JOTI JOURNAL

JUNE 2015 (BI-MONTHLY)

मध्य प्रदेश राज्य न्यायिक अकादमी

मध्य प्रदेश उच्च न्यायालय, जबलपुर - 482 007

MADHYA PRADESH STATE JUDICIAL ACADEMY

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

JOTI JOURNAL JUNE - 2015

SUBJECT- INDEX

PART-I
(ARTICLES & MISC.)

PART-II
(NOTES ON IMPORTANT JUDGMENTS)

ACT/ TOPIC NO.	NOTE NO.	PAGE

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

CIVIL PROCEDURE CODE, 1908
सिविल प्रक्रिया संहिता, 1908

(ii) Framing of issues – Duty of Court – Law explained – The obligation and duty to frame issues is solely cast on the Court which may, nevertheless, elicit suggestions from the litigants-adversaries before it.

धारा–11 – (i) कई वाद – एक कामन निर्णय द्वारा निराकृत– डिक्री की अंतिमता– पूर्व न्याय या रेसज्यूडिकेटा के सिंद्धात का लागू होना – विधि समझायी गई।

(ii) वाद पदों की रचना – न्यायालय का कर्त्तव्य – विधि समझायी गई – वाद पद विरचित करने का दायित्व और कर्त्तव्य केवल न्यायालय पर होता है वे अर्थात न्यायालय पक्षकारों से इस बारे में सुझाव ले सकते हैं।

(iii) वाद प्रश्न विरचित न करने का प्रभाव। **118*** **216**

Sections 96, 100, 149, 151 and Orders 7 Rule 11 (c) & Order 41 Rule 33 – (i) Whether deficiency in court fees is curable at appellate stage? Held, Yes.

(ii) Powers of appellate court, scope of.

धारा 96, 100, 149, 151 और आदेश 7 नियम 11 (सी) और आदेश 41 नियम 33 – (i) क्या न्यायालय शुल्क की अपर्याप्ता को अपील के स्तर पर सुधारा जा सकता है? अभिनिर्धारित किया गया, हाँ।

(ii) अपील न्यायालय की शक्तियों का विस्तार। **119′** **218**

Section 99 and Order 1 Rules 9 & 10 – Maintainability of suit – Improper and defective description of parties, non-effect of.

धारा 99 और आदेश 1 नियम 9 और 10 – वाद की प्रचलनशीलता – पक्षकारों के विवरण का अनुचित और त्रुटिपूर्ण होने का प्रभाव न होना। **120*** **219**

Order 1 Rule 10 – Joinder of party – Addition of party resulting in triangular fight – Cannot be allowed.

आदेश 1 नियम 10 – पक्षकार का संयोजित किया जाना – यदि पक्षकार को जोड़े जाने का परिणाम विवाद को त्रिपक्षीय बना देता हो तब पक्षकार के जोड़े जाने की अनुमति नहीं दी जा सकती।

121 **219**

Order 1 Rule 10 – Suit relating to trust property – Applicant is a beneficiary of the Trust – Filed application under Order 1 Rule 10 CPC for making him party – He is not a stranger to the dispute but a proper party – Application allowed.

आदेश 1 नियम 10 – न्यास की संपत्ति संबंधी वाद – न्यास के एक हितग्राही ने आदेश 1 नियम 10 सी.पी. सी. का आवेदन स्वयं को पक्षकार बनाने का प्रस्तुत किया – वह विवाद के लिये एक अंजान व्यक्ति या स्ट्रेंजर नहीं है बल्कि एक उचित पक्षकार है – आवेदन स्वीकार किया गया।

122* **221**

Order 6 Rule 17 – Prayer for amendment contrary to the basic pleading, made after seeking several adjournments with an aim to procrastinate the trial – Is impermissible

आदेश 6 नियम 17 — संशोधन की प्रार्थना जो कि मूल अभिवचनों के विरूद्ध है कई स्थगन लेने के बाद विचारण को विलंबित करने के उद्देश्य से की गई — यह (संशोधन की प्रार्थना) अनुमति योग्य नहीं है। **123*** **221**

Order 7 Rule 3 – Suit for the relief of permanent prohibitory injunction – Effect of non mentioning the length and width of the suit land.

आदेश 7 नियम 3 — स्थायी निषेधात्मक व्यादेश के अनुतोष का वाद — वाद संपत्ति की लंबाई व चौड़ाई (वाद पत्र में) दर्ज न करने का प्रभाव। **124** **221**

Order 11 Rule 14 – Power to direct a party to produce documents, conditions stated therefor.

आदेश 11 नियम 14 — एक पक्षकार को दस्तावेज प्रस्तुत करने के निर्देश देने की शक्ति के प्रयोग के लिये शर्ते बतलाई गई। **125** **223**

Order 21 Rule 97 – Application under Order 21 Rule 97 of the Code, procedure therefor.

आदेश 21 नियम 97 — आदेश 21 नियम 97 के आवेदन पर प्रक्रिया। **126*** **223**

Order 21 Rules 97, 99, 100, 101 103 and 107 – Resistance or obstruction for possession of immovable property by third party, maintainability of.

Appealable decree/deemed decree and non-appealable order – Law explained.

