JOTI JOURNAL

FEBRUARY 2014 (BI-MONTHLY)

न्यायिक अधिकारी प्रशिक्षण एवं अनुसंधान संस्थान

मध्य प्रदेश उच्च न्यायालय, जबलपुर – 482 007

JUDICIAL OFFICERS' TRAINING & RESEARCH INSTITUTE

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

JOTI JOURNAL FEBRUARY - 2014

SUBJECT- INDEX

PART-I
(ARTICLES & MISC.)

PART-II
(NOTES ON IMPORTANT JUDGMENTS)

ARBITRATION AND CONCILIATION ACT, 1996

Sections 27 and 25 (c) – Arbitration Tribunal can take assistance of court in recording of evidence even in *ex parte* matter. **2** **2**

ARMS ACT, 1959

Section 25 – See Section 31 of Criminal Procedure Code, 1973 **13** **8**

CIVIL PROCEDURE CODE, 1908

Section 10 r/w/s 151 – Continuity and maintainability of civil and criminal proceedings – Stay of proceedings – Civil proceedings cannot be stayed on the ground of pendency of a criminal case. **3** **2**

Section 148 – Time fixed for payment of arrears in compromise decree cannot be extended by the Court – Virtually, it amounts to modification of decree

Power under section 148 CPC can be used in relation to period fixed or granted by the Court and not by parties in compromise decree.

Void order neither creates legal rights nor obligations even if it is unchallenged

46 (iii) to (v) **67**

Order 7 Rule 10 – Return of plaint – The reckoning date for the purpose of interest is the date of institution of second suit based on presentation of plaint before competent court and not the date of presentation of previous suit – Plaintiff cannot take advantage of his own mistake – However, he is entitled for the benefit of section 14 of Limitation Act, 1963 and adjustment of court fees paid in previous suit. **4** **3**

Order 14 Rules 1 & 2 – (i) Issue, when can be treated as preliminary? Held, it is settled proposition of law that whenever the issues framed under Order XIV, Rules 1, 2 of Civil Procedure Code or any of them could not be decided on merits unless the evidence of the parties is necessary and needed then such issue could neither be treated to be a preliminary issue nor could be decided in such manner.

(ii) Question as to court fees, basis for determination of – The question of court fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. **5*** **3**

Order 15 Rule 3 and Order 14 Rule 2 – Question of court fee linked with jurisdiction of court – Defendant has a right to raise objection – Court should decide it as a preliminary issue – Even if the issue is mixed question of fact and law, it can very well be decided as a preliminary issue. **6** **4**

Order 21 Rule 89 – Court has discretionary power to set aside sale on deposit of required amount by judgment-debtor – Though auction sale in favour of petitioner confirmed but pursuant to one opportunity given by the High Court, the judgment-debtor deposited the amount – On the facts, order to set aside the sale treated as proper and in accordance with law. **7** **5**

(iii) A preliminary inquiry should be time bound and should not exceed seven days – Cause of delay should reflect in General Diary – If preliminary inquiry ends in closure of the complaint, such intimation must be supplied with reasons to the informant forthwith.

(iv) FIRs are of two kinds (a) FIR made and duly signed by informant to the police officer under section 154 (1); and (b) FIR registered by police itself on any information received other than by way of an informant – In both types of FIR, police is duty bound to register the FIR if it discloses cognizable offence.

(v) Punishment provided under section 166-A IPC for non-registration of FIR of cognizable offence does not imply and it is not compulsory for other offence not specified in section 166-A IPC – Section 166-A IPC is to be read in consonance with section 154 (1) CrPC.

(vi) All information about cognizable offence whether leading to inquiry or registration of FIR must mandatorily be mentioned in the General Diary and the decision to conduct the enquiry must also be reflected in the Diary.

(vii) The provision of section 154 of the CrPC shall prevail on section 44 of the Police Act, 1861.

(viii) Enquiry under sections 2 (g), 159, 202 and 340 CrPC is relatable to a judicial act and not to the steps taken by the police by way of preliminary inquiry prior to the registration of FIR or investigation after FIR. **15 11**

Sections 157, 378 and 386 – Mother or father of the deceased came with theory of accidental death – But accused not disclosed it in statement under section 313 CrPC – Accused absconded – He did not set up defence of *alibi* – He had not explained how deceased received injuries – It was his obligation to explain how deceased received injuries in his house – His silence gives inverse inference against him and forms a link in the chain of circumstances which point to his guilt.

On the facts, no delay in lodging FIR.

Section 157 CrPC – Copy of FIR to Magistrate is only for external check on working of police which has to be followed strictly – But delay by itself is not sufficient to throw out prosecution case. **30* (iii), 37 (vi) & (vii)**

Sections 204, 362, 482 and 201 – Order to issue process under section 204 by Magistrate – He is not empowered to recall it in absence of power of review – The only remedy is proceeding under section 482 CrPC or under Article 227 of the Constitution.

Power to return the complaint for want of jurisdiction can be invoked immediately on receipt of complaint but not after issuance of summons under section 204 CrPC.

16 (i) & (ii) 14

Section 239 – (i) Whether defect in investigation can be a ground for discharge? Held, No.

(ii) Application for discharge – What needs to be considered? Whether there is a ground for presuming that the offence has been committed or not and whether a ground for convicting the accused has been made out or not. **17 19**

EVIDENCE ACT, 1872

– High Court reversed and convicted the appellant under section 304 part 2 – Parents of deceased were hostile – But prosecution case was established by independent witnesses; doctor and head constables who deposed about dying declaration – No reason to disbelieve the doctor and head constable.

Conviction can be based on a dying declaration recorded when deceased is in a fit mental condition to make it – It should be truthful and voluntary.

Dying declaration if reliable, minor discrepancies at the time of recording, does not affect the prosecution story.

Interference with acquittal is permissible, if acquittal is perverse. 3**0 (i),(ii),37 (iv) & (v)**

Section 307 – See Section 31 of Criminal Procedure Code, 1973 **13 8**

Sections 375 r/w Expln. thereto or section 506/375 – (i) Rupture of hymen is immaterial for theory of rape – Mere penetration is sufficient.

(ii) Grant of lesser punishment than minimum prescribed – Adequate and special reasons depend upon several factors – No strait jacket formula has been laid down.

31 42

Section 376 – (i) In case of rape, the evidence of prosecutrix plays the most vital role – If it is credible and inspires total confidence, it can be relied without further corroboration – If the court is hesitant to place reliance, it should look to other evidence for corroboration – Such weight is given to the evidence of prosecutrix because she is at par with that of an injured witness.

(ii) Lapse on the part of prosecution can be condoned but evidence on record must be clinching.

(iii) Presence of injuries is not necessary to prove commission of rape. **32 43**

Sections 376 and 90 – Consent – Sexual Intercourse by accused with prosecutrix on promise of marriage – When prosecutrix got pregnant, accused refused to marry her on the ground that she is of 'bad character' – Shows that accused never intended to marry prosecutrix and procured her consent only for the reason of having sexual relation with her – Act of accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under section 90 of the IPC. **33 44**

Section 377 – "Carnal intercourse against the course of nature" – The acts under the provision of this section cannot be determined only with reference to the act and circumstances under which it is executed – It is difficult to prepare a list of such acts covered under this section – Even then this section could apply irrespective of age and consent – This section merely identifies certain acts which constitute the offence irrespective of gender identity or orientation.

Possibility of prosecution in cases of consensual intercourse between adults cannot be ruled out – It has been held that section 377 is not unconstitutional – Parliament has to decide deletion or amendment of the provision as suggested by the Attorney General.

34 47

MOTOR VEHICLES RULES, 1989 (CENTRAL)

NATIONAL INVESTIGATION AGENCY ACT, 2008

NEGOTIABLE INSTRUMENTS ACT, 1881

Sections 118, 139 and 138 – (i) For the purpose of drawing presumption under section 118 r/w/s 139, burden lies on prosecution/complainant to show that (i) for the purpose of advancing loan in question to the accused, he was having requisite funds (ii) accused issued a cheque for the payment of money advanced and (iii) accused was bound to make payment and agreed for payment at the time of issuance of cheque.

(ii) On the facts, complainant failed – Therefore, reversing the order of acquittal by trial court, the judgment of the High Court was perverse. **44 62**

Section 138 – Complaint can be filed before the Magistrate within whose jurisdiction any of the five acts has taken place:

(a) drawing of the cheque

(b) presentation of the cheque to the bank

(c) unpaid return by the drawee bank

(d) giving notice for demanding payment

(e) failure by drawer to make payment within 15 days of receipt of the notice

16 (iii) 14

RENT CONTROL AND EVICTION:

Relationship of landlord and tenant between parties is the essential requirement – Therefore, enquiry is limited to that extent – The question of plaintiff's title on the basis of purchase or question of adverse possession by defendant is beyond the scope of enquiry in eviction suit under Rent Control Act – But question of title can be considered incidentally.

The question of acquisition of title by adverse possession is beyond the scope of suit of eviction under Rent Control Act – The proper Court is Civil Court constituted under C.P.C.

45 (i) & (ii) 63

See section 13 of Accommodation Control Act, 1961 and section 148 of Civil Procedure Code, 1908 **46 67**

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

Sections 13 (4), 17 and 34 – (i) Expression used in section 17 "any person" includes not only borrower but also guarantor or any other person who may be affected by measures taken under section 13 (4).

Ouster of jurisdiction of Civil Court – Extent of – Section 34 of the Act ousts the jurisdiction of Civil Court in respect of any matter which DRT or Appellate Tribunal is entitled to determine whereas section 34 deals with the measures for enforcement of security interest – In section 34 the expression "in respect of any matter" also includes the measures provided under section 34 – Any person aggrieved by such measures can approach DRT or Appellate Tribunal – In such matter Civil Court has no jurisdiction. **47 69**

PART-III
(CIRCULARS/NOTIFICATIONS)

PART-IV
(IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS)

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FROM JOTRI

Pradeep Kumar Vyas
Faculty Member, JOTRI

Esteemed Readers

Ten days prior to the ***Nirbhaya Episode*** that jolted the country, there was a specific direction issued by Hon'ble the Apex Court in ***Akil v. State (NCT of Delhi)*** (Judgement dated 6th December, 2012 in Criminal Appeal No. 1735 of 2009), which was later on reported in ***(2013) 7 SCC 125,*** to follow the instructions issued by Hon'ble Supreme Court in the decision of ***Raj Deo Sharma v. State of Bihar, (1998) 7 SCC 507*** and reiterated in ***State of U.P. v. Shambhunath, (2001) 4 SCC 667*** case. Those directions were circulated amongst the Judges of Madhya Pradesh District Judiciary. But a period of more than 12 years have elapsed since then and till now, some 800 new Judges have been inducted in M.P. Judiciary which is more than 60 percent of present strength. So it is time to discuss with them about the directions as well as necessity of their strict compliance.

On 6th December, 2012, Hon'ble the Supreme Court expressed its anguish that trials are not strictly adhering to the procedure prescribed under the provision contained in Section 231 along with Section 309 of Cr.P.C., and further emphasised that such adherence can ensure speedy trial of cases and also rule out the possibility of any manoeuvring taking place by granting undue adjournment on a mere asking. In ***Raj Deo Sharma case*** (supra), the need to comply with Section 309 of the Code in its letter and spirit was emphasied and those directions were reminded again in ***Shambhunath case*** (supra) and it was reiterated that if a witness is present in Court, he must be examined on that very day. The Court must know that most of the witnesses attend the Court at heavy cost, after keeping aside their own avocation. Certainly, they incur suffering and loss of income. The meagre amount of ***bhatta*** (allowance) which a witness is paid by the Court is generally a poor solace for the financial loss incurred by him and there should be reformation of primitive practice in trial Courts that where witnesses are called through summons or other processes and after standing at the doorstep from morning till evening, only to be told at the end of the day that the case is adjourned to another day. This can be reformed by everyone if the presiding officer concerned has a commitment to duty.

To achieve the desired results JOTRI also developed programmes and with the experiences shared with the Judges we tried to overcome the constraints and challenges in speedy disposal of cases that affect the society at large especially crime against women and children and in the month of July 2013 workshops on the said subject were organised at Indore and Gwalior.

Contributing to Institutional efforts, Judges of Madhya Pradesh following those directions and in an incident, that occurred on 26.12.2012 in Mandla, the District & Sessions Court pronounced its judgment on 05.02.2013 and High Court of Madhya Pradesh at Jabalpur affirmed the conviction of the appellant under Sections 376 and 450 of the Indian Penal Code, 1860, as well as confirmed the death sentence awarded for the offence under Section 302 IPC by the trial court vide judgment and order dated 27.06.2013 passed in Criminal Reference No 01 of 2013 and Criminal Appeal No. 397 of 2013 and the efforts made by the Judges of Madhya Pradesh for speedy trial have been appreciated by Hon'ble the Supreme Court in the following words:

> "***Before we part, we would like to note with appreciation that in the instant case investigation and all judicial proceedings upto this Court stood concluded in less than 8 months from the date of incidence. Thus, it is an exemplar of expeditious justice in country of chronic delay by smooth functioning of investigating agency, courts and the members of legal fraternity. We expect such prompt disposal of cases specifically in cases of such grave nature."***

This appreciation is recognition to our joint efforts to achieve constitutional goal of dispensation of speedy, inexpensive and efficacious justice. It shows that the judges of Madhya Pradesh are keeping the promise of expeditious trial of cases especially in trial of graver offences. For this appreciation, every member of District Juduciary of Madhya Pradesh has contributed and is entitled for a share of this.

It is the true welcome of new year of 2014 and we congratulate through this first issue of JOTI 2014 to every member of the District Juduciary of Madhya Pradesh. We have to continue our journey in the same spirit and zeal so that the virtues of adjudication cannot be allowed to be paralyzed by adjournments and non-demonstration of due diligence to deal with the matter and timely justice could be the identity of Madhya Pradesh Judiciary.

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Hon'ble Shri Justice Nishith Kumar Mody, Hon'ble SHRI JUSTICE B.K. DUBE AND HON'BLE SHRI JUSTICE A.K. SHRIVASTAVA, DEMIT OFFICE

Hon'ble Shri Justice Nishith Kumar Mody demitted office on 05.12.2013 on His Lordship's attaining superannuation. Was born on 06.12.1951. After obtaining LL.B degree, joined Bar in the year 1973 at Gwalior. Was Member of High Court Bar Association, Gwalior. Acted as Government Advocate for State of Madhya Pradesh. Was standing Counsel for Union Bank of India, State Bank of India, M.P. Electricity Board and Board of Secondary Education, Madhya Pradesh. Was also Additional Advocate General, High Court of Madhya Pradesh, Gwalior Bench prior to elevation.

Elevated as permanent Judge of the High Court of Madhya Pradesh on 11th October, 2004.

Hon'ble Shri Justice B.K. Dube demitted office on 19.01.2014 on His Lordship's attaining superannuation. Born on 20.01.1952 at village Nakau, Distt. Mainpuri, Uttar Pradesh. After obtaining degrees of B.Sc., LL.B and LL.M., joined as Civil Judge Class II on 23.08.1979. Was promoted to the post of Additional District Judge on 12.10.1991.

Worked as Additional Registrar, High Court of Madhya Pradesh at Jabalpur and also Member Secretary of the Madhya Pradesh State Legal Services Authority. Granted Selection Grade on 08.05.1999 and Super Time Scale on 26.02.2006. Worked in different capacities at Datia, Rewa, Satna, Mehgaon, Bemetara, Morena, Bhind, Neemuch, Jabalpur and Sagar. Was District & Sessions Judge, Jabalpur from July, 2008 prior to elevation. Took oath as Additional Judge, High Court of Madhya Pradesh on 03.05.2010 and as Permanent Judge on 02.05.2012

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Hon'ble Shri Justice A.K. Shrivastava demitted office on 30.01.2014 on His Lordship's attaining superannuation. Was Born on 31.01.1952. After obtaining B.Sc. and LL.B. degrees, enrolled as an Advocate and started practice in the year 1976. Practised in all fields like Constitutional, Civil, Criminal and Labour, etc. Mainly practised in High Court and in Supreme Court of India. While practising as an advocate was standing Counsel for several industries and companies like

J.K. Tyre, SRF Company, Punj Alloyed Company, Gwalior Dugdh Sangh, Gwalior Sugar Factory, M.P. State Road Transport Corporation, Cadbury India Ltd., Jiwaji Rao Cotton Mills, Grasim Industries, CIMCO, J.B. Mangharam, Hotline Teletubes, Hotline Glass etc. Was also appointed as Sole Arbitrator in some cases.

Elevated as Additional Judge of the High Court of Madhya Pradesh on

2nd September, 2002 and as Permanent Judge on 8th September, 2003.

We on behalf of JOTI Journal wish Their Lordships a healthy, happy and prosperous life.

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If you have choices, choose the best; and
If you have no choices, do the best.

आरोप के संबंध में

प्रदीप कुमार व्यास,
संकाय सदस्य,
न्यायिक अधिकारी प्रशिक्षण एवं
अनुसंधान संस्थान

दाण्डिक मामलों में आरोप विरचित करना एक महत्वपूर्ण प्रक्रम होता है और उस समय मजिस्ट्रेट या न्यायाधीश के मन में कई तरह के प्रश्न उत्पन्न होते हैं जैसे कब अपराध के सभी तत्व लिखना आवश्यक है और कब केवल विधि द्वारा अपराध को दिया गया विशिष्ट नाम लिख देना पर्याप्त है।

यदि वारंट विचारण के परिवाद मामले में आरोप पूर्व प्रति परीक्षण हुआ है तो उसके तथ्य किस सीमा तक देखे जा सकते है? अभियुक्त पक्ष द्वारा प्रस्तुत दस्तावेज को क्या विचार में ले सकते है?

क्या आरोप के समय एक विस्तृत आदेश लिखना आवश्यक है। यदि पूर्व से विरचित आरोप में कोई त्रुटि है तो उन्हें कब संशोधित करना जरूरी होता है। लगाये गये आरोप से भिन्न अपराध प्रमाणित होने पर क्या स्थिति होगी और ऐसे कितने ही प्रश्न नवनियुक्त मजिस्ट्रेट एवं न्यायाधीश के मन में उत्पन्न होते है यहाँ हम इन्हीं प्रश्नों और उन पर नवीनतम वैधानिक स्थिति के बारे में विचार करेंगे और आरोप पत्र के कुछ नमूनों के बारे में विचार करेंगे ताकि दाण्डिक न्यायालय का अमूल्य समय बच सके।

1. विधिक प्रावधान

दण्ड प्रक्रिया संहिता,1973 के अध्याय 17 में धारा 211 से 224 में आरोप के संबंध में प्रावधान है साथ ही धारा 227, 228, 239, 240, 251 में भी आरोप लगाने और अभियुक्त के उन्मोचन के बारे में प्रावधान है यहाँ हम केवल मुख्य प्रावधानों का उल्लेख करेंगे। उक्त समस्त प्रावधान आरोप के संबंध में अध्ययन योग्य है।

धारा 211 (1) दण्ड प्रक्रिया संहिता के अनुसार प्रत्येक आरोप में उस अपराध का कथन होगा जिसका अभियुक्त पर आरोप है।

धारा 211 (2) के अनुसार यदि उस अपराध का सृजन करने वाली विधि द्वारा उसे कोई विनिर्दिष्ट नाम दिया गया है तो आरोप में उसी नाम से अपराध का वर्णन किया जाएगा।

धारा 211 (3) के अनुसार यदि उस अपराध का सृजन करने वाली विधि द्वारा उसे कोई विनिर्दिष्ट नाम नहीं दिया गया है तो अपराध की इतनी परिभाषा देनी होगी जितनी से अभियुक्त को इस बात की सूचना हो जाये जिसका उस पर आरोप है।

धारा 211 (4) के अनुसार वह विधि और विधि की वह धारा, जिसके विरूद्ध अपराध किया जाना कथित है, आरोप में उल्लेखित होगी।

धारा 211 (5) के अनुसार यह तथ्य कि आरोप लगा दिया गया है इस कथन के समतुल्य है कि विधि द्वारा अपेक्षित प्रत्येक शर्त जिससे आरोपित अपराध बनता है उस विशिष्ट मामले में पूरी हो गयी है।

धारा 211 (6) के अनुसार आरोप न्यायालय की भाषा में लिखा जायेगा।

धारा 211 में आरोप के अंतर्वस्तु के बारे में उपयुक्त प्रावधान किये गये है।

धारा 212 (1) दण्ड प्रक्रिया संहिता के अनुसार अभिकथित अपराध का समय और स्थान के बारे में और जिस व्यक्ति के विरूद्ध अथवा जिस वस्तु के विषय में वह अपराध किया गया है उस व्यक्ति या वस्तु के बारे में ऐसी विशिष्टियाँ आरोप में उल्लेखित की जायेंगी जिससे की अभियुक्त को आरोप की उचित रूप से और पर्याप्त सूचना हो जाये।

धारा 213 दण्ड प्रक्रिया संहिता के अनुसार कुछ मामलों में अपराध करने की रीति का भी उल्लेख आरोप में करना आवश्यक होता है।

शेष प्रावधानों का उल्लेख उचित स्थान पर आगे किया जायेगा।

2. आरोप का उद्देश्य

न्याय दृष्टांत सजन शर्मा विरूद्ध स्टेट ए.आई.आर. 2011 एस.सी. 632 में माननीय सर्वोच्च न्यायालय ने यह प्रतिपादित किया है कि आरोप विरचित करना और अभियुक्त परीक्षण, दाण्डिक विचारण के दो महत्वपूर्ण प्रक्रम है कुछ न्यायालय यह कार्य बहुत अवैध या यांत्रिक तरीके से कर रहे है इसे हतोत्साहित किया जाना चाहिए। इस संबंध में न्याय दृष्टांत बासव राजा विरूद्ध स्टेट ऑफ कर्नाटका (2008) 9 एस.सी. सी. 329 तीन न्यायमूर्तिगण की पीठ भी अवलोकनीय है।

आरोप का उद्देश्य अभियुक्त को जिस मामले के बारे में उसे आरोपित किया गया है उसके बारे में सूचना देना है और यह क्षेत्राधिकार को नहीं छूता है यदि अभियुक्त को आवश्यक सूचना अन्य विधि से संसूचित हो जाती है और उसके हितों पर प्रतिकूल असर नहीं पड़ता हो तो आरोप की रचना अमान्य नहीं ठहरायी जा सकती है।

इस संबंध में संतोषी कुमारी विरूद्ध स्टेट ऑफ जे एंड के (2011) 9 एस.सी.सी. 234 अवलोकनीय है जिसमें यह भी कहा गया है कि आरोप के शब्दों का तकनीकी फॉर्मूला नहीं होता है वास्तव में मामला जिसके लिए अभियुक्त का विचारण हो रहा है उसे समझ में आ जाना चाहिए।

इस प्रकार आरोप विरचित करने का प्रक्रम बहुत महत्वपूर्ण प्रक्रम होता है जिस पर अभियुक्त को आरोप के माध्यम से यह जानकारी दी जाती है कि उसके विरूद्ध क्या मामला है जिसके लिए अब उसका विचारण होना है अतः आरोप अत्यन्त सावधानी से विरचित करना चाहिए।

3. आरोप एवं अभियोग का सारांश

वारंट मामलों में एवं सेशन न्यायालय द्वारा विचारणीय मामलों में आरोप विरचित किये जाते हैं जबकि समन मामलों में एवं संक्षिप्त विचारण प्रक्रिया वाले मामलों में धारा 251 दण्ड प्रक्रिया संहिता के तहत अभियुक्त को अभियोग का सारांश बतलाया जाता है यह ध्यान रखना चाहिए।

दोनों कार्यवाहियों का उद्देश्य एक ही है केवल प्रक्रिया अलग–अलग है।

आरोप, आरोप पत्र के फार्म में लगाये जाते हैं जबकि अभियोग सारांश एक ग्रीन पेपर पर तैयार किया जाता है यह ध्यान रखना चाहिए कभी–कभी आरोप पत्र के फार्म उपलब्ध नहीं होते है तब आरोप पत्र भी ग्रीन पेपर पर ही तैयार करवाये जाते है।

4. अभियुक्त द्वारा प्रस्तुत सामग्री पर विचार न करना

आरोप विरचित करने के प्रक्रम पर अभियुक्त द्वारा प्रस्तुत सामग्री या दस्तावेजों को उसके बचाव को नहीं देखा जाता है बल्कि अभियोजन द्वारा धारा 173 दण्ड प्रक्रिया संहिता के तहत जो अंतिम प्रतिवेदन प्रस्तुत किया जाता है उसे ही विचार में लिया जाता है।

आरोप के प्रक्रम पर केवल अभियुक्त के निवेदन को सुना जाता है लेकिन इसका अर्थ यह नहीं है कि उसे मौखिक या दस्तावेजी साक्ष्य पेश करने का अवसर दिया जाता है।

इस संबंध में न्याय **दृष्टांत स्टेट ऑफ उड़ीसा विरूद्ध देबेन्द्र नाथ पादी (2005) 1 एस.सी.सी. 568** तीन न्यायमूर्तिगण की पीठ का न्याय दृष्टांत अवलोकनीय है जिसमें उक्त विधि प्रतिपादित की गयी है।

इस संबंध में न्याय दृष्टांत **भारत पारिख विरूद्ध सी.बी.आई. (2008) 10 एस.सी.सी. 109** अवलोकनीय है जिसमें यह कहा गया है आरोप विरचित करते समय अभियुक्त का निवेदन केवल अभियोजन की सामग्री तक ही सीमित रहता है और इस स्टेज पर कोई लम्बी जॉच या मिनी ट्रायल संचालित करना अनुमत नहीं है।

इस तरह आरोप विरचित करते समय अभियुक्त द्वारा प्रस्तुत दस्तावेजों को विचार में नहीं लिया जाता है केवल अभियोजन द्वारा प्रस्तुत दस्तावेजों को ही विचार में लेते हैं यह वैधानिक स्थिति स्पष्ट हो चुकी है जिसे आरोप विरचित करते समय सदैव ध्यान में रखना चाहिए।

इस संबंध में न्याय दृष्टांत **हेमचंद्र विरूद्ध स्टेट ऑफ झारखंड (2008) (5) एस.सी.सी. 113, अजय कुमार परमार विरूद्ध स्टेट ऑफ राजस्थान ए.आई.आर. 2013 एस.सी. 633, निर्णय चरण 11 एस.एम.एस. फार्मा सूटिकल लिमिटेड विरूद्ध नीता भल्ला ए.आई.आर. 2005 एस.सी. 3512, भरत पारिख विरूद्ध सी.बी. आई. ए.आई.आर. 2009 एस.सी. (सप्लीमेंट) 523 एवं रूकमणी विरूद्ध विजय ए.आई.आर. 2009 एस.सी. 1013 भी अवलोकनीय है।**

5. साक्ष्य का मूल्यांकन

आरोप विरचित करते समय केवल यह देखना होता है कि जो सामग्री अभियोजन ने प्रस्तुत की है उससे अभियुक्त का अपराध करना प्रथम दृष्टया प्रतीत होता है। इस प्रक्रम पर साक्ष्य की प्रोबेटीव वैल्यू नहीं देखना होती है इस संबंध में न्याय दृष्टांत **सोमा चक्रवर्ती विरूद्ध स्टेट (2007) 5 एस.सी.सी. 403, स्टेट ऑफ ए.पी. विरूद्ध गोलकुंडा लिंगा स्वामी (2004) 6 एस.सी.सी. 522 एवं ओंकार नाथ मिश्रा विरूद्ध स्टेट (2008) 2 एस.सी.सी. 561** अवलोकनीय है।

6. धारा 218 एवं 220 दण्ड प्रक्रिया संहिता का लागू न होना

जहाँ अपराध का विचारण अलग–अलग मजिस्ट्रेट द्वारा किया जा रहा हो वहाँ धारा 218 एवं धारा 220 द.प्र.सं लागू नहीं होती है क्योंकि ऐसे में संयुक्त विचारण नहीं किया जा सकता इस संबंध में न्याय **दृष्टांत स्टेट ऑफ पंजाब विरूद्ध राजेश स्याल (2002) 8 एस.सी.सी. 158** अवलोकनीय है।

7. क्या विस्तृत आदेश जरूरी ?

आरोप विरचित करते समय आदेश में कारण लिखना आवश्यक नहीं। केवल आरोपी को उन्मोचित किया जा रहा हो तब कारण देना आवश्यक होता है इस संबंध में न्याय दृष्टात **लालू प्रसाद यादव विरूद्ध स्टेट ऑफ बिहार 2007 (1) एस.सी.सी. 49** अवलोकनीय है।

लेकिन जहाँ न्यायालय किसी विशिष्ट धारा का आरोप नहीं लगा रही हो और उसे ड्राप कर रहा हो वहाँ उसे संक्षिप्त कारण देना जरूरी है चाहे अभियुक्त को उन्मोचित नहीं भी किया जा रहा हो इस संबंध में न्याय दृष्टांत **आर.एस. मिश्रा विरूद्ध स्टेट ऑफ उड़ीसा ए.आई.आर. 2011 एस.सी. 1103** अवलोकनीय है।

8. दोषसिद्धि की राय के बारे में

न्याय दृष्टांत **सांघी ब्रदर्स प्राइवेट लिमिटेड विरूद्ध संजय चौधरी (2008) 10 एस.सी.सी. 681** के अनुसार अभियुक्त के अपराध में लिप्त होने के बारे में मजबूत संदेह प्रथम दृष्टया होना आरोप विरचित करने के लिए पर्याप्त होता है इस स्टेज पर दोषसिद्धि के बारे में कोई राय देना आवश्यक नहीं होता है।

9. उन्मोचन के बारे में

न्याय दृष्टांत पी. विजयन विरूद्ध स्टेट ऑफ केरला ए.आई.आर. 2010 एस.सी. 663 के अनुसार न्यायाधीश के लिए यह आवश्यक नहीं है कि वह अभियोजन की सामग्री पर हर दशा में आरोप विरचित करें बल्कि उसे न्यायिक मस्तिष्क का प्रयोग करके यह देखना चाहिए कि विचारण के लिए कोई मामला अभियोजन की सामग्री से बनता है या नहीं क्योंकि उन्मोचन का प्रावधान इसलिए बनाया गया है कि लोक समय का अपव्यय रोका जाये और प्रथम दृष्टया मामला नहीं बनता है तो अभियुक्त को हरासमेंट और खर्च से बचाया जाये।

न्याय दृष्टांत **योगेश उर्फ सचिन जगदीश जोशी विरूद्ध स्टेट ऑफ महाराष्ट्र (2008) 10 एस.सी.सी. 394** के अनुसार आरोप विरचित करते समय यह देखना आवश्यक नहीं होता है कि क्या विचारण दोषसिद्धि पर समाप्त होगा या नहीं केवल यह देखना होता है कि अभिलेख पर जो सामग्री है वह यदि अखण्डित रहती है तो दोषसिद्धि युक्तियुक्त रूप से संभव है। जहाँ न्यायालय की राय में दो समान मत संभव हो और न्यायाधीश की राय में अभियुक्त के विरूद्ध अपराध करने का गंभीर संदेह नहीं है तो वह अभियुक्त को उन्मोचित कर सकता है इस मामले में न्याय दृष्टांत स्टेट ऑफ बिहार विरूद्ध रमेश सिंह (1977) 4 एस.सी. सी. 39 एवं यूनियन ऑफ इंडिया विरूद्ध प्रफुल्ल कुमार (1979) 3 एस.सी.सी. 4 को भी विचार में लिया गया।

10. आरोप पूर्व प्रमाण के बारे में

परिवाद पर संस्थित वारंट मामलों में पहले परिवादी का आरोप पूर्व प्रमाण लिया जाता है उसके बाद आरोप विरचित करने का प्रक्रम आता है और इस प्रक्रम पर परिवादी और उसके साक्षीगण के प्रतिपरीक्षण में जो तथ्य आये है उन्हें आरोप विरचित करने के लिए विचार में लिया जाता है इस संबंध में न्याय दृष्टांत म**धुमिलन सिन्टेक्स लिमिटेड विरूद्ध सिडिंकेट बैंक 2010 (3) एम.पी.जे.आर. 338** अवलोकनीय है।

न्याय दृष्टांत अजय कुमार घोष विरूद्ध स्टेट ऑफ झारखंड ए.आई.आर. 2009 एस.सी. 2282 के अनुसार जहाँ अभियुक्त का धारा 245 (2) द.प्र.सं. का आवेदन निरस्त कर दिया गया हो वहाँ विचारण न्यायालय धारा 246 (1) द.प्र.सं. के तहत सीधे बिना किसी साक्ष्य लिये आरोप विरचित नहीं किये जा सकते क्योंकि आरोप पूर्व साक्ष्य पर अभियुक्त को प्रतिपरीक्षण का अधिकार होता है।

11. आरोप रचना के सिद्धांत

न्याय दृष्टांत सज्जन कुमार विरूद्ध सी.बी.आई. (2010) 9 एस.सी.सी. 368 में आरोप विरचित करते समय ध्यान में रखे जाने योग्य सिद्धांत बतलाये गए है।

इस मामलें में न्याय दृष्टांत यूनियन ऑफ इंडिया विरूद्ध प्रफुल्ल कुमार सामल (1979) 3 एस.सी.सी. 4 को विचार में लिया गया है उसमें बतलाये सिद्धांत उल्लेखित किये हैं जो इस प्रकार है :–

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the material placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even

at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

12. आरोप में संशोधन

धारा 216 (1) दण्ड प्रक्रिया संहिता के अनुसार कोई भी न्यायालय निर्णय सुनाये जाने के पूर्व किसी भी समय आरोप में परिवर्तन या परिवर्धन कर सकता है।

धारा 216 (2) के अनुसार ऐसा प्रत्येक परिवर्तन या परिवर्धन अभियुक्त को पढ़कर सुनाया और समझाया जायेगा।

धारा 216 (3) के अनुसार यदि आरोप में किये गये परिवर्तन या परिवर्धन न्यायालय की राय में ऐसा है कि विचारण को तुरन्त आगे चलाने से अभियुक्त पर अपनी प्रतिरक्षा करने या अभियोजन पर मामले के संचालन में कोई प्रतिकूल प्रभाव पड़ने की संभावना नहीं हो तो न्यायालय ऐसे परिवर्तन या परिवर्धन के पश्चात् अपने विवेक अनुसार विचारण को ऐसे आगे चला सकता है मानों परिवर्तित या परिवर्धित आरोप ही मूल आरोप है।

धारा 216 (4) के अनुसार यदि न्यायालय की राय में परिवर्तन या परिवर्धन ऐसा है जिसके कारण अभियुक्त या अभियोजन पर प्रतिकूल प्रभाव उक्त अनुसार पड़ना सम्भावित है तब वह नये विचारण निर्देश दे सकता है।

धारा 216 (5) अभियोजन के पूर्व मंजूरी आदि के बारे में है।

धारा 217 दण्ड प्रक्रिया संहिता के अनुसार जब कभी विचारण प्रारम्भ होने के बाद न्यायालय द्वारा आरोप परिवर्तित या परिवर्धित किये जाते हैं तब अभियोजक और अभियुक्त को :– (ए) किसी ऐसे साक्षी की जिसकी परीक्षा की जा चुकी है पुनः बुलाने की या पुनः समन करने की और उसके ऐसे परिवर्तन या परिवर्धन के बारे में परीक्षा करने की अनुमति दी जायेगी तब तक की न्यायालय की राय में ऐसा करना आवश्यक नहीं हो।

(बी) न्यायालय किसी अन्य साक्षी को भी बुलाने की अनुमति दे सकता है।

उक्त प्रावधान से यह स्पष्ट है कि कोई भी दण्ड न्यायालय निर्णय सुनाये जाने के पूर्व किसी भी समय आरोप में परिवर्तन या परिवर्धन कर सकता है और ऐसा परिवर्तन और परिवर्धन के बाद की प्रक्रिया को इन प्रावधानों में स्पष्ट किया गया है।

न्याय दृष्टांत **कस्तूरचंद्र विरूद्ध स्टेट ऑफ एम.पी. आई.एल.आर. 2011 एम.पी.एस.एन. 123** के अनुसार न्यायालय निर्णय पारित करने के पूर्व किसी भी समय आरोप को परिवर्तित या परिवर्धित करने के लिए सशक्त होती है धारा 216 दण्ड प्रक्रिया संहिता एक विस्तृत प्रावधान है जिसमें आरोप विरचित करने में हुई किसी त्रुटि को सुधारा जा सकता है और यदि आरोप विरचित नहीं किया गया हो तो उसे विरचित भी किया जा सकता है यदि किसी अपराध का आरोप प्रारम्भिक स्तर पर

बनने के बाद भी नहीं लगाया गया हो तब भी न्यायालय किसी भी प्रक्रम पर निर्णय पारित करने के पूर्व आरोप विरचित कर सकती है।

इस संबंध में न्याय दृष्टांत मंजू लता तिवारी विरूद्ध स्टेट ऑफ एम.पी. आई.एल.आर. 2008 एम.पी. 2731 अवलोकनीय है, जिसमें एक अभियुक्त के विरूद्ध धारा 13 (1) (डी) भ्रष्टाचार निवारण अधिनियम के आरोप के बाद में लगाये गये।

13. अभियुक्त के हितों पर प्रतिकूल असर कैसे देखा जाये?

