चालान जमा का विवरण सत्यापित भी कर सकते हैं।

डिपॉजिटर



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PART-IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016

NO. 43 OF 2016

[10th August, 2016.]

An Act further to amend the ***Benami*** Transactions (Prohibition) Act, 1988.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. Short title and commencement. — (1) This Act may be called the ***Benami*** Transactions (Prohibition) Amendment Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Insertion of new heading before section 1.— In the ***Benami*** Transactions (Prohibition) Act, 1988 (hereinafter referred to as the principal Act), before section 1, the following heading shall be inserted, namely:—

''CHAPTER I
PRELIMINARY.''

3. Amendment of section 1. — In section 1 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) This Act may be called the Prohibition of ***Benami*** Property Transactions Act, 1988.".

4. Substitution of new section for section 2.— For section 2 of the principal Act, the following section shall be substituted, namely:—

Definitions.— '2. In this Act, unless the context otherwise requires,—

(1) "Adjudicating Authority" means the Adjudicating Authority appointed under section 7;

(2) "Administrator" means an Income-tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961;

(3) "Appellate Tribunal" means the Appellate Tribunal established under section 30;

(4) "Approving Authority" means an Additional Commissioner or a Joint Commissioner as defined in clauses (1C) and (28C) respectively of section 2 of the Income-tax Act, 1961; (5) "attachment" means the

prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act;

(6) "authority" means an authority referred to in sub-section (1) of section 18;

(7) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949, applies and includes any bank or banking institution referred to in section 51 of that Act;

(8) "***benami*** property" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property;

(9) "***benami*** transaction" means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by —

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.— For the removal of doubts, it is hereby declared that ***benami*** transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882, if, under any law for the time being in force,—

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;

(ii) stamp duty on such transaction or arrangement has been paid; and

(iii) the contract has been registered.

(10) ***"benamidar"*** means a person or a fictitious person, as the case may be, in whose name the ***benami*** property is transferred or held and includes a person who lends his name;

(11) "Bench" means a Bench of the Adjudicating Authority or the Appellate Tribunal, as the case may be;

(12) "beneficial owner" means a person, whether his identity is known or not, for whose benefit the ***benami*** property is held by a ***benamidar***;

(13) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963;

(14) "director" shall have the same meaning as assigned to it in clause (34) of section 2 of the Companies Act , 2013;

(15) "executor" shall have the same meaning as assigned to it in clause (c) of section 2 of the Indian Succession Act, 1925;

(16) "fair market value", in relation to a property, means—

(i) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed;

(17) “firm” shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;

(18) “High Court” means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain;

(19) “Initiating Officer” means an Assistant Commissioner or a Deputy Commissioner as defined in clauses (9A) and (19A) respectively of section 2 of the Income-tax Act, 1961;

(20) “Member” means the Chairperson or the Member of the Adjudicating Authority or the Appellate Tribunal, as the case may be;

(21) “notification” means a notification published in the Official Gazette and the expression “notified” shall be construed accordingly;

(22) “partner” shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932, and shall include,—

(a) any person who, being a minor, has been admitted to the benefits of partnership; and

(b) a partner of a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008;

(23) “partnership” shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932, and shall include a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008;

(24) “person” shall include —

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm;

(v) an association of persons or a body of individuals, whether incorporated or not;

(vi) every artificial juridical person, not falling under sub-clauses (i) to (v);

(25) "prescribed" means prescribed by rules made under this Act; (26) "property" means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property;

(27) "public financial institution" shall have the same meaning as assigned to it in clause (72) of section 2 of the Companies Act, 2013;

(28) "Special Court" means a Court of Session designated as Special Court under sub-section (1) of section 50;

(29) "transfer" includes sale, purchase or any other form of transfer of right, title, possession or lien;

(30) "trustee" means the trustee as defined in the section 3 of the Indian Trusts Act, 1882;

(31) words and expressions used herein and not defined in this Act but defined in the Indian Trusts Act, 1882, the Indian Succession Act, 1925, the Indian Partnership Act, 1932, the Income-tax Act, 1961, the Depositories Act, 1996, the Prevention of Money-Laundering Act, 2002, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the same meanings respectively assigned to them in those Acts.'.