आदेश 21 नियम 97, 99, 100, 101, 103 और 107 — तृतीय पक्ष द्वारा अचल संपत्ति के आधिपत्य लेने में प्रतिरोध या बाधा की प्रचलनशीलता ।

अपील योग्य आज्ञप्ति, डीम्ड डिक्री और अपील योग्य न होने वाले आदेश के बारे में विधि समझाई गई। **127** **224**

Order 26 Rule 9 – Interim application for appointment of commissioner in appeal, determination of.

आदेश 26 नियम 9 — अपील में कमीश्नर नियुक्ति के लिये अंतरिम आवेदन का निर्धारण किया जाना। **128** **229**

Order 39 Rules 1 and 2 – See section 41 (b) of Specific Relief Act, 1963.

आदेश 39 नियम 1 और 2 — देखें विनिर्दिष्ट अनुतोष अधिनियम, 1963 की धारा 41 (बी)। **129** **231**

Order 39 Rules 1 and 2 – Temporary injunction against alienation – Held, to prevent complications resulting from creation of third party interest, injunction can be granted against creation of such interest.

आदेश 39 नियम 1 और 2 — अंतरण के विरूद्ध अस्थायी निषेधाज्ञा — अभिनिर्धारित किया गया, जटिलता को रोकने जो कि तृतीय पक्ष के हित सृजित होने के परिणाम से होगी, निषेधाज्ञा जारी की जा सकती है।

Order 41 Rules 31 and 33 – Duties of first appellate court, explained.

आदेश 41 नियम 31 व 33 — प्रथम अपील न्यायालय के कर्त्तव्य। **131 (ii)** **233**

CRIMINAL PROCEDURE CODE, 1973

दण्ड प्रक्रिया संहिता, 1973

Section 125 – Filing of application for maintenance, limitation therefor.

Second marriage, proof of – Cogent evidence is required to be adduced.

Maintenance, eligibility therefor.

धारा 125 — भरण पोषण के लिये आवेदन प्रस्तुत करने की परिसीमा।

द्वितीय विवाह का प्रमाण — इसके लिये अकाट्य प्रमाण आवश्यक होता है।

भरण पोषण के लिये पात्रता। **132*** **234**

Sections 125 and 128 – Attachment of salary in execution of maintenance order, requirement of.

धारा 125 और 128 — भरण पोषण के आदेश के निष्पादन में वेतन कुर्की के लिये अनिवार्यतायें। **133*** **234**

Section 154 – Appreciation of documentary evidence – FIR – It should contain the essential features of the prosecution case but cannot be expected to be an encyclopedia of whole prosecution case.

धारा 154 — दस्तावेजी साक्ष्य का मूल्यांकन — प्रथम सूचना प्रतिवेदन — इसमें अभियोजन के प्रकरण के आवश्यक मुख्य तथ्य होना चाहिये किन्तु यह अपेक्षा नहीं की जा सकती कि यह अभियोजन के पूरे प्रकरण के विश्व ज्ञान कोष या इनसाइक्लोपीडिया के समान होगा। **152 (i)** **275**

Section 154 – Effect of non-mentioning of names of all witnesses in the FIR.

धारा 154 — सभी गवाहों के नाम प्रथम सूचना प्रतिवेदन में दर्ज न करने का प्रभाव।

134 (i) **235**

Sections 156 (3), 190 and 202 (1) – Power to direct investigation u/s 156 (3) of the Code – Re-exercise is impermissible.

धारा 156 (3), 190 और 202 (1) — धारा 156 (3) द.प्र.सं. के अधीन अनुसंधान का निर्देश देने की शक्ति — इस शक्ति का पुनः प्रयोग (उसी मामले में दो बार प्रयोग) अनुमत नहीं है।

135 **236**

Sections 173 and 190 – Cognizance is a process where the court takes judicial notice of an offence – The court is not bound by the report submitted by the police under section 173(2) Cr. P.C.

CRIMINAL TRIAL :

दांडिक विचारण :

— Court, duty of – The Court cannot be a mute spectator, particularly in criminal cases and shun its primary duty of finding out the truth from the material on record – It has to punish the guilty and protect the innocent.

False plea taken by accused, effect of – A false plea is to be taken as an additional circumstance against the accused.

Appeal against acquittal – Power of Appellate Court, scope and exercise of.

न्यायालय का कर्तव्य – न्यायालय एक मूक दर्शक नहीं हो सकता है, विशेषकर दांडिक मामलों में यह उसका प्राथमिक कर्तव्य है कि वह अभिलेख पर उपलब्ध सामग्री से सत्य का पता लगाये – उसे दोषी को दंडित करना चाहिये और निर्दोष को संरक्षित करना चाहिये।

अभियुक्त द्वारा एक असत्य बचाव लेने का प्रभाव – अभियुक्त द्वारा एक असत्य बचाव लेना उसके विरूद्ध परिस्थिति की एक अतिरिक्त श्रृंखला होती है।

दोषमुक्ति के विरूद्ध अपील – अपील न्यायालय की शक्ति का विस्तार और प्रयोग।

155 (i),(iii) & (v) **281**

– (i) Sentencing policy:

(a) Sentence, object of – It serves a three-fold purpose; punitive, deterrent, and protective.

(b) Death sentence, imposition of – Aggravating and mitigating circumstance, consideration of.

(ii) Victimology – It is the paramount duty of the Court to provide justice to the incidental victims of the crime (i.e. the family members of the deceased persons) – Appropriate and proportional sentence requires to be imposed.