धारा 215 दण्ड प्रक्रिया संहिता, 1973 के अनुसार अपराध के या उन विशिष्टियों के जिनके आरोप में कथन होना अपेक्षित है कथन करने में किसी गलती को और उस अपराध या उन विशिष्टियों के कथन करने में किसी लोप को मामले के किसी प्रक्रम में तब तात्विक माना जायेगा जब ऐसी गलती या लोप से अभियुक्त वास्तव में भुलावे में पड़ गया है और उसके कारण न्याय नहीं हो पाया है अन्यथा नहीं।

न्याय दृष्टांत मैनपाल विरूद्ध स्टेट ऑफ हरियाणा ए.आई.आर. 2010 एस.सी. 3292 में यह बतलाया गया है कि आरोप की किसी गलती से अभियुक्त को प्रिजूडिस होना कैसे देखा जाता है इस मामले में यह कहा गया कि जहाँ अभियुक्त पर एक व्यक्ति के विरूद्ध अपराध करने का आरोप लगाया गया हो लेकिन साक्ष्य अन्य व्यक्ति के विरूद्ध अपराध करने की आई हो और उसमें अभियुक्त को दोषसिद्धि किया गया हो जबकि उस अन्य व्यक्ति के संबंध में अभियुक्त पर कोई आरोप विरचित नहीं किया गया था तब यह देखेंगे की क्या अभियुक्त ऐसे आरोप के अभाव में अपनी उचित प्रतिरक्षा नहीं कर पाया है तब यह कहा जायेगा अभियुक्त को आरोप की इस त्रुटि से प्रिजूडिस हुआ है लेकिन अभियुक्त ने अपनी पूरी प्रतिरक्षा की हो तब यह नहीं कहा जा सकता की अभियुक्त के हितों पर प्रतिकूल असर पड़ा है।

इस मामले में यह भी कहा गया कि आरोप लगाने का उद्देश्य अभियुक्त को मामले के संबंध में जानकारी देना की उसके विरूद्ध क्या आरोप है जिसमें उसे क्या बचाव करना है और यह जानकारी हुई या नहीं यह मामले के तथ्यों और परिस्थितियों मे और अभिलेख से देखना चाहिए।

न्याय दृष्टांत एस. गनेशन विरूद्ध रामारघुरमन (2011) 2 एस.सी.सी. 83 के अनुसार जब तक अभियुक्त यह बतलाने में समर्थ नहीं होता कि आरोप विरचित करने की त्रुटि के कारण उसके हितों पर वास्तव में असर पड़ा हो और उसे यह जानकारी नहीं थी वास्तव में उसके विरूद्ध क्या मामला है इस कारण वह उचित रूप से अपनी प्रतिरक्षा नहीं कर सका, तब तक तकनीकी आधारों पर दोषसिद्धि में हस्तक्षेप नहीं किया जा सकता।

इस मामले में न्याय दृष्टांत **शनिचर साहनी विरूद्ध स्टेट ऑफ बिहार ए.आई.आर. 2010 एस.सी. 3786, टोपन विरूद्ध स्टेट ऑफ बॉम्बे ए.आई.आर. 1956 एस.सी.33, विली उर्फ विलियम विरूद्ध स्टेट ऑफ एम.पी. ए.आई.आर. 1956 एस.सी. 116, फरूखद्दीन विरूद्ध स्टेट ऑफ एम.पी. ए.आई.आर. 1967 एस.सी. 1326, स्टेट ऑफ ए.पी. विरूद्ध टी. रेड्डी ए.आई.आर. 1998 एस.सी. 2702, राम जी सिंह विरूद्ध स्टेट ऑफ बिहार ए.आई.आर. 2001 एस.सी. 3853, गुरप्रीत सिंह विरूद्ध स्टेट ऑफ पंजाब ए.आई.आर. 2006 एस.सी. 191, अमरसिंह**

विरूद्ध स्टेट ऑफ हरियाणा ए.आई.आर. 1973 एस.सी. 2221 एवं स्टेट विरूद्ध नवजोत सिद्धू (2005) 11 एस.सी.सी. 600 को विचार में लिया गया।

न्याय दृष्टांत दरबारा सिंह विरूद्ध स्टेट ऑफ पंजाब ए.आई.आर. 2013 एस.सी. 840 के मामले में न्याय की हानि कब मानी जाये, इसे स्पष्ट किया गया है।

वैधानिक स्थिति से स्पष्ट होती है कि आरोप विरचित करने में हुई किसी त्रुटि या लोप से अभियुक्त के हितों पर प्रतिकूल असर पड़ना तभी माना जाता है जब ऐसी त्रुटि या लोप के कारण अभियुक्त यह नहीं जान पाया है कि उसके विरूद्ध वास्तव में क्या आरोप है और ऐसी जानकारी नहीं होने से वह अपना युक्तियुक्त बचाव नहीं कर पाया।

14. आरोप न होने पर दोषसिद्धि

धारा 222 दण्ड प्रक्रिया संहिता में यह प्रावधान है कि जहाँ अभियुक्त किसी एक अपराध के आरोप के लिए आरोपित किया गया हो लेकिन जिससे छोटा अपराध यदि साबित होता है तो उसे छोटे अपराध के लिए दोषसिद्धि किया जा सकता है चाहे उसका आरोप उस पर विरचित नहीं किया गया हो।

न्याय दृष्टांत **शौकत हुसैन गुरू विरूद्ध स्टेट (2008) 6 एस.सी.सी. 776** में यह प्रतिपादित किया गया है पृथक आरोप विरचित किये बिना भी छोटे अपराध के लिए दोषसिद्धि धारा 222 दण्ड प्रक्रिया संहिता में उल्लेखित है इस मामले में अभियुक्त पर धारा 120 भा.द.सं. का आरोप लगाया गया था और उसे धारा 123 भा.द.सं. में दोषसिद्ध किया गया जिसे उचित माना गया।

न्याय दृष्टांत **रफीक अहमद विरूद्ध स्टेट ऑफ यू.पी. (2011) 8 एस.सी.सी. 300** के अनुसार यदि अभियुक्त को गंभीर अपराध या बड़े अपराध से आरोपित किया गया हो तब उसे अपेक्षाकृत छोटे अपराध जो कि समान प्रकृति का हो और जिसमें अपराध के सभी आवश्यक तथ्य प्रमाणित हो जाते हैं उसमें दण्डित किया जा सकता है इस मामले में आरोपी पर धारा 396 भा.द.सं. का आरोप था और उसे 302 भा. द.सं. में दण्डित करने का प्रश्न था।

न्याय दृष्टांत **दिनेश सेठ विरूद्ध स्टेट ऑफ एन सिटी देहली (2008) 14 एस.सी.सी. 94** में अभियुक्त पर धारा 304 बी भा.द.सं. का आरोप लगाया गया था और उसे धारा 498 ए भा.द.स.में दण्डित किया गया था।

न्याय दृष्टांत **नरविन्दर कौर विरूद्ध स्टेट ऑफ पंजाब ए.आई.आर. 2011 एस.सी. 686** के मामले में अभियुक्त पर धारा 304 बी भा.द.सं. का आरोप विरचित किया गया था और उसे 306 भा.द.सं. में दण्डित किया गया जिसे उचित माना गया।

न्याय दृष्टांत **जितेन्द्र कुमार विरूद्ध स्टेट ऑफ हरियाणा ए.आई.आर. 2012 एस.सी. 2488** के मामले में अभियुक्त को हत्या के षड्यंत्र धारा 302 सहपठित धारा 120 बी भा.द.सं. के लिए आरोपित किया गया था और उसे धारा 302 भा.द.सं. में दण्डित किया गया।

न्याय दृष्टांत **दरबारा सिंह विरूद्ध स्टेट ऑफ पंजाब ए.आई.आर. 2013 एस.सी. 840** के मामले में अभियुक्त पर धारा 302 भा.द.सं. का आरोप था और उसे धारा 302/34 भा.द.सं. में दण्डित किया गया।

न्याय दृष्टांत **संगारा बोइना श्रीनू विरूद्ध स्टेट ऑफ ए.पी. 1997(2) डबल्यू.एन. 43 एस.सी**. के मामले में धारा 302 भा.द.सं. का आरोप विरचित किया गया था यह प्रतिपादित किया गया है कि अभियुक्त को धारा 306 भा.द.सं. में दण्डित नहीं किया जा सकता।

15. सामान्य आशय, सामान्य उद्देश्य के साथ मुख्य आरोप लगाना

जब कभी अभियुक्तगण पर किसी अपराध के बारे में सामान्य आशय या सामान्य उद्देश्य के आरोप विरचित किये जाये वहाँ मुख्य अपराध का आरोप अवश्य होना चाहिए जैसे यदि आरोप धारा 148, 307/149 एवं 325/149 भा.द.सं. का विरचित किया गया हो लेकिन मुख्य अपराध जैसे 307 एवं 325 के कोई आरोप किसी भी अभियुक्त पर विरचित न किये गये हों तब मुख्य अपराध जैसे 307 भा.द.सं. में की गयी दोषसिद्धि स्थिर नहीं रह सकती है इस संबंध में न्याय दृष्टांत **पूना विरूद्ध स्टेट ऑफ एम.पी. 1996 एम.पी.एल.जे. 376** अवलोकनीय है।

लेकिन न्याय दृष्टांत **विली (विलियम) स्लेनी विरूद्ध स्टेट आफ एम.पी. ए.आई.आर. 1956 एस.सी. 116** पाँच न्यायमूर्तिगण की पीठ के अनुसार दो अभियुक्तगण पर धारा 302 सहपठित धारा 34 भा.द.सं. के आरोप लगाये गये, धारा 302 भा.द.सं. का वैकल्पिक आरोप नहीं लगाया गया था, यह पाया गया कि अभियुक्त को इससे कोई प्रीजूडिस नहीं हुआ, अतः सह अभियुक्त को धारा 302 भा.द.सं. में पृथक आरोप के अभाव में भी दोषसिद्ध किया जा सकता है।

जहाँ किसी विशिष्ट अपराध के किये जाने के बारे में संदेह हो वहाँ वैकल्पिक आरोप विरचित किये जा सकते हैं इस संबंध में न्याय दृष्टांत **मिश्रीलाल विरूद्ध स्टेट ऑफ एम.पी. 1995 (2) डब्ल्यू.एन. 25** अवलोकनीय है।

16. सी.एफ.एल.ने नमूना परीक्षण को अयोग्य पाया

न्याय दृष्टांत **सुरेश नारायण विरूद्ध फूड इन्सपेक्टर 2002 (2) विधि भास्वर 306** के अनुसार जहाँ केन्द्रीय खाद्य प्रयोगशाला ने नमूना परीक्षण के योग्य नहीं पाया वहाँ अभियुक्त के मूल्यवान अधिकार का हनन हुआ है उस पर आरोप विरचित नहीं किये जा सकते।

17. पावर ऑफ आटार्नी होल्डर पर आरोप

परिवादी ने जनरल पावर ऑफ अटार्नी अभियुक्त के पक्ष में दिया जिसके आधार पर उसने परिवादी के कुछ प्लॉट विक्रय कर दिये विक्रय का कोई अधिकार नहीं दिया गया था क्रेता ने इस तथ्य का ज्ञान होने के बावजूद संव्यवहार किया ऐसे में क्रेता और पावर ऑफ आटार्नी होल्डर पर धारा 420 और 120 बी भा.द.सं. के आरोप विरचित किये जाना उचित माना गया इस संबंध में न्याय दृष्टांत चमन लाल विरूद्ध स्टेट ऑफ पंजाब ए.आई.आर. 2009 एस.सी. 2972 तीन न्यायमूर्तिगण की पीठ का न्याय दृष्टांत अवलोकनीय है।

18. कब अपराध की रीति का उल्लेख आवश्यक

धारा 213 दण्ड प्रक्रिया संहिता, 1973 के अनुसार जब धारा 211 और 212 की विशिष्टयों से भी अभियुक्त को आरोप की पर्याप्त सूचना नहीं मिलती वहाँ अपराध के रीति का उल्लेख भी आवश्यक होता है।

धारा 213 दण्ड प्रक्रिया संहिता के नीचे विभिन्न दृष्टांत दिये गये हैं जिनसे यह समझा जा सकता है कब अपराध के विधि या रीति का उल्लेख आवश्यक होता है।

जैसे ए पर बी की हत्या का अभियोग है इस आरोप में हत्या की विधि या रीति का उल्लेख आवश्यक नहीं है लेकिन ए पर बी को छलने का आरोप है, छल की विधि लिखना होगी।

19. मजिस्ट्रेट द्वारा विचारणीय मामलों में आरोप के प्रारूप

सामान्यतः नवनियुक्त मजिस्ट्रेट को आरोप विरचित करने में प्रारम्भ में थोड़ी कठिनाई आती है इसलिए यहाँ सर्वप्रथम हम मजिस्ट्रेट द्वारा विचारणीय मामलों के आरोप के प्रारूपों पर विचार करेंगे।

यहाँ यह भी स्पष्ट किया जाता है कि वे ही प्रारूप दिये जा रहे हैं जो अधिकतम उपयोग में आते हैं यदा–कदा काम में आने वाले आरोपों को नहीं लिया जा रहा है।

यदि समन मामला हो तब अपराध की विशिष्टयां धारा 251 दण्ड प्रक्रिया संहिता के तहत ग्रीन पेपर पर तैयार करके सुनाना चाहिए वारंट मामला हो तब आरोप पत्र के प्रारूप में यह कार्यवाही करना चाहिए।

अतः जहाँ आरोप शब्द है उसका अर्थ समन मामले में अपराध की विशिष्टयां समझा जाये। जहाँ अपराध की विशिष्टयां पढ़कर सुनाई या समझायी जाती हैं वहाँ धारा 251 भा.द.सं. के तहत अभियुक्त से यह पूछा जाता है क्या वह दोषी होने का अभिवाक् करता है या प्रतिरक्षा करना चाहता है।

जबकि वारंट मामलों में ऐसा पूछना आवश्यक नहीं होता है केवल यह निर्देश देना होता है कि आरोपी का विचारण उक्त आरोप पर किया जाये इस तथ्य को ध्यान में रखना चाहिए।

आरोप
धारा 147 भारतीय दण्ड संहिता

दाण्डिक प्रकरण क्रमांक 10/13
राज्य विरूद्ध रामलाल

मैं ए.बी.सी. न्यायिक मजिस्ट्रेट आप आरोपी रामलाल पिता श्यामलाल पर निम्नलिखित आरोप लगाता हूँ :–

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में आप एक विधि विरूद्ध जमाव के सदस्य थे जिसका सामान्य उद्देश्य परिवादी मोहनलाल को स्वेच्छया उपहति कारित करना (अन्य सामान्य उद्देश्य जो भी हो वे लिख सकते है) था उक्त सामान्य उद्देश्य के प्रवर्तन में आपने बल या हिंसा का प्रयोग करके बलवा किया जो भारतीय दण्ड संहिता की धारा 147 में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है। क्या आप दोषी होने का अभिवाक् करते हो अथवा प्रतिरक्षा करना चाहते हो।

ए.बी.सी. न्यायिक मजिस्ट्रेट प्रथम श्रेणी

धारा 148 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में आप एक विधि विरूद्ध जमाव के सदस्य थे जिसका सामान्य उद्देश्य परिवादी मोहनलाल को स्वेच्छया उपहति

कारित करना (अन्य सामान्य उद्देश्य जो भी हो वे लिख सकते है) था उक्त सामान्य उद्देश्य के प्रवर्तन में आपने बल या हिंसा का प्रयोग करके बलवा किया और आप उक्त बलवा करते समय घातक आयुध (जैसे बन्दूक/धारिया/तलवार/बल्लम आदि) से सज्जित थे या लकड़ी आदि ऐसी चीज से सज्जित थे जिसे आक्रामक आयुध के रूप में उपयोग किये जाने पर मृत्यु कारित होना संभाव्य थी जो भारतीय दण्ड संहिता की धारा 148 में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

अतः मैं निर्देश देता हूँ की आपका उक्त आरोप के लिए विचारण इस न्यायालय द्वारा किया जाये।

ए.बी.सी. न्यायिक मजिस्ट्रेट प्रथम श्रेणी

धारा 149 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में आप एक विधि विरूद्ध जमाव के सदस्य थे जिसका सामान्य उद्देश्य परिवादी मोहनलाल को स्वेच्छया उपहति कारित करना (अन्य सामान्य उद्देश्य जो भी हो वे जैसे आपराधिक अभित्रास कारित करना, लोकस्थान आदि लिख सकते है) था उक्त सामान्य उद्देश्य के प्रवर्तन में अवैध समूह के सदस्य या सदस्यों ने परिवादी मोहनलाल के साथ मारपीट कर उसे स्वेच्छया उपहति कारित की। (यहाँ विधि विरूद्ध जमाव के सदस्यों द्वारा किये गये अन्य अपराध जैसे आपराधिक अभित्रास कारित करना, आदि लिखे जा सकते है।) ऐसे अपराध का किया जाना आप जानते थे कि उपरोक्त अवैध समूह द्वारा सामान्य उद्देश्य के प्रवर्तन में किया जाना संभाव्य है जो धारा 323, 506, सहपठित धारा 149 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

अतः मैं निर्देश देता हूँ की आपका उक्त आरोप के लिए विचारण इस न्यायालय द्वारा किया जाये।

ए.बी.सी. न्यायिक मजिस्ट्रेट प्रथम श्रेणी

धारा 34 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में सह अभियुक्त श्यामलाल और मोहन लाल के साथ मिलकर परिवादी एक्स पिता व्हाय को स्वेच्छया उपहति कारित करने, आपराधिक अभित्रास कारित करने का सामान्य आशय बनाया और उसकी पूर्ति में सह अभियुक्त श्यामलाल ने परिवादी एक्स को चाकू से स्वेच्छया उपहति कारित की और आप अभियुक्त रामलाल का उसने सामान्य आशय था या आप अभियुक्त रामलाल यह जानते थे कि उक्त कार्य सामान्य आशय के अग्रसरण में कारित किया जा रहा है जो धारा 324, सहपठित धारा 34 भा.द.सं.में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

अतः मैं निर्देश देता हूँ की आपका उक्त आरोप के लिए विचारण इस न्यायालय द्वारा किया जाये।

ए.बी.सी. न्यायिक मजिस्ट्रेट प्रथम श्रेणी

धारा 160 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में लोकस्थान पर आपने दंगा किया जो धारा 160 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 186 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में रामलाल प्रधान आरक्षक जो कि एक लोकसेवक था उसके लोककृत्य के निर्वहन में स्वेच्छया बाधा डाली जो धारा 186 भा. द.स. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 201 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में यह जानते हुए कि एक्स की हत्या की गयी है अथवा विश्वास करने का कारण रखते हुए कि एक्स की हत्या की गयी है उक्त अपराध के किये जाने से संबंधित साक्ष्य को विलोपित किया और ऐसा इस आशय से किया की अभियुक्त को वैध दण्ड से बचाया जा सकें जो धारा 201 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 279 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में लोकमार्ग पर वाहन मोटर साइकिल एम.पी. 09 एम.ए. 3286 उतावलेपन या उपेक्षा से इस प्रकार चलाया जिससे मानव जीवन संकटापन्न हो जाये या किसी अन्य व्यक्ति को उपहति या क्षति कारित होना संभाव्य हो जाये जो धारा 279 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 294 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में लोकस्थान गांधी चौराहा या उसके समीप अश्लील शब्द उच्चारित किए जिससे परिवादी एक्स और अन्य को क्षोभ कारित हुआ जो धारा 294 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 304 ए भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में वाहन, कार एम. पी. 20 एम.ए. 2062 उतावलेपन या उपेक्षा से चलाकर एक्स को टक्कर मारकर उसकी मृत्यु कारित की जो आपराधिक मानव वध की कोटि में नहीं आती है जो धारा 304 ए भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 309 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में सल्फास की गोलियां खाकर आत्महत्या का प्रयत्न किया जो धारा 309 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 323 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय को स्वेच्छया उपहति कारित की जो धारा 323 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 324 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय को चाकू से जो की काटने का एक उपकरण है, स्वेच्छया उपहति कारित की जो धारा 324 भा. द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 325 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय को स्वेच्छया घोर उपहति कारित की जो धारा 325 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 332 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय को जो एक लोकसेवक था और पदीय कर्त्तव्य के निर्वहन में कार्य कर रहा है आपने इस आशय से की उसे लोकसेवक के कर्त्तव्य के निर्वहन से निवारित या भयोपरत करें उसे स्वेच्छया उपहति कारित की जो धारा 332 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 337 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में वाहन, कार एम. पी. 20 एम.ए. 2062 उतावलेपन या उपेक्षा से चलाकर एक्स को टक्कर मारकर उसे उपहति कारित की जो धारा 337 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 338 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में वाहन, कार एम. पी. 20 एम.ए. 2062 उतावलेपन या उपेक्षा से चलाकर एक्स को टक्कर मारकर उसे घोर उपहति कारित की जो धारा 338 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 341 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता वाए को सदोष अवरूद्ध किया जो धारा 341 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 342 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय को सदोष परिरूद्ध किया जो धारा 342 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 352 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय पर हमला या आपराधिक बल प्रयोग किया जो धारा 352 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 353 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय को जो एक लोकसेवक था और पदीय कर्त्तव्य के निर्वहन में कार्य कर रहा है आपने इस आशय से की उसे लोकसेवक के कर्त्तव्य के निर्वहन से निवारित या भयोपरत करें उस पर हमला या आपराधिक या बल प्रयोग किया जो धारा 353 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 354 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में अभियोक्त्रि की लज्जा भंग करने के आशय से या यह जानते हुए की लज्जा भंग होगी उस पर हमला या आपराधिक बल प्रयोग किया जो धारा 354 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 379 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में स्टेट बैंक ऑफ इंडिया शाखा सिविल लाइन जबलपुर के बाहर परिवादी एक्स पिता व्हाय के आधिपत्य से उसकी सहमति के बिना एक मोटर साइकिल एम.पी. 20 एम.ए. 2062 बेईमानी पूर्वक ले लेने का आशय रखते हुए हटाकर चोरी की जो धारा 379 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 380 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय के आवास गृह से एक सोने की चेन वजन 3 तोला, चार सोने की चूड़िया वजन 3 तोला कुल कीमत 50,000 हजार रूपये नकद 5,000 रूपये चुराये जो धारा 380 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 403 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में एक मोटर साइकिल एम.पी. 20 एम.ए. 2062 या एक सोने की चैन कीमत 10,000 रूपये का बेईमानी पूर्वक दुर्विनियोग किया या उसे अपने उपयोग के लिए संपरिवर्तित किया जो धारा 403 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 406 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में एक मोटर साइकिल एम.पी. 20 एम.ए. 2062 या एक सोने की चैन कीमत 10,000 रूपये जो आपको परिवादी एक्स पिता वाय द्वारा न्यस्त की गई थी का आपराधिक न्यास भंग किया जो धारा 406 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 411 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में एक मोटर साइकिल एम.पी. 20 एम.ए. 2062 या एक सोने की चैन कीमत 10,000 रूपये जो चुराई हुई संपत्ति है इसे चुराई हुई जानते हुए या चुराई हुई होने के विश्वास का कारण रखते हुए बेईमानी से प्राप्त किया या रखा जो धारा 411 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 414 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में एक मोटर साइकिल एम.पी. 20 एम.ए. 2062 या एक सोने की चैन कीमत 10,000 रूपये जो चुराई हुई संपत्ति है इसे चुराई हुई जानते हुए या चुराई हुई होने के विश्वास का कारण रखते हुए उसे छिपाने में या व्ययनित करने में या इधर–उधर करने में स्वेच्छया सहायता की जो धारा 414 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 420 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता वाय को प्रवंचित किया और उसे बेईमानी पूर्वक उत्प्रेरित किया कि वह उसके गहने एक सोने की चैन और एक अंगूठी आपको परिदत्त कर दे जो धारा 420 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 426 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता वाय की सम्पत्ति नष्ट करके उसे रिष्टि कारित की जो धारा 426 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 427 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय की फसल कीमत 5,000 रूपये मवेशियों से चरवाकर नष्ट करके उसे रिष्टि कारित की जो धारा 427 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 428 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय की मुर्गियाँ कीमत 1,000 रूपये का वध करके उसे रिष्टि कारित की जो धारा 428 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 429 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय की भैंस कीमत 5,000 रूपये को विकलांग करके उसे रिष्टि कारित की जो धारा 429 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 447 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय के आधिपत्य की भूमि में अपराध करने या परिवादी को अभित्रस्त, अपमानित करने या क्षुब्ध करने के आशय से प्रवेश करके आपराधिक अतिचार किया जो धारा 447 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 448 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय के आधिपत्य के मकान में जो मानव निवास के रूप में उपयोग में आता है अपराध करने या परिवादी को अभित्रस्त, अपमानित करने या क्षुब्ध करने के आशय से प्रवेश करके गृह अतिचार किया जो धारा 448 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 451 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय के आधिपत्य के मकान में जो मानव निवास के रूप में उपयोग में आता है में उसे उपहति कारित करने या कारावास से दंडनीय कोई अन्य अपराध करने के आशय से प्रवेश करके गृह अतिचार किया जो धारा 451 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 452 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय के आधिपत्य के मकान में जो मानव निवास के रूप में उपयोग में आता है में उसे उपहति कारित करने की या उस पर हमला करने की या उसे सदोष अवरूद्ध करने की या उसे उपहति, हमला या सदोष अवरोध के भय में डालने की तैयारी करके प्रवेश कर गृह अतिचार किया जो धारा 452 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 454 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय के आधिपत्य के मकान में जो मानव निवास के रूप में उपयोग में आता है में उसे उपहति कारित करने या कारावास से दंडनीय कोई अन्य अपराध करने के आशय से प्रवेश करके प्रच्छन्न गृह अतिचार या गृह भेदन किया जो धारा 454 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 455 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय के आधिपत्य के मकान में जो मानव निवास के रूप में उपयोग में आता है में उसे उपहति कारित करने की या उस पर हमला करने की या उसे सदोष अवरूद्ध करने की या उसे उपहति, हमला या सदोष अवरोध के भय में डालने की तैयारी करके प्रवेश कर प्रच्छन्न

गृह अतिचार या गृह भेदन किया जो धारा 455 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में हैं।

धारा 457 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को रात्रि 10 बजे या उसके लगभग सूर्यास्त के पश्चात् एवं सूर्योदय के पूर्व ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय के आधिपत्य के मकान में जो मानव निवास के रूप में उपयोग में आता है में उसे उपहति कारित करने की या कारावास से दंडनीय कोई अन्य अपराध या चोरी करने के आशय से प्रवेश करके रात्रि प्रच्छन्न गृह अतिचार या रात्रि गृह भेदन किया जो धारा 457 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 494 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को रात्रि 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय जो कि आपकी पत्नी है उसके जीवित रहते हुए ऐसी दशा में विवाह किया जो उक्त पत्नी के जीवन काल में किये जाने के कारण शून्य है जो धारा 494 भा.द.सं.में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 497 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को रात्रि 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय से जारकर्म यह जानते हुए या विश्वास करने का कारण रखते हुए कि वह रामलाल की पत्नी है और उक्त जारकर्म में उक्त महिला के पति रामलाल की कोई सम्मति या मोनसुकूलता नहीं थी जो धारा 497 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 498 ए भारतीय दण्ड संहिता

दिनांक 1/1/2013 को रात्रि 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय को जो कि आप अभियुक्त रामलाल की पत्नी एवं अभियुक्त श्यामलाल व मोहन बाई की बहू है उसके साथ क्रूरता की जो धारा 498 ए भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 500 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय पर चोर होने का लान्छन इस आशय से लगाया कि उससे परिवादी की ख्याति की अपहानि की जाये या यह जानते हुए या विश्वास करने का कारण रखते हुए लगाया कि ऐसे लान्छन से परिवादी की ख्याति की अपहानि होगी जो धारा 500 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 504 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय को अश्लील गालियाँ देकर साशय अपमानित किया और इस आशय से

या संभाव्य जानते हुए प्रकोपित किया कि वह लोक शान्ति भंग करे या अन्य कोई अपराध करे जो धारा 504 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 506 भाग–2 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता वाय को जान से मारने की धमकी देकर आपराधिक अभित्रास कारित किया जो धारा 506 भाग–2 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 509 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में अभियोक्त्रि की लज्जा का अनादर करने के आशय से उसे अश्लील शब्द कहे या सीटी बजाई या उस पर आँख मारी या उसे अश्लील चित्र प्रदर्शित किया और ऐसा इस आशय से किया कि अभियोक्त्रि की एकान्तता का अतिक्रमण किया जाये या वे अश्लील शब्द सीटी की आवाज अभियोक्त्रि द्वारा सुनी जाये या आपका आँख मारना या अश्लील चित्र प्रदर्शित करना उसके द्वारा देखा जाये जो धारा 509 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 511 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर मे परिवादी एक्स पिता व्हाय की पेंट की जेब से उसका बटुआ चुराने का प्रयत्न किया जो धारा 379 सहपठित धारा 511 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

कुछ सेशन ट्रायल मामलों के आरोप

धारा 302 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता व्हाय की मृत्यु साशय या जानते हुए कारित की जो धारा 302 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 304 बी भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता व्हाय की मृत्यु उसके विवाह दिनांक 15.11.2010 से 7 वर्ष के भीतर जलने से या जहरीली वस्तु खाने से सामान्य परिस्थितियों से अन्यथा हुई और आप अभियुक्त रामलाल ने जो कि उसके पति एवं आप अभियुक्त श्यामलाल और मोहनबाई ने जो की उसके सास–ससुर हो उसे मृत्यु की पूर्व दहेज के लिए तंग करके उसके साथ क्रूरता की और ऐसा करके आपने दहेज मृत्यु का अपराध किया जो धारा 304 बी भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 306 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता व्हाय ने फांसी लगाकर या सल्फास की गोलियां खाकर आत्महत्या की और आप अभियुक्त रामलाल ने जो की उसके पति और अभियुक्त श्यामलाल और मोहनबाई ने जो की

सास–ससुर को उसे मायके से दहेज लाने के लिए प्रताड़ित करके उसे आत्महत्या के लिए दुष्प्रेरित किया जो धारा 306 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 307 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग ग्राम पनागर तहसील व जिला जबलपुर में परिवादी एक्स पिता व्हाय को साशय या ज्ञान पूर्वक चाकू से पेट में ऐसी परिस्थितियों वार किया कि यदि एक्स की मृत्यु हो जाती तो तुम हत्या के अपराध के दोषी होते और उक्त कृत्य द्वारा आपने एक्स को गंभीर उपहति कारित की और ऐसा करके हत्या के प्रयत्न का अपराध किया जो धारा 307 भा.द.सं. में दंडनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 333 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय को जो एक लोकसेवक था और पदीय कर्त्तव्य के निर्वहन में कार्य कर रहा है आपने इस आशय से की उसे लोकसेवक के कर्त्तव्य के निर्वहन से निवारित या भयोपरत करें उसे स्वेच्छया घोर उपहति कारित की जो धारा 333 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 363 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय को जो कि 15 वर्ष का था उसके विधिपूर्ण संरक्षक पिता सोहनलाल की संरक्षकता से व्यपहरण किया जो धारा 363 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 366 भारतीय दण्ड संहिता