5. Insertion of new heading before section 3. — Before section 3 of the principal Act, the following heading shall be inserted, namely:—

"CHAPTER II
PROHIBITION OF BENAMI TRANSACTIONS"

6. Amendment of section 3. — In section 3 of the principal Act,—

(a) sub-section (2) shall be omitted;

(b) sub-section (3) shall be renumbered as sub-section (2) thereof;

(c) after sub-section (2) as so renumbered, the following sub-section shall be inserted, namely:—

"(3) Whoever enters into any ***benami*** transaction on and after the date of commencement of the ***Benami*** Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.";

(d) sub-section (4) shall be omitted.

7. Amendment of section 4. — In section 4 of the principal Act, sub-section (3) shall be omitted.

8. Substitution of new sections 5 and 6. — For sections 5 and 6 of the principal Act, the following sections shall be substituted, namely:—

"5. Property held *benami* liable to confiscation. — Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.

6. Prohibition on re-transfer of property by *benamidar.* — (1) No person, being a ***benamidar*** shall re-transfer the ***benami*** property held by him to the beneficial owner or any other person acting on his behalf.

(2) Where any property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void.

(3) The provisions of sub-sections (1) and (2) shall not apply to a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016.".

9. Insertion of new Chapters III to IV. — After section 6 of the principal Act, the following shall be inserted, namely:—

'CHAPTER III
AUTHORITIES

7. Adjudicating Authority. — The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act.

8. Composition of Authority. — An Adjudicating Authority shall consist of a Chairperson and at least two other Members.

9. Qualification for appointment of Chairperson and Members. (1) A person shall not be qualified for appointment as the Chairperson or a Member of the Adjudicating Authority unless he,—

(a) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service; or

(b) has been a member of the Indian Legal Service and has held the post of Joint Secretary or equivalent post in that Service.

(2) The Chairperson and other Members of the Adjudicating Authority shall be appointed by the Central Government in such manner as may be prescribed.

(3) The Central Government shall appoint the seniormost Member to be the Chairperson of the Adjudicating Authority.

10. Constitution of Benches of Adjudicating Authority. — (1) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with two Members, as the Chairperson may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit in the National Capital Territory of Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson may transfer a Member from one Bench to another Bench.

11. Power of Adjudicating Authority to regulate own procedure. — The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Authority shall have powers to regulate its own procedure.

12. Term of office of Chairperson and Members of Adjudicating Authority. — The Chairperson and Members of the Adjudicating Authority shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-two years, whichever is earlier and shall not be eligible for reappointment.

13. Terms and conditions of services of Chairperson and Members of Adjudicating Authority. — (1) The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the Adjudicating Authority shall be such as may be prescribed.

(2) Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

14. Removal of Chairperson and Members of Adjudicating Authority. — (1) The Central Government may, by order, remove from office, the Chairperson or other Members of the Adjudicating Authority, if the Chairperson or such other Member, as the case may be,—

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, involving moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in officer is prejudicial to the public interest

(2) No Chairperson or office is prejudicial to the public interest. Member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

15. Members to act as Chairperson in certain circumstances. — (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the seniormost Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office. (2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the seniormost Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

16. Vacancies, etc., not to invalidate proceedings of Adjudicating Authority. — No act or proceeding of the Adjudicating Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of the Authority; or

(b) any defect in the appointment of a person acting as a Member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

17. Officers and employees of Adjudicating Authority. — (1) The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.

(2) The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.

18. Authorities and jurisdiction. — (1) The following shall be the authorities for the purposes of this Act, namely:—

(a) the Initiating Officer;

(b) the Approving Authority;

(c) the Administrator; and

(d) the Adjudicating Authority.

(2) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or in accordance with such rules as may be prescribed.

19. Powers of authorities. — (1) The authorities shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath;

(c) compelling the production of books of account and other documents;

(d) issuing commissions;

(e) receiving evidence on affidavits; and

(f) any other matter which may be prescribed.