(i) दंड नीतिः

(a) दंड का उद्देश्य – इसके तीन उद्देश्य है दंडात्मक, निवारक और सुरक्षात्मक – कठोर दंड अपराध की गंभीरता को दर्शाता है, विधि का सम्मान अग्रसर करना अपराध के लिये युक्तियुक्त दंड देने के लिये होता है साथ ही उसी प्रकार के अपराध से समुदाय को सुरक्षित करना और दांडिक आचरण में सुधार लाना भी इसका लक्ष्य होता है।

(b) मृत्यु दण्ड दिया जाना – परिस्थितियाँ स्पष्ट की गई।

(ii) विक्टिमोलॉजी – अपराध से पीड़ित के प्रति न्यायालय के कर्तव्य स्पष्ट किये गये।

139 **240**

DIVISION OF PROPERTY OF CHRISTIANS:

(i) Christian Family – Concept of joint family property or coparceners under Hindu Law, non-applicability of – The concept of coparceners or joint family property is exclusive to the Hindu Law and is not existent amongst Christians.

(ii) Absolute owner – A Christian who inherited property from his parents is the absolute owner of such property – He can divide and distribute property as per his wish.

ईसाईयों में संपत्ति का विभाजन :

(i) ईसाई परिवार – संयुक्त हिन्दू परिवार की संपत्ति या सहदायिक की हिन्दू विधि के अधीन धारणा का लागू न होना – सहदायिक या संयुक्त हिन्दू परिवार की संपत्ति की धारणा केवल हिन्दू विधि के लिये है इसका विस्तार ईसाईयों तक नहीं है।

(ii) निरपेक्ष या पूर्ण स्वामी – एक ईसाई जो उसके माता–पिता से संपत्ति उत्तराधिकार में प्राप्त करता है वह ऐसी संपत्ति का पूर्ण स्वामी होता है – वह उस संपत्ति को उसकी इच्छा अनुसार विभाजित और वितरित कर सकता है। **140 245**

ELECTRICITY ACT, 2003

विद्युत अधिनियम, 2003

Section 154 – Filing of private complaint in respect of an offence relating to unauthorized consumption of electricity, necessity therefor – Submission of complaint to police prior to filing of complaint before Special Court is not *sine qua non* – Electricity Company may directly file private complaint before the Court.

धारा 154 – विद्युत के अनाधिकृत उपभोग के संबंध में निजी परिवाद का प्रस्तुत किया जाना – विशेष न्यायालय के समक्ष परिवाद प्रस्तुत करने के पूर्व पुलिस को शिकायत करना आवश्यक शर्त नहीं है – विद्युत कंपनी न्यायालय के समक्ष सीधे परिवाद प्रस्तुत कर सकती है।

141 247

EVIDENCE ACT, 1872

साक्ष्य अधिनियम, 1872

Section 3 – Appreciation of evidence – Previous animosity – It is a double edged weapon – Can be a basis for false implication and can also be a motive for the crime, decided by the court on facts and circumstances of each case.

धारा 3 – साक्ष्य का मूल्यांकन – पूर्व वेमनस्य – यह एक दो धार वाला हथियार है – यह एक असत्य फंसाने का आधार हो सकता है, अपराध करने का हेतू भी हो सकता है, न्यायालय प्रत्येक प्रकरण के तथ्यों और परिस्थितियों में निर्णीत करती है (की पूर्व वेमनस्य का प्रभाव क्या है)।

134 (ii) 235

Section 3 – See sections 378 and 386 of the Criminal Procedure Code, 1973

धारा 3 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 378 और 386 **158** **288**

Sections 8 and 27 – Discovery of fact and recovery of articles under section 27 of the Evidence Act – Law explained.

Distinction between the conduct of an accused, admissible under section 8 and the statement made to police in the course of investigation – Law explained.

What is excluded by section 162 of Cr.P.C. is the statement made to Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation.

धारा 8 और 27 – धारा 27 साक्ष्य अधिनियम के तहत तथ्यों का पता लगना और वस्तुओं की बरामदगी संबंधी विधि समझाई गई।

अभियुक्त के आचरण जो की धारा 8 साक्ष्य अधिनियम के तहत ग्राह्य है और उसके द्वारा अनुसंधान के दौरान पुलिस को दिये गये कथन में अंतर – विधि समझाई गई।

151 (ii) & (iii) **267**

Section 32 (1) – Appreciation of evidence – Minor discrepancies and infirmities in investigation, non-effect of – Available overwhelming evidence proving the offence alleged, cannot be discredited or rejected on account of minor discrepancies in evidence and infirmities in investigation.

धारा 32 (1) – साक्ष्य का मूल्यांकन छोटे विरोधाभास और अनुसंधान की कमी का प्रभाव न होना – अभिलेख पर अभिकथित अपराध को प्रमाणित करने के लिये पर्याप्त साक्ष्य उपलब्ध है उस पर केवल छोटे विरोधाभासों और अनुसंधान की कमियों के आधार पर अविश्वास नहीं किया जा सकता।

155 (ii) **281**

Section 32 (1) – Dying declaration of 'A' relating to cause of death of herself and 'B' – Whether it is admissible for the cause of death of 'B' ?

धारा 32 (1) – 'ए' का मृत्यु पूर्व कथन जो उसकी स्वयं की व 'बी' की मृत्यु के कारण के बारे में था – क्या यह (मृत्यु कालिन कथन) 'बी' की मृत्यु के कारण के बारे में ग्राह्य है?