दिनांक 1/1/2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी अभियोक्त्रि को आप अभियुक्त श्यामलाल के साथ परिवादी एक्स की इच्छा के विरूद्ध उससे विवाह करने के लिए विवश करने के आशय से अपहरण किया जो धारा 366 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 376 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी अभियोक्त्रि के साथ बलात्संग किया जो धारा 376 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 394 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय से एक सोने की चेन 3 तोला कीमत 60,000 रूपये उसे चाकू अड़ाकर तत्काल उपहति के भय में डालकर लूटी और लूट के दौरान उसे स्वेच्छया उपहति कारित की जो धारा 394 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 395 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय से एक सोने की चेन 3 तोला कीमत 60,000 रूपये उसे चाकू अड़ाकर तत्काल उपहति के भय में डालकर लूटी और लूट के समय और लूट करने में आप अभियुक्त रामलाल, श्यामलाल, मोहनलाल, सोहनलाल और रफीक लूट में शामिल थे और ऐसा करके आपने डकैती का अपराध किया जो धारा 395 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 399 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को रात्रि 11:30 बजे ग्राम पनागर तहसील जबलपुर में गांव के बाहर आप अभियुक्त रामलाल सह अभियुक्तगण के साथ घातक आयुधों से सज्जित होकर रामनाथ गोयल पिता श्यामनाथ निवासी ग्राम पनागर के यहाँ डकैती करने की तैयारी कर रहे थे जो धारा 399 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 402 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को रात्रि 11:30 बजे ग्राम पनागर तहसील जबलपुर में गांव के बाहर आप अभियुक्त रामलाल सह–अभियुक्तगण के साथ घातक आयुधों से सज्जित होकर रामनाथ गोयल पिता श्यामनाथ निवासी ग्राम पनागर के यहाँ डकैती करने के लिए एकत्रित हुए थे जो धारा 402 भा.द.सं.में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 409 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में जिला न्यायालय जबलपुर में नाजिर के पद पर एक लोकसेवक रहते हुए लोकसेवक के रूप में न्यस्त की गई राशि रूपये 20,000 का आपराधिक न्यास भंग किया जो धारा 409 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 435 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय की गेहूँ की फसल कीमत 10,000 रूपये जलाकर अग्नि द्वारा रिष्टि कारित की जो धारा 435 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 436 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में परिवादी एक्स पिता व्हाय के गोदाम में जो कि सम्पत्ति की अभिरक्षा के लिए उपयोग में आता है में आग लगाकर गेहूँ कीमत 10,000 रूपये जलाकर अग्नि द्वारा रिष्टि कारित की जो धारा 436 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 467 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में रामलाल पिता श्यामलाल के नाम की एक विल की साशय और ज्ञान पूर्वक कूटरचना की जो धारा 467 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 468 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में रामलाल पिता श्यामलाल के नाम की एक विल की साशय और ज्ञान पूर्वक कूटरचना इस आशय से की उस दस्तावेज को छल के लिए उपयोग में लिया जाये की जो धारा 468 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

धारा 471 भारतीय दण्ड संहिता

दिनांक 1.1.2013 को प्रातः 10 बजे या उसके लगभग सिविल लाइन जबलपुर में रामलाल पिता श्यामलाल के नाम की एक विल जो की एक कूटरचित दस्तावेज है उसे कूटरचित जानते हुए या कूटरचित होने के विश्वास के कारण रखते हुए उपयोग में लिया जो धारा 471 भा.द.सं. में दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।

20. उपसंहार

इस प्रकार प्रत्येक न्यायाधीश और मजिस्ट्रेट को उक्त वैधानिक स्थितियों को ध्यान में रखते हुए आरोप विरचित करना चाहिए आरोप विरचित करते समय प्रथम सूचना, जप्ती, पुलिस कथन, मेडीकल प्रतिवेदन, परिवाद पत्र, और अन्य सभी दस्तावेजों का ध्यान पूर्वक अवलोकन करना चाहिए और जहाँ कहीं यह संदेह हो कि दो में से कौन सा आरोप बनता है वहाँ वैकल्पिक आरोप विरचित कर लेना चाहिए। अभियुक्त या अभियुक्त गण पर जितने भी संभावित आरोप उक्त सामग्री से बनते हों वे सभी स्पष्ट रूप से लगाना चाहिए आरोप पत्र में किसी भी प्रकार की संदिग्धता नहीं रहना चाहिए। आरोप विरचित करना एक महत्वपूर्ण स्टेज है इस स्टेज पर अत्यन्त सावधानी पूर्वक कार्य करना चाहिए ऊपर जो प्रारूप दिये गये है वे केवल मार्गदर्शक है प्रत्येक मामलों के तथ्यों और परिस्थितियों में उनमें आवश्यक परिवर्तन कर लेना चाहिए। आरोप लगाने के दिन **धारा 294 दण्ड प्रक्रिया संहिता 1973** के प्रावधानों का उचित मामलों में प्रयोग करना चाहिए औपचारिक प्रकृति के दस्तावेजों को स्वीकार करने के लिए अभियोजक और बचाव पक्ष का ध्यान उन पर आकर्षित करवाना चाहिए।

मामले में परिवादी और प्रत्यक्ष साक्षीगण को पहले कथन के लिए बुलवाना चाहिए ताकि मामले में यदि समझौता हो जाए तो औपचारिक गवाहों को कथन के लिए बुलाने से बचा जा सकता है।

कर्म करो तो ऐसे करो जैसे सब कुछ आपके हाथ में है और प्रार्थना करो तो ऐसे करो जैसे सब कुछ भगवान के हाथ में है।

एक विद्वान

•

अभिवचनों का संशोधन
(आदेश 6 नियम 17 सी.पी.सी.)

प्रदीप कुमार व्यास,
संकाय सदस्य,
न्यायिक अधिकारी प्रशिक्षण एवं
अनुसंधान संस्थान

विचारण न्यायालयों में प्रायः कुछ अन्तर्वर्ती आवेदन सिविल प्रकरणों में अधिकतर प्रस्तुत होते हैं उनमें एक अभिवचनों में संशोधन बाबत् आदेश 6 नियम 17 सी.पी.सी. के तहत प्रस्तुत होता है। यह आवेदन कार्यवाही के किसी भी प्रक्रम पर पेश किया जाता है व इस आवेदन को स्वीकार करने या अस्वीकार करने बावत् प्रश्न प्रत्येक न्यायाधीश के समक्ष उत्पन्न होता है। यहाँ हम इसी आवेदन के निराकरण में ध्यान रखे जाने योग्य वैधानिक स्थितियों पर विचार करेंगें।

आदेश 6 नियम 17 सी.पी.सी. इस प्रकार है :–

न्यायालय कार्यवाहियों के किसी भी प्रक्रम पर, किसी भी पक्षकार को, ऐसी रीति से और ऐसे निबंधनों पर, जो न्याय संगत हो अपने अभिवचनों के परिवर्तित या संशोधित करने के लिये **अनुज्ञात कर सकेगा** और वे **सभी संशोधन किये जायेंगे** जो दोनों पक्षकारों के बीच विवाद के वास्तविक प्रश्न के अवधारण के प्रयोजन के लिए आवश्यक हों:

परंतु विचारण प्रारंभ होने के पश्चात् संशोधन के लिए किसी आवेदन को तब तक अनुज्ञात नहीं किया जायेगा जब तक की न्यायालय इस निर्णय पर न पहुंचे कि सम्यक तत्परता बरतने पर भी वह पक्षकार, विचारण प्रारंभ होने से पूर्व वह विषय नहीं उठा सका था।

धारा 153 सी.पी.सी. के प्रावधान भी ध्यान में रखना चाहिये जिसके अनुसार :–

न्यायालय किसी भी समय और खर्च संबंधी ऐसी शर्तो पर या अन्यथा जो वह ठीक समझे वाद के किसी भी कार्यवाही में की किसी भी त्रुटि या गलती को संशोधित कर सकेगा और ऐसी कार्यवाही द्वारा उठाये गये या उस पर अवलंबित वास्तविक प्रश्न या विवाद्यक के अवधारण के प्रयोजन के लिये सभी आवश्यक संशोधन किये जायेंगे।

1. प्रावधान की प्रकृति

आदेश 6 नियम 17 सी.पी.सी. का अवलोकन करे तो यह स्पष्ट होता है कि यह प्रावधान आंशिक रूप से आज्ञापक और आंशिक रूप से विवेकाधिकार पर आधारित है माननीय सर्वोच्च न्यायालय ने न्याय दृष्टांत राजेश कुमार अग्रवाल विरूद्ध के.के. मोदी, ए.आई.आर. 2006 एस.सी. 1647 में भी यह बतलाया है कि यह प्रावधान आंशिक रूप से आज्ञापक व आंशिक रूप से वैवेकीय है।

2. लिखित आवेदन व शपथ पत्र की आवश्यकता

संशोधन के लिये किसी पक्षकार का लिखित आवेदन होना आवश्यक है न्यायालय स्वप्रेरणा से अभिवचनों को संशोधित नहीं कर सकता है। न्याय दृष्टांत सलेम एडवोकेट बार एसोसिएशन विरूद्ध यूनियन ऑफ इंडिया, ए.आई.आर. 2005 एस.सी. 3353 तीन न्यायमूर्तिगण की पीठ ने यह भी प्रतिपादित किया है कि संशोधन आवेदन के साथ शपथ पत्र आवश्यक है यह शपथ पत्र शपथकर्ता पर एक अतिरिक्त दायित्व डालता है कि आवेदन में कहे गये तथ्य सत्य है।

न्यायालय किसी पक्ष को ऐसे निर्देश नहीं दे सकती कि न्यायालय की इच्छानुसार वह उसके अभिवचनों को संशोधित करे इस संबंध में न्याय दृष्टांत सीताराम विरूद्ध दामोदर प्रसाद, 1994 (1) डब्ल्यू. एन. 76 अवलोकनीय हैं।

इस तरह अभिवचनों में संशोधन के लिये एक लिखित आवेदन और समर्थन में शपथ पत्र होना आवश्यक होता हैं।

एक बार संशोधन स्वीकार हो जाने के बाद वह पक्ष उसे प्रत्याहरण (विड्रा) नहीं कर सकता उसे आदेश का पालन करना होगा इस संबंध में न्याय दृष्टांत **राजपाल विरूद्ध जगदीश, 1996 (2) डब्ल्यू.एन. 10 अ**वलोकनीय हैं।

कोई पक्षकार स्वयं के अभिवचनों में संशोधन कर सकता है विपक्षी के अभिवचनों में संशोधन नहीं कर सकता है।

3. परंतुक के बारे में

वर्ष 2002 में आदेश 6 नियम 17 सी.पी.सी. में संशोधन करके एक परंतुक जोड़ा गया है। जिस पर हमें विचार करना होगा परंतुक इस प्रकार है :–

''परंतु विचारण प्रारंभ होने के पश्चात् संशोधन के लिये किसी आवेदन को तब तक अनुज्ञात नहीं किया जायेगा जब तक की न्यायालय इस निष्कर्ष पर नहीं पहुंचे कि सम्यक तत्परता बरतने पर भी वह पक्षकार, विचारण प्रारंभ होने से पूर्व वह विषय नहीं उठा सका था।''

न्याय दृष्टांत **जसप्रीत कोर विरूद्ध राम कृष्ण 2010 (3) एम.पी.एल.जे. 387 डी.बी**. के अनुसार परंतुक केवल विचारण प्रारंभ होने के पश्चात ही लागू होता है विचारण प्रारंभ होने के पूर्व परंतुक लागू नहीं होता।

न्याय दृष्टांत **सुमेश सिंह विरूद्ध फूलन देवी, ए.आई.आर. 2009 एस.सी. 2831** के अनुसार वर्ष 2002 में जोड़ा गया यह परंतुक इस परंतुक के बाद प्रस्तुत मामलों पर ही लागू होगा न्याय दृष्टांत स्टेट बैंक ऑफ हैदाराबाद विरूद्ध टाउन म्यूनिसिपल काउंसिल, (2007) 1 एस.सी.सी. 765 में भी यह प्रतिपादित किया गया है कि वर्ष 2002 के संशोधन के लागू होने के पूर्व के प्रकरणों पर परंतुक लागू नहीं होगा।

न्याय दृष्टांत **चन्द्रकांत विरूद्ध राजेन्द्र सिंह, ए.आई.आर. 2008 एस.सी. 2234** में यह प्रतिपादित किया गया है कि आदेश 6 नियम 17 सी.पी.सी. में परंतुक जोड़ने का उद्देश्य विलंब को कम करना और प्रकरणों की तेज गति से सुनवाई करना है।

इसी न्याय दृष्टांत में शब्द सम्यक तत्परता का अर्थ एक प्रज्ञावान व्यक्ति उसके मामले में जैसा आचरण करता है उसे बतलाया गया है।

न्याय दृष्टांत **जे. सेम्यूएल विरूद्ध गट्टू महेश, (2012) 2 एस.सी.सी. 300** में माननीय सर्वोच्च न्यायालय ने अनुबंध के विशिष्ट पालन के मामले में शब्द सम्यक तत्परता पर प्रकाश डाला है और यह प्रतिपादित किया है कि पक्षकार जो कोई अनुतोष चाहता है उसे सम्यक तत्पर रहना चाहिये और यह संशोधन के लिए एक आवश्यकता है जिसे अनदेखा नहीं किया जा सकता।

4. विचारण कब प्रारंभ होता है?

न्याय दृष्टांत **विद्या बाई विरूद्ध पद्मलता, ए.आई.आर. 2009 एस.सी. 1433** के अनुसार जिस दिन वाद प्रश्न विरचित किये जाते है उस दिन विचारण प्रारंभ होता है।

न्याय दृष्टांत **अजेन्द्र प्रसाद जी एन. पाण्डे विरूद्ध स्वामी केशव प्रसाद दास जी, ए.आई.आर. 2007 एस.सी. 806** में भी यह प्रतिपादित किया गया है कि विचारण उस दिन प्रारंभ होता है जिस दिन वाद प्रश्न विरचित किये जाते हैं और प्रकरण साक्ष्य के लिये नियत किया जाता है।

इस तरह एक बार वाद प्रश्न विरचित करने के बाद जैसे ही प्रकरण साक्ष्य के लिये नियत कर दिया जाता है विचारण प्रारंभ हो जाता है और विचारण प्रारंभ होने के बाद जो संशोधन आवेदन पेश होता है उसमें यह तथ्य विचार योग्य होता है कि क्या वह संबंधित पक्षकार संशोधन के माध्यम से जो विषय उठाना चाहता है उसे सम्यक तत्परता बरतने पर भी विचारण प्रारंभ होने के पूर्व नहीं उठा सका था यदि ऐसा है तब वह संशोधन स्वीकार किया जायेगा।

अन्य दशा में अर्थात विचारण प्रारंभ होने के पश्चात् यदि आवेदन दिया है और आवेदन में उठाये गये तथ्य विचारण प्रारंभ होने के पूर्व उठाये जा सकते थे तब मुख्य विचारणीय प्रश्न यह रहेगा कि क्या प्रस्तावित संशोधन पक्षकारों में उत्पन्न वास्तविक विवाद के निराकरण के लिये आवश्यक प्रकृति का है और साथ ही उसके स्वीकार करने से दूसरे पक्ष को कोई ऐसी हानि तो नहीं हो रही है जिसकी पूर्ति प्रतिकारात्मक खर्च देकर भी नहीं कराई जा सकती है इन दो कारकों पर विचार करके ही विचारण प्रारंभ होने के पश्चात् दिये गये संशोधन आवेदन स्वीकार या अस्वीकार करना चाहिये सामान्य सिद्धांत जो नीचे दिये गये हैं वे इन आवेदन पर भी लागू होंगे।

5. संशोधन संबंधी सामान्य सिद्धांत

1. न्याय दृष्टांत **रेवाजीतू बिल्डर्स एण्ड डव्लपर्स विरूद्ध मेसर्स नारायण स्वामी, ए.आई.आर. 2009 एस.सी. (सप्लीमेंट) 2897** में माननीय सर्वोच्च न्यायालय ने संशोधन आवेदन को स्वीकार या अस्वीकार करते समय ध्यान रखने योग्य सिद्धांत बतलाये हैं जो इस प्रकार है :–

1. क्या चाहा गया संशोधन प्रकरण के उचित व प्रभावी निराकरण के लिये आवश्यक है।
2. क्या संशोधन आवेदन सद्भावनापूर्ण है या दुर्भावनापूर्ण है।
3. संशोधन ऐसा नहीं होना चाहिये जो दूसरे पक्ष के हितों पर ऐसा प्रतिकूल प्रभाव डाले जिसकी पूर्ति प्रतिकर दिलाकर भी नहीं की जा सकती हो।
4. क्या संशोधन अस्वीकार करे तो इससे लिटिगेशन बढ़ेगा या अन्याय होगा।
5. क्या प्रस्तावित संशोधन मामले की प्रकृति और चरित्र को मूलभूत या संवैधानिक रूप से बदलता है।
6. यह एक सामान्य नियम है कि न्यायालय ऐसे संशोधन स्वीकार नहीं करते है जो संशोधन के आवेदन दिनांक पर अवधि बाधित होते है।

   माननीय सर्वोच्च न्यायालय ने इसी मामले में यह भी कहा है कि ये कुछ महत्वपूर्ण कारक है जो उदाहरण स्वरूप है परिपूर्ण नहीं है, इनको संशोधन आवेदन के निराकरण के समय मस्तिष्क में रखना चाहिये।

   न्याय दृष्टांत पीरगोंडा एच. पाटिल विरूद्ध काला गोंडा एस. पाटिल, ए.आई.आर. 1957 एस.सी. 363 तीन न्यायमूर्तिगण की पीठ में यह प्रतिपादित किया गया है कि :–

1. ऐसे सभी संशोधन स्वीकार किये जाना चाहिये जो पक्षकारों में उत्पन्न वास्तविक विवाद के न्यायपूर्ण निराकरण के लिये आवश्यक हो।
2. जिससे अन्य पक्ष के साथ अन्याय न होता हो।

   ऐसे संशोधन अस्वीकार करना चाहिये यदि उनसे विपक्षी को उसी अवस्था में न रखा जा सकता हो जहां वह पहले था और प्रतिकारात्मक खर्च दिलाकर भी क्षति की पूर्ति न की जा सकती हो।

   यह एक सामान्य नियम है कि ऐसा संशोधन जो अवधि बाधित हो उसे स्वीकार नहीं करना चाहिये।

   अंततः विचारणीय परीक्षण यही है कि क्या संशोधन विपक्षी के साथ अन्याय किये बिना स्वीकार किया जा सकता है या नहीं।

न्याय दृष्टांत पंजाब नेशनल बैंक विरूद्ध इंडियन बैंक (2003) 6 एस.सी.सी. 79 भी इस संबंध में अवलोकनीय हैं।

6. विलंब से संशोधन आवेदन प्रस्तुत होने पर

न्याय दृष्टांत देल्ही **डव्लपमेंट अथार्टी विरूद्ध एस.एस. अग्रवाल, ए.आई.आर. 2011 एस.सी. 3265** में यह प्रतिपादित किया गया है विलंब पर विचार किये बिना संशोधन आवेदन स्वीकार नहीं किया जाना चाहिये।

न्याय दृष्टांत **गायत्री विमन्स वेलफेयर एशोसिएशन विरूद्ध गोवरम्मा, ए.आई.आर. 2011 एस.सी. 785** में अपील के प्रक्रम पर प्रतिवादी ने लिखित कथन में प्रतिदावा आधिपत्य के अनुतोष हेतु जोड़ने की प्रार्थना संशोधन आवेदन के माध्यम से की थी।

वादी का आधिपत्य लंबे समय से स्थापित व अबाधित था उसके पक्ष में स्थायी व्यादेश की आज्ञप्ति थी संशोधन आवेदन विलंब से देने का कारण भी नहीं बताया था संशोधन अस्वीकार किया गया।

न्याय दृष्टांत **महावीर प्रसाद विरूद्ध रतन लाल, ए.आई.आर. 2009 एस.सी. (सप्लीमेंट) 2117** में विभाजन के वाद में प्रारंभ डिक्री पारित होने के 21 वर्ष बाद संशोधन आवेदन दिया जो अस्वीकार किया गया।

न्याय दृष्टांत **श्रीमती आमना बेगम विरूद्ध श्रीमती सुशीला बाई, ए.आई.आर. 2010 एम.पी. 141** डी.बी. के मामले में वादी का प्रमाण पूर्ण हो जाने के बाद प्रतिवादी ने लिखित कथन में संशोधन चाहा तथ्य पश्चातवर्ती घटना से संबंधित भी नहीं था विलंब का कारण भी नहीं दिया गया था संशोधन अस्वीकार करना उचित माना गया।

न्याय दृष्टांत **सुरेन्द्र कुमार शर्मा विरूद्ध माखन सिंह, ए.आई.आर. 2009 एस.सी. (सप्लीमेंट) 2671** तीन न्यायमूर्तिगण की पीठ में यह प्रतिपादित किया गया है विलंब अपने आप में संशोधन आवेदन को अस्वीकार करने का पर्याप्त आधार नहीं है न्यायालय को यह देखना चाहिये कि क्या ऐसा संशोधन पक्षकारों में उत्पन्न वास्तविक विवाद का समाधान कर सकता है। क्या विरोधी पक्षकार को प्रतिकारात्मक खर्च दिलाकर कम्पनसेट किया जा सकता है। न्याय दृष्टांत साउथ कोंकण डिस्टलरी विरूद्ध प्रभाकर गजानंद नायक, ए. आई.आर. 2009 एस.सी. 1177 के मामले में भी माननीय सर्वोच्च न्यायालय ने भी यह प्रतिपादित किया है कि ऐसा कोई आत्यंतिक नियम नहीं है कि जहां संशोधन द्वारा चाहा गया अनुतोष परिसीमा अवधि द्वारा बाधित हो ऐसे प्रत्येक मामले में संशोधन अस्वीकार ही करना चाहिये जहां संशोधन से न्याय के उद्देश्य की पूर्ति हो रही हो और आगामी लिटिगेशन रोका जा सकता हो वहां ऐसा संशोधन भी स्वीकार करना चाहिये।

न्याय दृष्टांत **नार्थ इस्टर्न रेल्वे एडमिनिशट्रेशन विरूद्ध भगवान दास, ए.आई.आर. 2008 एस.सी. 2139** में यह प्रतिपादित किया है कि यदि संशोधन पक्षकारों में उत्पन्न विवाद के निराकरण के लिये आवश्यक हो और विपक्षी के साथ अन्याय पूर्ण न हो तब अपील के प्रक्रम पर भी स्वीकार किया जा सकता है।

न्याय दृष्टांत **हसमत राई विरूद्ध रघूराथ, ए.आई.आर. 1981 एस.सी. 1711 में म.प्र.** स्थान नियंत्रण के मामले में द्वितीय अपील में संशोधन पश्चातवर्ती घटना पर आधारित होने से जोड़ा गया था।

न्याय दृष्टांत **उक्त राजकुमार विरूद्ध मेसर्स एस.के. स्वर्गी, ए.आई.आर. 2008 एस.सी. 2303** के मामले में अंतिम तर्क के प्रक्रम पर संशोधन चाहा गया था जबकि तथ्य पूर्व से पक्षकार के ज्ञान में थे ऐसा संशोधन अस्वीकार किया गया।

न्याय दृष्टांत **उक्त चन्द्रकांत विरूद्ध राजेन्द्र सिंह, ए.आई.आर. 2008 एस.सी. 2234** के मामले में प्रतिवादी ने आज्ञापक व्यादेश के प्रकरण में प्रमाण समाप्त होने के बाद विभाजन अनुबंध के बारे में संशोधन और उसे पेश करने का अनुतोष चाहा प्रतिवादी ने उसके प्रमाण में विभाजन अनुबंध के बारे में कुछ नहीं कहा था संशोधन में विलंब का कारण भी नहीं दर्शाया था ऐसा संशोधन अस्वीकार किया गया।

7. गुणदोष पर विचार

न्याय दृष्टांत उक्त राजेश कुमार अग्रवाल विरूद्ध के.के. मोदी, ए.आई.आर. 2006 एस.सी. 1674 में यह प्रतिपादित किया गया है कि संशोधन स्वीकार करते समय उसके गुणदोष पर विचार नहीं करना चाहिये यही विधि उक्त न्याय दृष्टांत आंध्रा बैंक विरूद्ध ए.बी.एन. अमरो बैंक, ए.आई.आर. 2007 एस.सी. 2511 में भी प्रतिपादित की गई है इन दोनों मामलों में यह कहा गया है कि मुख्य विचार केवल यह करना चाहिये कि क्या संशोधन वास्तविक विवाद के निराकरण में आवश्यक है या नहीं।

न्याय दृष्टांत उषा देवी विरूद्ध रिजवान अहमद, ए.आई.आर. 2008 एस.सी. 1147 में भी यही विधि प्रतिपादित की गई है कि संशोधन आवेदन पर विचार करते समय उसके गुणदोष विचार योग्य तथ्य नहीं होते है।

न्याय दृष्टांत **उमा गुप्ता विरूद्ध सुशीला, 1989 जे.एल.जे. 617** के अनुसार संशोधन की सत्यता व असत्यता पर या गुणदोष पर आवेदन पर विचार करते समय विचार नहीं करना चाहिये।

8. अवधि बाधित संशोधन

न्याय दृष्टांत **वन विभाग कर्मचारी गृह निर्माण सहकारी संस्था मर्यादित विरूद्ध रमेश चंद, ए.आई.आर. 2011 एस.सी. 41** में एक घोषणा और निषेधाज्ञा के वाद में अनुबंध के विनिर्दिष्ट पालन का दावा करने में वादी ने लोप किया यह माना जायेगा की वादी ने वह दावा त्याग दिया है 11 वर्ष बाद संशोधन आवेदन पेश करके अनुबंध पालन का दावा जोड़ना चाहा ऐसा संशोधन स्वीकार नहीं किया जा सकता क्योंकि यह परिसीमा अधिनियम, 1963 के अनुच्छेद 54 के अनुसार अवधि बाधित हो चुका है।

न्याय दृष्टांत **के. राहेजा कंस्ट्रेक्शन लिमिटेड विरूद्ध एलीयंस मिनिस्टर्स, ए.आई.आर., 1995 एस.सी. 1768** में निषेधाज्ञा के एक वाद में 7 वर्ष बाद अनुबंध पालन संबंधी संशोधन जोड़ना चाहा था जो अस्वीकार किया गया।

न्याय दृष्टांत अम्बया काल्या मात्रे विरूद्ध स्टेट ऑफ महाराष्ट्र, (2011) 9 एस.सी.सी. 325 में तीन न्यायमूर्तिगण की पीठ ने भूमि अधिग्रहण अधिनियम, 1894 के एक मामले में यह प्रतिपादित किया की रेफरेंस आवेदन में प्रतिकर की राशि में संशोधन का आवेदन, भूमि स्वामी के लिये यह आवश्यक नहीं है कि वह रेफरेंस आवेदन में प्रतिकर की राशि विशेष रूप से बतलाये अतः प्रतिकर की राशि के संशोधन के बारे में कोई परिसीमा लागू नहीं होती है।

इसी मामले में यह भी कहा गया है कि ऐसा संशोधन जिसके द्वारा एक प्रकृति की आपत्ति से दूसरी प्रकृति की आपत्ति जोड़ना चाही हो वह धारा 18 में उल्लेखित परिसीमा अवधि के बाद अनुमति के योग्य नहीं होती हैं।

अतः भूमि अधिग्रहण अधिनियम से संबंधित मामलों में उक्त दोनों ही स्थितियों में संशोधन के समय ध्यान रखना चाहिये।

न्याय दृष्टांत **साउथ कोंकण डिस्टीलरी विरूद्ध प्रभाकर गजानंद नायक, ए.आई.आर. 2009 एस.सी. 1177** के मामले में फर्म के विघटन के मामले में प्रतिवादी ने लिखित कथन में भविष्य के हानि का क्लेम जोड़ने की प्रार्थना 13 वर्ष बाद की थी जो अवधि बाधित क्लेम था विलंब का स्पष्टीकरण भी नहीं दिया गया था ऐसा संशोधन अस्वीकार किया गया।

न्याय दृष्टांत **शिव गोपाल साह विरूद्ध सीताराम, ए.आई.आर. 2007 एस.सी. 1478** में निष्कासन के एक वाद में प्रतिवादी ने विक्रय पत्र के आधार पर विरोधी स्वत्व दर्शाया वादी और सहवादी 15 वर्ष तक मौन रहे 15 वर्ष बाद विक्रय पत्र बोगस है ऐसी घोषणा का संशोधन चाहा विलंब का कोई कारण नहीं दर्शाया वादी ऐसा अवधि बाधित क्लेम नहीं जोड़ सकता।

न्याय दृष्टांत **आशुतोष विरूद्ध प्राणोदेवी, ए.आई.आर. 2008 एस.सी. 2171** में वादी ने स्वत्व घोषणा और प्रतिवादी द्वारा तृतीय पक्ष के हित में किये गये विक्रय पत्र को अपास्त करवाने का अनुतोष चाहा वादी ने 13 वर्ष बाद धारा 22 हिन्दू उत्तराधिकारी अधिनियम, 1956 के प्रकाश में क्रय करने के अधिमानी अधिकार (प्रीफरेन्शियल राइट) का संशोधन जोड़ना चाहा वादी का पक्ष था की वह संपत्ति का सहस्वामी है उसे संपत्ति क्रय करने का अधिमानी अधिकार है।

सामान्यतः ऐसा अधिकार 1 वर्ष के भीतर दावा किया जाता है ऐसा संशोधन खारिज किया गया।

न्याय दृष्टांत **टी.एन. अलोय फोन्ड्री कंपनी लिमिटेड विरूद्ध टी.एन. इलेक्ट्रीसिटी बोर्ड (2004) 3** एस. सी.सी. 392 में यह प्रतिपादित किया गया है कि सामान्य नियम यह है कि ऐसा संशोधन जो संशोधन आवेदन देने की तारीख पर अवधि बाधित हो उसे स्वीकार नहीं करना चाहिये इस मामले में न्याय दृष्टांत एल.जे. लेच एण्ड कंपनी लिमिटेड विरूद्ध जार्डन स्कीनर एण्ड कंपनी, ए.आई.आर. 1957 एस.सी. 375 पर विश्वास करते हुये उक्त विधि प्रतिपादित की गई हैं।

न्याय **दृष्टांत पंकाजा विरूद्ध येल्लाप्पा, ए.आई.आर. 2004 एस.सी. 4102** में यह प्रतिपादित किया गया है कि स्थायी निषेधाज्ञा के वाद में स्वत्व घोषणा का अनुतोष जोड़ना चाहा स्वत्व संबंधी

तथ्य वाद में पहले से दर्ज थे यह नहीं कहा जा सकता की नया अनुतोष जोड़ा गया है विलंब के आधार पर संशोधन अस्वीकार नहीं कर सकते हैं यदि न्याय के उद्देश्य के लिये आवश्यक हो और लिटिगेशन बढ़ने से रोकने के लिए आवश्यक हो तब अवधि बाधित अनुतोष भी जोड़ सकते हैं।

9. पश्चातवर्ती घटना के बारे में

न्याय दृष्टांत **पी.सी. हवलदार विरूद्ध जोगन दास, ए.आई.आर. 2009 एम.पी. 129 डी.बी**. में यह प्रतिपादित किया है कि पश्चातवर्ती घटना पर आधारित संशोधन स्वीकार किया जाना चाहिये।

न्याय दृष्टांत **कमला बाई विरूद्ध श्रीमती प्रीति रायजादा, आई.एल.आर. 2010 एम.पी. 603** डी.बी. में भी विचारण प्रारंभ होने के बाद दिया गया संशोधन आवेदन पत्र पश्चातवर्ती घटनाक्रम के बारे में होने से स्वीकार करना उचित माना गया सम्यक तत्परता के साथ आवेदन दिया गया था।

न्याय दृष्टांत **संपत कुमार विरूद्ध अय्या कन्नू, ए.आई.आर. 2002 एस.सी. 3369** के मामले में स्थायी व्यादेश के वाद में वादी को बलपूर्वक बेकब्जा कर दिया गया उसने स्वत्व घोषणा व पारिणामिक रूप से आधिपत्य वापसी का संशोधन चाहा जो स्वीकार किया गया।

न्याय दृष्टांत र**घू तिलक डी. जोन विरूद्ध एस. रामप्पन, ए.आई.आर. 2001 एस.सी. 699** के मामले में वादी ने वादग्रस्त संपत्ति पर बनी बाउण्ड्री वाल को गिराने से प्रतिवादी को रोकने के स्थायी व्यादेश का वाद पेश किया गया। वाद लंबित रहने के दौरान प्रतिवादी ने बाउण्ड्री वाल गिरा दी वादी ने क्षतिपूर्ति का संशोधन चाहा जो स्वीकार किया गया परिसीमा का प्रश्न वाद प्रश्न बनाकर तय हो सकता है।

न्याय दृष्टांत **राजाराम नारायण विरूद्ध राजाराम, ए.आई.आर. 1996 एम.पी. 12** के मामले में निर्माण से रोकने के लिये निषेधाज्ञा का वाद था वाद लंबन के दौरान निर्माण कर लिया गया आज्ञापक व्यादेश का संशोधन जोड़ना चाहा जो स्वीकार किया गया।

न्याय दृष्टांत **मन्नी लाल दुबे विरूद्ध ज्ञासी राम, 1993 (1) डब्ल्यू.एन. 10** के मामले में वादी ने आधिपत्य की पुनर्स्थापना बावत संशोधन जोड़ना चाहा जिसे स्वीकार किया गया।