(2) All the persons summoned under sub-section (1) shall be bound to attend in person or through authorised agents, as any authority under this Act may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(3) Every proceeding under sub-section (1) or sub-section (2) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

(4) For the purposes of this Act, any authority under this Act may requisition the service of any police officer or of any officer of the Central Government or State Government or of both to assist him for all or any of the purposes specified in sub-section (1), and it shall be the duty of every such officer to comply with the requisition or direction.

(5) For the purposes of this section, “reporting entity” means any intermediary or any authority or of the Central or the State Government or any other person as may be notified in this behalf.

Explanation.— For the purposes of sub-section (5), “intermediary” shall have the same meaning as assigned to it in clause (n) of sub-section (1) of section 2 of the of the Income- tax Act, 1961;

(b) officers of the Customs and Central Excise Departments;

(c) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985;

(d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

(e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934;

(f) police;

(g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1999;

(h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(i) officers of any other body corporate constituted or established under a Central or a State Act; and

(j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

Prevention of Money-Laundering Act, 2002.

20. Certain officers to assist in inquiry, etc. . — The following officers shall assist the authorities in the enforcement of this Act, namely:—

(a) income-tax authorities appointed under sub-section (1) of section 117

21. Power to call information. — (1) The Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to require any officer of the Central Government or State Government or a local body or any person or officer who is responsible for registering and maintaining books of account or other documents containing a record of any transaction relating to any property or any other person to furnish any information in relation to any person, point or matter as in his opinion shall be useful for or relevant for the purposes of this Act.

(2) Without prejudice to sub-section (1), every officer or person referred to in sub-section (1) shall furnish such information to any authority under this Act in such form and manner as may be prescribed.

22. Power of authority to impound documents. — (1) Where any books of account or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of the books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain the books of account or other documents for a period not exceeding three months from the date of order of attachment made by the Adjudicating Authority under sub-section (3) of section 26:

Provided that the period for retention of the books of account or other documents may be extended beyond a period exceeding three months from the date of order of attachment made by the Adjudicating Authority under sub-section (3) of section 26 where the authority records in writing the reasons for extending the same.

(2) Where the authority impounding and retaining the books of account or other documents, under sub-section (1) is the Initiating Officer, he shall obtain approval of the Approving Authority within a period of fifteen days from the date of initial impounding and seek further approval of the Approving Authority for extending the period of initial retention, before the expiry of the period of initial retention, if so required.

(3) The period of retention of the books of account or other documents under sub-section (1) shall in no case exceed a period of thirty days from the date of conclusion of all the proceedings under this Act.

(4) The person, from whom the books of account or other documents were impounded under sub-section (1), shall be entitled to obtain copies thereof.

(5) On the expiry of the period specified under sub-section (1), the books of account or other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or the Adjudicating Authority permits their release to any other person.

23. Power of authority to conduct inquiry, etc. . — The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to conduct or cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters under this Act.

CHAPTER IV

ATTACHMENT, ADJUDICATION AND CONFISCATION

24. Notice and attachment of property involved in *benami* transaction. — (1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a ***benamidar*** in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.

(2) Where a notice under sub-section (1) specifies any property as being held by a ***benamidar*** referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.

(3) Where the Initiating Officer is of the opinion that the person in possession of the property held ***benami*** may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).

(4) The Initiating Officer, after making such inquires and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),—

(a) where the provisional attachment has been made under sub-section (3), —

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) revoke the provisional attacment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made under sub-section (3),—

(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

25. Manner of service of notice. — (1) A notice under sub-section (1) of section 24 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

(2) Any notice referred to in sub-section (1) may be addressed—

(i) in case of an individual, to such individual;

(ii) in the case of a firm, to the managing partner or the manager of the firm;

(iii) in the case of a Hindu undivided family, to Karta or any member of such family;

(iv) in the case of a company, to the principal officer thereof;

(v) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

26. Adjudication of *benami* property. — (1) On receipt of a reference under sub-section (5) of section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons, namely:—

(a) the person specified as a ***benamidar*** therein;

(b) any person referred to as the beneficial owner therein or identified as such;

(c) any interested party, including a banking company;

(d) any person who has made a claim in respect of the property:

Provided that the Adjudicating Authority shall issue notice within a period of thirty days from the date on which a reference has been received:

Provided further that the notice shall provide a period of not less than thirty days to the person to whom the notice is issued to furnish the information sought.