142 **249**

Sections 65-A and 65-B – Admissibility of an electronic evidence – Source and authenticity are the two key factors for an electronic evidence so, at the time of admitting such evidence, the court should bear in mind the above two factors.

धारा 65-ए और 65-बी – एक इलेक्ट्रॉनिक साक्ष्य की ग्राह्यता – स्त्रोत व अधिकतृता एक इलेक्ट्रॉनिक साक्ष्य के दो मुख्य कारक होते हैं अतः न्यायालय को ऐसी साक्ष्य ग्राह्य करते समय उक्त दो कारक मस्तिष्क में रखना चाहिये। **143 (ii)** **250**

When above Exception is attracted, conviction can be altered to section 304 Part I IPC instead of section 302 IPC.

धारा 300 का अपवाद 4, धारा 302 और 304 – कब धारा 300 भा.द.सं. का अपवाद 4 आकर्षित होता है? अभिनिर्धारित किया गया जहां 4 अनिवार्यतायें संतुष्ट हो जाती है वहां धारा 300 का अपवाद 4 आकर्षित होता है।

जहां उक्त अपवाद आकर्षित होता है वहां धारा 302 भा.द.सं. के स्थान पर दोषसिद्धि 304 भाग I भा.द.सं. में परिवर्तित करना चाहिये। **147** **257**

Section 302 – As many as 20 injuries, all incised wounds, were found all over the body of deceased/wife – Immediately before the death of the deceased/wife, when the accused/husband and deceased/wife were living together, the entire burden was upon the accused to show as to who else was responsible for killing the deceased.

Submission of accused for lesser sentence, denied.

धारा 302 – बीस चोटें, जो सभी छेदित घाव या इंसाइज्ड वूंड थी, मृतक/पत्नी के पूरे शरीर पर पाई गई थी – जब अभियुक्त/पति और मृतक/पत्नी, मृतक/पत्नी की मृत्यु के ठीक पूर्व साथ–साथ रह रहे थे अभियुक्त पर यह पूरा भार (प्रमाण भार) था कि वह यह दर्शावे की मृतक की हत्या के लिये कौन उत्तरदायी है।

अभियुक्त का कम दण्ड देने का तर्क – नकारा गया। **148** **259**

Sections 302 and 304 Part 1 – Conviction can be altered to section 304 Part I IPC in place of section 302 IPC.

धारा 302 और 304 भाग 1 – दोषसिद्धि धारा 302 भा.द.सं. के स्थान पर 304 भाग I भा.द.सं. में परिवर्तित की जा सकती है। **149** **261**

Sections 302, 326 and 460 – Offence under sections 302, 326 and 460 of IPC – Acid attack – Death of a married woman by acid burns caused by accused, who had an evil eye and wanted to keep her and also caused injuries to other persons who went to her rescue – Offences charged were proved beyond reasonable doubt by duly proved dying declaration and statements of eye witnesses – FIR was also lodged promptly – Imposition of death penalty – Reference under section 366 Cr.P.C., confirmation of – Held, Trial Court rightly awarded death penalty to accused – Further held, persons who suffered disfiguration and burn injuries are entitled to adequate compensation.

धारा 302, 326 और 460 – धारा 302, 326 और 460 के अधीन अपराध – अम्ल या एसिड द्वारा हमला अभियुक्त द्वारा कारित अम्ल द्वारा हमले से एक विवाहित महिला की मृत्यु हुई जिस पर अभियुक्त बुरी नजर रखता था और उसे उसके साथ रखना चाहता था तथा बचाने आये एक व्यक्ति को उपहति कारित हुई – प्रत्यक्ष साक्षीगणों के कथन और सम्यक रूप से प्रमाणित मृत्यु पूर्व कथन से अपराध युक्तियुक्त संदेह से परे प्रमाणित हुआ – प्रथम सूचना तत्काल दर्ज करवाई गई थी – मृत्यु दंड अधिरोपित किया गया – धारा 366 द.प्र.सं. के अधीन उसकी पुष्टि के लिये निर्देश – अभिनिर्धारित किया गया विचारण न्यायालय ने अभियुक्त को मृत्यु दंड सही दिया है

– व्यक्ति जिन्हें जलने के कारण चोटे आयी और विद्रूपीकरण हुआ, पर्याप्त प्रतिकर पाने के हकदार है। **150** **264**

Sections 302 and 376 – Offence of rape alongwith murder – Death sentence, confirmation of – Law explained.

धारा 302 और 376 – हत्या सहित बलात्कार का अपराध – मृत्यु दण्ड की पुष्टि – विधि समझाई गई। **151 (i)** **267**

Section 304-B – Accused/husband was acquitted by High Court – Claim of parity by mother–in–law.

धारा 304-बी – अभियुक्त/पति उच्च न्यायालय द्वारा दोषमुक्त किया गया था – सास द्वारा समानता का दावा । **152 (ii)** **275**

Section 304-B – (i) Offence under section 304-B IPC, ingredients of and word 'shown', connotation of.

(ii) Offence under section 304-B IPC – The word 'soon', interpretation of.

(iii) Initial presumption of innocence of the accused, replacement of by an assumption of guilt – Burden of proof.

(iv) Dowry death – Cruelty – Soon before death – Wife committed suicide within one year of her marriage – It cannot be said that cruelty was not soon before death.

(v) Presumption of innocence, importance of.