यदि प्रतिवादी लिखित कथन में मकान मालिक के स्वत्वों से इंकार करे और मकान मालिक निष्कासन के आधार के रूप में इस बावत् संशोधन करना चाहे तो उसे अनुमति देना चाहिये इस संबंध में न्याय दृष्टांत **रमेश चंद्र विरूद्ध राजेश कुमार, 1995 जे.एल.जे. 583** अवलोकनीय है।

इस प्रकार पश्चातवर्ती घटना के आधार पर यदि संशोधन आवेदन दिया जाता है और सम्यक तत्परता से दिया जाता है तो उसे संशोधन के अन्य सामान्य सिद्धांत को ध्यान में रखते हुये स्वीकार किया जा सकता है।

10. पारिणामिक संशोधन

न्याय दृष्टांत **बिकाराम सिंह विरूद्ध रामबाबू, ए.आई.आर. 1981 एस.सी. 2036** में यह प्रतिपादित किया है कि वाद पत्र में संशोधन होने पर पारिणामिक संशोधन आवेदन स्वीकार करना चाहिये।

जब कभी वाद पत्र में संशोधन आवेदन को स्वीकार किया जावे तब प्रतिवादी को पारिणामिक संशोधन का एक अवसर अवश्य देना चाहिये।

11. प्रतिवादी को सूचना पत्र

न्याय दृष्टांत **हरिराम कीर विरूद्ध स्टेट बैंक ऑफ इंडिया, 2005 (3) एम.पी.एच.टी. 147** में यह प्रतिपादित किया गया है कि जहां प्रतिवादी के विरूद्ध पूर्व से एकपक्षीय कार्यवाही करने के आदेश हो और कोई संशोधन आवेदन दिया जाये जिसमें चाहा गया संशोधन तात्विक प्रकृति का न हो तब प्रतिवादी को पुनः सूचना पत्र देना आवश्यक नहीं होता है लेकिन जहां संशोधन तात्विक प्रकृति का हो वहां प्रतिवादी को पुनः सूचना पत्र देना चाहिये।

न्याय दृष्टांत **बंशीधर विरूद्ध अलोक कुमार, ए.आई.आर. 2011 एम.पी. 144, महेश सिंह विरूद्ध सेवा राम, 2000 (1) एम.पी.एल.जे. 407** भी इस संबंध में अवलोकनीय हैं।

12. आर्थिक क्षेत्राधिकार के बाहर का संशोधन और क्षेत्राधिकार में लाने के लिये संशोधन

कभी–कभी ऐसे संशोधन आवेदन भी प्रस्तुत होते हैं जो न्यायालय के आर्थिक क्षेत्राधिकार के बाहर के होते हैं ऐसी दशा में न्याय दृष्टांत **कृष्ण कुमार विरूद्ध मंगल प्रसाद, ए.आई.आर. 2006 एम.पी. 227 (डी.बी.)** से मार्गदर्शन लेना चाहिये जिसके अनुसार ऐसे संशोधन जिनके परिणाम स्वरूप न्यायालय के आर्थिक क्षेत्राधिकार में वृद्धि हो जाती है वे भी स्वीकार किये जा सकते हैं और न्यायालय के लिये यह उचित होता है की वह ऐसे संशोधन स्वीकार करके वाद को उचित न्यायालय में पेश करने के लिए लौटा दे।

न्याय दृष्टांत **वीरेन्द्र कुमार विरूद्ध शारदा बाई, 1993 (1) डब्ल्यू.एन. 190** में यह प्रतिपादित किया गया है कि ऐसा संशोधन जो वाद को न्यायालय के क्षेत्राधिकार में लाने के लिये प्रस्तावित हो उससे इंकार नहीं करना चाहिये और एक बार ऐसा संशोधन स्वीकार करने के बाद उसका प्रभाव दावा दायर करने के समय से हो जाता हैं।

न्याय दृष्टांत **दुर्गा प्रसाद विरूद्ध कुमारी स्वाती गुप्ता, 1993 (2) डब्ल्यू.एन. 29** के अनुसार यदि वाद का मूल्यांकन कम करने का संशोधन चाहा जाये तो इसे स्वीकार किया जा सकता है वाद की प्रचलनशीलता को विपक्षी चाहे तो चुनौती दे सकता हैं।

13. वाद व संविदा दोनों में संशोधन

न्याय दृष्टांत **पूरन राम विरूद्ध भागू राम, ए.आई.आर. 2008 एस.सी. 1960** के मामले में अनुबंध के विनिर्दिष्ट पालन के वाद में संपत्ति के विवरण में त्रुटि थी वादी ने वाद और संविदा दोनों में संशोधन आवेदन दिया।

धारा 26 विनिर्दिष्ट अनुतोष अधिनियम, 1963 के प्रकाश में संविदा में भी संशोधन स्वीकार किया जा सकता है अतः वाद और संविदा दोनों में संशोधन स्वीकार किया गया।

जहाँ पारस्परिक त्रुटि या म्युचुअल मिस्टेक के कारण सम्पत्ति का गलत विवरण दर्ज किया गया हो वहाँ उसे संशोधित किया जा सकता है लेकिन संविदा के पालन के वाद को घोषणा के वाद में नहीं बदला जा सकता जैसा कि उक्त न्याय दृष्टांत के चरण 13 से स्पष्ट होता है।

इस तरह जहां मामला उक्त धारा 26 से कवर होता हो वहां ऐसा संशोधन भी स्वीकार किया जा सकता है।

14. साक्ष्य के बारे में अभिवचन

न्याय दृष्टांत **गोपाल शर्मा विरूद्ध श्रीमती सावित्री देवी, 1994 (1) डब्ल्यू.एन. 192** के अनुसार चाहा गया संशोधन पूर्व से अभिवचन में था साक्ष्य के बारे अभिवचन किया जाना आवश्यक नहीं होता है ऐसा संशोधन उचित रूप से अस्वीकार किया गया।

15. न्याय शुल्क से बचने के लिए संशोधन

न्याय दृष्टांत **अशोक कुमार विरूद्ध हरिशंकर, 1987 (2) एम.पी.डब्ल्यू.एन. 33** में यह प्रतिपादित किया गया है कि मूल्य अनुसार न्याय शुल्क देने से बचने के लिये संशोधन आवेदन दिया ऐसा संशोधन अस्वीकार किया जाना चाहिये।

16. विधिक स्थिति के बारे में संशोधन

संशोधन के माध्यम से विधिक स्थिति समाविष्ट करना चाहा विधि या विधि की स्थिति अभिवचन करना आवश्यक नहीं होता है ऐसा संशोधन न्याय संगत नहीं कहा जा सकता इस संबंध में न्याय दृष्टांत **मालती विरूद्ध एम.पी.ई.बी. 1996 (1) डब्ल्यू.एन. 8** अवलोकनीय है।

व्यवहार वाद में माननीय सर्वोच्च न्यायालय के कुछ निर्णयों का सार संशोधन के माध्यम से जोड़ना कोई पक्ष यदि चाहे तो उसे ऐसी अनुमति नहीं दी जानी चाहिये क्योंकि यह अभिवचनों के सिद्धांत के विरूद्ध है।

17. लिखित कथन में संशोधन

न्यायालय को वाद पत्र की तुलना में लिखित कथन में संशोधन की अनुमति देते समय अधिक उदार रहना चाहिये जैसा कि न्याय दृष्टांत **सुशील कुमार विरूद्ध मनोज कुमार, ए.आई.आर. 2009 एस.सी. 2544** में प्रतिपादित किया गया है।

न्याय दृष्टांत **उषा बाला साहेब स्वामी विरूद्ध किरण ए. स्वामी, ए.आई.आर. 2007 एस.सी. 1663** में भी कहा गया है कि वाद पत्र के संशोधन और लिखित कथन के संशोधन दोनों की प्रार्थना में अंतर होता है लिखित कथन के संशोधन के समय न्यायालय को अधिक उदार रहना चाहिये प्रतिवादी वैकल्पिक बचाव, अतिरिक्त बचाव ले सकता है वाद की प्रकृति में परिवर्तन वाद पत्र के संशोधन के समय ध्यान रखना होता है।

न्याय दृष्टांत **सुशील कुमार विरूद्ध एम.पी. राज्य सहकारी बैंक, आई.एल.आर. 2008 एम.पी. 2238** भी अवलोकनीय है।

न्याय दृष्टांत **आंध्रा बैंक विरूद्ध ए.बी.एन. अमरो बैंक एन.व्ही., ए.आई.आर. 2007 एस.सी. 2511** के अनुसार प्रतिवादी नया बचाव ले सकता है।

न्याय दृष्टांत **विमल चंद जैन विरूद्ध रमाकांत जाजू, ए.आई.आर. 2009 एस.सी. (सप्लीमेंट) 1550** के अनुसार यह स्थापित विधि है कि प्रतिवादी वैकल्पिक बचाव ले सकता है लेकिन संशोधन द्वारा ऐसे बचाव लेने की अनुमति नहीं दी जा सकती जो एक दूसरे को नष्ट करने वाले हो।

न्याय दृष्टांत **अरविन्द कुमार विरूद्ध निमाड़ वनिता विश्व खण्डवा, 2004 (3) एम.पी.जे.आर. 176** के अनुसार वैकल्पिक/असंगत बचाव संशोधन के माध्यम से लिये जा सकते हैं लेकिन यदि वे दूसरे पक्ष के हितों को गंभीर रूप से प्रभावित करते हो तब न्यायालय ऐसे संशोधन अस्वीकार कर सकता है।

न्याय दृष्टांत **ट्रांस मेरिन कार्पोरेशन विरूद्ध जेनसर टेक्नोलॉजीसा लिमिटेड, ए.आई.आर. 2009 एस. सी. (सप्लीमेंट) 2552** के मामले में निष्कासन के वाद में मकान मालिक किरायेदार के संबंध स्वीकार किये गये किरायेदार पश्चात्वर्ती प्रक्रम पर स्वत्व को चुनौती नहीं दे सकता स्वत्व को चुनौती देने वाला ऐसा संशोधन आवेदन स्वीकार नहीं करना चाहिये।

न्याय दृष्टांत **श्रीमती सुशीला बाई विरूद्ध खलील अहमद, 2011 (3) एम.पी.एच.टी. 387** के मामले में प्रतिवादी ने लिखित कथन देने के बाद कांउटर क्लेम जोड़ना चाहा था जिस प्रार्थना को अस्वीकार किया गया था।

न्याय दृष्टांत **बोल्ले पाण्डा पी. पोनाछा विरूद्ध के.एम. माण्डप्पा, ए.आई.आर. 2008 एस.सी. 2003** के मामले में वादी ने स्वत्व घोषणा और आधिपत्य का वाद पेश किया प्रतिवादी ने लिखित कथन दिया बाद में संशोधन द्वारा आधिपत्य की पुनः प्राप्ति का काउंटर क्लेम जोड़ना चाहा उसका मामला था कि वादी ने बाद में अतिक्रमण कर लिया यह अभिमत दिया गया कि काउंटर क्लेम का वाद कारण लिखित कथन पेश करने के पूर्व उत्पन्न होना नहीं कहा जा सकता ऐसा काउंटर क्लेम चलने योग्य नहीं होने से संशोधन अस्वीकार किया गया।

न्याय दृष्टांत **गौतम स्वरूप विरूद्ध लीला जेटली, ए.आई.आर. 2009 एस.सी. (सप्लीमेंट) 363** के मामले में वादी उसके पिता द्वारा की गई वसीयत के आधार पर संपत्ति में उसका आधा हिस्सा है ऐसा मामला लेकर आया था प्रतिवादी ने लिखित कथन में विल के निष्पादन से इंकार नहीं किया गया था और वादी का पूरा मामला स्वीकार कर लिया था।

प्रतिवादी ने दूसरा लिखित कथन पेश करने की अनुमति का आवेदन दिया जो निरस्त किया गया प्रतिवादी ने लिखित कथन में संशोधन का आवेदन स्वीकारोक्ति के स्पष्टीकरण के बावत् दिया जो अस्वीकार किया गया प्रतिवादी का पक्ष यह था कि उसने कोई अभिभाषक नियुक्त नहीं किये लिखित कथन नहीं दिया लिखित कथन पर उसके हस्ताक्षर नहीं है।

न्याय दृष्टांत **दिलीप भारती विरूद्ध श्रीमती मीरा बाई, आई.एल.आर. 2011 एम.पी. 406 डी.बी**. के मामले में प्रतिवादी ने पूरे लिखित कथन को रिप्लेस करने का आवेदन दिया उसका पक्ष था कि उसके अभिभाषक ने उसके ज्ञान में लाये बिना लिखित कथन दिया है यह प्रतिपादित किया गया है कि प्रतिवादी ने उसके साथ कपट होने के बारे में कोई आक्षेप नहीं लगाये है लिखित कथन के प्रत्येक पृष्ठ पर उसके हस्ताक्षर है प्रतिवादी उसके द्वारा की गई स्वीकारोक्ति वापस नहीं ले सकता।

18. विभिन्न प्रकार के मामलों में संशोधन

1. **मोटर दुर्घटना प्रकरणों में संशोधन** :– न्याय दृष्टांत **आनंद कुमार जैन विरूद्ध यूनियन ऑफ इंडिया, ए.आई.आर. 1996 एस.सी. 1125** में एक मोटर दुर्घटना दावा में संशोधन आवेदन पत्र स्वीकार किया गया था अतः ये प्रावधान अर्थात अभिवचनों में संशोधन के प्रावधान क्लेम प्रकरणों पर भी लागू होते हैं।

2. **माध्यस्थ व सुलह अधिनियम, 1996 के मामले** :– न्याय दृष्टांत **स्टेट ऑफ महाराष्ट्र विरूद्ध मेसर्स हिन्दुस्तान कंस्ट्रक्शन कंपनी, ए.आई.आर. 2010 एस.सी. 1299** के मामले में अवार्ड को अपास्त करने के आदेश के विरूद्ध अपील में अपील के मेमोरेण्डम में संशोधन की अनुमति दी गई थी और यह प्रतिपादित किया गया था कि यदि न्यायहित में आवश्यक हो तो ऐसा संशोधन किया जा सकता है ऐसा संशोधन धारा 34 (3) अधिनियम 1996 से पूरी तरह वर्जित नहीं होता है।

   इस मामले में यह भी कहा गया कि अवार्ड को अपास्त करने का बिल्कुल नया आधार जिसके बारे में मूल आवेदन कोई भूमिका न हो अपील के स्तर पर नहीं जोड़ा जा सकता है ऐसा संशोधन अस्वीकार किया गया।

3. **निष्पादन आवेदन में संशोधन** :– संशोधन के सामान्य सिद्धांतों के अधीन रहते हुये निष्पादन आवेदन में भी संशोधन किया जा सकता है इस संबंध में न्याय दृष्टांत **श्रीमती तारकदासी विरूद्ध बट्ट कृष्ण राय, ए.आई.आर. 1964 कलकत्ता 42** अवलोकनीय हैं।

4. **धारा 125 दं.प्र.सं. के आवेदन में संशोधन** :– न्याय दृष्टांत **अहसान अंसारी विरूद्ध स्टेट ऑफ झारखण्ड, 2007 सी.आर.एल.जे. एन.ओ.सी. 766** में यह प्रतिपादित किया गया है कि धारा 125 दं.प्र. सं. के आवेदन में संशोधन आवेदन पत्र चलने योग्य होता हैं।

5. **धारा 138 एन.आई. एक्ट के परिवाद में संशोधन** :– न्याय दृष्टांत **पंडित गोरे लाल विरूद्ध राहुल पंजाबी, 2009 (5) एम.पी.एच.टी. 323** के मामले में अंतिम तर्क की स्टेज पर परिवादी ने चेक नंबर के सुधार के लिये आवेदन दिया ऐसा टंकन त्रुटि सुधार बावत् आवेदन न्याय हित में स्वीकार करना उचित माना गया।

   न्याय दृष्टांत **चन्द्रपाल विरूद्ध अशोक लीलेण्ड, 2012 आई.एल.आर. एम.पी. 302** में यह प्रतिपादित किया गया है कि न्याय हित में परिवाद में संशोधन स्वीकार किया जा सकता है। इस संबंध में न्याय दृष्टांत श्रीमती शशि श्रीवास्तव विरूद्ध जगदीश सिंह, 2007 (4) एम.पी.एच.टी. 480 भी अवलोकनीय हैं।

6. **अपील के मेमोरेण्डम में संशोधन :–** अपील न्यायालय को अपील के मेमोरेण्डम में आदेश 6 नियम 17 और धारा 107 सी.पी.सी. के प्रकाश में संशोधन करने की शक्तियाँ है इस संबंध में न्याय दृष्टांत **ए.आई.आर. 1948 पटना 97 डी.बी**. अवलोकनीय हैं।

7. **चुनाव याचिका में संशोधन :–** न्याय दृष्टांत **(1994) 2 जे.टी. एस.सी. 66** के अनुसार चुनाव याचिका में भी संशोधन के प्रावधान रिप्रजेंटेशन ऑफ पीपुल एक्ट के प्रावधानों के अधीन रहते हुये लागू होते हैं।

8. **लौटाये गये वाद में संशोधन :–** न्याय दृष्टांत **हनामाथप्पा विरूद्ध चन्द्र शेखर अप्पा, ए.आई.आर. 1997 एस.सी. 1307** के अनुसार जो वाद वादी को सक्षम न्यायालय में पेश करने के लिये लौटा दिया जाता है उसमें वह आवश्यक संशोधन करके प्रस्तुत कर सकता है ऐसे वाद को खारिज करना उचित नहीं माना है क्योंकि ऐसे वाद में संशोधन की अनुमति लेने की आवश्यकता नहीं होती है।

19 संशोधन की विधि

न्याय दृष्टांत **गुरंदी लाल सिंह विरूद्ध राजकुमार, ए.आई.आर. 2008 एस.सी. 1003** में यह प्रतिपादित किया गया है कि अभिवचनों में संशोधन की अनुमति मिलने के बाद मूल अभिवचन में संशोधन करना चाहिये उसे लाल स्याही से अंडर लाईन करना चाहिये या हाई लाईट करना चाहिये।

इस मामले में यह भी प्रतिपादित किया गया कि पारिणामिक संशोधन सिर्फ मूल संशोधन की सीमा तक होना चाहिये।

इस तरह संशोधन आवेदन के निराकरण के बाद संबंधित पक्ष से मूल अभिवचन में संशोधन करवाना चाहिये और उन्हें लाल स्याही से अंडर लाईन या हाई लाईट करवाना चाहिये।

20. डॉक्टरिन ऑफ रीलेट बेक

न्याय दृष्टांत **कन्हैया लाल विरूद्ध मुक्ति लाल ए.आई.आर. 2007 एम.पी. 1 डी.बी.** में यह प्रतिपादित किया गया है कि सामान्य नियम यह है कि संशोधन जो वाद पत्र में किया जाता है वह वाद प्रस्तुति दिनांक से माना जाता है जो की डॉक्टरिन ऑफ रीलेट बेक के सिद्धांत के आधार पर होता है लेकिन जहां ऐसा मामला हो जिसमें यह प्रश्न की चाहा गया संशोधन अवधि बाधित है या नहीं विचारण के लिये खुला हो वहां यह सिद्धांत लागू नहीं होता है माननीय सर्वोच्च न्यायालय के विभिन्न न्याय दृष्टांतों पर विचार करते हुये यह विधि प्रतिपादित की गई।

न्याय दृष्टांत **चिमन लाल विरूद्ध मिश्री लाल, 1985 जे.एल.जे. (एस.सी.) 74** के अनुसार म.प्र. स्थान नियंत्रण अधिनियम के मामले में संशोधन किया गया संशोधन वाद दिनांक से रीलेट बेक होता है लेकिन यह अवैध मांग सूचना पत्र को वैध नहीं कर सकता है दोनों अलग–अलग बाते हैं।

21. प्रतिकारात्मक खर्च लगाने के बारे में

न्याय दृष्टांत **उक्त रेवा जीतू बिल्डर्स विरूद्ध नारायण स्वामी, ए.आई.आर. 2009 एस.सी. (सप्लीमेंट) 2897** में माननीय सर्वोच्च न्यायालय ने प्रतिकारात्मक खर्च अधिरोपित करने के उद्देश्य बताये है जो इस प्रकार है :–

1. ऐसे संशोधन जो दुर्भावना पूर्वक विधिक कार्यवाही को विलंबित करने के लिये पेश होते है उन्हें निरूत्साहित करना।
2. विरोधी पक्ष को विलंब और उसे हुई असुविधा के लिये क्षतिपूर्ति दिलवाना।
3. संशोधन के प्रकाश में उसके विरोध स्वरूप कार्यवाही में लगने वाले खर्च दिलवाना।
4. पक्षकारों को यह स्पष्ट संदेश देना की वे उनके मूल अभिवचन तैयार करने में सावधान रहे।

इस तरह संशोधन आवेदन स्वीकार करते समय प्रतिकारात्मक खर्च अधिरोपित करने में उक्त उद्देशों को ध्यान में रखना चाहिये।

22. विविध

संशोधन स्वीकार करने या न करने के बारे में कुछ अन्य स्थितियाँ निम्न प्रकार से हैः–

न्याय दृष्टांत **उक्त विद्या बाई विरूद्ध पदमलता, ए.आई.आर. 2009 एस.सी. 1433** के मामले में वादी के मुख्य परीक्षण का शपथ पत्र पेश करने के बाद प्रतिवादी ने लिखित कथन में संशोधन चाहा था जो आदेश 6 नियम 17 सी.पी.सी. के परंतुक के तहत वर्जित है यह संशोधन अस्वीकार किया गया।

न्याय दृष्टांत **उक्त सुशील कुमार विरूद्ध मनोज कुमार, ए.आई.आर. 2009 एस.सी. 2544** में यह प्रतिपादित किया गया है कि संशोधन द्वारा एक पक्षकार अपनी स्वीकारोक्ति को स्पष्ट कर सकता है।

न्याय दृष्टांत **उक्त सुरेन्द्र कुमार विरूद्ध माखन सिंह, ए.आई.आर. 2009 एस.सी. (सप्लीमेंट) 2671** के मामले में बकाया किराये के आधार पर निष्कासन का वाद था संशोधन के बाद भी वाद निष्कासन का ही रहना था वाद की प्रकृति में परिवर्तन करने वाला संशोधन है इस आधार पर उसकी निरस्ती उचित नहीं मानी गई।

उक्त न्याय दृष्टांत **उषा देवी विरूद्ध रिजवान अहमद, ए.आई.आर. 2008 एस.सी. 1147** में वादी ने वादग्रस्त संपत्ति का विवरण त्रुटिपूर्ण दिया है प्रतिवादी द्वारा लिखित कथन में ध्यान दिलाने के बाद भी ध्यान नहीं दिया था चूंकि संशोधन विवाद के निराकरण के लिए आवश्यक था इसलिये 10 हजार रूपये प्रतिकारात्मक खर्च पर स्वीकार किया गया।

न्याय दृष्टांत **भरत कृष्णदास ठक्कर विरूद्ध मेसर्स किरण कंस्ट्रक्शन, ए.आई.आर. 2008 एस.सी. 2134** के मामले में घोषणा के वाद में अनुबंध पालन का अनुतोष जोड़ना चाहा था मूल वाद की प्रकृति ने तात्विक परिवर्तन होने से उसे अनुमति योग्य नहीं माना गया।

न्याय दृष्टांत **एम.सी. अग्रवाल एच.यू.एफ. विरूद्ध मेसर्स सहारा इंडिया, ए.आई.आर. 2008 एस.सी. 2887** के मामले में निष्कासन अंतरवर्ती लाभ और आज्ञापक व्यादेश के वाद में ऐसा संशोधन चाहा गया कि अंतर्वर्ती लाभ परिसर के किराये के बराबर दिलवाया जाये इस संशोधन से वाद की प्रकृति में परिवर्तन नहीं होगा बल्कि अंतर्वर्ती लाभ की मात्रा निकालने में यह संशोधन सहायक होगा अतः वास्तविक विवाद के निराकरण में उचित होने से उसे अस्वीकार करना उचित नहीं माना गया।

न्याय दृष्टांत **रामचरण विरूद्ध दामोदर, ए.आई.आर. 2007 एस.सी. 2577** में स्वत्व घोषणा के वाद में संशोधन आवेदन विलंब से दिया गया था संशोधन से वादी के क्लेम को समाधानप्रद तरीके से न्यायालय निराकृत कर सके इसमें सहायता मिलना प्रतीत होती थी ऐसा संशोधन स्वीकार किया गया विरोधी पक्ष को खर्च दिलवाया जा सकता था।

न्याय दृष्टांत **राजकुमार विरूद्ध दिपेन्द्र कोर, ए.आई.आर. 2005 एस.सी. 1592** के मामले में स्थायी निषेधाज्ञा का वाद था बाद में अनुबंध पालन का अनुतोष जोड़ा गया लेकिन तत्परता और तैयारी के बारे में अभिवचन नहीं किये गये इस बावत् संशोधन आवेदन दिया गया जिसे स्वीकार किया जाना उचित माना गया।

न्याय दृष्टांत **लक्खी राम विरूद्ध त्रिखा राम, ए.आई.आर. 1998 एस.सी. 1230** में भी तत्परता और तैयारी बावत अभिवचन का संशोधन स्वीकार किया गया था और इसे उचित माना गया था।

लेकिन न्याय दृष्टांत **जे. सेम्यूएल विरूद्ध गट्टू महेश, (2012) 2 एस.सी.सी. 300** में माननीय सर्वोच्च न्यायालय ने वर्ष 2002 के आदेश 6 नियम 17 सी.पी.सी. के संशोधन के प्रकाश में जोड़े गये परंतुक की विवेचना करते हुये यह प्रतिपादित किया गया है कि अनुबंध के विशिष्ट पालना के वाद में तत्परता और तैयारी के अभिवचन आवश्यक होते हैं और ऐसे अभिवचन को जोड़ने के लिए विचारण प्रारंभ होने के बाद संशोधन आवेदन पत्र दिया गया जो टंकण त्रुटि मानते हुये स्वीकार कर लिया गया इसे उचित नहीं माना गया और यह प्रतिपादित किया गया कि पक्षकार सम्यक रूप से सर्तक नहीं था इसे टंकण त्रुटि नहीं मान सकते आवेदन अस्वीकार किया गया।

न्याय दृष्टांत **सी.एम. वीर कुट्टी विरूद्ध सी.एम. मुथू कुट्टी, ए.आई.आर. 1981 एस.सी. 1533** के मामले में प्रारंभिक आज्ञप्ति पर अपील थी कुछ संपत्ति का सही व पूर्ण विवरण दर्ज नहीं था कुछ का उल्लेख छूट गया था ऐसा संशोधन स्वीकार किया गया।

न्याय दृष्टांत **जयजय राम मनोहर लाल विरूद्ध नेशनल बिल्डिंग, ए.आई.आर. 1969 एस.सी. 1267** के अनुसार तकनीकी आधार पर संशोधन आवेदन निरस्त नहीं करना चाहिये।

न्याय दृष्टांत **म्युनिसिपल कॉर्पोरेशन विरूद्ध लाला पंचम, ए.आई.आर. 1965 एस.सी. 1008** पांच न्यायमूर्तिगण की पीठ के मामले में यह प्रतिपादित किया गया कि संशोधन द्वारा एक नया मामला वादी ने जोड़ना चाहा ऐसा संशोधन स्वीकार नहीं करना चाहिये इस संबंध में न्याय दृष्टांत

ए.के. गुप्ता विरूद्ध दामोदर वेली कार्पोरेशन, ए.आई.आर. 1967 एस.सी. 96, मेसर्स मोदी स्पिनिंग विरूद्ध मेसर्स लद्दाराम, ए.आई.आर. 1977 एस.सी. 680, एवं हाजी मोहम्मद विरूद्ध मोहम्मद इकबाल, ए.आई.आर. 1978 एस.सी. 798 तीन न्यायमूर्तिगण की पीठ भी अवलोकनीय है।

न्याय दृष्टांत **पुरूषोत्तम उम्मेद भाई एण्ड कंपनी विरूद्ध मेसर्स मणी लाल एण्ड संस, ए.आई.आर. 1961 एस.सी. 325 के** मामले में फर्म के नाम से वाद ऐसे भागीदार के नाम से पेश कर दिया गया जो भारत के बाहर व्यापार करता था यह वाद के शीर्षक लिखने या विवरण लिखने की त्रुटि है जिसे धारा 153 सी.पी.सी. में सुधारा जा सकता है आदेश 6 नियम 17 सी.पी.सी. के आवेदन की आवश्यकता नहीं है ऐसा प्रतिपादित किया गया।

न्याय दृष्टांत **दानपति विरूद्ध घनश्याम दास, 2009 (2) एम.पी.जे.आर. 333** में वादी ने गेहूँ के थोक व्यापार के लिये परिसर की आवश्यकता बतलाई थी बाद में उसने खली भूसा आदि के व्यापार की आवश्यकता बतलाई केवल व्यापार बदलने से सद्भाविक आवश्यकता बदल गई है ऐसा नहीं माना जा सकता संशोधन स्वीकार किया गया।

न्याय दृष्टांत **रामचन्द्र विरूद्ध श्रीमती इन्द्रा बाई, 1993 (2) डब्ल्यू.एन. 79** के अनुसार प्रकरण को विलंबित करने के आशय से दिया गया संशोधन आवेदन निरस्त करना उचित माना गया।

विधि का बिन्दु व वाद के चलने योग्य न होने का बिन्दु संशोधन के बिना भी उठाया जा सकता है ऐसा संशोधन विलंब कारित करने के लिये किया जा रहा है इस आधार पर निरस्त किया गया इस संबंध में न्याय दृष्टांत **राजेन्द्र सिंह विरूद्ध राम भजन सिंह, 2000 (2) डब्ल्यू.एन. 54** अवलोकनीय है।

अस्थायी निषेधाज्ञा का आवेदन निरस्त होने के बाद वादी ने स्वत्व घोषणा और आधिपत्य वापसी का संशोधन चाहा इसे वाद की प्रकृति में परिवर्तन नहीं माना गया संशोधन स्वीकार किया गया। न्याय दृष्टांत **मित्र मंडल सहकारी संस्था विरूद्ध डॉ. आर.सी जैन, 1985 एन.पी.डब्ल्यू.एन. 481** अवलोकनीय हैं।

यदि संशोधन आवेदन में गलत प्रावधान लिख दिया है तब भी इससे कोई प्रभाव नहीं होता है।

23. उपसंहार

उक्त संपूर्ण विवेचन से निम्न लिखित रूप से अभिवचनों में संशोधन की विधि मुख्य रूप से स्पष्ट होती है :–

1. ऐसे सभी संशोधन जो पक्षकारों में उत्पन्न वास्तविक विवाद के न्यायपूर्ण निराकरण के लिये आवश्यक हो उन्हें समाविष्ट करने की अनुमति देना चाहिये यदि ऐसी अनुमति देने से विपक्षी के हितों पर ऐसा प्रतिकूल असर न पड़ता हो जिसकी पूर्ति प्रतिकारात्मक खर्च देकर भी न करवाई जा सके।

2. यह एक सामान्य नियम है कि संशोधन आवेदन दिनांक पर जो अनुतोष अवधि बाधित हो चुका हो उसे स्वीकार करने की अनुमति नहीं देना चाहिये।

3. वाद पत्र और लिखित कथन में संशोधन के समय मानदण्ड भिन्न होते हैं लिखित कथन में संशोधन की अनुमति देते समय न्यायालय को अधिक उदार रहना चाहिये प्रतिवादी वैकल्पिक बचाव, अतिरिक्त बचाव भी ले सकता है और वाद की प्रकृति में परिवर्तन का सिद्धांत केवल वाद पत्र के संशोधन के समय महत्वपूर्ण होता है लेकिन प्रतिवादी भी ऐसे बचाव नहीं ले सकता जो एक दूसरे को नष्ट करने वाले हो।

4. पश्चातवर्ती घटनाक्रम के आधार पर किये गये संशोधन स्वीकार करना चाहिये संशोधन आवेदन पर विचार करते समय उसकी सत्यता या गुणदोष नहीं देखना चाहिये।

5. वाद प्रश्न जिस दिन विरचित किये जाते हैं और मामला साक्ष्य के लिये नियत किया जाता है उस दिन से विचारण प्रारंभ होता है। विचारण प्रारंभ होने के पश्चात प्रस्तुत संशोधन आवेदन पत्र में यह देखना चाहिये की क्या संबंधित पक्ष सम्यक तत्परता के बाद भी उस मामले को विचारण प्रारंभ होने के पूर्व नहीं उठा सका था लेकिन अंततः यदि संशोधन पक्षकारों में उत्पन्न वास्तविक विवाद के न्यायपूर्ण निराकरण के लिए आवश्यक है और उससे विपक्षी को ऐसी क्षति संभावित नहीं है जिसकी पूर्ति प्रतिकारात्मक खर्च दिलाकर न की जा सके तब ऐसे संशोधन जो विचारण प्रारंभ होने के पश्चात भी किये जा रहे हैं स्वीकार करना चाहिये लेकिन उचित प्रतिकारात्मक खर्च भी विलंब कारित करने वाले पक्षकार पर अधिरोपित करना चाहिये।

6. संशोधन के लिये लिखित आवेदन जो शपथ पत्र से समर्थित हो दिया जाना चाहिये।

इस प्रकार किसी भी पक्ष द्वारा उसके अभिवचनों में संशोधन का आवेदन कार्यवाही के किसी भी प्रक्रम पर पेश होने पर उक्त वैधानिक स्थितियों को ध्यान में रखते हुये आवेदन का त्वरित निराकरण करना चाहिये ऐसे आवेदनों को अधिक समय तक लंबित नहीं रखना चाहिये बल्कि आवेदन पेश होने पर एक लघु अवसर देकर विपक्षी यदि लिखित जवाब देना चाहे तो उसका लिखित जवाब लेकर, उभय पक्ष को सुनकर उक्त वैधानिक स्थितियों को ध्यान में रखते हुये मामले के तथ्यों और परिस्थितियों में एक उचित आदेश पारित करना चाहिये।

ऐसे आवेदन अधिकतम एक सप्ताह में निपट जावें ऐसे प्रयास करना चाहिए।

वस्तुएं धन से खरीदी जा सकती है या बल से छीनी जा सकती है किंतु ज्ञान सतत् अध्ययन से ही प्राप्त हो सकता है अतः एक सतत् अध्ययन शैली हर व्यक्ति को विकसित करना चाहिए।

एक विद्वान

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PART - II
NOTES ON IMPORTANT JUDGMENTS

1. ARBITRATION ACT, 1940 – Sections 2 (a), 8 and 34

(i) Arbitration Clause – What is? Clause empowering Superintending Engineer to immediately resolve any controversy relating to specifications, designs, drawings, quality of workmanship or material used etc. and also providing that his decision shall be binding on contractor, is not arbitration clause – Power conferred on Superintending Engineer is in the nature of departmental dispute resolution mechanism for the purpose of expeditious sorting out of problems during execution of work.