(2) Where the property is held jointly by more than one person, the Adjudicating Authority shall make all endeavours to serve notice to all persons holding the property:

Provided that where the notice is served on anyone of the persons, the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the property.

(3) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) making or causing to be made such inquiries and calling for such reports or evidence as it deems fit; and (c) taking into account all relevant materials, provide an opportunity of being heard to the person specified as a ***benamidar*** therein, the Initiating Officer, and any other person who claims to be the owner of the property, and, thereafter, pass an order—

(i) holding the property not to be a ***benami*** property and revoking the attachment order; or

(ii) holding the property to be a ***benami*** property and confirming the attachment order, in all other cases.

(4) Where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is ***benami*** property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part of the properties is held ***benami***.

(5) Where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to it by the Initiating Officer is ***benami*** property, it shall provisionally attach the property and the property shall be deemed to be a property referred to it on the date of receipt of the reference under sub-section (5) of section 24.

(6) The Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or ***suo motu,*** strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable him to adjudicate upon and settle all the questions involved in the reference.

(7) No order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under sub-section (5) of section 24 was received.

(8) The ***benamidar*** or any other person who claims to be the owner of the property may either appear in person or take the assistance of an authorised representative of his choice to present his case.

Explanation.—For the purposes of sub-section (8), authorised representative means a person authorised in writing, being —

(i) a person related to the ***benamidar*** or such other person in any manner, or a person regularly employed by the ***benamidar*** or such other person as the case may be; or

(ii) any officer of a scheduled bank with which the ***benamidar*** or such other person maintains an account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practice in any civil court in India; or

(iv) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(v) any person who has acquired such educational qualifications as the Board may prescribe for this purpose.

27. Confiscation and vesting of *benami* property. — (1) Where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a ***benami*** property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a ***benami*** property:

Provided that where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46:

Provided further that the confiscation of the property shall be made in accordance with such procedure as may be prescribed.

(2) Nothing in sub-section (1) shall apply to a property held or acquired by a person from the ***benamidar*** for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the ***benami*** transaction.

(3) Where an order of confiscation has been made under sub-section (1), all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.

(4) Any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.

(5) Where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

28. Management of properties confiscated. — (1) The Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-section (1) of section 27 has been made, in such manner and subject to such conditions, as may be prescribed.

(2) The Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of Administrators.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under sub-section (3) of section 27, in such manner and subject to such conditions as may be prescribed.

29. Possession of the property. — (1) Where an order of confiscation in respect of a property under sub-section (1) of section 27, has been made, the Administrator shall proceed to take the possession of the property.

(2) The Administrator shall,—

(a) by notice in writing, order within seven days of the date of the service of notice to any person, who may be in possession of the ***benami*** property, to surrender or deliver possession thereof to the Administrator or any other person duly authorised in writing by him in this behalf;

(b) in the event of non-compliance of the order referred to in clause (a), or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty of the officer to comply with the requisition.

CHAPTER V

APPELLATE TRIBUNAL

30. Establishment of Appellate Tribunal. — The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority under this Act.

31. Composition etc. of Appellate Tribunal. — (1) The Appellate Tribunal shall consist of a Chairperson and at least two other Members of which one shall be a Judicial Member and other shall be an Administrative Member.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with two Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit in the National Capital Territory of Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise its jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

32. Qualifications for appointment of Chairperson and Members of Appellate Tribunal. — (1) A person shall not be qualified for appointment as Chairperson of the Appellate Tribunal unless he is a sitting or retired Judge of a High Court, who has completed not less than five years' of service.

(2) A person shall not be qualified for appointment as a Member unless he—

(a) in the case of a Judicial Member, has been a Member of the Indian Legal Service and has held the post of Additional Secretary or equivalent post in that Service;

(b) in the case of an Administrative Member, has been a Member of the Indian Revenue Service and has held the post of Chief Commissioner of Income-tax or equivalent post in that Service.