(vi) Dowry death – Family members of husband, implication of – If accused husband not living with parents and/or other family members, stronger proof is required to implicate family members of the accused husband.

(vii) Guilt of accused husband – Acquittal of father, brother or other family members, non-effect of – Law explained.

(viii) FIR – Delay, non-effect of – Wife died allegedly by consuming poison – FIR lodged on the next day i.e. after 10 hours of incident – Held, in fact delay has no effect as it cannot be said to be inordinate delay.

धारा 304–बी – (i) धारा 304 बी भा.द.सं. के अपराध के घटक में शब्द ''दर्शाया'' का अर्थ – वास्तव में इसका अर्थ ''प्रमाणित करना'' है।

(ii) धारा 304 बी भा.द.सं. का अपराध – शब्द ''कुछ पूर्व'' या ''soon'' का अर्थान्वयन।

(iii) अभियुक्त के निर्दोष होने की प्रारंभिक उपधारणा का स्थान दोषसिद्धि की धारणा द्वारा लिया जाना – प्रमाण भार।

(iv) दहेज मृत्यु – मृत्यु के ठीक पूर्व क्रूरता पत्नी ने विवाह के 1 वर्ष के भीतर आत्महत्या की – यह नहीं कहा जा सकता की मृत्यु के ठीक पूर्व क्रूरता नहीं थी।

(v) निर्दोष होने की उपधारणा का महत्व – स्पष्ट किया गया।

(vi) दहेज मृत्यु – पति के परिवार के सदस्यों को लिप्त किया जाना।

(vii) अभियुक्त पति का दोषी होना – पिता, भाई या परिवार के अन्य सदस्यों की दोषमुक्ति का प्रभाव न होना – विधि समझाई गई।

(viii) प्रथम सूचना प्रतिवेदन – विलंब का प्रभाव न होना – अभिकथित रूप से जहर का सेवन करने से पत्नी की मृत्यु – घटना के 10 घंटे बाद अगले दिन प्रथम सूचना दर्ज करवायी गई – अभिनिर्धारित किया गया, विलंब का कोई प्रभाव नहीं है क्योंकि यह असामान्य विलंब नहीं है।

153* **276**

Sections 304-B and 498-A – Dowry death – Bride burning.

(i) Acquittal of co-accused (i.e. sister-in-law of deceased) – Criminal liability of the other accused person (i.e. mother-in-law of deceased), non-effect of.

(ii) Dowry death, proof of.

(iii) Dowry death – Bride burning – Sentencing – Undue sympathy is not warranted with respect to crime against women and children.

धारा 304-बी और 498-ए – दहेज मृत्यु – बहु को जलाना।

(i) ननंद सह–अभियुक्त की दोषमुक्ति – अन्य अभियुक्त सास के दांडिक दायित्व पर इसका प्रभाव न होना –

(ii) दहेज मृत्यु का प्रमाण।

(iii) दहेज मृत्यु – बहु का जलाना – दंड – महिलाओं और बच्चों के विरूद्ध अपराध के संबंध में अनावश्यक दयालुता आवश्यक नहीं होती है। **154** **279**

Sections 304-B and 498-A – Dowry death, proof of – Death of the deceased was within seven years of marriage – Was subjected to harassment for dowry soon before her death by her husband and mother-in-law who were living together – Death was in circumstances other than natural and not accidental – Accused persons; husband and mother-in-law of the deceased, living in the same house, took false plea that they had no idea that the deceased received burn injuries – Although subsequent dying declaration recorded by Magistrate was inconsistent but the same recorded earlier by the Police Officer was consistent with the circumstances on record – Held, offences duly proved – Allowing the appeal against acquittal, conviction recorded by the Trial Court restored.

धारा 304-बी और 498-ए – दहेज मृत्यु का प्रमाण – मृत्यु विवाह के 7 वर्ष के भीतर हुई – सास और पति द्वारा मृत्यु के ठीक पूर्व पत्नी को दहेज की मांग को लेकर तंग किया जाना प्रमाणित हुआ है – मृत्यु सामान्य से भिन्न परिस्थितियों में हुई थी और दुर्घटनावश नहीं हुई थी – अभियुक्तगण पति और सास उसी घर में मृतक के साथ रहते थे और उन्होंने यह असत्य बचाव लिया की मृतक को जलने से कैसे चोटें आई उसकी उन्हें कोई जानकारी नहीं – मजिस्ट्रेट द्वारा अभिलिखित किये गये मृत्यु पूर्व कथन में विसंगतता थी किन्तु पुलिस द्वारा उसके पूर्व अभिलिखित मृत्यु पूर्व कथन में स्थिरता थी – अभिनिर्धारित किया गया अपराध सम्यक रूप से प्रमाणित हुआ

– दोषमुक्ति के विरूद्ध अपील को स्वीकार किया गया और विचारण न्यायालय द्वारा दिये गये दोषसिद्धि के आदेश को पुनः कायम किया गया। **155 (vi) 281**

Sections 304-B and 498-A – Offences under sections 304-B and 498-A IPC are not mutually inclusive – If an accused is acquitted under one offence, it does not mean that the accused cannot be convicted for another offence.