(ii) Circulars issued by the Government may be a guideline for the authorities implementing the work but they are not conclusive of correct interpretation of relevant clause agreement – Interpretation given by the Government is not binding on the Court.

Vishnu (dead) by LRs v. State of Maharashtra and others

Judgment dated 04.10.2013 passed by the Supreme Court in Civil Appeal No. 3680 of 2005, reported in (2014) 1 SCC 516 (3-Judge Bench)

Extracts from Judgment:

There is nothing in the language of Clause 30 from which it can be inferred that the parties had agreed to confer the role of arbitrator upon the Superintending Engineer of the Circle.

In terms of Clause 29 of B-1 Agreement, the Superintending Engineer of the Circle was invested with the authority to approve all works to be executed under the contract. In other words, the Superintending Engineer was to supervise execution of all works. The power conferred upon him to take decision on the matters enumerated in Clause 30 did not involve adjudication of any dispute or lis between the State Government and the contractor. It would have been extremely anomalous to appoint him as Arbitrator to decide any dispute or difference between the parties and pass an award. How could he pass an award on any of the issues already decided by him under Clause 30? Suppose, he was to decline approval to the designs, drawings etc. or was to object to the quality of materials etc. and the contractor had a grievance against his decision, the task of deciding the dispute could not have been assigned to the Superintending Engineer. He could not be expected to make adjudication with an un-biased mind. Even if he may not be actually biased, the contractor will always have a lurking apprehension that his decision will not be free from bias. Therefore, there is an inherent danger in treating the Superintending Engineer as an Arbitrator.

In view of the above discussion, we hold that the High Court had rightly held that Clause 30 of B-1 Agreements is not an arbitration agreement and the trial court was not right in appointing the Chief Engineer as an arbitrator.

Before concluding, we may observe that circulars issued by the State Government may provide useful guidance to the authorities involved in the implementation of the project but the same are not conclusive of the correct interpretation of the relevant clauses of the agreement and, in any case, the Government's interpretation is not binding on the Courts. In the results, the appeals are dismissed.

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2. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 27 and 25 (c)
Arbitration Tribunal can take assistance of Court in recording of evidence even in *ex parte* matter.

Delta Distilleries Limited v. United Spirits Limited and another
Judgment dated 23.09.2013 passed by the Supreme Court in Civil Appeal No. 8426 of 2013, reported in (2014) 1 SCC 113

Extracts from Judgment:

As seen from Sections 25 and 27 of the Arbitration and Conciliation Act, 1996, Section 25 (c) provides that in the event a party fails to appear at an oral hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings, and make the arbitral award on the evidence before it. This evidence can be sought either from any third person or from a party to the proceeding itself. The substitution of the phrase "parties and witnesses" under Section 43 of the earlier Act by the phrase 'any person' cannot make any difference, or cannot be read to whittle down the powers of the Arbitral Tribunal to seek assistance from the court where any person who is not cooperating with the Arbitral Tribunal or where any evidence is required from any person, be it a party to the proceedings or others. It is an enabling provision, and it has to be read as such. The term 'any person' appearing under Section 27 (2) (c) is wide enough to cover not merely the witnesses, but also the parties to the proceeding. It is undoubtedly clear that if a party fails to appear before the Arbitral Tribunal, the Tribunal can proceed ex-parte, as provided under Section 25 (c). At the same time, it cannot be ignored that the Tribunal is required to make an award on the merits of the claim placed before it. For that purpose, if any evidence becomes necessary, the Tribunal ought to have the power to get the evidence, and it is for this purpose only that this enabling section has been provided.

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3. CIVIL PROCEDURE CODE, 1908 – Section 10 r/w/s 151
Continuity and maintainability of civil and criminal proceedings – Stay of proceedings – Civil proceedings cannot be stayed on the ground of pendency of a criminal case.

Guru Granth Saheb Sthan Meerghat Vanaras v. Ved Prakash & others

Judgment dated 01.05.2013 passed by the Supreme Court in Civil Appeal No. 4166 of 2013, reported in ILR (2013) MP 2503 (DB) (SC)

Extracts from Judgment:

Even if there is possibility of conflicting decisions in the civil and criminal courts, such an eventuality cannot be taken as a relevant consideration. Secondly, in the facts of the present case there is no likelihood of any embarrassment to the defendants (respondent nos. 1 to 4 herein) as they had already filed the written statement in the civil suit and based on the pleadings of the parties the issues have been farmed.

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4. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 10

Return of plaint – The reckoning date for the purpose of interest is the date of institution of second suit based on presentation of plaint before competent court and not the date of presentation of previous suit – Plaintiff cannot take advantage of his own mistake – However, he is entitled for the benefit of section 14 of Limitation Act, 1963 and adjustment of court fees paid in previous suit.

Oil and Natural Gas Corporation Limited v. Modern Construction and Company

Judgment dated 07.10.2013 passed by the Supreme Court in Civil Appeal No. 8957 of 2013, reported in (2014) 1 SCC 648

Extracts from Judgment:

The law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted ***de novo*** even if it stood concluded before the court having no competence to try the same.

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***5. CIVIL PROCEDURE CODE, 1908 – Order 14 Rules 1 & 2**

(i) Issue, when can be treated as preliminary? Held, it is settled proposition of law that whenever the issues framed under Order XIV, Rules 1, 2 of Civil Procedure Code or any of them could not be decided on merits unless the evidence of the parties is

necessary and needed then such issue could neither be treated to be a preliminary issue nor could be decided in such manner.

(ii) Question as to court fees, basis for determination of – The question of court fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits.

Shantidevi and another v. Balchand and another

Order dated 03.07.2013 passed by the High Court of M.P. in First Appeal No. 87 of 2013, reported in 2013 (4) MPLJ 539 (DB)

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6. CIVIL PROCEDURE CODE, 1908 – Order 15 Rule 3 and Order 14 Rule 2

Question of court fee linked with jurisdiction of court – Defendant has a right to raise objection – Court should decide it as a preliminary issue – Even if the issue is mixed question of fact and law, it can very well be decided as a preliminary issue.

Suryapal Singh v. Sudha Tomar

Judgment dated 18.12.2013 passed by the High Court of Madhya Pradesh (Gwalior Bench) in W.P. No. 6539 of 2013, reported in AIR 2014 MP 23

Extracts from Judgment:

In the considered opinion of this Court, the question involved in this matter is no more ***res ingetra***. The Apex Court in ***Sujir Keshav Nayak v. Sujir Ganesh Nayak, AIR 1992 SC 1526*** opined that where the question of court fee is linked with jurisdiction, a defendant has a right to raise objection and he court should decide it as a preliminary issue. The said judgment is followed by the Himachal Pradesh High Court in ***Dr. Om Prakash Rawal v. Mr. Justice Amrit Lal Bahri, AIR 1994 HP 27***.

In para 5 of application (Annexure P/5) the petitioner has specifically pleaded that the question of court fee has a direct relation with the pecuniary jurisdiction of the Court and therefore, it should be decided as preliminary issue. The case of the present petitioner is squarely covered by the Judgment of Supreme Court is ***Sujir Keshav Nayak*** (supra). The Court below, in the considered opinion of this Court, has erred in rejecting the application for deciding the issue No.5 (regarding valuation of the suit) as a preliminary issue. Reason assigned by the Court below is unsustainable. Even if the issue of mixed question of facts and law, it can very well be decided as a preliminary issue.

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7. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 89

Court has discretionary power to set aside sale on deposit of required amount by judgment-debtor – Though auction sale in favour of petitioner confirmed but pursuant to one opportunity given by the High Court, the judgment-debtor deposited the amount – On the facts, order to set aside the sale treated as proper and in accordance with law.

Sukumar De v. Bimala Auddy and others

Judgment dated 28.10.2013 passed by the Supreme Court in SLP (C) No. 25797 of 2004, reported in (2014) 1 SCC 584

Extracts from Judgment:

In sum and substance the position which emerges on the auction of the property in question can be summarised as below: the property was put up on auction on July, 1970 and the bid of the petitioner in a sum of Rs.1.5 lakhs was the highest. The auction sale was confirmed on 9.7.1990. Under Order 21 Rule 89 C.P.C., a chance is given to the applicant to deposit the amount payable including 5 percent for the successful auction purchases and on deposit of that amount the Executing Court will set aside the sale on 10.7.1990 itself. The Respondent No. 4, judgment-debtor has filed the application requesting the executing court to intimate the amount to be deposited so that he could file application under Order 21 Rule 89 of CPC. Though this application was rejected, the order of the executing-court was set aside by the High Court allowing the revision of the judgment-debtor and directing the executing court to intimate the same to the judgment-debtor. In the first instance, the amount calculated was Rs. 1.14 lakhs which turned out to be wrong calculations, in as much as the High Court set aside the said order and on re-calculation, the amount payable was calculated at Rs. 42,055.87. The Executing Court had directed the judgment -debtors to pay this amount which was to be paid by 11.11.92. However, before that the judgment-debtor filed another revision petition. This revision petition is decided by the impugned order passed on 8.6.2004. No doubt, the amount calculated is found to be correct but the High Court chose to give one opportunity to the judgment-debtor to deposit the amount as upto that stage the controversy regarding actual payment had not been settled.

In these circumstances, exercise of discretion in the aforesaid manner cannot be found to be erroneous and contrary to law which warrants interference by this Court under Article 136 of the Constitution of India. Further, we do not find any substantial question of law. It is also to be kept in mind that immediately after the impugned order of the High Court the judgment-debtors had deposited the amount. They should not be made to lose the property, in the aforesaid circumstances.

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***8. CIVIL PROCEDURE CODE, 1908 – Order 26 Rule 9**

Commission for spot inspection, issuance of – Cannot be issued for collection of evidence and ascertainment of actual possession – Issue relating to possession is required to be decided by the Court itself on the basis of evidence.

Ramanuj Kushwaha & anr. v. Brijbhan Kushwaha & ors.

Order dated 14.12.2012 passed by the High Court of M.P. in Writ Petition No. 20744 of 2012, reported in ILR (2013) MP 2525

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9. CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 & 2

EVIDENCE ACT, 1872 – Section 114 (e)

LAND REVENUE CODE, 1959 (M.P.) – Sections 110 and 117

Revenue record, presumption thereof – No presumption under section 117 can be drawn in respect of entry made by Patwari in the remarks column of Khasra or field book.

Yashraj Datta (dead) through LR v. Bherulal & ors.

Judgment dated 02.04.2013 passed by the High Court of M.P. in Second Appeal No. 23 of 2000, reported in ILR (2013) MP 2660

Extract from Judgment:

The Division Bench of this Court in ***Churamani and another v. Shri Ramadhar and others, 1991 RN 61*** has categorically held that the entry made by patwari in the remark column or any other column of a Khasra or field book, no presumption of correctness can be attached. The Division Bench further held that Patwari is not required to make any kind of entry in a Khasra or field book under Chapter IX of M.P. Land Revenue Code, 1959. In this view of the matter, even if any entry in column no. 12 has been made by Patwari in the Khasra, it would not mean that plaintiff is in possession of the suit property.

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10. CIVIL PROCEDURE CODE, 1908 – Order 41 and Rules 1 (3) and 5

Appeal by judgment-debtor with prayer for complete stay – The Appellate Court on facts denied complete stay and ordered deposit of ` 20 crores and to furnish Bank Guarantee of the remaining decretal amount – Such order is according to settled principles.

Times Global Broadcasting Company Limited and another v. Parshuram Babaram Sawant

Order dated 14.11.2011 passed by the Supreme Court in SLP (C) No. 29979 of 2011, reported in (2014) 1 SCC 703

Extract from Order:

We have considered the argument of the learned counsel in the light of the findings recorded by the trial court and are of the view that the High Court did

not commit any error by directing the petitioners to deposit a portion of amount specified in the decree passed by the trial court with a further direction to furnish bank guarantee for the balance amount. The exercise of discretion by the High Court not to entertain the petitioners' prayer for complete stay of the decree passed by the trial court is in consonance with the principles laid down by this Court for deciding an application like the one filed by the petitioners.

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***11. CONSTITUTION OF INDIA**

Election Petition, interference therein – Mandate of the public cannot be disturbed in a routine manner as it hampers the democratic process and can only be done when allegations are strictly proved.

Geeta Bai (Smt.) v. The Sub Divisional Officer & ors.

Order dated 25.04.2013 passed by the High Court of M.P. in Writ Petition No. 169 of 2011, reported in ILR (2013) MP 2579

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12. CO-OPERATIVE SOCIETIES ACT, 1961 (M.P.) – Section 94

Suit for declaration and perpetual injunction against society – Notice under section 94 of the Act, necessity of – Held, applicants are bound to issue statutory notice and in the absence thereof, suit is not maintainable before the Civil Court.

Saphik alias Sahid Khan and another v. Nandlal Arora and others

Order dated 09.07.2013 passed by the High Court of M.P. in Review Petition No. 183 of 2013, reported in 2013 (4) MPLJ 701 (DB)

Extract from Order:

It is mandatory provision that no suit shall be instituted against a society or any of its officers in respect of any act touching the constitution, management or business of the society until the expiration of two months-next after notice of the aforersaid section delivered to the Registrar or left at his office with the requisite information as per requirement as stated above. In view of the prayer clause if any prayer is made by the applicants/plaintiffs in their suit before the trial Court against the respondent No. 2 – society, then the society being involved in the housing development for its members, then in any case the applicants/plaintiffs were bound to issue statutory notice as per requirement of section 94 of the Act before filing the suit or in any case such notice should have been left at the office of Registrar of the Cooperative Society and in the lack of such notice, the Civil Court was not having authority or jurisdiction to entertain the suit and taking into consideration such aspect if the Hon'ble Single Bench has passed the order, then such order does not appear to be contrary to any law or procedure.

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13. CRIMINAL PROCEDURE CODE, 1973 – Section 31
INDIAN PENAL CODE, 1860 – Section 307
ARMS ACT, 1959 – Section 25

Sentence – Consecutive or concurrent

(i) If offences were committed in a single transaction, sentences should be ordered to run concurrently and not consecutively.

(ii) Accused was previously convicted for committing an identical offence of very heinous crime – Not a ground to order sentence to run consecutively.

Manoj@Panu v. State of Haryana

Judgment dated 09.12.2013 passed by the Supreme Court in Criminal Appeal No. 2063 of 2013, reported in 2014 (1) Crimes 81 (SC)

Extracts from Judgment:

The grounds urged by the learned senior counsel for the appellant are stated hereunder :-

> "It was submitted that the courts below have committed a grave error of law by convicting the appellant despite the prosecution having failed to prove the case against the appellant and having not considered the tender age of 18 years of the appellant as also that the appellant has already undergone almost six years of imprisonment. He also contended that as per the law laid down by this Court the punishment and sentence for offences under a single transaction should have run concurrently and that in the present case, the firing incident pertains to a single FIR, and that the courts below failed to understand that the consecutive sentences awarded in the present case are disproportionate to the facts."

The learned senior counsel for the appellant further contended that the courts below failed to consider the settled legal position and also the provisions of Section 31 of Cr.P.C. and the decision in ***Chatar Singh v. State of M.P., (2006) 12 SCC 37,*** wherein it was observed that in a sentence for conviction for several offences, accused cannot be sentenced to imprisonment for a period longer than 14 years. Therefore, the order passed by the lower courts in sentencing the appellant for more than 14 years is not only perverse but also illegal and is liable to be set aside. Reliance was also placed upon the judgment in ***Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Asst. Collector of Customs (Prevention), Ahmedabad & Anr., (1988) 4 SCC 183*** in support of the proposition of law laid down by this Court on the issue of concurrent or consecutive sentences, the relevant portion of which is extracted hereunder :

> "10. The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences."

The same position of law was adopted by this Court in the case of ***State of Punjab v. Madan Lal, (2009) 5 SCC 238*** by observing in Para 5 that :-

> "5. The majority view in ***State of Maharashtra v. Najakat Alia Mubarak Ali, (2001) 6 SCC 311*** was to the similar effect. It was held in Para 17 as follows:
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> > "17. In the above context, it is apposite to point out that very often it happens, when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well."

We have heard the learned counsel for both the parties. The ground on which the appellant was awarded the sentence which was to run consecutively was due to the previous criminal record of the appellant for a similar type of offence of shooting in the court premises, which charge was proved as per Ex. P-1. This is the basis on which the trial court considered the extenuating circumstances into consideration to impose punishment for offences committed by the appellant, sentencing him to different periods for each one of the offences committed by him. The sentences were ordered to run consecutively, and the same was upheld by the High Court in exercise of its appellate jurisdiction. In view of the aforesaid legal position laid down by this Court regarding concurrent and consecutive sentences, the sentences imposed upon the appellant for different offences to run consecutively under the IPC and the Arms Act, are erroneous in law, as the same are contrary to law laid down by this Court as per the cases referred to supra upon which reliance has been rightly placed by the learned senior counsel on behalf of the appellant.

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14. CRIMINAL PROCEDURE CODE, 1973 – Section 125

(i) Claim of maintenance by second wife is maintainable if the second marriage has been performed as per the Hindu rites but during the subsistence of first marriage, if the husband had not disclosed the fact of earlier marriage to the second wife, the husband cannot be permitted to take the advantage of his own wrong – The said person could be treated as legally wedded wife.

(ii) The situation would be different if the second marriage was within the full knowledge of the first marriage.

Badshah v. Urmila Badshah Godse and another

Judgment dated 18.10.2013 passed by the Supreme Court in Criminal Miscellaneous Petition No. 19530 of 2013, reported in (2014) 1 SCC 188

Extracts from Judgment:

We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.

Firstly, in ***Chanmuniya v. Virendra Kumar Singh Kushwah, (2011) 1 SCC 141,*** the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125,Cr.P.C. by interpreting the term "wife" widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125,Cr.P.C. On the other hand, in the present case, respondent No.1 has been able to prove, by cogent and strong evidence, that the petitioner and respondent No.1 had been married each other.

Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into martial tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under Section 125,Cr.P.C. as respondent No.1 is not "legally wedded wife" of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Cr.P.C., respondent No.1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in ***Yamunabhai Anantrao Adhav v. Anantrao Shivram Adhav, (1998) 1 SCC 530*** and ***Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636*** would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said

jugment would not apply to those cases where a man marries a second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125,Cr.P.C. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve "social justice" which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

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15. CRIMINAL PROCEDURE CODE, 1973 – Sections 154, 155, 156 and 157 INDIAN PENAL CODE, 1860 – Section 166-A

(i) FIR in cognizable case – Registration of FIR is mandatory under section 154 of the Code – If informant has disclosed commission of the cognizable offence, there is no requirement of preliminary enquiry – However, if information received does not disclose commission of cognizable offence, then preliminary inquiry may be conducted.

(ii) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information – Proper stage for such verification is after registration of FIR.

(iii) A preliminary inquiry should be time-bound and should not exceed seven days – Cause of delay should reflect in General Diary – If preliminary inquiry ends in closure of the complaint, such intimation must be supplied with reasons to the informant forthwith.

(iv) FIRs are of two kinds (a) FIR made and duly signed by informant to the police officer under section 154 (1); and (b) FIR registered by police itself on any information received other than by way of an informant – In both types of FIR, police is duty bound to register the FIR if it discloses cognizable offence.

(v) Punishment provided under section 166-A IPC for non-registration of FIR of cognizable offence does not imply and it is not compulsory for other offence not specified in section 166-A IPC – Section 166-A IPC is to be read in consonance with section 154 (1) CrPC.

(vi) All information about cognizable offences, whether leading to inquiry or registration of FIR must mandatorily be mentioned

in the General Diary and the decision to conduct the inquiry must also be reflected in the Diary.

(vii) The provision of section 154 of the CrPC shall prevail on section 44 of the Police Act, 1861.

(viii) Inquiry under sections 2 (g), 159, 202 and 340 CrPC is relatable to a judicial act and not to the steps taken by the police by way of preliminary enquiry prior to the registration of FIR or investigation after FIR.

Lalita Kumari v. Government of Uttar Pradesh and others

Judgment dated 12.11.2013 passed by the Supreme Court in Writ Petition (Cri.) No. 68 of 2008, reported in (2014) 2 SCC 1 (5-Judge Bench)

Extracts from Judgment:

The Code contemplates two kinds of FIRs : The duly signed FIR under Section 154(1) is by the informant to the concerned officer at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under Section 154 (1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

a) It is the first step to 'access to justice' for a victim.

b) It upholds the 'Rule of Law' inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.

c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.

d) It leads to less manipulation in criminal cases and lessens incidents of 'ante-dates' FIR or deliberately delayed FIR.

Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.

Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made

out the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

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16. CRIMINAL PROCEDURE CODE, 1973 – Sections 204, 362, 482 and 201 NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

(i) Order to issue process under Section 204 by Magistrate – He is not empowered to recall it in absence of power of review – The only remedy is proceeding under Section 482 CrPC or Article 227 of the Constitution.

(ii) Power to return the complaint for want of jurisdiction can be invoked immediately on receipt of complaint but not after issuance of summons under Section 204 CrPC.

(iii) Complaint can be filed before the Magistrate within whose jurisdiction any of the five acts has taken place:

(a) drawing of the cheque;

(b) presentation of the cheque to the bank;

(c) unpaid return by the drawee bank;

(d) giving notice for demanding payment;

(e) failure by drawer to make payment within 15 days of receipt of the notice.

Devendra Kishanlal Dagalia v. Dwarkesh Diamonds Private Limited and others

Judgment dated 25.11.2013 passed by the Supreme Court in Criminal Appeal No. 1997 of 2013, reported in (2014) 2 SCC 246

Extracts from Judgment:

Section 201 Cr.P.C., as noticed earlier, can be applied immediately on receipt of a complaint, if the Magistrate is not competent to take cognizance of the offence. Once the Magistrate taking cognizance of an offence forms his opinion that there is sufficient ground for proceeding and issues summons under

Secion 204 Cr.P.C., there is no question of going back following the procedure under Section 201 Cr.P.C. In absence of any power of review or recall the order of issuance of summons, the Magistrate cannot recall the summon in exercise of power under Section 201 Cr.P.C. The first question is thus answered in negative and in favour of the appellant.

The question concerning the jurisdiction of Magistrate to issue summons fell for consideration before this Court in ***M/s. Escorts Limited v. Rama Mukherjee, (2014) 2 SCC 255.*** In the said case the Court noticed the earlier decision in ***K. Bhaskaran v. Shankaran Vaidhyam Balan, (1999) 7 SCC 510.*** In the light of the language used in Section 138 of the Act, the Court found five components in Section 138 of the Act, namely:

> (1) drawing of the cheque;
>
> (2) presentation of the cheque to the bank;
>
> (3) returning of the cheque unpaid by the drawee bank;
>
> (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and
>
> (5) failure of the drawer to make payment within 15 days of the receipt of the notice."

After saying so, this Court held that offence under Section 138 of the Act can be completed only with the concatenation of all the above components and for that it is not necessary that all the above five acts should have perpetrated at the same locality; it is possible that each of those five acts were done at five different localities, but a concatenation of all the above five is a ***sine qua non*** for the completion of the offence under Section 138 of the Act.

Having noticed the aforesaid provisions, this court in ***Escorts Ltd.*** (supra) held as follows:

> "It is apparent, that the conclusion drawn by the High Court, in the impugned order dated 27.4.2012, is not in consonance with the decision rendered by this Court in ***Nishant Aggarwal v. Kailash Kumar Sharma, (2013) 10 SCC 72.*** Therein it has been concluded, that the Court within the jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the jurisdiction to entertain the complaint filed under Section 138 of the Negotiable Instruments Act.

In addition to the judgment rendered by this Court in ***Nishant Aggarwal*** (supra) another bench of this Court has also arrived at the conclusion drawn in ***Nishant Aggarwal's case*** (supra), on the pointed issue under consideration. In this behalf, reference may be made to the decision rendered in ***FIL Industries Limited v. Imtiyaz Ahmed Bhat, (2014) 2 SCC 266*** decided on 12.8.2013. This Court in the above matter held as under:

> "The facts very briefly are that the respondent delivered a cheque dated 23rd December, 2010 for an amount of ` 29,69,746 (Rupees Twenty Nine lakhs sixty-nine thousand seven hundred forty-six only) on Jammu and Kashmir Bank Limited, Branch Imam Saheb, Shopian, to the appellant towards some business dealings and the appellant deposited the same in UCO Bank, Sopore. When the cheque amount was not encashed and collected in the account he appellant in UCO Bank, Sopore, the appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before the Chief Judicial Magistrate, Sopore.

The respondent sought dismissal of the complaint on the ground that the Chief Judicial Magistrate had no territorial jurisdiction to entertain the complaint. By order dated 29th November, 2011, the learned Chief Judicial Magistrate, Sopore, however, held that he had the jurisdiction to entertain the complaint. Aggrieved, the respondent filed Criminal Miscellaneous Petition No. 431 of 2011 under Section 561-A of the Jammu and Kashmir Criminal Procedure Code and by the impugned order dated 2nd June, 2012, the High Court quashed the complaint saying that the Court at Sopore had no jurisdiction to receive and entertain the complaint.

We have heard the learned counsel for the parties and we find that in ***K. Bhaskaran case*** (supra) this Court had the occasion to consider as to which Court would have the jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act and in paras 14, 15 and 16 of the judgment in the aforesaid case held as under:

> "14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning of the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.
>
> 15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at 5 different localities. But concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Act. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:

'178. (d) Where [the offence] consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.'

16.Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act.'

5. It will be clear from the aforesaid paragraphs of the judgment in ***K. Bhaskaran's case*** (Supra) that five different acts compose the offence under Section 138 of the Negotiable Instruments Act and if any one of these five different acts was done in a particular locality the Court having territorial jurisdiction on that locality can become the place of trial for the offence under Section 138 of the Negotiable Instruments Act and, therefore, the complainant choose any one of those courts having jurisdiction over any one of the local area within the territorial limits of which any one of the five acts was done. In the facts of the present case, it is not disputed that the cheque was presented to the UCO Bank at Sopore in which the appellant had an account and, therefore the Court at Sopore had territorial jurisdiction to entertain and try the complaint.

6. Learned counsel for the respondent, however, relied on the decision of this Court in ***Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720,*** to submit that the Court at Shopian would have the territorial jurisdiction. We have perused the aforesaid decision of this Court in ***Harman Electronics (P) Ltd.*** (supra) and we find on a reading of paras 11 and 12 of the judgment in the aforesaid case that in that case the issue was as to whether sending of a notice from Delhi itself would give rise to a cause of action for taking cognizance of a case under Section 138 of the Negotiable Instruments Act when the parties had been carrying on business at Chandigarh, the Head Office of the respondent-complainant was at Delhi but it had a Chandigarh

and all the transactions were carried out only from Chandigarh. On these facts, this Court held that Delhi from where the notice under Section 138 of the Negotiable Instruments Act was issued by the respondent would not have had jurisdiction to entertain the complaint under Section 138 of the Negotiable Instruments Act. This question does not arise in the facts of the present case.

7. For the aforesaid reasons, we allow the appeal, set aside the impugned judgment of the High Court and remand the matter to the Chief Judicial Magistrate, Sopore for decision in accordance with law."

In view of the above, having taken into consideration the factual position noticed by the High Court in para 13 of the impugned judgment, we are of the view, that the High Court erred in concluding that the courts at Delhi, did not have the jurisdiction to try the petition filed by the appellant under Section 138 of the Negotiable Instruments Act. The impugned order dated 27.4.2012 passed by the High Court is accordingly liable to be set aside. The same is, therefore, hereby set aside.

Despite the conclusion drawn by us hereinabove, it would be relevant to mention, that our instant determination is based on the factual position expressed by the High Court in paragraph 13 of the impugned order. During the course of hearing, whilst it was the case of the learned counsel for the appellant (based on certain documents available on the file of the present case) to reiterate that the cheque in question, which was the subject matter of the appellant's claim under Section 138 of the Negotiable Instruments Act, was presented for encashment at Delhi; it was the contention of the learned counsel for the respondent, that the aforesaid cheque was presented for encashment at Faridabad. It was accordingly submitted, that the jurisdictional issue needed to be decided by accepting, that the dishonoured cheque was presented at Faridabad. It is not possible for us to entertain and adjudicate upon a disputed question of fact. We have rendered the instant decision, on the factual position taken into consideration by the High Court. In case, the respondent herein is so advised, it would be open to him to raise an objection on the issue of jurisdiction, based on a factual position now asserted before us. The determination rendered by us must be deemed to be on the factual position into

consideration by the High Court (in para 13, extracted above), while disposing of the issue of jurisdiction. In case the respondent raises such a plea, the same shall be entertained and disposed of in accordance with law."

In the case in hand it is admitted that the business dealing was held at Mumbai; the products were supplied from Mumbai to New Delhi, cheques were handed over at Mumbai and the cheques were dishounoured by the bankers of respondents at New Delhi, and the legal notice was issued from Mumbai. Thus, at least one act out of the five ingredients of Section 138 of the Act having been committed at Mumbai, the complaint preferred by the complainant before the Magistrate at Mumbai was maintainable.

The second question is thereby, answered in affirmative and in favour of the appellant.

(Also see : ***Fil Industries Limited v. Imtiyaz Ahmed Bhat, (2014) 2 SCC 266***)

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17. CRIMINAL PROCEDURE CODE, 1973 – Section 239

(i) Whether defect in investigation can be a ground for discharge? Held, No.

(ii) Application for discharge – What needs to be considered? Whether there is a ground for presuming that the offence has been committed or not and whether a ground for convicting the accused has been made out or not.

State of T.N. v. N.Suresh Rajan & Ors

Judgment dated 06.01.2014 passed by the Supreme Court in Criminal Appeal No. 22 of 2014, reported in 2014 (1) Crimes 1 (SC)

Extracts from Judgment:

We have bestowed our consideration to the rival submissions and the submissions made by the learned senior counsel for the petitioner commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for that the

offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

Here the allegation against the accused Minister (Respondent No.1), K. Ponmudi is that while he was a Member of the Tamil Nadu Legislative Assembly and a State Minister, he had acquired and was in possession of the properties in the name of his wife as also his mother-in-law, who along with his other friends, were of Siga Educational Trust, Villupuram. According to the prosecution, the properties of Siga Educational Trust, Villupuram were held by other accused on behalf of the accused Minister. These properties, according to the prosecution, in fact, were the properties of K.Ponumudi. Similarly, accused N. Suresh Rajan has acquired properties disproportionate to his known sources of income in the names of his father and mother. While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law. While passing the impugned orders, the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification.

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18. CRIMINAL PROCEDURE CODE, 1973 – Sections 401 (1) & (3) and 386 (a)

(i) High Court's power of revision under section 401 CrPC – Scope – High Court while exercising powers of revision can exercise all powers of appellate court specified in section 386 CrPC except the power to convert the finding of acquittal into conviction – In exceptional circumstances, High Court can exercise the power of acquittal and direct retrial of cases.

(ii) In the matter of revision, the trial court without being influenced by observation made by the Revisional Court has power to re-appreciate the evidence.

(iii) Setting aside of order of acquittal in revision is guided by certain principles: (1) where acquittal is based on misreading of evidence or non-consideration of evidence or perverse appreciation of evidence or where trial court overlooked the material evidence or (2) where there is manifest error of law or procedure or (3) where the acquittal suffers from glaring illegality causing miscarriage of justice.

Ganesha v. Sharanappa and another

Judgment dated 19.11.2013 passed by the Supreme Court in Criminal Appeal No. 1948 of 2013, reported in (2014) 1 SCC 87

Extracts from Judgment:

From a plain reading of sub-section (1) of Section 401 of the Code it is evident that the High Court, while exercising the powers of revision, can exercise any of the powers conferred on a court of appeal including the power under Section 386 of the Code, relevant portion whereof reads as follows:

> **"386. Powers of the Appellate Court. –** After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may –
>
> > (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law."

However, in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to re-appraise the evidence in light of the observation of the revisional court and take an independent view uninfluenced by any of the observations of the revisional court on the merit of the case. By way of abundant caution, we may herein observe that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In such an exceptional case, the

Hig Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order re-trial.

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19. CRIMINAL PROCEDURE CODE, 1973 – Sections 438 and 82

(i) Nature and scope of section 438 – Is extraordinary and should be exercised only in exceptional cases where it appears that the person may be falsely implicated and there is no likelihood of misuse of any liberty – A proclaimed offender under section 82 CrPC shall not be entitled for anticipatory bail.

(ii) Cancellation of anticipatory bail – It is a settled position of law that where accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail.

State of Madhya Pradesh v. Pradeep Sharma

Judgment dated 06.12.2013 passed by the Supreme Court in Criminal Appeal No. 2049 of 2013, reported in (2014) 2 SCC 171

Extracts from Judgment:

In ***Adri Dharan Das v. State of W.B., (2005) 4 SCC 303,*** this Court considered the scope of Section 438 of the Code as under:-

> "Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of the Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief' for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds which the belief of the applicant is based that he may be arrested in non-bailable offence must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order not be generally passed. It flows from the very of the section which requires

> the applicant to show that he has reason to believe that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. Normally a direction should not issue to the effect that the applicant shall be released on bail 'whenever arrested for whichever offence whatsoever'. Such 'blanket order' should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not prima facie appear to be a case where any order in terms of Section 438 of the Code can be passed."