(3) No sitting Judge of a High Court shall be appointed under this section except after consultation with the Chief Justice of the High Court.

(4) The Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being the Chairperson or a Member of that Tribunal, may be appointed as the Chairperson or a Member, as the case may be, of the Appellate Tribunal under this Act.

33. Terms and conditions of services of Chairperson and Members of Appellate Tribunal. — (1) The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

(2) Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

34. Term of office of Chairperson and Members. — The Chairperson and Members of the Appellate Tribunal shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for reappointment.

35. Removal of Chairperson and Member from office in certain circumstances. — (1) The Central Government may, in consultation with the Chief Justice of High Court, remove from office of the Chairperson or any Member, who —

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government involves moral turpitude; or

(c) has become physically or mentally incapable; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Judicial Member shall not be removed from his office except by an order made by the Central Government after an inquiry made by Chief Justice of the High Court in which the Chairperson or Judicial Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may suspend from office the Chairperson or Judicial Member in respect of whom a reference of conducting an inquiry has been made to the Chief Justice of the High Court under sub-section (2), until the Central Government passes an order on receipt of the report of inquiry made by Chief Justice of the High Court on the reference.

(4) The Central Government may regulate the procedure for inquiry referred to in sub-section (2) in the manner as may be prescribed.

(5) The Administrative Member may be removed from his office by an order of the Central Government on the grounds specified in sub-section (1) and in accordance with the procedure notified by the Central Government:

Provided that the Administrative Member shall not be removed unless he has been given an opportunity of being heard in the matter.

36. Vacancies etc. not to invalidate proceedings of Appellate Tribunal. — No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of the Tribunal; or

(b) any defect in the appointment of a person acting as a Member of the Tribunal; or

(c) any irregularity in the procedure of the Tribunal not affecting the merits of the case.

37. Resignation and removal. — The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of the notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

38. Member to act as Chairperson in certain circumstances. — (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

39. Staff of Appellate Tribunal. — (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may thinks fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such, as may be prescribed.

40. Procedure and powers of Appellate Tribunal. — (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter, which may be, prescribed by the Central Government

(3) An order made by the Appellate Tribunal under this Act shall be executable by it as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having jurisdiction and the civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

41. Distribution of business amongst Benches of Appellate Tribunal. — Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provision as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

42. Power of Chairperson of Appellate Tribunal to transfer cases. — On the application of any of the parties and notice to the parties, and after hearing them, or on his own motion without any notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

43. Decision to be by majority. — If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing on the point or points by one or more of the other Members and the point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

44. Members etc. to be Public Servants. — The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Approving Authority, Initiating Officer, Administrator and the officers subordinate to all of them shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45. Bar of jurisdiction of civil courts. — No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

46. Appeals to Appellate Tribunal. — (1) Any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fees, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under sub-section (3) of section 26, within a period of forty-five days from the date of the order.

(2) The Appellate Tribunal may entertain any appeal after the said period of forty-five days, if it is satisfied that the appellant was prevented, by sufficient cause, from filing the appeal in time.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(4) An Appellate Tribunal while deciding the appeal shall have the power—

(a) to determine a case finally, where the evidence on record is sufficient;

(b) to take additional evidence or to require any evidence to be taken by the Adjudicating Authority, where the Adjudicating Authority has refused to admit evidence, which ought to have been admitted;

(c) to require any document to be produced or any witness to be examined for the purposes of proceeding before it;

(d) to frame issues which appear to the Appellate Tribunal essential for adjudication of the case and refer them to the Adjudicating Authority for determination;

(e) to pass final order and affirm, vary or reverse an order of adjudication passed by the Adjudicating Authority and pass such other order or orders as may be necessary to meet the ends of justice.

(5) The Appellate Tribunal, as far as possible, may hear and finally decide the appeal within a period of one year from the last date of the month in which the appeal is filed.

47. Rectification of mistakes. (1) The Appellate Tribunal or the Adjudicating Authority may, in order to rectify any mistake apparent on the face of the record, amend any order made by it under section 26 and section 46 respectively, within a period of one year from the end of the month in which the order was passed.