धारा 304-बी और 498-ए – धारा 304.बी और 498.ए भा.द.सं. के अधीन अपराध परस्पर एक दूसरे में शामिल नहीं है – यदि अभियुक्त को इनमें से एक अपराध में दोषमुक्त कर दिया गया हो तो इसका अर्थ यह नहीं है कि उसे दूसरे अपराध में दोषसिद्ध नहीं किया जा सकता। **156 286**

Sections 353 and 503 – A page created by traffic police on the Face book – Posting comment on it by accused – Whether constitute offences under sections 353 and 503 of IPC? Held, No, because it is a forum for the public to put forth their grievances – Accused may have *bona fide* belief that it was within permissible limits – No ingredients of the alleged offences are *prima facie* satisfied.

धारा 353 और 503 – यातायात पुलिस द्वारा फेसबुक पर एक पेज या पृष्ठ सृजित किया गया – अभियुक्त द्वारा उस पेज पर कमेंट या टिप्पणी दर्ज की गई – क्या धारा 353 व 503 भा.द.सं. के अपराध का गठन होता है? अभिनिर्धारित किया गया, नहीं क्योंकि यह आमजन के लिये एक फोरम है जिसमें वे अपनी शिकायत दर्ज कर सकते है – अभियुक्त को यह सद्भावनापूर्ण विश्वास हो सकता है कि उसने अनुमत सीमा में टिप्पणी या कमेंट किये है – प्रथम दृष्ट्या अभिकथित अपराध के घटक संतुष्ट नहीं होते है। **157 287**

Sections 363 and 364-B – See sections 378 and 386 of the Criminal Procedure Code, 1973.

धारा 363 और 364-बी – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 378 और 386। **158 288**

Section 420 – See section 200 of the Criminal Procedure Code, 1973.

धारा 420 – देखें दंड प्रक्रिया संहिता, 1973 की धारा 200। **159 290**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000

Section 7-A – See Rule 12 (3) (b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

धारा 7-ए – देखें किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2007 का नियम 12 (3) (बी)। **160 291**

Sections 12, 52 and 53 – Legal position regarding bail of juvenile in conflict with law:

(i) Heinousness, seriousness, severity, gravity of crime are no grounds for rejection of bail.

(ii) The bail can only be rejected on the grounds (or exceptions) stated in section 12 of J.J. Act, 2000.

(iii) The provisions of section 12 of J.J. Act, 2000 are independent of general provisions of bail enshrined in sections 437 and 439 of the Cr.P.C., 1973.

धारा 12, 52 और 53 – विधि संबंधित विरोध में किशोर की जमानत संबंधित विधिक स्थितिः–

(i) अपराध की जघन्यता, गंभीरता, प्रचंडता, विकटता जमानत निरस्त करने के आधार नहीं है।

(ii) जमानत केवल धारा 12 अधिनियम, 2000 में बतलाये आधारों (या अपवादों) पर निरस्त की जा सकती है।

(iii) धारा 12 अधिनियम, 2000 के प्रावधान धारा 437 और 439 दं.प्र.सं. के सामान्य प्रावधानों से स्वतंत्र प्रावधान है। **161 293**

Section 15 – If it is proved that on the date of offence the accused was juvenile, the maximum period for which he could be kept in a special home is for three years – Where such period has already lapsed, he should be released immediately – ***Ajay Kumar v. State of M.P., 2010 (15) SCC 83*** relied on.

धारा 15 – यदि यह प्रमाणित होता है कि अपराध करने की तारीख पर अभियुक्त किशोर था – उसे अधिकतम अवधि जिसके लिये विशेष गृह में रखा जा सकता है वह 3 वर्ष होती है – जहां ऐसी अवधि पहले से निकल चुकी हो उसे तत्काल रिहा कर देना चाहिये। अजय कुमार विरूद्ध स्टेट ऑफ एम.पी., 2010 (15) एस.सी. सी. 83 पर विश्वास किया गया। **162 295**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007
किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2007

Rule 12 (3) (b) – Applicant is deaf and dumb – Never admitted in any school – Only possible method to decide his claim of juvenility is to obtain medical opinion from the duly constituted Medical Board in terms of Rule 12(3) of the Rules, 2007.

नियम 12 (3) (बी) – आवेदक गूंगा और बहरा है – उसे कभी किसी स्कूल में दाखिल नहीं करवाया गया – उसके किशोरावस्था का दावा निराकृत करने का एक मात्र संभव उपाय, सम्यक रूप से गठित मेडिकल बोर्ड से नियम 12 (3) के अनुसार राय लेना है। **160 291**

Rules 12 and 98 – See section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

नियम 12 और 98 – देखें किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000 की धारा 15। **162 295**

LAND ACQUISITION ACT, 1894

भूमि अधिग्रहण अधिनियम, 1894

Sections 4, 6 and 11 – Land acquisition proceeding initiated under the Act of 1894, lapse of after coming into force of section 24 (2) of the Act of 2013 – Law explained.

धारा 4, 6 और 11 — भूमि अधिग्रहण की कार्यवाही अधिनियम, 1894 के तहत प्रारंभ की गई, धारा 24 (2) अधिनियम, 2013 के लागू होने के बाद लेप्स होना — विधि समझाई गई।

163 **296**

LAND REVENUE CODE, 1959 (M.P.)

मध्यप्रदेश भू–राजस्व संहिता, 1959

Sections 162 and 248 – (i) Section 162 of the Code, applicability of.

(ii) Section 248 of the Code, eviction there under – Law explained.

धारा 162 और 248 — (i) धारा 162 का लागू होना।

(ii) धारा 248 के अधीन निष्कासन — विधि समझाई गई। **164** **298**

MUSLIM LAW:

मुस्लिम विधि :

(i) Divorce (Khula), neaning of.