Recently, in ***Lavesh v. State (NCT of Delhi), (2012) 8 SCC 730,*** this Court, (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis to a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under:

> "12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as 'absconder'. Normally, when the accused is 'absconding' and declared as a 'proclaimed offender', there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.

In the light of what is stated above, the impugned orders of the High Court dated 10.01.2013 and 17.01.2013 in ***Sudhir Sharma v. State of M.P., Misc. Criminal Case Nos. 9996 of 2012 and Gudda v. State of M.P., Misc. Criminal case No. 15283 of 2012,*** respectively are set aside. Consequently, the subsequent order of the CJM dated 20.02.2013 in Crime No. 1034 of 2011 releasing the accused on bail after taking them into custody in compliance with the impugned order of the High Court is also set aside. In view of the same, both the respondents/accused

aredirected to surrender before the court concerned within a period of two weeks failing which the trial Court is directed to take them into custody and send them to jail. Both the appeals are allowed on the above terms.

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

High Court rejecting the anticipatory bail directed the trial court to release on bail – Such orders put restriction on the power of trial court to grant or refuse bail – Therefore, should never be passed.

Sudam Charan Dash v. State of Orissa and another

Judgment dated 25.10.2013 passed by the Supreme Court in Criminal Appeal No. 1862 of 2013, reported in (2014) 2 SCC 141

Extracts from Judgment:

We are surprised at the direction issued by the High Court to the trial court to release Respondent 2 on bail. When the High Court rejected the application for anticipatory bail, it was sufficient indication that the High Court thought it fit not to put a fetter on the investigating agency's power to arrest Respondent 2. In such a situation, the investigating agency, if it so desired and if it thought that the custodial interrogation of Respondent 2 was necessary, could have arrested him. Therefore, after rejecting the prayer for anticipatory bail, the High Court should not have negated its own order by directing that Respondent 2 should be released on bail. This is contradiction in terms. It dilutes the order rejecting anticipatory bail. Such order is not legally sound. It overlooks the scope and purport of Sections 438 and 439 of the Code of Criminal Procedure, 1973.

In a similar situation in ***Rashmi Rekha Thatoi & anr. v. State of Orissa & ors, (2012) 5 SCC 690*** this Court took a strong view of the matter and observed that such orders have no sanctity in law. Relevant observations of this Court could be quoted:

> "We have referred to the aforesaid pronouncements to highlight how the Constitution Bench in ***Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565*** had analysed and explained the intrinsic underlying concepts under Section 438 of the Code, the nature of orders to be passed while conferring the said privilege, the conditions that are imposable and the discretions to be used by the courts. On a reading of the said authoritative pronouncement and the principles that have been culled out in ***Savitri Agarwal v. State of Maharashtra, (2009) 8 SCC 325*** there is remotely no indication that the Court of Session or the High Court can pass an order that on surrendering of the accused before the Magistrate he shall be released on bail on such terms and conditions as the learned Magistrate may deem fit and proper or the superior court would impose conditions for grant of bail on such

surrender. When the High Court in categorical terms has expressed the view that it is not inclined to grant anticipatory bail to the petitioner-accused it could not have issued such a direction which would tantamount to conferment of benefit by which the accused would be in a position to avoid arrest. It is in clear violation of the language employed in the statutory provision and in flagrant violation of the dictum laid down in ***Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565*** and the principles culled out in ***Savitri Agarwal v. State of Maharashtra, (2009) 8 SCC 325***.

The operative portion of the order passed in that case reads as follows:

> "Judging on the foundation of aforesaid well-settled principles, the irresistible conclusion is that the impugned orders directing enlargement of bail of the accused persons, namely, Uttam Das, Abhimanyu Das and Murlidhar Patra by the Magistrate on their surrendering are wholly unsustainable and bound to founder and accordingly the said directions are set aside. Consequently, the bail bonds of the aforenamed accused persons are cancelled and they shall be taken into custody forthwith. It needs no special emphasis to state that they are entitled to move applications for grant of bail under Section 439 of the Code which shall be considered on their own merits."

We respectfully agree with these observations. We also feel that such orders put restriction on the power of the trial court to consider the bail application on merits and grant or reject prayer for bail. We are of the opinion that such orders should never be passed. In the circumstances, we set aside the impugned order.

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21. CRIMINAL PROCEDURE CODE, 1973 – Sections 468, 469, 470, 473 and Chapter XXXVI

(i) For the purpose of limitation, the relevant date for computation is the date when criminal complaint is filed or the date of institution of prosecution/criminal proceedings and not the date of cognizance.

(ii) The harmonious construction of sections 468, 469 and 470 is that Magistrate can take cognizance of an offence only on filing of complaint or filing of prosecution/criminal proceeding – The complainant or prosecution may be entitled to exclude the legally excludable time.

(iii) Cognizance is an act of the Court – It can be taken when Magistrate or Court applies its mind or take judicial notice to the suspected offence.

Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and others

Judgment dated 26.11.2013 passed by the Supreme Court in Criminal Appeal No. 829 of 2005, reported in (2014) 2 SCC 62 (5-Judge Bench)

Extracts from Judgment:

It is equally clear however that the law-makers did not want cause of justice to suffer in genuine cases. Law Commission recommended provisions for exclusion of time and those provisions were made part of Chapter XXXVI. We, therefore, find in Chapter XXXVI provisions for exclusion of time in certain cases (Section 470), for exclusion of date on which the Court is closed (Section 471), for continuing offences (Section 472) and for extension of period of limitation in certain cases (Section 473). Section 473 is crucial. It empowers the court to take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Therefore, Chapter XXXVI is not loaded against the complainant. It is true that the accused has a right to have a speedy trial and this right is a facet of Article 21 of the Constitution. Chapter XXXVI of the Cr.P.C. does not undermine this right of the accused. While it encourages diligence by providing for limitation it does not want all prosecutions to be thrown overboard on the ground of delay. It strikes a balance between the interest of the complainant and the interest of the accused. It must be mentioned here that where the legislature wanted to treat certain offences differently, it provided for limitation in the section itself, for instance, Section 198(6) and 199(5) of the Cr.P.C. However, it chose to make general provisions for limitation for certain types of offences for the first time and incorporated them in Chapter XXXVI Cr.P.C.

It is now necessary to see what the words ‘taking cognizance’ mean, Cognizance is an act of the court. The term ‘cognizance’ has not been defined in the Cr.P.C. To understand what this term means we will have to have a look at certain provisions of the Cr.P.C. Chapter XIV of the Code deals with ‘Conditions requisite for initiation of proceedings’. Section 190 thereof empowers a Magistrate to take cognizance upon (a) receiving a complaint of facts which constitute such offence; (b) a police report of such facts; (c) information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Chapter XV relates to ‘Complaints to Magistrates’. Section 200 thereof provides for examination of the complainant and the witnesses on oath. Section 201 provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. Section 202 provides for postponement of issue of process. He may, if he thinks fit, and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police

offier for the purpose of deciding whether there is sufficient ground for proceeding. Chapter XVI relates to commencement of proceedings before the Magistrate. Section 204 provides for issue of process. Under this section if the Magistrate is of the opinion that there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue summons for the attendance of the accused. In a warrant case, he may issue a warrant. Thus, after initiation of proceedings detailed in Chapter XIV, comes the stage of commencement of proceedings covered by Chapter XVI.

In ***Jamuna Singh & Ors. v. Bhadai Shah, AIR 1964 SC 1541*** relying on ***R.R. Chari v. State of U.P., AIR 1951 SC 207*** and ***Gopal Das Sindhi & Ors. v. State of Assam & Anr., AIR 1961 SC 986*** this Court held that it is well settled that when on a petition of complaint being filed before him, a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Cr.P.C., he must be held to have taken cognizance of the offences mentioned in the complaint.

Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons.

As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in ***Bharat Kale v. State of A.P. (2003) 8 SCC 559, Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394*** and ***Vanka Radhamanohari (Smt.). v. Vanka Venkata Reddy, (1993) 3 SCC 4.*** The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxim ***'nullum tempus aut locus occurrit regi',*** which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim ***'vigilantibus et non dormientibus, jura subveniunt'***. Chapter XXXVI of the Cr.P.C. which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 of the IPC, which have lesser punishment may have serious social consequences. Provision is, therefore, made for condonation of delay. Treating date of filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim ***'actus curiae neminem gravabit'*** which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims.

Proisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles.

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22. CRIMINAL PROCEDURE CODE, 1973 – Section 482

(i) If *prima facie* case of criminal breach of trust is made out against accused, then burden is on the accused to rebut.

(ii) Prerequisite for criminal breach of trust is entrustment of property and failure to account for – Having two parts; one entrustment, dominion or control on the property and second misappropriation or dishonest dealing with property contrary to the terms of the obligation created.

Ghanshyam v. State of Rajasthan

Judgment dated 12.12.2013 passed by the Supreme Court in Criminal Appeal No. 2085 of 2013, reported in (2014) 2 SCC 683

Extracts from Judgment:

It has been held in the case of ***Onkar Nath Mishra and ors. v. State (NCT of Delhi), (2008) 2 SCC 561*** that in the commission of the offence of criminal breach of trust, two distinct parts are involved. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created.

Further, it has been held in the case of ***Jaikrishnadas Manohardas Desai v. State of Bombay, AIR 1960 SC 889*** that:

> "4. ..... to establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure, in breach of an obligation, to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made."

In the light of the above legal principle laid down by this Court, the High Court was correct in holding that presumptions have been made by the trial court where it was not necessary in fact situation at hand. The decision reached by the trial court is not sustainable in law and is liable to be quashed. We concur with the decision of the High Court holding that it was correct in redirecting the matter to the trial court for adjudication on merit.

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23. EVIDENCE ACT, 1872 – Section 112

(i) Where there is a conflict between conclusive proof u/s 112 of the Evidence Act, 1872 and D.N.A. test report, which would prevail? Held, D.N.A. test report would prevail.

(ii) Difference between a legal fiction and presumption of fact – Explained – Legal fiction assumes existence of a fact which may not exist – Presumption of a fact depends upon satisfaction of certain circumstances.

Those circumstances logically would lead to this fact sought to be presumed – Section 112 of the Evidence Act does not create a legal fiction but provides for presumption.

Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & anr.

Judgment dated 06.01.2014 passed by the Supreme Court in Criminal Appeal No. 24 of 2014, reported in 2014 (1) Crimes 10 (SC)

Extracts from Judgment:

The learned counsel for appellant submits that in view of the opinions, based on DNA profiling that appellant is not the biological father, he cannot be fastened with the liability to pay maintenance to the girl-child born to the wife. The learned counsel for respondents, however, submits that the marriage between the parties has not been dissolved, and the birth of the child having taken place during the subsistence of a valid marriage and the husband having access to the wife, conclusively prove that the girl-child is the legitimate daughter of the appellant. According to him, the DNA test cannot rebut the conclusive presumption envisaged under Section 112 of the Evidence Act. According to him, respondent no. 2, therefore, has to be held to be the appellant's legitimate daughter. In support of the submission, reliance has been placed on a decision of this Court in the case of ***Kamti Devi v. Poshi Ram, (2001) 5 SCC 311,*** and reference has been made to paragraph 10 of the judgment, which reads as follows:

> "10. .....The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This may look hard from the point of

> view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception……."

The DNA test is an accurate test and on that basis it is clear that the appellant is not the biological father of the girl- child. However, at the same time, the condition precedent for invocation of Section 112 of the Evidence Act has been established and no finding with regard to the plea of the husband that he had no access to his wife at the time when the child could have been begotten has been recorded. Admittedly, the child has been born during the continuance of a valid marriage. Therefore, the provisions of Section 112 of the Evidence Act conclusively prove that respondent No. 2 is the daughter of the appellant. At the same time, the DNA test reports, based on scientific analysis, in no uncertain terms suggest that the appellant is not the biological father. In such circumstance, which would give way to the other is a complex question posed before us.

We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.

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24. EVIDENCE ACT, 1872 – Section 114-A

(i) If sexual intercourse by accused is proved and the prosecutrix denies her consent, the presumption is in her favour.

(ii) Delay in FIR sufficiently explained – Theory of consent in gang rape case is not acceptable for want of rebuttal of presumption under section 114-A.

State of Rajasthan v. Roshan Khan and others

Judgment dated 15.01.2014 passed by the Supreme Court in Criminal Appeal No. 79 of 2005, reported in (2014) 2 SCC 476

Extracts from Judgment

We cannot accept the submission of learned amicus curiae for Respondent No.5 that the finding given by the High Court that the prosecutrix may have gone with the accused persons on her own is a plausible one and should not be interfered with under Article 136 of the Constitution. As we have already noticed, the prosecutrix (PW-2) has deposed categorically that all the six persons had raped her without her consent and forcibly. Section 114A of the Indian Evidence Act, 1872 clearly provides that in a prosecution for rape under clause (g) of sub-section (2) of Section 376, IPC, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. Since the prosecutrix (PW-2) has categorically said that sexual intercourse was committed by the accused without her consent and forcibly, the Court has to draw the presumption that she did not give consent to the sexual intercourse committed on her by the accused persons. The defence has not led any evidence to rebut this presumption. In our considered opinion, the High Court could not have, therefore, held that there were circumstances to show that PW-2 had gone on her own and on this ground acquitted the respondents.

The High Court, however, has considered the delay on the part of informant (PW-1) to lodge the FIR as a relevant factor to doubt the prosecution story. We find that PW-1 has explained the delay in his evidence. He has stated that after he found his daughter at about 1.00 a.m. on 28.04.1999 at the Bhedia Daftar with Akbar and after the five other accused persons had fled, they returned to their house at 2.00 a.m. and remained at their house till before sunrise and thereafter lodged the FIR at the Police Station. He has further stated that the delay from 2.00 a.m. to 6.00 a.m. in lodging the report was on account of the fact that his wife was sick and he was also frightened and there was no other person to go to the police station. He has also stated that he returned home from the police station at about 9.00 a.m. The SHO of Bhadara Police Station has in his evidence stated that on 28.04.1999 the informant appeared in the police station and produced a written report (Ext.P-1) before him. In cross- examination on behalf of the accused Roshan, Shafi and Yakoob, PW-9 has stated that Ext.P-1 was produced before him at 6.00 a.m. on 28.04.1999. Yet the High Court has come to the conclusion that the report (Ext.P-1) must have been filed at about 11.15 am. and was ante-timed to 6.00 a.m. For this conclusion, we do not find any evidence, but only a surmise that Ext.P-1 must have been typed at the court premises after 11.00 a.m. Thus, the report (Ext.P-1) was filed by PW-1 at 6.00 a.m. in the morning reporting an incident that he had witnessed between 1.00 a.m. and 2.00 a.m. on 28.04.1999 and the period from 2.00 a.m. to 6.00 a.m., in our considered opinion, has been sufficiently explained by PW-1 in his evidence that he could not leave his wife alone until sunrise. As has been rightly submitted by Dr. Singhvi, no father would lodge a false complaint that

his aughter has been gang-raped. The High Court should not have doubted the prosecution story on the ground of delay in lodging the FIR.

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25. EVIDENCE ACT, 1872 – Section 115

Doctrine of estoppel, applicability of – Decree was challenged in execution proceedings on the ground of lack of jurisdiction – No such objection was raised in written statement – Appeal filed against judgment, and decree was also withdrawn – Held, as the applicant had opportunity to raise the objection before trial Court, he is estopped from raising the objection as to lack of jurisdiction in execution proceedings.

Madhya Pradesh Housing Board v. State of M.P. & anr.

Order dated 01.11.2013 passed by the High Court of M.P. in Civil Revision No. 251 of 2007, reported in ILR (2013) MP 2723

Extract from Order :

The applicant was made party in the case and it had an opportunity to raise all such objections in the case and the trial Court had decided all the questions raised before it. If the judgment dated 8.2.1984 is perused, then it would be apparent that no such objection was raised by the applicant in the written statement and the trial Court could not consider such a point in the case. it was for the applicant to raise this objection before the trial Court along with the other objections raised by it. According to the judgment of the Single Bench of this Court in the case of ***V.K. Munshi v. Raipur Co-operative Housing Society Ltd., 2001 (1) MPHT 514*** it is for the trial Court to consider as to whether the Civil Court had the jurisdiction to entertain the suit or not, and therefore it was for the applicant to raise such objections before the trial Court. When the opportunity is given to the defendant to raise all objections before the trial Court and if any objection is not taken before the trial Court, then the concerned defendant is not competent to take such an objection before the Executing Court. Hon' ble the Apex Court in the case of ***Commissioner, Bangalore Development Authority v. Brijesh Reddy, 2013 AIR SCW 2378*** has laid that such objection ought to have been raised at the earliest before the trial Court. The higher Court may refuse to entertain such plea in absence of proof of prejudice. In para 8 of the order Hon'ble the Apex Court has held as under:

> "Section 9 of the Code of Civil Procedure, 1908 provides jurisdiction to try all suits of civil nature excepting those that are expressly or impliedly barred which reads as under:
>
> "***9. Courts to try all civil suits unless barred.*** – The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

From the above provision, it is clear that Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The jurisdiction of Civil Court with regard to a particular matter can be said to be excluded if there is an express provision or by implication it can be inferred that the jurisdiction is taken away. An objection as to the exclusion of Civil Court's jurisdiction for availability of alternative forum should be taken before the trial Court and at the earliest failing which the higher court may refuse to entertain the plea in the absence of proof of prejudice."

No reason has been shown by the applicant as to why no such objection was raised before the trial Court at the time when the written statement was filed. Under such circumstances, where the applicant withdrew the appeal filed against the judgment and decree passed by the learned 4th Civil Judge Class-II, Bhopal, then certainly the applicant is estopped to raise such an objection before any other Court including the Executing Court, and therefore the contention of the learned counsel for the applicant cannot be accepted that such objection could be raised before the Executing Court.

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26. EVIDENCE ACT, 1872 – Section 134

(i) Testimony of single witness – The Court can act and rely but it should be wholly reliable – The emphasis is on value, weight and quality but not on the quantity of evidence.

(ii) Testimony of hostile witness need not be discarded totally – The part which supports prosecution case can be taken into consideration.

Veer Singh and others v. State of Uttar Pradesh

Judgment dated 10.12.2013 passed by the Supreme Court in Criminal Appeal No. 256 of 2009, reported in (2014) 2 SCC 455

Extracts from Judgment:

Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity multiplicity or plurality of witnesses. It is not the number of witnesses but quality of their evidence which is important as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided under Section 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. (Vide ***Vadivelu Thevar v. State of Madras, AIR 1957 SC 614; Kunju v. State of Tamil Nadu, AIR 2008 SC 1381; Bipin Kumar Mondal v. State of West Bengal, AIR 2010 SC 3638; Mahesh v. State of Madhya Pradesh, (2011) 9 SCC 626; Prithipal Singh v. State of Punjab, (2012) 1 SCC 10; Kishan Chand v. State of Haryana, (2013) 2 SCC 502*** and ***Gulam Sarbar v. State of Bihar (Now Jharkhand), (2014) 3 SCC 401***.

In the present case we are left with the sole testimony of injured eye-witness PW4 Harbans Kaur. She has lost all the members of her family in the attack during the occurrence. There is no reason for her to falsely implicate any of the accused in the case. On the contrary she would only point out the correct assailants who are responsible for killing her family members. We are of the considered view that the testimony of PW4 Harbans Kaur is cogent, credible and trustworthy and has a ring of truth and deserves acceptance. All the 12 victims of the occurrence died of homicidal violence is established by the oral testimony of the doctors who conducted autopsies on their bodies and the certificates issued by them to that effect.

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27. INDIAN PENAL CODE, 1860 – Section 304 A

Reduction of sentence – Trial Court awarded sentence of one year R.I. and fine of Rs. 1000 – Sentence upheld by sessions court – High Court, on the ground that trial was pending since 1999, reduced the sentence to period already undergone which was only 34 days – The Apex Court has observed that a life has been lost due to rash and negligent driving on the part of accused which could not have been ignored – Sentence awarded by Trial Court is restored.

State of M.P. v. Dongar Singh

Judgment dated 29.11.2013 passed by the Supreme Court in Criminal Appeal No. 2030 of 2013, reported in 2014 ACJ 500 (S.C.)

Extracts from Judgment:

Heard the learned counsel for both the parties. The respondent was proceeded against under Section 304A of the Indian Penal code for having committed the death of one Bachhraj due to rash and negligent driving. Judicial Magistrate, First Class, Chachoda, District Guna, awarded the sentence of one year rigorous imprisonment and a fine of ` 1000/ to the respondent by his order dated 19.2.2007 which was left undisturbed in appeal by the Sessions Court at District Guna.

The respondent filed a criminal revision before the High Court of Madhya Pradesh. The only point which was argued on behalf of the respondent in the High Court was with respect to the sentence, that the sentence be reduced to the period already undergone by the respondent by then which was only 34 days. The High Court has accepted the plea and reduced the sentence only on the ground that the trial was pending since 1999. We are not impressed by this reasoning given by the High Court. A Life has been lost due to rash and negligent driving on the part of the respondent which could not have been ignored.

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28. INDIAN PENAL CODE, 1860 – Section 304-B

"Soon before death" does not mean "at any time before" nor "immediately before" – It has been used with reference to cruelty or harassment which were meted in proximity to death that has to be considered as cause of death.

Tummala Venkateswar Rao v. State of Andhra Pradesh

Judgment dated 17.12.2013 passed by the Supreme Court in Criminal Appeal No. 552 of 2011, reported in (2014) 2 SCC 240

Extracts from Judgment:

This Court in the case of ***Kailash v. State of Madhya Pradesh, AIR 2007 SC 107*** has observed as under:

> "No presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the victim. This is so because the expression used in the relevant provision is "soon before". The expression is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. The expression is pregnant with the idea of proximity test. It cannot be said that the term "soon before" is synonymous with the term 'immediately before'. This is because of what is stated in Section 114 Illustration (a) of the Evidence Act. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link [see ***Hira Lal v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80]***."

This Court in the case of ***Hira Lal*** (supra) has observed as under:

> "A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected

to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. 'Soon before' is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to the expression 'soon before' used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession'. The determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

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29. INDIAN PENAL CODE, 1860 – Sections 304-B and 498-A
Certificate as to period of detention as required by section 428 CrPC, necessity of – Law reiterated.

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

Judgment dated 10.09.2013 passed by the High Court of M.P. in Criminal Appeal No. 653 of 2007, reported in ILR (2013) MP 2702

Extract from Judgment:

Before parting, because matter involves question of common importance, Registry, subject to approval of Hon'ble the Chief Justice, may take suitable steps to inform learned Courts of the State while dealing with trial of criminal cases should specifically prepare complete chart of period of detention as required by Section 428 of the Code. Accused persons are entitled to set off period of each and every day of their detention for which they had been detained during investigation, enquiry or the trial of that particular case. Because, the trial Courts are in better position to furnish details of each and every day detention, specially detention period of investigation and enquiry, therefore, the trial Courts are requested to give specific details of the period of detention, if any, undergone by the accused during the investigation, enquiry or trial of the same case and before the date of conviction, in one appropriate para of the judgment.

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***30. INDIAN PENAL CODE, 1860 – Sections 304 Part II and 498-A**
CRIMINAL PROCEDURE CODE, 1973 – Sections 157, 378 and 386

(i) Deceased married four years back – Demand of dowry made at the time of marriage and after marriage – On the date of occurrence, quarrel between deceased and appellant – Appellant poured kerosene on her and set her on fire – Dying declaration recorded by doctor and signed it – Trial court acquitted the appellant – High Court reversed and convicted the appellant under section 304 Part 2 – Parents of deceased were hostile – But prosecution case was established by independent witnesses; doctor and head constables who deposed about dying declaration – No reason to disbelieve the doctor and head constable.

(ii) Conviction can be based on a dying declaration recorded when deceased is in a fit mental condition to make it – It should be truthful and voluntary.

(iii) Mother or father of the deceased came with theory of accidental death – But accused not disclosed it in statement under section 313 CrPC – Accused absconded – He did not set up defence of *alibi* – He had not explained how deceased received injuries – It was his obligation to explain how deceased received injuries in his house – His silence gives inverse inference against him and forms a link in the chain of circumstances which point to his guilt.

(iv) Dying declaration if reliable, minor discrepancies at the time of recording, does not affect the prosecution story.

(v) Interference with acquittal is permissible, if acquittal is perverse.

(vi) On the facts, no delay in lodging FIR.

(vii) Section 157 CrPC – Copy of FIR to Magistrate is only for external check on working of police which has to be followed strictly – But delay by itself is not sufficient to throw out prosecution case.

Anjanappa v. State of Karnataka

Judgment dated 12.11.2013 passed by the Supreme Court in Criminal Appeal No. 1223 of 2008, reported in (2014) 2 SCC 776

Extracts from Judgment:

It is well settled that an order of acquittal is not to be set aside lightly. If the view taken by the trial court is a reasonably possible view, it is not to be disturbed. If two views are possible and if the view taken by the trial court is a reasonably possible view, then the appellate court should not disturb it just because it feels that another view of the matter is possible. However, an order of acquittal will have to be disturbed if it is perverse. We have examined the trial court's order of acquittal in light of above principles. We are of the considered opinion that the High Court was justified in setting it aside as it is perverse.

What has weighed with the trial court is the fact that the parents have turned hostile. They came out with a story which even the appellant did not have in mind. He merely denied the prosecution story. The parents stated that the deceased was heating water on stove. She caught fire accidentally and sustained burn injuries. If this was true, the appellant would have stated so in his statement recorded under Section 313 of the Code of Criminal Procedure ("the code"). We have perused the evidence of the parents. We have no doubt that they were either won over by the appellant or pressurized into supporting the appellant. Their evidence is a tissue of lies. In any case, even if it is obliterated and kept out of consideration, there is sufficient other evidence on record to establish the appellant's guilt.

As we have already noted, PW-2 Chikkaeeramma and PW-3 Hanumantharayappa have turned hostile. It is apparent that they have tried to help the appellant. In that effort they have come out with the accidental death theory which was not even urged by the appellant. The appellant could have very easily come out with it in his statement recorded under Section 313 of the Code. PW-2 Chikkaeeramma and PW-3 Hanumantharayappa are, therefore, completely exposed. It is sad that even parents did not stand by their daughter. We do not understand how a woman, particularly a mother, turned her back on the daughter. Possibly these witnesses were bought over by the appellant. Such conduct displays greed and lack of compassion. If they were threatened by the appellant and were forced to depose in his favour it is a sad reflection on our system which leaves witnesses unprotected. The reasons why witnesses so frequently turn hostile need to be ascertained. There is no witness protection plan in place.

In ***Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374*** this Court spoke about importance of witnesses and their protection. The relevant paragraphs read as under:

> " 'Witnesses' as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle the truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of the State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery…..
>
> The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in the court the witness could safely depose the truth without any fear of being haunted by those against whom he had deposed."

We share the above sentiments. Unless the witnesses are protected the rise in unmerited acquittals cannot be checked. It is unfortunate that this important issue has not received necessary attention.

In any case, the trial court should have seen through the insincerity and dishonesty of PW-2 Chikkaeeramma and PW-3 Hanumantharayappa and having regard to the independent evidence of PW-4 Dr. Parthasarathy, which is corroborated by the evidence of PW-5 HC Ramachari the trial court shouldhave held that the deceased was in a fit mental condition to make a dying declaration and, therefore, her dying declaration can be relied upon.

It is well settled that a conviction can be based on a dying declaration recorded properly when the declarant is in a fit mental condition to make it. It should be truthful and voluntary. All these tests are satisfied in the present case. Judgments on which reliance is placed by the appellant's counsel are not applicable to the case on hand. In ***Nallapati Sivaiah v. SDO, (2007) 15 SCC 465*** the medical evidence on record and other attendant circumstances were altogether ignored and dying declaration was reliedupon. In those circumstances this Court while reiterating its view in ***Laxman v. State of Maharashtra, (2002) 6 SCC 710*** rejected the dying declaration in the peculiar facts of the case.

In ***Mehiboobasab Abbasabi Nadaf v. State of Karnataka, (2007) 13 ACC 112*** the deceased wife had made four dying declarations in which she had taken contradictory stands. This Court was primarily dealing with inconsistent dying declarations. While observing that a conviction can indisputably be based on a dying declaration if it is voluntarily and truthfully made this Court set aside the conviction based on the dying declarations on the ground of their inconsistency. Inconsistency in dying declaration is not a ground of attack in this case. In any case, there is consistency between the statement of Gowramma recorded by PW-4 Dr. Parthasarathy, which is at Exhibit-P16(b), the history recorded in Gowramma's case sheet, which is Exhibit-P17 and statement of Gowramma recorded by PW-5 HC Ramachari, which is at Exhibit-P19. This judgment is, therefore, not applicable to the present case.

Rasheed Beg v. State of M.P., (1974) 4 SCC 264 also turns on its own facts. There is the second dying declaration two additional names were added. This Court found it not safe to rely on the dying declarations. This judgment must be restricted to its own facts and has no application to the present case. In ***Kake Singh v. State of M.P., 1981 (Supp) SCC 25*** a good part of the brain of the deceased was burnt. The doctor had not categorically stated that the deceased was conscious when he made the dying declaration. Hence, no reliance was placed on it. In the present case the doctor has categorically stated that the deceased was in a position to make a statement. No parallel can, therefore, be drawn from ***Kake Singh*** (supra). The doctor's evidence which is supported by the evidence of PW-5 HC Ramachari and other attendant circumstances establishes that the dying declaration of Gowramma is truthful and it was voluntarily made by her when she was in a fit state of mind.

Besides, the conduct of the appellant speaks volumes. He was absconding and could be arrested only on 19/02/1992. Moreover, in his statement recorded under Section 313 of the Code he has not explained how the deceased received burn injuries. He did not set up the defence of ***alibi***. It was obligatory on him to explain how the deceased received burn injuries in his house. His silence on this aspect gives rise to an adverse inference against him. It forms a link in the chain of circumstances which point to his guilt.

Minor discrepancy in the time of recording of dying declaration creates no dent in the prosecution story which is, otherwise, substantiated by reliable evidence. Certain documents like inquest panchanama and post-mortem notes do not state that kerosene smell was emanating from the body of Gowramma. When there is overwhelming evidence on record to establish that kerosene was poured on Gowramma and she was set on fire, it is absurd to argue that the prosecution case should be disbelieved because it is not mentioned in certain documents that kerosene smell was emanating from her body.

The submission that there is delay in lodging the FIR must be rejected. PW-5 HC Ramachari recorded the dying declaration at about 10.30p.m. on 17/10/1991. He, then, presented Memo Exhibit-P18 to the Station House Officer. Thereafter, PW-6 ASI S. Nanjudappa of Vijayanagara Police Station recorded the FIR at about 11.30 p.m. In the facts of this case, we find that there is no delay in recording the FIR. Hence, it is not necessary to refer to ***Meharaj Singh v. State of U.P., (1994) 5 SCC 188*** which is relied upon on this aspect.

Similarly, we find that there is no unexplained delay in forwarding FIR to the Magistrate. FIR was recorded at about 11.30 p.m. on 17/10/1991. PW-6 ASI S Nanjudappa has explained that since the constable was going to the Court on the next day, he gave the FIR to him on the next day i.e. 18/10/1991 and it reached the Magistrate at about 4.30 p.m. on 18/10/1991. In the facts of this case this time lag can hardly be described as delay and, in any case, acceptable explanation is offered by PW-6 ASI S. Nanjudappa. It is, therefore, not necessary to refer to ***Bijoy Singh v. State of Bihar, (2002) 9 SCC 147*** where in this Court was dealing with a case where FIR was registered on 25/08/1991 at about 2.30 a.m. and copy thereof was received by the Magistrate on 27/08/1991. It is pertinent to note that even in that case this Court observed that sending copy of the special report to the Magistrate under Section 157 of the Code is the only external check on the working of the police agency imposed by law which is to be strictly followed. But, that delay by itself does not render the prosecution case doubtful. If the delay is reasonably explained no adverse inference can be drawn against the prosecution.

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31. INDIAN PENAL CODE, 1860 – Sections 375 r/w Expln. thereto or section 506/375

(i) Rupture of hymen is immaterial for theory of rape – Mere penetration is sufficient.

(ii) Grant of lesser punishment than minimum prescribed – Adequate and special reasons depend upon several factors – No strait jacket formula has been laid down.

Parminder alias Ladka Pola v. State of Delhi

Judgment dated 16.01.2014 passed by the Supreme Court in Criminal Appeal No. 133 of 2006, reported in (2014) 2 SCC 592

Extracts from Judgment

Section 375, IPC, defines the offence of 'rape' and the Explanation to Section 375, IPC, states that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. This Court has accordingly held in ***Wahid Khan v. State of Madhya Pradesh, (2010) 2 SCC 9*** that even the slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial. In the aforesaid case, this Court has relied on the very same passage from Modi in Medical Jurisprudence and Toxicology (Twenty Second Edition). In the present case, even though the hymen of the prosecutrix was not ruptured the High Court has held that there was penetration which has caused bleeding in the private parts of the prosecutrix as would be evident from the fact that the underwear of the prosecutrix was stained by blood. In our considered opinion, the High Court was right in holding the appellant guilty of the offence of rape and there is no merit in the contention of the learned counsel for the appellant that there was only an attempt to rape and not rape by the appellant.

In ***State of Rajasthan v. Vinod Kumar, (2012) 6 SCC 770,*** cited on behalf of the State, the accused-Vinod Kumar had been convicted by the trial court under Section 376, IPC, and sentenced to seven years imprisonment. The High Court, however, reduced the sentence to five years imprisonment without recording adequate and special reasons for doing so. This Court held that the High Court failed to ensure compliance with the mandatory requirement of the proviso to Section 376(1), IPC, to record adequate and special reasons.

This Court, after considering the earlier decisions of this Court, held:

> "Thus, the law on the issue can be summarised to the effect that punishment should always be proportionate/ commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim are not the relevant factors for determining the quantum of punishment. The court has to decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of the accused and age of the

sexually assaulted victim and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case.