(2) No amendment shall be made under sub-section (1), if the amendment is likely to affect any person prejudicially, unless he has been given notice of intention to do so and has been given an opportunity of being heard.

48. Right to representation. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.

(2) The Central Government may authorise one or more of its officers to act as presenting officers on its behalf, and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Explanation.— For the purposes of this section, "authorised representative" means a person authorised by the appellant in writing to appear on his behalf, being—

(i) a person related to the appellant in any manner, or a person regularly employed by the appellant; or

(ii) any officer of a scheduled bank with which the appellant maintains an account or has other regular dealings; or

(iii) any legal practitioner who is entitled to practice in any civil court in India; or

(iv) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(v) any person who has acquired such educational qualifications as the Board may prescribe for this purpose.

49. Appeal to High Court. — (1) Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.

(2) The High Court may entertain any appeal after the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified in sub-section (1).

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

(5) Nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(6) The High Court shall decide the question of law so formulated and deliver the judgment thereon containing the grounds on which any decision is founded and may award any cost as it deems fit.

(7) The High Court may determine any issue which—

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

(8) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

CHAPTER VI
SPECIAL COURTS

50. Special Courts. — (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

(3) The Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by—

(i) the authority; or

(ii) any officer of the Central Government or State Government authorised in writing by that Government by a general or special order made in this behalf.

(4) Every trial under this section shall be conducted as expeditiously as possible and every endeavour shall be made by the Special Court to conclude the trial within six months from the date of filing of the complaint.

51. Application of Code of Criminal Procedure, 1973 to proceedings before Special Court. — (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and the persons conducting the prosecution before the Special Court, shall be deemed to be Public Prosecutors:

Provided that the Central Government may also appoint for any case or class or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless, the Public Prosecutor has been in practice as an advocate for not less than seven years, and the

Special Public Prosecutor has been in practice as an advocate for not less than ten years in any court.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

52. Appeal and revision. — The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

CHAPTER VII
OFFENCES AND PROSECUTION

53. Penalty for *benami* transactions. — (1) Where any person enters into a ***benami*** transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, ***benamidar*** and any other person who abets or induces any person to enter into the ***benami*** transaction, shall be guilty of the offence of ***benami*** transaction.

(2) Whoever is found guilty of the offence of ***benami*** transaction referred to in sub-section (1) shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property.

54. Penalty for false information. — Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine which may extend to ten per cent. of the fair market value of the property .

55. Previous sanction. — No prosecution shall be instituted against any person in respect of any offence under sections 3, 53 or section 54 without the previous sanction of the Board.'.

10. Substitution of new Chapter VIII for sections 7 and 8. — For sections 7 and 8 of the principal Act, the following shall be substituted, namely:—

'CHAPTER VIII
MISCELLANEOUS

56. Repeal of provisions of certain Acts. — (1) Sections 81, 82 and 94 of the Indian Trusts Act, 1882, section 66 of the Code of Civil Procedure, 1908 and section 281A of the Income-tax Act, 1961, are hereby repealed.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall affect the continued operation of section 281A of the Income-tax Act, 1961 in the State of Jammu and Kashmir.

57. Certain transfers to be null and void. — Notwithstanding anything contained in the Transfer of the Property Act, 1882 or any other law for the time being in force, where, after the issue of a notice under section 24, any property referred to in the said notice is transferred by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Central Government under section 27, then, the transfer of the property shall be deemed to be null and void.

58. Exemption. — (1) The Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act.

(2) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

59. Power of Central Government to issue directions, etc.. — (1) The Central Government may, from time to time, issue such orders, instructions or directions to the authorities or require any person to furnish information as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow the orders, instructions and directions of the Central Government.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to anyone or more of the following criteria, namely:—

(a) territorial area;

(b) classes of persons;

(c) classes of cases; and

(d) any other criterion that may be specified by the Central Government in this behalf.

(3) No orders, instructions or directions under sub-section (1) shall be issued so as to—

(a) require any authority to decide a particular case in a particular manner; or

(b) interfere with the discretion of the Adjudicating Authority in the discharge of its functions.