(ii) Khula, when can be effected?

(iii) Application u/s 12 of Protection of Women from Domestic Violence Act by divorced Muslim wife, maintainability of.

(i) तलाक (खुला) का अर्थ।

(ii) खुला, कब प्रभावशील किया जा सकता है?

(iii) तलाक शुदा पत्नी द्वारा धारा 12 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम के आवेदन की प्रचलनशीलता। **165** **300**

N.D.P.S. ACT, 1985

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985

Sections 8 and 20 – See sections 12, 52 and 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

धारा 8 और 20 — देखें किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000 की धारा 12, 52 और 53। **161** **293**

NEGOTIABLE INSTRUMENTS ACT, 1881

परक्राम्य लिखत अधिनियम, 1881

PREVENTION OF CORRUPTION ACT, 1988

भ्रष्टाचार निवारण अधिनियम, 1988

Sections 7 and 13 – Twin requirements are *sine qua non* for proving the offence under section 7 of the Act of 1988 – Firstly, the demand and secondly, the voluntary acceptance of illegal gratification – If these are proved by evidence, then conviction must follow under section 7 of the Act of 1988.

धारा 7 और 13 – धारा 7 अधिनियम, 1988 के अपराध को प्रमाणित करने के लिये 2 अनिवार्यतायें आवश्यक होती है – पहली अवैध परितोषण की मांग, दूसरी उसको स्वेच्छा से स्वीकार कर लेना – यदि साक्ष्य से ये दो तथ्य प्रमाणित हो जाते हैं तो धारा 7 अधिनियम, 1988 के तहत् दोषसिद्धि होना चाहिये।

170 **309**

PROPERTY LAW :

संपत्ति विधि :

- See Division of Property of Christians
- देखें ईसाईयों में संपत्ति का विभाजन **140** **245**

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013

Section 24 (2) – (i) Nature of second proviso of section 24 (2) (as inserted vide Amendment Ordinance of 2014 w.e.f. 01.01.2015 – It is prospective in operation.

(ii) Interpretation of Statues – Fresh legislation, whether prospective or retrospective?

(iii) Award was passed on 06.08.2007 under the old Act of 1894 – Neither physical possession taken nor compensation paid – More than five years have already passed – Land acquisition proceedings are deemed to have lapsed in terms of section 24 (2) of the Act of 2013.

धारा 24 (2) – (i) धारा 24 (2) के द्वितीय परंतुक की प्रकृति (जिसे संशोधन अध्यादेश 2014 दिनांक 01.01. 2015 से प्रभावशील द्वारा जोड़ा गया है) – यह भविष्यलक्षी लागू होता है।

(ii) विधि का अर्थान्वयन – एक नवीन विधान – भूतलक्षी या भविष्यलक्षी कैसा होगा।

(iii) अवार्ड भूमि अर्जन अधिनियम, 1894 के तहत् दिनांक 6.8.2007 को पारित किया गया – न तो भूमि का भौतिक आधिपत्य लिया गया था न ही प्रतिकर भुगतान किया गया था – 5 वर्ष से अधिक समय बीत चुका था – भूमि अधिग्रहण कार्यवाही धारा 24 (2) अधिनियम, 2013 के अर्थो में समाप्त या लेप्स हो जाना मानी जायेगी।

171 **310**

Section 24 (2) – See sections 4, 6 and 11 of the Land Acquisition Act, 1894.

धारा 24 (2) – देखें भूमि अधिग्रहण अधिनियम, 1894 की धारा 4, 6 और 11।

163 **296**

PART - I

सम्पादकीय

प्रदीप कुमार व्यास,
प्रभारी संचालक

सम्मानीय पाठक गण,

इस अंक में धारा 357–ए द.प्र.सं, 1973 के क्रम में बनायी गई ''मध्यप्रदेश अपराध पीड़ित प्रतिकर योजना, 2015'' को शामिल किया गया है जो 31 मार्च 2015 के राजपत्र में प्रकाशित हुई है और राजपत्र में प्रकाशन दिनांक से ही यह योजना प्रदेश में लागू हो चुकी है। इस योजना की लंबे समय से प्रतीक्षा थी।

इस अंक में विद्युत अधिनियम, 2003 के मामलों में अपराध के शमन को लेकर उत्पन्न प्रश्न और उस पर समाधान शामिल किया गया है। इन मामलों में अपराध का शमन अधिक होता है और हमारे नवनियुक्त विशेष न्यायाधीश महोदय के मन में कई प्रश्न होते हैं जिनको इस लेख में शामिल किया गया है।

इन दो माहों में एक कार्यक्रम अपर जिला न्यायाधीशगण के एडवांस कोर्स का 11 मई 2015 से 15 मई 2015 तक आयोजित किया गया है वहीं जून के अंतिम सप्ताह में एक कार्यशाला मोटरयान अधिनियम के अधीन क्लेम प्रकरणों पर और दूसरी कार्यशाला 27 एवं 28 जून 2015 को एन.डी.पी. एस. एक्ट पर रखी गई है।

माह फरवरी 2015 के अंक में कागज की गुणवत्ता अच्छी नहीं रही है जिस बारे में मुद्रक को कागज की गुणवत्ता सुधारने के लिये कहा जा चुका है।