The power under the proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation. The legislature introduced the imposition of minimum sentence by amendment in IPC w.e.f. 25-12-1983, therefore, the courts are bound to bear in mind the effect thereof. The court while exercising the discretion in the exception clause has to record "exceptional reasons" for resorting to the proviso. Recording of such reasons is ***sine qua non*** for granting the extraordinary relief. What is adequate and special would depend upon several factors and no straitjacket formula can be laid down."

It is, therefore, clear that what is adequate and special would depend upon several factors and on the facts of each case and no straitjacket formula has been laid down by this Court. The legislature, however, requires the Court to record the adequate and special reasons in any given case where the punishment less than the minimum sentence of seven years is to be imposed. The conduct of the accused at the time of commission of the offence of rape, age of the prosecutrix and the consequences of rape on the prosecutrix are some of the relevant factors which the Court should consider while considering the question of reducing the sentence to less than the minimum sentence.

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32. INDIAN PENAL CODE, 1860 – Section 376

(i) In case of rape, the evidence of prosecutrix plays the most vital role – If it is credible and inspires total confidence, it can be relied without further corroboration – If the court is hesitant to place reliance, it should look to other evidence for corroboration – Such weight is given to the evidence of prosecutrix because she is at par with that of an injured witness.

(ii) Lapse on the part of prosecution can be condoned but evidence on record must be clinching.

(iii) Presence of injuries is not necessary to prove commission of rape.

Hem Raj v. State of Haryana

Judgment dated 03.01.2014 passed by the Supreme Court in Criminal Appeal No. 9 of 2014, reported in (2014) 2 SCC 395

Extracts from Judgment:

In a case involving charge of rape the evidence of the prosecutrix is most vital. If it is found credible, if it inspires total confidence, it can be relied upon even ***sans*** corroboration. The court may, however, if it is hesitant to place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice (See : ***State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550***). Such weight is given to the prosecutrix's evidence because her evidence is on a par with the evidence of an injured witness which seldom fails to inspire confidence. Having placed the prosecutrix's evidence on such a high pedestal, it is the duty

of the court to scrutinize it carefully, because in a given case on that lone evidence a man can be sentenced to life imprisonment. The court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthiness rely upon it.

Faced with such a situation, we were anxious to find out whether there can be any clinching medical evidence suggesting rape, but, unfortunately, the prosecution has failed to examine Dr. Anjali Shah, who had had examined the prosecutrix. The MLR was produced in the court by PW 6 J.B. Bhardwaj. Medical Record Technician. This is a serious lapse on the part of the prosecution. We are aware that lapses on the part of the prosecution should not lead to unmerited acquittals. This is, however, subject to the rider that in such a situation the evidence on record must be clinching so that the lapses of the prosecution could be condoned. Such is not the case here. The MLR does suggest that the hymen of the prosecutrix was torn. It is also true that the prosecution has brought on record FSL report which shows that human semen was detected on the salwar of the prosecutrix and on the underwear of the accused. However, it is difficult to infer from this that the prosecutrix was raped by the appellant. The prosecutrix herself has vacillated on this aspect. It was pointed out that no injuries were found on the prosecutrix. We do not attach much importance to this aspect because presence of injuries is not a must to prove commission of rape. But the prosecutrix's evidence is so infirm that it deserves to be rejected. Her brother has come out with a case that the appellant tried to rape the prosecutrix. He did not say that the appellant raped the prosecutrix. Taking an overall view of the matter, we find it difficult to sustain the prosecution case that the prosecutrix was raped by the appellant. This is a case where the appellant must be given benefit of doubt.

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33. INDIAN PENAL CODE, 1860 – Sections 376 and 90
Consent – Sexual Intercourse by accused with prosecutrix on promise of marriage – When prosecutrix got pregnant, accused refused to marry her on the ground that she is of 'bad character' – Shows that accused never intended to marry prosecutrix and procured her consent only for the reason of having sexual relation with her –

Act of accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under section 90 of the IPC.

State of U.P. v. Naushad

Judgment dated 19.11.2013 passed by the Supreme Court in Criminal Appeal No. 1949 of 2013, reported in AIR 2014 SC 384

Extracts from Judgment:

Section 376 of IPC prescribes the punishment for the offence of rape. Section 375 of the IPC defines the offence of rape, and enumerates six descriptions of the offence. The description "secondly" speaks of rape "without her consent". Thus, sexual intercourse by a man with a woman without her consent will constitute the offence of rape. We have to examine as to whether in the present case, the accused is guilty of the act of sexual intercourse with the prosecutrix 'against her consent'. The prosecutrix in this case has deposed on record that the accused promised marriage with her and had sexual intercourse with her on this pretext and when she got pregnant, his family refused to marry him with her on the ground that she is of 'bad character'.

How is 'consent defined? Section 90 of the IPC defines consent known to be given under 'fear or misconception' which reads as under:-

> "**90.** Consent known to be given under fear or misconception – A consent is not such consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; xxxx"

Thus, if consent is given by the prosecutrix under a misconception of fact, it is vitiated. In the present case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. After she got pregnant, he refused to do so. From this, it is evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under Section 90 of the IPC. Thus, the alleged consent said to have obtained by the accused was not voluntary consent and this Court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions. It is apparent from the evidence that the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix. He made a false promise to her and he never aimed to marry her. In the case of ***Yedla Srinivas Rao v. State of A.P., (2006) 11 SCC 615,*** with reference to similar facts, this Court in para 10 held as under:-

"10. It appears that the intention of the accused as per the testimony of PW 1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by he accused that he had committed sexual intercourse which is apparent from the testimony of PWs. 1, 2 and 3 and before Panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuaded the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent."

Further, in para 17 of the said judgment, this Court held that:

> "In the present case in view of the facts as mentioned above we are satisfied that the consent which had been obtained by the accused was not a voluntary one which was given by her under misconception of fact that the accused would marry her but this is not a consent in law. This is more evident from the testimony of PW 1 as well as PW 6 who was functioning as Panchayat where the accused admitted that he had committed sexual intercourse and promised to marry her but he absconded despite the promise made before the Panchayat. That shows that the accused had no intention to marry her right from the beginning and committed sexual intercourse totally under the misconception of fact by prosecutor that he would marry her."

Thus, this Court held that the accused in that case was guilty of the offence of rape as he had obtained the consent of the prosecutrix fraudulently, under a misconception of fact.

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34. INDIAN PENAL CODE, 1860 – Section 377

(i) "Carnal intercourse against the course of nature" – The acts under the provision of this section cannot be determined only with reference to the act and circumstances under which it is executed – It is difficult to prepare a list of such acts covered under this section – Even then this section could apply irrespective of age and consent – This section merely identifies certain acts which constitute the offence irrespective of gender identity or orientation.

(ii) Possibility of prosecution in cases of consensual intercourse between adults cannot be ruled out – It has been held that section 377 is not unconstitutional – Parliament has to decide deletion or amendment of the provision as suggested by the Attorney General.

Suresh Kumar Koushal and another v. Naz Foundation and others

Judgment dated 11.12.2013 passed by the Supreme Court in Civil Appeal No. 10972 of 2013, reported in (2014) 1 SCC 1

Extracts from Judgment:

In ***Lohana Vasantlal Devchand v. State, AIR 1968 Guj 252, Khanu v. Emperor, AIR 1925 Sind 286, State of Gujarat v. Bachmiya Musamiya, (1999) 3 Guj LR 2456*** and ***Mihir v. State of Orissa, 1992 CriLJ 488 (Ori),*** no uniform test can be culled out to classify acts as "carnal intercourse against the order of nature". In our opinion the acts which fall within the ambit of the section 377 IPC can only be determined with reference to the act itself and the circumstances in which it is executed. All the aforementioned cases refer to non consensual and markedly coercive situations and the keenness of the court in bringing justice to the victims who were either women or children cannot be discounted while analyzing the manner in which the section has been interpreted. We are apprehensive of whether the Court would rule similarly in a case of proved consensual intercourse between adults. Hence it is difficult to prepare a list of acts which would be covered by the section. Nonetheless in light of the plain meaning and legislative history of the section, we hold that Section 377 IPC would apply irrespective of age and consent. It is relevant to mention here that the Section 377 IPC does not criminalize a particular people or identity or orientation. It merely identifies certain acts which if committed would constitute an offence. Such a prohibition regulates sexual conduct regardless of gender identity and orientation.

After considering the authorities in ***Anuj Garg v. Hotel Assn. of India, (2008) 3 SCC 1, John Vallamattom v. Union of India, (2003) 6 SCC 611, Keshavan Madhava Menon v. State of Bombay, AIR 1951 SC 128, Ram Krishna Dalmia v. S.R. Tendulkar, AIR 1958 SC 538, R.M.D. Chamarbangwalla v. Union of India, AIR 1957 SC 628, Namit Sharma v. Union of India, (2013) 1 SCC 745, D.S. Nakara v. Union of India, (1983) 1 SCC 305, CST v. Radhakrishan , (1979) 2 SCC 249, Minerva Ltd. v.***

Union of India, (1980) 3 SCC 625 and DTC v. Mazdoor Congress,1991 Supp (1) SCC 600 the following principles can be culled out:

(i) The High Court and Supreme Court of India are empowered to declare as void any law, whether enacted prior to the enactment of the Constitution or after. Such power can be exercised to the extent of inconsistency with the Constitution/contravention of Part III.

(ii) There is a presumption of constitutionality in favour of all laws, including pre-Constitutional laws as Parliament, in its capacity as the representative of the People, is deemed to act for the benefit of the people in light of their needs and the constraints of the Constitution.

(iii) The doctrine of severability seeks to ensure that only that portion of the law which is unconstitutional is so declared and the remainder is saved. This doctrine should be applied keeping in mind the scheme and purpose of the law and the intention of the Legislature and should be avoided where the two portions are inextricably mixed with one another.

(iv) The court can resort to reading down a law in order to save it from being rendered unconstitutional. But while doing so, it cannot change the essence of the law and create a new law which in its opinion is more desirable.

Applying the afore-stated principles to the case in hand, we deem it proper to observe that while the High Court and this Court are empowered to review the constitutionality of Section 377 IPC and strike it down to the extent of its inconsistency with the Constitution, self restraint must be exercised and the analysis must be guided by the presumption of constitutionality. After the adoption of the Penal Code in 1950 (sic 1860) around 30 amendments have been made to the statute, the most recent being in 2013 which specifically deals with sexual offences, a category to which Section 377 IPC belongs. The 172nd Law Commission Report specifically recommended deletion of that section and the issue has repeatedly come up for debate. However, the Legislature has chosen not to amend the law or revisit it. This shows that Parliament, which is undisputedly the representative body of the people of India has not thought it proper to delete the provision. Such a conclusion is further strengthened by the fact that despite the decision of the Union of India not to challenge in appeal the order of the Delhi High Court, the Parliament has not made any amendment in the law. While this does not make the law immune from constitutional challenge, it must nonetheless guide our understanding of its character, scope, ambit and import.

It is, therefore, apposite to say that unless a clear constitutional violation is proved, this Court is not empowered to strike down a law merely by virtue of its falling into disuse or the perception of the society having changed as regards the legitimacy of its purpose and its need.

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35. JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2000 – Sections 7-A, 49 and 2(1)
Reliance on school records *vis-à-vis* opinion of Medical Board – Acceptance of medical report arises only if the school records discarded by stating cogent reasons.

Ranjeet Goswami v. State of Jharkhand and another

Judgment dated 18.09.2013 passed by the Supreme Court in Criminal Appeal No. 1465 of 2013, reported in (2014) 1 SCC 588

Extracts from Judgment:

We are of the view that no cogent reasons have been stated by the High Court to discard the school leaving certificate which was issued on 10.04.2004 by the then Principal of the school. The certificate reveals the date of birth of the accused as 10.05.1991. The school leaving certificate was proved by examining the head mistress of the school. She has recognized the signatures of the principal who issued the school leaving certificate. The evidence adduced by the head mistress was not challenged. Consequently, there is no reason to discard that document. Further, we notice that there was some confusion as to whether the appellant, whose name is Ranjeet Goswami is the same person Rajiv Ranjan Goswami. The investigating officer's report indicates that they are different persons. Consequently we have to take it that the school leaving certificate produced was in respect of the appellant which has been proved.

We, therefore, find no reason to reject the school leaving certificate. If that be so, as per the ratio laid down in ***Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750*** there is no question of subjecting the accused to a medical examination by a medical board. Going by the school leaving certificate since the appellant was a juvenile on the date of occurrence, he can be tried only by the JJ Board. Consequently, the order passed by the High Court is set aside and that of the Sessions Judge, Dumka is restored. The appeal is allowed, as stated above.

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36. LAND ACQUISITION ACT, 1894 – Sections 18 and 30
Scope – Limitation under section 18 applies in a situation where an apportionment made in the award is objected by beneficiary whereas under section 30 no such apportionment is made by the Collector due to conflicting claims – In such case, limitation period under section 18(2) commences from the date of order/award of apportionment is either communicated or is informed actually or constructively to the concerning party – The expression "from the date of Collector's award" used in proviso to section 18, does not mean in literal or mechanical way.

Madan and another v. State of Maharashtra

Judgment dated 06.12.2013 passed by the Supreme Court in Civil Appeal No. 10863 of 2013, reported in (2014) 2 SCC 720

Extracts from Judgment:

It is for the first time on 4.9.1991 (date of the order under Section 30 of the Act) that the appellants came to know that they were entitled to compensation and the quantum thereof. It is not in dispute that the Reference under Section 18 was made within 6 weeks from the said date i.e. 4.9.1991. In the above facts, it is difficult to subscribe to the view taken by the High Court to hold that the Reference under Section 18 was barred by limitation.

A cursory glance of the provisions of Sections 18 and 30 of the Act, extracted above, may suggest that there is some overlapping between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the Court. But, a closer scrutiny would indicate that the two Sections of the Act operate in entirely different circumstances. While Section 18 applies to situations where the apportionment made in the Award is objected to by a beneficiary thereunder, Section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the Court under Section 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the Award would crystallize after apportionment is made in favour of a claimant. It is only thereafter that a reference under Section 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the Court in the reference under Section 30 or in the civil suit, as may be.

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37. LAND ACQUISITION ACT, 1894 – Sections 23, 18 and 54
Compensation on the ground of development potentiality of land – 12% per annum increase should be applied on the value of land from the date of notification upto four years instead of for entire period – On the facts of the case, entire period not included for grant of escalation – Cannot be treated as precedent.

Kashmir Singh v. State of Haryana and others

Judgment dated 13.12.2013 passed by the Supreme Court in Civil Appeal No. 11030 of 2013, reported in (2014) 2 SCC 165

Extracts from Judgment:

It is clear from the above that price of land in the said area in 1991 was fixed @ Rs.420/- per square yard. The Court had applied the formula of 12% per year in the valuation of land and on that basis fixed the market rate at approximately Rs.520/- per square yard after taking a deduction of one-third, the valuation was arrived at Rs.350/- per square yard in the year 1993. The relevant portion of the judgment of ***Ashraft v. State of Haryana, (2013) 5 SCC 527,*** in this behalf reads as under:

> "50 In regard to the 157.20 acres of land situated in Fatehabad, District Hisar, Haryana, acquired for utilisation and development of residential and commercial purposes in Sector 3, Fatehabad, the compensation in respect thereof has been questioned in Civil Appeals Nos. 319-52 of 2011 by one Mukesh and a number of appeals have been tagged with the said matter, including the one filed by the Haryana Urban Development Authority, being SLPs (C) Nos. 26772-79 of 2009 (now appeals). As indicated hereinbefore, in para 25, the Collector had awarded compensation at a uniform rate of Rs 1,81,200/- per acre along with statutory benefits. The Reference Court determined the compensation at the uniform rate of Rs 206 per square yard. The High Court modified the said award and awarded compensation at the rate of Rs 260 per square yard for the land acquired up to the depth of 100 meters abutting National Highway No. 10. The value of the rest of the acquired land was maintained at Rs 206 per square yard. The area in question being already developed to some extent, a cut of 50% on the value is, in our view, excessive. We agree with Mr. Swarup that resorting to the belting system by the High Court was improper and that at best a standard cut of one-third would have been sufficient to balance the smallness of the exhibits produced. It has been pointed out by Mr. Swarup that on a comparative basis, the price of lands in the area in 1991 was on an average of about Rs 420 per square yard. Given the sharp rise in land prices, the value, according to Mr. Swarup, would have doubled to about Rs 800 per square yard by 1993. Even if we have to apply the formula of 12% increase, the valuation of the lands in question in 1993 would be approximately Rs 527 per square yard. Imposing a deduction of one-third, valuation comes to about Rs 350 per square yard, which, in our view, would be the proper compensation for the lands covered in the case of Mukesh and other connected matters."

Going by the formula adopted in the aforesaid judgment, 12% per annum increase can be applied on the value of land determined as Rs.520/- per square yard in the year 1993, up to the year 2001 when the Notification under Section 4 of the Act was issued in the instant case. However, we cannot be oblivious to the fact that from 1993 to 2001, there was a period when instead of increase in the land price, there was attrition in the land rates. Therefore, we would like to enhance the value by applying the formula of 12% per annum increase for a

period of 4 years, instead of taking entire period 1993 and 2001(and this would not be treated as a precedent). When calculated in this manner, the valuation of the land in the year 2001 shall come to Rs.770/- per square yard. After making a deduction of one-third there from the net valuation comes to Rs.514/- per square yard. Compared to the land value of this very area in 1993 which was fixed at Rs.350/- per square yards, we have increased the same by about 50% over a period of 7 years or so, which we think, is quite reasonable as this much compensation is legitimately due to the appellants. We, accordingly, fix the compensation @ Rs.514/- per square yard for the acquired land of the appellants.

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38. MOTOR VEHICLES ACT, 1988 – Sections 110 and 111
MOTOR VEHICLES RULES, 1989 (CENTRAL) – Rules 108 and 119
Menace of use of multi-toned horns – Only possible remedy to curb is imposition of exemplary fine on the violators and ensure its rigorous enforcement by the concerned authorities and agencies.

Abhay Singh v. State of Uttar Pradesh and others
Judgment dated 10.12.2013 passed by the Supreme Court in Special Leave Petition (C) No. 25237 of 2010, reported in AIR 2014 SC 427

Extracts from Judgment:

We shall first deal with the issue of use of multi-toned horns in violation of Rule 119 of the 1989 Rules and the corresponding Rules framed by the State Governments and the Administration of the Union Territories. Since the learned Solicitor General and the Additional Solicitor General are in agreement with the learned Amicus that the prohibition contained in Rule 119(2) on the use of multi-toned horns giving a succession of different notes or with any other sound producing device giving an unduly harsh, shrill, loud or alarming noise is absolute with certain exceptions specified in sub-rule (3), the only thing required to be done by the Central and the State Governments is to implement the prohibition in its letter and spirit. Their failure to do so for last almost 24 years is inexplicable. The contemptuous disregard to the prohibition by people in power, holders of public offices, civil servants an even ordinary citizens is again reflective of 'Raj Mentality' and is antithesis of the concept of a Republic. We feel that the only possible remedy to curb the menace of use of multi-toned horns is to impose exemplary fine on the violators and ensure its rigorous enforcement by the concerned authorities and agencies.

On the issue of use of vehicles with red lights, we were inclined to agree with the learned Amicus that use of signs and symbols of authority such as red lights, etc., is contrary to the constitutional ethos and the basic feature of republicanism, but, on a deeper consideration, we have felt persuaded to accept the submissions of the learned Solicitor General and the Additional Solicitor General that the term "high dignitariesused in proviso (iii) to Rule 108(1) of the 1989 Rules would take within its various constitutional functionaries, i.e.,

holders of the constitutional offices. When the framers of the Constitution have considered it appropriate to treat those occupying constitutional positions as a special category, there is no reason for the Court to exclude them from the ambit of the term “high dignitaries”. The use of red lights on the vehicles carrying the holders of constitutional posts will in no manner compromise with the dignity of other citizens and individuals or embolden them to think that they are superior to other people, more-so, because this distinction would be available to them only while on duty and would be co-terminus with their tenure. However, the Governments of most of the States and Administration of Union Territories have framed rules and issued notifications allowing use of red lights on the vehicles carrying large number of persons other than “high dignitaries”. They have also used the power of issuing notifications to enlarge the list of the persons entitled to use red lights with or without flashers whether on duty or otherwise. Most of these notifications are far beyond the scope of clause ‘c’ of Notifications dated 11.1.2002 and 28.7.2005 issued by the Central Government. It also deserves to be mentioned that there has been abysmal failure on the part of the concerned authorities and agencies of various State Governments and the Administration of the Union Territories to check misuse of the vehicles with red lights on their top. So much so that a large number of persons are using red lights on their vehicles for committing crimes in different parts of the country and they do so with impunity because the police officials are mostly scared of checking vehicles with red lights, what to say of imposing fine or penalty.

The police officers and other authorities entrusted with the task of enforcing the provisions of the 1988 Act and the Rules framed thereunder must discharge their duties without any fear or favour and should impose appropriate penalty on those who violate the prohibition contained in Rule 108 (1) and Rule 119 and similar rules framed by the State Governments and the Administration of Union Territories. The owners/users of the vehicles fitted with multi-toned horns other than those allowed to use such horns under Rule 119(3) of the 1989 Rules or corresponding rules framed by the State Governments and the Administration of the Union Territories shall, within a period of one month from today, remove the multi-toned horns. The officers authorised to enforce the provisions of the 1988 Act and the rules framed thereunder by the Central Government, the State Governments and the Administration of Union Territories shall also ensure that multi-toned horns are removed from all the vehicles except those specified in rule 119(3) of the 1989 Rules or corresponding rules framed by the State Governments and the Administration of Union Territories.

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39. MOTOR VEHICLES ACT, 1988 – Section 149 (2) (a) (ii)
Though the driver of offending vehicle not possessing a valid driving licence, Insurance Company is liable to pay compensation to third party first and then it may recover the said amount from owner and driver of offending vehicle.

Gattabai and others v. Ramchandra and others

Judgment dated 16.04.2013 passed by High Court of Madhya Pradesh in M.A. No. 2707 of 2010, reported in 2014 ACJ 395 (M.P.)

Extracts from Judgment:

So far as exoneration of the respondent No. 3 is concerned, undisputedly the deceased was a third party, the offending vehicle was insured with the respondent No. 3, even if the respondent No. 1 was not possessing a valid licence then, too, at least right of recovery ought to have been given to the respondent No.3. In the circumstances, the appeal filed by the appellant is allowed and the impugned award passed by the learned Tribunal whereby the respondent No.3 was exonerated is modified to the extent that respondent No. 3 shall pay and shall have a right to recover the amount awarded from the respondent Nos.1 and 2.

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40. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Claimant is an educated young businessman of fertilizers – He has lost his leg in the accident – It would not only affect his earning capacity but also deprive him of several amenities in life – Tribunal awarded ` 45,000 – Apex Court enhanced a lump sum amount of ` 5,00,000.

Ram Gopal Yadav v. Paramjeet Kaur and another

Judgment dated 03.12.2013 passed by Supreme Court in C.A. No. 10811 of 2013, reported in 2014 ACJ 499 (S.C.)

Extracts from Judgment:

It is not in dispute that the appellant was 30 years of age on the date of the motor accident. It is also not in dispute that he is an educated person and was doing business in the sale of fertilizers. The fact that he has lost his leg in the accident is bound to not only affect his earning capacity but deprive him of several amenities in life. In the totality of all these circumstances and without going into the details, we are of the opinion that apart from the amount of ` 45,000 awarded by the Tribunal, payment of a lump sum amount of ` 5,00,000 (Rupees Five Lakh) inclusive of interest up to the date of this order towards compensation for the injury suffered by the appellant would meet the ends of justice.

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41. MOTOR VEHICLE'S ACT, 1988 – Section 166

Contributory negligence – Deceased was sitting in a car – The accident occurred due to collision of said car with mini truck – Because deceased was not driving the car, finding of contributory negligence recorded by claims tribunal is set aside by High Court.

Judgment dated 02.04.2013 passed by High Court of Madhya Pradesh in M.A. No. 1545 of 2012, reported in 2014 ACJ 460 (M.P.)

Extracts from Judgment:

After hearing learned counsel for the parties and on perusal of the record, the manner in which the accident has taken place, it is clear that deceased was sitting in a car which was driven by the driver of the car. The accident has taken place due to collision of said car with mini truck. It is not a case where the deceased was driving the car himself which collided with mini truck. In such circumstances, the finding of contributory negligence recorded by the Claims Tribunal and the deduction made accordingly in the impugned award is unsustainable. In that view of the matter, the compensation so calculated by the Claims Tribunal of ` 6,92,000 be paid full to the claimants setting aside the finding of contributory negligence. It is to be observed here that for setting aside the finding of contributory negligence, court-fee, as paid by the claimant, of

` 34,600 is not required to be paid by appellants therefore, allowing I.A. N0. 1782 of 2013, refund of the said court-fee is directed to the claimants and the certificate be issued by the Registry in this regard. On setting aside the finding of contributory negligence, for remaining amount, interest is payable as awarded by the Claims Tribunal. As the claim of enhancement has not been pressed by the claimant, therefore, with the aforesaid modification in the impugned award, this appeal stands disposed of. In the facts and circumstances of the case, parties to bear their own costs.

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42. MOTOR VEHICLES ACT, 1988 – Section 166

(i) Permanent disability – The estimation is of loss of earning capacity or functional disability – Manual labourer – Loss of limb is equivalent to loss of livelihood – Vegetable vendor of 24 years of age sustaining injuries on lower end of right femur, left upper arm and amputation of right leg – His functional disability counted at 85%.

(ii) Proof of income of self-employed labourer is not required looking to present condition of economy and rise in price of agricultural product, earning estimated at ` 6,500 p.m.

(iii) Self-employed person of 24 years of age having 85% functional disability is entitled to increase of 50% as future prospects.

(iv) Requirement of use of artificial limb from time to time – ` 1lac awarded as medical cost and future medical costs.

(v) ` 25,000 awarded as litigation cost under section 35 CPC.

(vi) Amount awarded with interest @ 9% p.a.

(vii) Another appellant also vegetable vendor having fracture of right femur, tibia, middle shaft tibia and fibula, personal disability determined

at 35%, average monthly income ` 6,500, increase of future income as 50%, Future medical expenses ` 15,000 total compensation ` 9,77,100 with 9% p.a interest.

(viii) Third appellant, cleaner of lorries suffering from comminuted fracture unable to bend, stretch or rotate his right hand and also unable to lift heavy object that is essential for livelihood – Functional disability assessed at 85% – On the basis of Minimum Wages Rules in Karnataka monthly income estimated at Rs. 4,300 with adding barter charges ` 700 pm increase 50% As future loss, awarded ` 15,67,000 with 9% interest p.a.

Syed Sadiq and others v. Divisional Manager, United India Insurance Company Limited

Judgment dated 16.01.2014 passed by the Supreme Court in Civil Appeal No. 662 of 2014, reported in (2014) 2 SCC 735

Extracts from Judgment:

This Court in the case of ***Mohan Soni v. Ram Avtar Tomar, (2012) 2 SCC 267*** has elaborately discussed upon the factors which determine the loss of income of the claimant more objectively. The relevant paragraph reads as under:

> "In a more recent decision in ***Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343,*** this Court considered in great detail the correlation between the physical disability suffered in an accident and the loss of earning capacity resulting from it. In paragraphs 10, 11 and 13 of the judgment in ***Raj Kumar*** (supra), this Court made the following observations:
>
> > 10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the

extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in ***Arvind Kumar Mishra v. New India Assurance Company Ltd., (2010) 10 SCC 254*** and ***Yadava Kumar v. National Insurance Company Ltd., (2010) 10 SCC 341***).

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the whole-sale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant/claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant/claimant is still capable to fend for his livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income.

Further, regarding the use of multiplier, it was held in the ***Sarla Verma v. DTC, (2009) 6 SCC 121*** which was upheld in ***Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421,*** as under:

> "We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying ***Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176, U.P. SRTC v. Trilok Chandra, (1996) 4 SCC 362*** and ***New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720),*** which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

Therefore, applying the principle of ***Sarla Verma*** (supra) in the present case, we hold that the High Court was correct in applying the multiplier of 18 and we uphold the same for the purpose of calculating the amount of compensation to which the appellant/claimant is entitled to.

Thus, the total amount which is awarded under the head of 'loss of future income' including the 50% increment in the future, works out to be ` 17,90,100 [(6,500x 85/100 + 50/100 x 85/100 x ` 6,500) x 12 x 18].

Further, along with compensation under conventional heads, the appellant/claimant is also entitled to the cost of litigation as per the legal principle laid down by this Court in the case of ***Balram Prasad v. Kunal Saha, (2014) 1 SCC 384.*** Therefore, under this head, we find it just and proper to allow ` 25,000

Hence, the appellant/claimant is entitled to the compensation under the following heads:

Towards cost of artificial leg	` 50,000
Towards pain and suffering	` 75,000
Towards loss of marriage prospectus	` 50,000
Towards loss of amenities	` 75,000
Towards medical and incidental cost	` 1,00,000
Towards cost of litigation	` 25000

Also, by relying upon the principle laid down by this Court in the case of ***Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association, AIR 2012 SC 100,*** we find it just and proper to allow interest at the rate of 9% per annum.

Hence, the total amount of claim the appellant/claimant becomes entitled to is ` 21,65,100 with interest @ 9% per annum from the date of application till the date of payment.

The appellant/claimant in this appeal has identified himself as a cleaner of lorries by profession. As per the wound certificate Ex. P-219, it has been established that the appellant/claimant has sustained fracture on middle 1/3rd of right humerus and comminuted fracture at the junction of upper 1/3rd and middle 1/3rd of right tibia. The injuries sustained by him and the treatment taken by him is evident from the disability certificate marked as Ex. P-221, X-ray film marked as Ex. P-222 which is supported by oral evidence of the claimant and doctor examined as PW-2 and PW-4 respectively. PW-4 Dr. Rajesh has stated in his evidence that the claimant has suffered 22% permanent disability to upper limb and 29% to lower limb. The High Court has calculated the functional disability to 13%. We are inclined to hold that the High Court has erred in ascertaining the functional disability to such a low percentage considering that the appellant/claimant earns his livelihood through manual labour. It is evident from the material evidence produced on record that the appellant/claimant has suffered from comminuted fracture in the accident as a result of which he will not be able to bend, stretch or rotate his right hand. He will also not be able to lift heavy material which is so essential to carry on with his business to earn his livelihood. Therefore, we are inclined to observe that the appellant/claimant suffers from a functional disability to the extent of 85%.

Further, the appellant/claimant has claimed that he has been earning ` 5,000 p.m. by working as a cleaner of the lorry. The Tribunal assessed his monthly income at ` 3000. The High Court, considering his age and his profession as a cleaner, assessed his income at ` 3500. However, based on the Karnataka State Minimum Wages Rule 2012-2013, the appellant/claimant is entitled to ` 4246 per month. Since, no written record of his income could be produced before the Court, we take his income, as per Revised Minimum Wages Rule at ` 4246 rounding it off as Rs. 4300 per month. Further, an amount of ` 700 can be added as daily barter charges. Therefore, his monthly income amounts to ` 5000.

Further, considering that the appellant/claimant was 22 years of age, the multiplier applicable to his age group is 18 and also based on the legal principle laid down by this Court in various cases, we hold that he is entitled to 50% increment in future loss of income. Therefore, he is entitled to an amount of ` 13,77,000 [(` 5000 x 85/100 + 50/100 x 85/100 x ` 5,000) x 12 x 18].

It is pertinent to note that the appellant/ claimant in this appeal has produced medical bills for ` 8000. He was treated as an inpatient for 15 days in a private hospital. Therefore, considering the same, the High Court has awarded a sum of ` 15000 under the head of medical and incidental expenses. However, considering the fact that the appellant/claimant was also required to have conveyance, nourishment and attendant charges for proper recovery of health, we increase the compensation under this head to ` 50,000. Further, considering the fracture sustained by the appellant/claimant and the evidence produced by the doctor, another ` 5000 awarded by the High Court towards future expenses is upheld by us.

Further, towards loss of amenities, the Tribunal has awarded ` 10,000. However, considering the disability stated by the doctor and the amount of discomfort and unhappiness he has to undergo in the future life, the High Court has awarded ` 20,000 under this head. We intend to observe that the amount awarded by the High Court under this head is very meager and inadequate considering the age and the amount of disability. Therefore, under this head, we award a sum of ` 50,000.

Apart from this, based on the reasoning we have already provided above for the two other appellants/claimants, the appellant/claimant in this appeal, is also entitled to compensation under the following heads:

Towards pain and suffering	` 60,000
Towards medical and incidental expenses	` 50,000
Towards loss of amenities	` 50,000
Towards future expenses	` 5,000
Towards cost of litigation	` 25,000

Therefore, the appellant/claimant in this appeal is entitled to a total amount of ` 15,67,000 with an interest of 9% per annum from the date of application till the date of payment.

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43. MOTOR VEHICLES ACT, 1988

Contributory negligence – Truck driver, while overtaking another vehicle came on the wrong side of the road and dashed against a car coming from opposite direction – The accident has taken place on driver side of both the vehicles – Car driver had seen the truck coming rashly and negligently – He should have parked his car at the left side if he was in a slow speed – Tribunal held that truck driver was solely liable for the accident – Contributory negligence of the truck driver and car driver quantified by 80 per cent and 20 per cent by High Court.

New India Assurance Co. Ltd. v. Preeti and others

Judgment dated 03.04.2013 passed by High Court of Madhya Pradesh in M.A. No. 2034 of 2008, reported in 2014 ACJ 176 (M.P.)