60. Application of other laws not barred. — The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force.

61. Offences to be non-cognizable. — Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable.

62. Offences by companies. — (1) Where a person committing contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly.

(2) Nothing contained in sub-section (1), shall render any person liable to punishment if he proves that the contravention took place without his knowledge.

(3) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of

any director, manager, secretary or other officer of the company, the director, manager, secretary or other officer shal1 also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) "company" means a body corporate, and includes—

(i) a firm; and

(ii) an association of persons or a body of individuals whether incorporated or not; and

(b) "director", in relation to—

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

63. Notice, etc., not to be invalid on certain grounds. — No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in the notice, summons, order, document or other proceeding if the notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

64. Protection of action taken in good faith. — No prosecution, suit or other proceeding shall lie against the Government or any officer of the Government or the Appellate Tribunal or the Adjudicating Authority established under this Act, for anything done or intended to be done in good faith under this Act.

65. Transfer of pending cases. — (1) Every suit or proceeding in respect of a ***benami*** transaction pending in any Court (other than a High Court) or Tribunal or before any forum on the date of the commencement of this Act shall stand transferred to the Adjudicating Authority or the Appellate Tribunal, as the case may be, having jurisdiction in the matter.

(2) Where any suit, or other proceeding stands transferred to the Adjudicating Authority or the Appellate Tribunal under sub-section (1),—

(a) the court, Tribunal or other forum shall, as soon as may be, after the transfer, forward the records of the suit, or other proceeding to the Adjudicating Authority or the Appellate Tribunal, as the case may be;

(b) the Adjudicating Authority may, on receipt of the records, proceed to deal with the suit, or other proceeding, so far as may be, in the same manner as in the case of a reference made under sub-section (5) of section 24, from the stage which was reached before the transfer or from any earlier stage or de novo as the Adjudicating Authority may deem fit.

66. Proceedings etc. against legal representative. — (1) Where a person dies during the course of any proceeding under this Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased.

(2) Any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative and all the provisions of this Act, except sub-section (2) of section 3 and the provisions of Chapter VII, shall apply accordingly.

(3) Where any property of a person has been held ***benami*** under sub-section (3) of section 26, then, it shall be lawful for the legal representative of the person to prefer an appeal to the Appellate Tribunal, in place of the person and the provisions of section 46 shall, so far as may be, apply, or continue to apply, to the appeal.

67. Act to have overriding effect.— The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

68. Power to make rules. — (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) manner of ascertaining the fair market value under clause 16 of section 2;

(b) the manner of appointing the Chairperson and the Member of the Adjudicating Authorities under sub-section (2) of section 9;

(c) the salaries and allowances payable to the Chairperson and the Members of the Adjudicating Authority under sub-section (1) of section 13;

(d) the powers and functions of the authorities under sub-section (2) of section 18;

(e) other powers of the authorities under clause (f) of sub-section (1) of section 19;

(f) the form and manner of furnishing any information to the authority under sub-section (2) of section 21;

(g) the manner of provisional attachment of property under sub-section (3) of section 24;

(h) the procedure for confiscation of ***benami*** property under the second proviso to sub-section (1) of section 27;

(i) the manner and conditions to receive and manage the property under sub-section (1) of section 28;

(j) the manner and conditions of disposal of property vested in the Central Government under sub-section (3) of section 28;

(k) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 33;

(l) the manner of prescribing procedure for removal of Chairperson or Member under sub-section (4) of section 35;

(m) the salaries and allowances payable to and the other terms and conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 39;

(n) any power of the Appellate Tribunal under clause (i) of sub-section (2) of section 40;

(o) the form in which appeal shall be filed and the fee for filing the appeal under sub-section (1) of section 46;

(p) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

69. Laying of rules and notifications before Parliament. — Every rule made and notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or notifications, as the case may be, both Houses agree that the rules or notifications, as the case may be, should not be made or issued, the rule or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification, as the case may be.

70. Power to remove difficulties. — (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.

(2) No order shall be made under this section after the expiry of two years from the commencement of this Act.

(3) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

71. Transitional provision. — The Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under this Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Money-Laundering Act, 2002 and the Appellate Tribunal established under section 25 of that Act may discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under this Act.'.

11. Amendment of section 9. — Section 9 of the principal Act shall be renumbered as section 72 thereof.

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मोटर दुर्घटना दावा याचिका के बिंदु मुख्यतः धारा 166 के अंतर्गत मोटर दुर्घटना दावा याचिका : ..... के लिए दावा

(1) दुर्घटना की दिनांक :
उपहति अथवा प्राणघातक

(2) प्रतिद्वंद्वी
(a) वाहन क्रमांक :
(b) बीमा पॉलिसी क्रमांक :
(पॉलिसी सीमित है या असीमित)
(c) प्रतिद्वंद्वी की तामील हुई है अथवा नहीं
यदि हाँ, तो दिनांकः
(d)

(3) प्रस्तुत दस्तावेज :
(a) प्रथम सूचना प्रतिवेदन
(b) पंचनामा
(c) प्रमाण पत्र
(d) बिल
(e) एक्स–रे
(f) अन्य दस्तावेज

(4) मौखिक साक्ष्यः
दावेदार की ओर सेः (a)
(b)
(c)
(d)
प्रतिद्वंद्वी यदि हाँः यदि नहींः

(5) प्रस्तुत न्यायदृष्टांत : दावेदार द्वारा : .....
प्रतिद्वंद्वी द्वारा : .....

(6) क्या प्रतिद्वंद्वी द्वारा दावेदार या मृतक की अंगदायी अपेक्षा अभिवंचित की हैः .....
.....

(7) क्या दावेदार अथवा मृतक द्वारा वाहन चलाया जा रहा था अथवा यात्री था अथवा पैदल चलने वाला था अथवा पीछे सवार थाः

(8) क्या पॉलिसी की शर्तों या दायित्व के विवाद को प्रतिद्वंद्वी द्वारा स्वीकार किया गया है :–
यदि हाँ : संक्षिप्त आपत्तिः

(9) मात्रा : मूलवेतन :
आयु :
गुणांक :
विकलांग्ता या प्रतिशत :
Spliet :
परिवहन :
भविष्य हानि :
पूर्ण योग :

मोटर दुर्घटना दावा याचिका अंतर्गत धारा 140 मोटर यान अधिनियम

आपत्तियाँः

पॉलिसी का विवरणः

(1) दुर्घटना दिनांकः

प्रथम सूचना रिपोर्ट दर्ज कराने की दिनांक..... पंचनामा .....

अभियोग पत्रः हाँ/नहीं

पंचनामा : दिनांक ..... प्रदर्श .....

उपहति अथवा मृत्यु प्रमाण पत्र : प्रदर्श .....

विकलांगता अथवा शव परीक्षण प्रतिवेदन के बिन्दुः प्रदर्श .....

पंजीयन प्रमाण पत्रः प्रदर्श .....

अनुज्ञप्ति : प्रदर्श .....

पॉलिसी : प्रदर्श .....

(2) प्रतिद्वंद्वी क्रमांक 1 तथा 2 : तामील/ अदम तामील

(3) सम्मिलित वाहन क्र.: ..... संलिप्तता

क्रमबद्ध आपत्तियाँ अंतर्गत धारा 140ः हाँ/नहीं

(4) वाहन क्रमांक ..... की प्रस्तुत पॉलिसी की वैध दिनांक :.....

(5) बीमा कंपनी के दायित्व के संबंध में विवाद : .....

(6) धारा 140 सहपठित धारा 142 के अंतर्गत उपहति के संबंध में विवादः हाँ/नहीं .....

(7) आवेदक की ओर से नियुक्त अधिवक्ता का नामः .....

(8) प्रतिद्वंद्वी की ओर से अधिवक्ता का नाम : .....

(9) अन्य आपत्तियाँ, यदि हो तो : .....

(10)

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मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्य प्रदेश राज्य न्यायिक अकादमी

मध्यप्रदेश उच्च न्यायालय, जबलपुर - 482 007