Extracts from Judgment:

After having heard learned counsel appearing on behalf of the parties at length, first of all the issue of contributory negligence raised by the insurance company requires consideration. As per the averments of the claim petition it is clear that the deceased driving Indigo car (MP 09-HD4626)coming back from Bhopal to Indore at about 1.30 a.m., when they reached 10 kilometres ahead to Ashta they met with an accident, car collided with the truck bearing No. MP 09-KC 3118 coming from opposite direction, i.e., Indore to Bhopal. In the said context if the statement of Vivek Agrawal, AW 2, is seen then it is clear that he has seen the truck coming rashly and negligently from opposite direction overtaking another vehicle. In para 11 of his cross-examination it is admitted by him that both the vehicles have collided head-on. Simultaneously, the statement of the driver of the offending vehicle (truck) is also relevant whereby it is clear that Indigo car coming from opposite direction rashly and negligently collided with the truck. By conjoint reading of both these statements along with spot map, Exh. P3, it is clear that the place of accident is in the left side of the road going towards Indore from Bhopal. The place where Indigo car was lying is on left side of the road. In the statement of this witness it has also come on record that the accident has taken place from the driver side of both the vehicles. Considering the aforesaid, it is clear that the driver of the offending vehicle (truck) came to wrong direction but simultaneously, it cannot be ignored that in the night when it is seen by the eyewitness sitting in a car that the offending vehicle coming rashly and negligently then taking safeguard they should have parked their vehicle at the left side if they were in a slow speed. It is clear from the record that the accident has taken place from in front by colliding of both these vehicles though from the driver side and not directly by head-on. In such circumstances looking to the spot map and the evidence so brought by the claimants as well as by the driver of the offending vehicle it cannot be ignored that deceased was not negligent. Looking to the overall material brought on record the percentage of negligence on the side of the deceased may be lesser. He is also negligent to cause accident with the offending vehicle (truck). In that view of the matter in the opinion of this

finding recorded by the Claims Tribunal recording negligence of the offending vehicle only is set aside. After considering all the material on record and looking to the spot map the contributory negligence of the offending vehicle and the vehicle driven by the deceased is quantified by 80 per cent and 20 per cent. Thus, the issue of contributory negligence is decided accordingly.

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44. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 118, 139 and 138

(i) For the purpose of drawing presumption under section 118 r/w/s 139, burden lies on prosecution/complainant to show that (i) for the purpose of advancing loan in question to the accused, he was having requisite funds (ii) the accused issued a cheque for the payment of money advanced and (iii) accused was bound to make payment and agreed for payment at the time of issuance of cheque.

(ii) On the facts, complainant failed – Therefore, reversing the order of acquittal by trial court, the judgment of the High Court was perverse.

John K. Abraham v. Simon C. Abraham and another

Judgment dated 05.12.2013 passed by the Supreme Court in Criminal Appeal No. 2043 of 2013, reported in (2014) 2 SCC 236

Extracts from Judgment:

When we examine the judgment impugned in this appeal, we find that the High Court committed a serious illegality in reversing the judgment of learned Chief Judicial Magistrate. While reversing the judgment of the trial Court, what weighed with the learned Judge of the High Court was that in the 313 Cr.P.C. questioning, it was not the case of the appellant that a blank signed cheque was handed over to his son and that even in the cross-examination it was not suggested to PW 1 that a blank cheque was issued. The High Court was also persuaded by the fact that the appellant failed to send any reply to the lawyer's notice, issued by the respondent. Based on the above conclusions, the High Court held that the presumption under Sections 118 and 139 of the Negotiable Instruments Act could be easily drawn and that the appellant failed to rebut the said presumption. On that single factor, the learned Judge of the High Court reversed the judgment of the trial Judge and convicted the appellant.

It has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.

Keeping the said statutory requirements in mind, when we examine the facts as admitted by the respondent-complainant, as rightly concluded by the learned trial Judge, the respondent was not even aware of the date when substantial amount of Rs.1,50,000/- was advanced by him to the appellant, that he was not sure as to who wrote the cheque, that he was not even aware when exactly and where exactly the transaction took place for which the cheque came to be issued by the appellant. Apart from the said serious lacuna in the evidence of the complainant, he further admitted as PW 1 by stating once in the course of the cross-examination that the cheque was in the handwriting of the accused and the very next moment taking a diametrically opposite stand that it is not in the handwriting of the accused and that it was written by the complainant himself, by further reiterating that the amount in words was written by him.

We find that the various defects in the evidence of respondent, as noted by the trial Court, which we have set out in paragraph 7 of the judgment, were simply brushed aside by the High Court without assigning any valid reason. Such a serious lacuna in the evidence of the complainant, which strikes at the root of a complaint under Section 138, having been noted by the learned trial Judge, which factor was failed to be examined by the High Court while reversing the judgment of the trial Court, in our considered opinion would vitiate the ultimate conclusion reached by it. In effect, the conclusion of the learned Judge of the High Court would amount to a perverse one and, therefore, the said judgment of the High Court cannot be sustained.

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45. RENT CONTROL AND EVICTION:
LIMITATION ACT, 1963 – Section 27 and Article 65

(i) Relationship of landlord and tenant between parties is the essential requirement – Therefore, enquiry is limited to that extent – The question of plaintiff's title on the basis of purchase or question of adverse possession by defendant is beyond the scope of enquiry in eviction suit under Rent Control Act – But question of title can be considered incidentally.

(ii) The question of acquisition of title by adverse possession is beyond the scope of suit of eviction under Rent Control Act – The proper Court is Civil Court constituted under C.P.C.

(iii) Period of limitation on the basis of adverse possession stops running by filing a suit for recovery of possession even if suit is filed in the wrong forum.

(iv) Principles of adverse possession reiterated – It must be actual, open, hostile, exclusive and continuous.

Tribhuvanshankar v. Amrutlal
Judgment dated 13.11.2013 passed by the Supreme Court in Civil Appeal No. 10316 of 2013 reported in (2014) 2 SCC 788

Extracts from Judgment:

The Court in ***Rajendra Tiwary v. Basudeo Prasad, (2002) 1 SCC 90*** posed a question whether on the facts and in the circumstances of the case the High Court was right in law holding that an equitable decree for eviction of the defendant could be passed under Order 7 Rule 7 of the Civil Procedure Code and remanding the case to the first appellate court for recording its finding on the question of title of the parties to the suit premises and for passing an equitable decree for eviction against the defendant if the plaintiffs were found to have title thereto. Answering the question the learned Judges proceeded to state thus:

> "It is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses (c) and (d) of sub-section (1) of Section 11 of the Act, courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The ***sine qua non*** or granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of "landlord and tenant" should exist. The scope of the enquiry before the courts was limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" in clauses (f) and (h), respectively, of Section 2 of the Act."

In course of deliberation, the two-Judge Bench distinguished the authorities in ***Firm Sriniwas Ram Kumar v. Mahabir Prasad, AIR 1951 SC 177*** and ***Bhagwati Prasad v. Chandramaul, AIR 1966 SC 735*** by observing thus: (Rajendra Tiwari case)

> "These are cases where the courts which tried the suits were ordinary civil courts having jurisdiction to grant alternative relief and pass decree under Order 7 Rule 7. A Court of Rent Controller having limited jurisdiction to try suits on grounds specified in the special Act obviously does not have jurisdiction of the ordinary civil court and therefore cannot pass a decree for eviction of the defendant on a ground other than the one specified in the Act. If, however, the alternative relief is permissible within the ambit of the Act, the position would be different."

Thereafter, the learned Judges proceeded to express thus: (Rajendra Tiwari case)

> "In this case the reason for denial of the relief to the plaintiffs by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently found

> to be not established. In any event inquiry into title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable. Further, as pointed out above, in such a case the provisions of Order 7 Rule 7 are not attracted."

At this juncture, we may fruitfully refer to the principles stated in ***Ranbir Singh v. Asharfi Lal, (1995) 6 SCC 580.*** In the said case the Court was dealing with the case instituted by the landlord under Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for eviction of the tenant who had disputed the title and the High Court had set aside the judgment and decree of the courts below and dismissed the suit of the plaintiff seeking eviction. While adverting to the issue of title the Court in ***Ranbir Singh*** (supra) ruled that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties.

In the said case the learned Judges referred to the authority in ***LIC v. India Automobiles & Co., (1990) 4 SCC 286*** wherein the Court had observed that:

> "....in a suit for eviction between the landlord and tenant, the Court will take only a ***prima facie*** decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It was further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has ***prima facie*** right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bona fide the Court may have to go into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case."

On a seemly analysis of the principle stated in the aforesaid authorities, it is quite vivid that there is a difference in exercise of jurisdiction when the civil court deals with a lis relating to eviction brought before it under the provisions of Transfer of Property Act and under any special enactment pertaining to eviction on specified grounds. Needless to say, this court has cautiously added that if alternative relief is permissible within the ambit of the Act, the position would be different. That apart, the Court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case. We respectfully concur with the aforesaid view and we have no hesitation in holding that the dictum laid down in ***Bhagwati Prasad v Chandramaul, AIR 1966 SC 735*** and ***Bishwanath Agarwalla v Sabitri Bera, (2009) 15 SCC 693*** are distinguishable, for in the said cases the suits were filed under the Transfer of Property Act where the equitable relief under Order 7 Rule 7 could be granted.

At this juncture, we are obliged to state that it would depend upon the Scheme of the Act whether an alternative relief is permissible under the Act. In ***Rajendra Tiwary's case*** (supra) the learned Judges, taking into consideration the width of the definition of the "landlord" and "tenant" under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, had expressed the opinion. The dictionary clause under the Act, with which we are concerned herein, uses similar expression. Thus, a limited enquiry pertaining to the status of the parties, i.e., relationship of landlord and tenant could have been undertaken. Once a finding was recorded that there was no relationship of landlord and tenant under the Scheme of the Act, there was no necessity to enter into an enquiry with regard to the title of the plaintiff based on the sale deed or the title of the defendant as put forth by way of assertion of long possession. Similarly, the learned appellate Judge while upholding the finding of the learned trial Judge that there was no relationship of landlord and tenant between the parties, there was no warrant to reappreciate the evidence to overturn any other conclusion. The High Court is justified to the extent that no equitable relief could be granted in a suit instituted under the Act. But, it has committed an illegality by affirming the judgment and decree passed by the learned trial Judge because by such affirmation the defendant becomes the owner of the premises by acquisition of title by prescription. When such an enquiry could not have been entered upon and no finding could have been recorded and, in fact, the High Court has correctly not dwelled upon it, the impugned judgment to that extent is vulnerable and accordingly we set aside the said affirmation.

The conception of adverse possession fundamentally contemplates a hostile possession by which there is a denial of title of the true owner. By virtue of remaining in possession the possessor takes an adverse stance to the title of the true owner. In fact, he disputes the same. A mere possession or user or permissive possession does not remotely come near the spectrum of adverse possession. Possession to be adverse has to be actual, open, notorious, exclusive and continuous for the

requisite frame of time as provided in law so that the possessor perfects his title by adverse possession. It has been held in ***Secy. of State for India in Council v. Debendra Lal Khan, AIR 1934 PC 23*** that the ordinary classical requirement of adverse possession is that it should be ***nec vi, nec clam, nec precario***.

We have referred to the aforesaid pronouncements since they have been approved by this Court in ***Babu Khan v Nazim Khan, AIR 2001 SC 1740*** wherein after referring to the aforesaid two decisions and the decisions in ***Ragho Prasad v Pratap Narain Agrawal, 1969 All LJ 975*** the two-judge bench ruled thus: (***Babu Khan case***)

> "12.... The legal position that emerges out of the decisions extracted above in that once a suit for recovery of possession against the defendant who is in adverse possession is filed, the period of limitation for perfecting title by adverse possession comes to a grinding half we are in respectable agreement with said statement of law. In the present case, as soon as the precedecessor-in-interest of the applicant filed an application under section 91 of the act for restoration of possession of the land against the defendant in adverse possession the defendant's adverse possession ceased to continue thereafter in view of the legal position that such adverse possession does not continue to run after filing of the suit. We are therefore of the view that the suit brought by the plaintiffs for recovery of possession of the land was not bared by limitation."

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46. RENT CONTROL AND EVICTION:
ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 13
CIVIL PROCEDURE CODE, 1908 – Section 148

(i) Protection under section 13 of the M.P. Accommodation Control Act, 1961 is available only during trial and upto appeal but not available at the stage of execution of decree for eviction.

(ii) Eviction decree on the basis of compromise is permissible if any one of the statutory grounds for eviction exists in the facts of the case.

(iii) Time fixed for payment of arrears in compromise decree cannot be extended by the Court – Virtually, it amounts to modification of decree.

(iv) Power under section 148 CPC can be used in relation to period fixed or granted by the Court and not by parties in compromise decree.

(v) Void order neither creates legal rights nor obligations even if it is unchallenged.

Shivshankar Gurgar v. Dilip
Judgment dated 03.01.2014 passed by the Supreme Court in Civil Appeal No. 52 of 2014, reported in (2014) 2 SCC 465

Extracts from Judgment:

The third reason of the High Court and the conclusion of the executing court that the compromise decree insofar as it provided for eviction of the tenant in the event of his failure to pay the arrears of rent within a period of six months from the decree is contrary to the provisions of the Act are interlinked. Therefore, we are required to examine the scope of Sections 12 and 13 of the Act insofar as they are relevant for the present purpose.

The only ground urged by the appellant in his suit is that the tenant fell in arrears of rent. Such a ground is one of the grounds in Section 12(1)(a) of the Act which enables the landlord to evict the tenant if he could successfully establish that the tenant did infact fall in arrears of rent and had neither tendered nor paid the amount within the period specified under Section 12(1)(a) despite a demand. Section 12(1)(a) reads as follows:-

> "That the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner."

A reading of Section 13, in our view clearly indicates that the payment or the deposit of rent into the court by the judgment debtor (tenant) is contemplated only during the pendency of the suit for eviction or an appeal (by the tenant) against a decree or order of eviction. Section 13 has no application to the execution proceedings of a decree for eviction.

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47. SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Sections 13 (4), 17 and 34

(i) Expression used in section 17 "any person" includes not only borrower but also guarantor or any other person who may be affected by measures taken under section 13 (4).

(ii) Ouster of jurisdiction of Civil Court – Extent of – Section 34 of the Act ousts the jurisdiction of Civil Court in respect of any matter which DRT or Appellate Tribunal is entitled to determine whereas section 34 deals with the measures for enforcement of security interest – In section 34 the expression "in respect of any matter" also includes the measures provided under section 34 – Any person aggrieved by such measures can approach DRT or Appellate Tribunal – In such matter Civil Court has no jurisdiction.

Jagdish Singh v. Heeralal and others
Judgment dated 30.10.2013 passed by the Supreme Court in Civil Appeal No. 9771 of 2013, reported in (2014) 1 SCC 479

Extracts from Judgment:

Section 34 of the Securitisation Act ousts the civil court jurisdiction. For easy reference, we may extract Section 34 of the Securitisation Act, which is as follows:

> "***34. Civil Court not to have jurisdiction*** **–** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

The scope of Section 34 came up for consideration before this Court in ***Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311*** and this Court held as follows:

> "It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by one of the lerned counsel for the respondents that there would be no bar to approach the civil court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by the lerned counsel for the respondents is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken 'or to be taken in pursuance of any power conferred under this Act'. That is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding thereof. The bar of civil court thus applies to all such matters which may be

taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13.''

Section 13 deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the Securitisation Act.

Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the ***"Measures"*** referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have jurisdiction to entertain any suit or proceeding ***"in respect of any matter"*** which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. Civil Court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.

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48. SPECIFIC RELIEF ACT, 1963 – Section 34

(i) The plaintiff cannot seek declaration of ownership on the basis of adverse possession but he can claim ownership by way of defence as defendant in a proceeding against him.

(ii) If a suit is filed later on, the defendant may also plead the finding of previous suit to operate as *res judicata*.

Gurdwara Sahib v. Gram Panchayat Village Sirthala and another

Judgment dated 16.09.2013 passed by the Supreme Court in Civil Appeal No. 8244 of 2013, reported in (2014) 1 SCC 669

Extracts from Judgment:

There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in

advrse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.

However, we also find from the reading of the judgment of the High Court that the High Court has refused the injunction observing that the appellant was not entitled to the same as it is the Gram Panchayat which is the owner of the property in dispute and as the appellant is in possession without any right, it has no right to seek injunction against the Gram Panchayat. This finding is totally perverse and, in fact, unnecessary. In the first instance, there was no occasion or reason for the appellant's counsel to seek this prayer in the Second Appeal. As pointed out above, the relief of injunction had already been granted by the Civil Court and this portion of the decree had not been challenged by the respondents. Decree to this extent in favour of the appellant had attained finality. The First Appellate Court also specifically recorded this fact and observed that by not challenging the judgment and decree passed by the learned Civil Judge, the respondents accepted that the appellant was in adverse possession of the land since 13.4.1952. We, thus, clarify that observations of the High Court that the appellant is not entitled to injunction, were unnecessary and beyond the scope of the appeal.

As the appellant is in possession of the suit property since 13.4.1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case respondents file suit for possession and/or ejectment of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of issue No.1 to the effect that the appellant is in possession of adverse possession since 13.4.1952 operates as res judicata. Subject to this clarification, the appeal is dismissed.

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49. SPECIFIC RELIEF ACT, 1963 – Sections 34 and 5

(i) Suit for declaration of title and possession – The burden to prove the case is on plaintiff – It is immaterial that defendant proves his case or not – If a plaintiff files a suit, he has to prove his case but he cannot take the benefit of weakness of defendant.

(ii) Entries in revenue record do not confer any title.

Union of India and others v. Vasavi Cooperative Housing Society Limited and others

Judgment dated 07.01.2014 passed by the Supreme Court in Civil Appeal No. 4702 of 2004, reported in (2014) 2 SCC 269

Extracts from Judgment:

It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by defendants in support of their case probabalises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.

At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in ***Moran Mar Basselios Catholicos v. Thukalan Paulo Avira, AIR 1959 SC 31*** observed that:

> " .....in a suit [for declaration] if the plaintiffs are to succeed, they must do so on the strength of their own title."

In ***Nagar Palika, Jind v. Jagat Singh, (1995) 3 SCC 426*** this Court held as under :

> "The onus to prove title to the property in question was on the plaintiff-respondent. ... In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."

The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.

We are of the view that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question. Ext.X-1 is Classer Register of 1347 which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. Plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased

. The only document that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned.

Both, the trial Court and the High Court made a detailed exercise to find out whether the GLR Register maintained under the Cantonment Land Administration Rules, 1937 and the entries made there under will have more evidentiary value than the Revenue records made by the Survey Department of the State Government. In our view, such an exercise was totally unnecessary. Rather than finding out the weakness of GLR, the Courts ought to have examined the soundness of the plaintiff case. We reiterate that the plaintiff has to succeed only on the strength of his case and not on the weakness of the case set up by the defendants in a suit for declaration of title and possession.

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50. SERVICE LAW:

Promotion – Non-impleadment of necessary parties – Effect – Once respondents are promoted, the juniors who were promoted earlier would become junior if they are not arrayed as parties – Such an adverse order cannot be passed against the principles of natural justice.

State of Rajasthan v. Ucchab Lal Chhanwal

Judgment dated 22.10.2013 passed by the Supreme Court in Civil Appeal No. 9544 of 2013, reported in (2014) 1 SCC 144

Extracts from Judgment:

In ***Indu Shekhar Singh v. State of U.P., (2006) 8 SCC 129*** wherein it has been held thus: -

> "There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of ***inter se*** seniority."

In ***Public Service Commission v. Mamta Bisht, (2010) 12 SCC 204*** this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus:

> "... in ***Udit Narain Singh Malpaharia v. Board of Revenue, AIR 1963 SC 786*** wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. Moreso, proviso to Order 1 Rule 9 of the Code of Civil

Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. [Vide ***Gulabchand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706*** and ***Sarguja Transport Service v. STAT, (1987) 1 SCC 5***]

10. In ***Prabodh Verma v. State of U.P., (1984) 4 SCC 251*** and ***Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768*** it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

In ***J.S. Yadav v. State of Uttar Pradesh and another, (2011) 6 SCC 570*** it has been held as follows:-

"No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice."

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***51. SUCCESSION ACT, 1925 – Section 372**

Whether second wife of the deceased is entitled to Succession Certificate? Held, No – Further held, children from second wife are entitled for issuance of succession certificate in respect of pensionary and other benefits.

Champa Devi and others v. Gulabi Devi

Judgment dated 03.07.2013 passed by the High Court of M.P. in Civil Revision No. 351 of 2004, reported in 2013 (4) MPLJ 535

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52. TERRORISM AND ORGANISED CRIME:

NATIONAL INVESTIGATION AGENCY ACT, 2008 – Sections 21, 13 (1), 14 (1), 16 (3) and Schedule.

Under section 16 (3) of NIA Act, original bail application lies only before Special Court – Section 21 (4) provides that appeal against such bail order lies before the Division Bench of the High Court only – Such application cannot be directly filed before the High Court under section 439 CrPC or 482 CrPC.

State of Andhra Pradesh through Inspector General, National Investigation Agency v. Mohd. Hussain alias Saleem

Judgment dated 13.09.2013 passed by the Supreme Court in Crl. MPs. No. 17570 of 2013, reported in (2014) 1 SCC 258

Extracts from Judgment:

When it comes to the Scheduled Offences, the Special Courts are given exclusive jurisdiction to try them under Section 13(1) of the NIA Act. When it is a composite offence covered under any Act specified in the Schedule and some other Act, the trial of such offence is also to be conducted before the Special Court in view of Section 14(1) of the NIA Act. Section 16(2) of the Act gives the power to the Special Court to conduct a summary trial, where the offence is punishable with imprisonment for a term not exceeding three years or with fine or both. Section 16(3) of the Act declares as follows:-

> "(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session."

In view of this provision, the application for bail by the accused lies before a Special Court.

Section 21(4) of the Maharashtra Control of Organised Crime Act, 1999 provides that an appeal lies to the High Court against an order of the Special Court granting or refusing bail. However sub-section (3) which is a prior sub-section, specifically states that 'except as aforesaid', no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court. Therefore, the phrase 'except as aforesaid' takes us to sub-sections (1) and (2). Thus when anybody is aggrieved by any judgment, sentence or order including an interlocutory order of the Special Court, no such appeal or revision shall lie to any Court except as provided under sub-sections (1) and (2), meaning thereby only to the High Court. This is the mandate of Section 21(3) of the NIA Act.

The applicant is being prosecuted for the offences under the Maharashtra Control of Organised Crime Act, 1999 as well as the Unlawful Activities (Prevention) Act, 1967, such offences are triable only by the Special Court, and therefore application for bail in such matters will have to be made before the Special Court under the NIA Act, 2008, and shall not lie before the High Court either under section 439 or under section 482 of the Code. The application for bail filed by the applicant in the present case is not maintainable before the High Court.

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53. TRANSFER OF PROPERTY ACT, 1882 – Section 53-A
Protection of possession – Possession in part performance of a contract under section 53-A of the Act, entitlement of – Person is entitled to protect his possession if he is ready and willing to perform his part of the contract.

Bhavuti (deceased through LRs) v. Alam (deceased through LRs) & anr.
Judgment dated 01.08.2013 passed by the High Court of M.P. in Second Appeal No. 257 of 1998, reported in ILR (2013) MP 2670

Extracts from Judgment:

From a perusal of Section 53-A of the Act, it is evident that in order to avail the benefit of Section 53-A the Act, the transferee has to show that he has done some act in furtherance of the contract and has performed or is ready and willing to perform his part of contract.

The provisions of Section 53-A of the Act were considered by the Supreme Court in the case of Mohanlal (deceased) through his LR's ***Kachru and others v. Mira Abdul Gaffar and another, AIR 1996 SC 910,*** wherein it was held that a person in possession in pursuance of the agreement for sale is entitled to protection under Section 53-A of the Act only, if he is ready and willing to perform his part of the contract. It is further held that mere statement of a person in possession of the property in pursuance of an agreement for sale, that he is ready and willing to perform his part of contract is not enough. Similar view has been taken in the case of Supreme Court in the case of ***Ram Kumar Agarwal and another v. Thawar Das (Dead) through LRs AIR 1999 SC 3248, Roop singh (Dead) through LRs v. Ram singh (Dead) through LRs, AIR 2000 SC 1485, Mool Chand Bakhru and another v. Rohan and others, AIR 2002 SC 812*** and ***P.T. Munichikkanna Reddy and Ors. v. Revamma and others, AIR 2007 SC 1753***.

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54. TRANSFER OF PROPERTY ACT, 1882 – Sections 59 and 58 (f)
(i) Mortgage by deposit of title deeds (MDTD) – It is not required to be registered ordinarily in the matter of MDTD if title deeds are deposited in the notified town in view of section 59 which provides exception in respect of MDTD for the purpose of registration.
(ii) No instrument is required to be drawn for a valid MDTD – Mere simple memorandum is sufficient for handing over of deposit of title deeds by the borrower to the creditor – But if the memorandum creates rights or liabilities or extinguishes them in regard to MDTD, the registration of such memorandum is compulsory.

State of Haryana and others v. Narvir Singh and another

Judgment dated 07.10.2013 passed by the Supreme Court in Civil Appeal No. 9030 of 2013, reported in (2014) 1 SCC 105

Extracts from Judgment:

A mortgage ***inter alia*** means transfer of interest in the specific immovable property for the purpose of securing the money advanced by way of loan. Section 17(1)(c) of the Registration Act provides that a non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extension of any such right, title or interest, requires compulsory registration. A mortgage by deposit of title-deeds in terms of Section 58(f) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title-deeds can be effected only by a registered instrument. In the face of it, in our opinion, when the debtor deposits with the creditor title-deeds of the property for the purpose of security, it becomes mortgage in terms of Section 58(f) of the Transfer of Property Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. The essence of mortgage by deposit of title-deeds is handing over, by a borrower to the creditor, the title deeds of immovable property with the intention that those documents shall constitute security, enabling the creditor to recover the money lent. After the deposit of the title-deeds the creditor and borrower may record the transaction in a memorandum but such a memorandum would not be an instrument of mortgage. A memorandum reducing other terms and conditions with regard to the deposit in the form of a document, however, shall require registration under Section 17(1)c) of the Registration Act, but in a case in which such a document does not incorporate any term and condition, it is merely evidential and does not require registration.

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NOTE : (*) Asterisk denotes short notes

PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION ISUED BY CENTRAL GOVERNMENT REGARDING ENFORCEMENT OF RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

Ministry of Rural Development (Department of Land Resources) Notification No. S.O. 3729 (E) dated the 19the December, 2013. Published in Gazette of India (Extraordinary) Part II Section 3(ii) dated 19-12-2013 Page 1.

In exercise of the powers conferred by sub-section (3) of Section 1 of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013),** the Central Government hereby appoints the 1st day of January, 2014 as the date on which the said Act shall come into force.

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NOTIFICATION ISSUED BY THE M.P. GOVERNMENT REGARDING APPOINTMENT OF DISTRICT OFFICER FOR EVERY DISTRICT TO EXERCISE POWERS OR DISCHARGE FUNCTIONS UNDER SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

Notification No. F. No. 11-2-2014-One-9, dated the 20th January, 2014. Published in M.P. Rajpatra (Asadharan) dated 20.1.2013 Page 79.

In exercise of the powers conferred by Section 5 of the **Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013** the state Government hereby notifies Additional Collector (Chief Executive Officer, Zila Panchayat) as Ex-Officio District Officer, in all the Districts, to exercise powers or discharge function under this Act.

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NOTIFICATION DATED 16TH JANUARY, 2014 ISSUED BY MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (DEPARTMENT OF PERSONNEL AND TRAINING) REGARDING ENFORCEMENT OF LOKPAL AND LOKAYUKTAS ACT, 2013 (1 OF 2014)

S.O. 119 (E).– In exercise of the powers conferred by sub-section (4) of Section 1 of the **Lokpal and Lokayuktas Act, 2013 (1 of 2014)**, the Central Government hereby appoints the 16th day of January, 2014, as the date on which the provisions of the said Act shall come into force.

[F.No. 407/4/2014-AVD-IV(B)]
DEEPTI UMASHANKAR, Jt. Secy.

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Take up one idea. Make that one idea your life – think of it, dream of it, live on that idea. Let the brain, muscles, nerves, every part of your body, be full of that idea, and just leave every other idea alone. This is the way to success.

– Swami Vivekananda

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

EXTRACTS OF THE SCHEDULE APPENDED TO THE LOKPAL AND LOKAYUKTAS ACT, 2013 WHICH MADE AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988 (49 OF 1988) AND THE CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974) AND CAME INTO FORCE ON 16TH JANUARY, 2014

(Notification published in the same issue of JOTI Journal in Part III)

PART III

Amendments to the Prevention of Corruption Act, 1988 (49 of 1988)

1. Amendment of Sections 7, 8, 9 and 12. – In Sections 7, 8, 9 and Section 12,-

(a) for the words "six months", the words "three years" shall respectively be substituted;

(b) for the words "five years", the words "seven years" shall respectively be substituted;

2. Amendment of Section 13. – In Section 13, in sub-section (2),-

(a) for the words "one year", the words "four years" shall be substituted;

(b) for the words "seven years", the words "ten years" shall be substituted.

3. Amendment of Section 14. – In Section 14,-

(a) for the words "two years", the words "five years" shall be substituted.

(b) for the words "seven years", the words, "ten years" shall be substituted.

4. Amendment of Section 15. – In Section 15, for the words "which may extend to three years", the words "which shall not be less than two years but which may extend to five years" shall be substituted.

5. Amendment of Section 19. – In Section 19, after the words "except with the previous sanction", the words "save as otherwise provided in the Lokpal and Lokayuktas Act, 2013" shall be inserted.

PART IV

Amendments to the Code of Criminal Procedure, 1973 (2 of 1974)

Amendment of Section 197. – In Section 197, after the words "except with the previous sanction", the words "save as otherwise provided in the Lokpal and Lokayuktas Act, 2013" shall be inserted.

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THE MADHYA PRADESH EXCISE (EXERCISE OF POWERS TO SEARCH WITHOUT A WARRANT) RULES, 2014

Notification No.F-B-1-07-2014-2-V- (13) dated the 17th February, 2014. Published in M.P. Rajpatra (Asadharan) dated 17.2.2014 Pages 168(2-4).

In exercise of the powers conferred by sub-section (1), clause (a) of sub-section (2) and proviso to sub-section (3) of Section 62 read with Section 54 of **the Madhya Pradesh Excise Act, 1915 (No. II of 1915),** the Government of Madhya Pradesh, hereby, makes the following rules, namely:-

Rules

1. Short title and commencement.– (1) These rules may be called **the Madhya Pradesh Excise (Exercise of Powers to Search without a Warrant) Rules, 2014.**

(2) They shall come into force with effect from the date of their publication in the "Madhya Pradesh Gazette".

2. Definitions. – In these rules unless the context otherwise requires, –

(a) "Act" means the Madhya Pradesh Excise Act, 1915 (No. II of 1915);

(b) Words and expressions used but not defined in these rules shall have the same meaning as assigned to them in the Act.

3. Exercise of power to search without a warrant by Excise Officers.– Every Officer empowered under Section 54 of the Act for entering and searching any place without search warrant, shall before entering the place, record the grounds of his belief and satisfaction in Form-A that the offence under Sections 34, 35, 36, 36A, 36B, 36C, 37, 38, 38A, 39 or 40 has been, is being or is likely to be committed by the accused. He shall hand over a copy of this document to the accused, in whose custody the place is, before the search. This document shall be the part of his case diary.

4. Report to the Collector.– Every Officer shall submit a detailed report in Form-B of the result regarding such search carried out under Section 54 of the Act, to the Collector as soon as possible.

5. Monthly submission of Report.– Every Officer shall submit a monthly report in Form-C to the Collector about such searches and the results thereof.

6. Savings.– Any action taken under Section 54 of the Act shall, in so far as it is not inconsistent with the provisions of these rules, be deemed to have been taken under the corresponding provisions of these rules.

FORM-A

[See rule-3]

PROCLAMATION ABOUT SEARCH WITHOUT WARRANT

1. Details of information receive

.....

.....

2. On the basis of above information I,.....(name and designation) believe and satisfy that..... place (describe Place, house, vehicle, etc) is used/being used as a place for manufacturing/ transporting/ importing/ exporting/ collection/ possessing liquor/intoxicant*..... (mention liquor/intoxicant's name). After satisfying myself that the offender under Sections 34/35/36/36A/36A/36B/36C/37/38/38A/39/40* of the Act has been/is being or is likely to be committed* shortly, and as a search warrant from a Magistrate cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, I am proceeding to carry out a search operation of the place mentioned above under Section 54 of the Madhya Pradesh Excise Act.

Time.....

Dated.....day of.....2014

Place.....

(Signature).....

(Name).....

(Designation).....

FORM –B

[See rule 4]

RESULT OF SEARCH UNDER SECTION 54 OF THE ACT

To,

The Collector

.....

I beg to state that under Section 54 of Madhya Pradesh Excise Act 1915, I have searched.....place details of Place, House, Vehicle etc. The result of this search is given below:-

1. Details of seizure-

*(a) (i) Name of accused (occupier of the place).....

(ii) The section of Excise Act under which the offence alleged to be committed.....

(iii Details of seizure (intoxicant, vehicle etc.).....

(iv) Brief of the case... .....

*(b) No unauthorized liquor or intoxicant has been seized and the place has been handed over to the occupier.

2. I had recorded the grounds of my belief and satisfaction that the offence under Sections 34/35/36/36A/36B/36C/37/38/38A/39/40* had been, was being or was likely to be committed* and a copy of From-A had been given to the accused/occupier of the place before the search. A copy of Form-A is attached herewith.

Time.....

Dated.....day of.....2014

Place.....

(Signature).....

(Name).....

(Designation).....

*Strike out which is not applicable.

FORM-C
[See rule 5]

MONTHLY REPORT OF SEARCHES AND RESULTES THEREOF

Name of Month.....

S.No.	Date of search	Name of accused/occupier of the place	Details of place searched	Search successful of blank search
(1)	(2)	(3)	(4)	(5)

Details of seizures	Section of Madhya Pradesh Excise Act	Date on which challan put up in the Court	Decision or current position of the case in the Court
(6)	(7)	(8)	(9)

Place.....

Date.....

(Signature).....

(Name).....

(Designation).....

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