तेरहवे वित्त आयोग की राशि से क्रय की गई बुक सेल्फ वर्ष 2012 बेच तक के समस्त न्यायाधीशों के लिये गोदरेज कंपनी की शीघ्र ही संबंधित कंपनी द्वारा जिला एवं तहसील स्तर पर सप्लाई की जावेगी। शेष न्यायाधीशों के लिये ऐसी बुक सेल्फ मिल सके इसके लिये आगे प्रयास किया जायेगा।

अप्रैल 2015 का अंक 27.04.2015 को अकादमी की वेबसाइट पर अपलोड कर दिया गया था। हार्डकापी शीघ्र प्रेषित की जायेगी।

जून 2015 का यह अंक 19.05.2015 को अकादमी की वेबसाइट पर अपलोड किया जा रहा है ताकि हमारे सदस्यगण को नवीनतम वैधानिक स्थिति शीघ्र पता लग सके।

इस पत्रिका को लेकर आपके अमूल्य सुझाव हर बार की तरह इस बार भी आमंत्रित करता हूँ। और आशा करता हूं कि आपकी ओर से अनुकरणीय सुझाव प्राप्त होंगे।

आपका
प्रदीप कुमार व्यास

कमजोर तब रूकते हैं,
जब वे थक जाते हैं,
और विजेता तब थमते हैं,
जब वे जीत जाते हैं,

एक विद्वान

•

विद्युत अधिनियम, 2013 अपराधों का शमन

प्रदीप कुमार व्यास
प्रभारी संचालक

सामान्य विधि में जिस तरह दण्ड प्रक्रिया संहिता, 1973 की धारा 320 में अपराधों के शमन या समझौते की व्यवस्था है उसी प्रकार विशेष विधियों में भी अपराधों के शमन की व्यवस्था है यहाँ हम विद्युत अधिनियम, 2003 में अपराधों के शमन के बारे में विचार करेंगे। विद्युत अधिनियम के मामलों में समझौते अधिक होते है और उनको लेकर कई प्रश्न हमारे नव नियुक्त विशेष न्यायाधीशों के मन में रहते है ऐसे ही प्रश्न और उनके समाधान यहां दिये जा रहे हैं ताकि दैनिक न्यायिक कार्य में आसानी हो सके और न्यायालयों का महत्वपूर्ण समय बच सके।

प्रश्न 1 :– विद्युत अधिनियम, 2003 में शमन के बारे में सामान्य प्रावधान क्या है?

उत्तरः– धारा 152 (1) विद्युत अधिनियम, 2003 के अनुसार दण्ड प्रक्रिया संहिता, 1973 में अर्न्तविष्ट या समाहित किसी बात के होते हुए भी,

समुचित सरकार या उसके द्वारा इस बाबत् प्राधिकृत कोई अधिकारी,

किसी उपभोक्ता या व्यक्ति से,

जिसने इस अधिनियम के तहत दण्डनीय विद्युत चोरी का कोई अपराध कारित किया है या जिस पर यह युक्तियुक्त संदेह है कि उसने ऐसा अपराध किया है।

अपराध का शमन करने के लिए टेबिल या तालिका में वर्णित राशि स्वीकार कर सकेंगे।

समुचित सरकार शासकीय राजपत्र में अधिसूचना द्वारा तालिका की दरों को संशोधित कर सकेंगे।

धारा 152 (1) अधिनियम अपराधों के शमन के बारे में मूलभूत प्रावधान है।

प्रश्न 2 :– समुचित सरकार क्या है?

उत्तरः– अधिनियम की धारा 2 (5) के अनुसार समुचित सरकार से तात्पर्य :–

(a) (i) ऐसी उत्पादन कम्पनी के बाबत् जो पूर्णतः या अंशतः उसके स्वामित्व की हो,

(ii) विद्युत के किसी अर्न्तराज्यिक उत्पादन, पारेषण, व्यापार या प्रदाय के संबंध में और किन्हीं खानों, तेल, क्षेत्रों, रेल, राष्ट्रीय राजमार्गों, हवाई अड्डों, तार, प्रसारण केन्द्र और कोई रक्षा संक्रम, डाकयार्ड, परमाणु शक्ति संस्थापन के बाबत् और,

(iii) राष्ट्रीय भार प्रेक्षण केन्द्र और प्रादेशिक भार प्रेक्षण केन्द्र के बाबत्

(iv) उसके या उसके नियंत्रणाधीन किसी संक्रम या विद्युत संस्थापन के संबंध में, केन्द्रीय सरकार

अभिप्रेत है।

(b) किसी अन्य दशा में इस अधिनियम के अधीन अधिकारिता रखने वाली राज्य अभिप्रेरित है।

उक्त परिभाषा से यह स्पष्ट है कि यदि मामला केन्द्र की विषय वस्तु जैसे रेल, राष्ट्रीय राजमार्ग, हवाई अड्डे, रक्षा आदि के बारे में है तब समुचित सरकार का तात्पर्य केन्द्रीय सरकार होगा और अन्य दशा में राज्य सरकार होगा।

प्रश्न 3:– समुचित सरकार द्वारा प्राधिकृत अधिकारी कौन हो सकते है?

उत्तरः– मध्यप्रदेश शासन द्वारा जारी अधिसूचना क्रमांक–एफ–1–05–07/13 दिनांक 6 अक्टूबर 2007 जिसका प्रकाशन म.प्र. राजपत्र (पार्ट–1) दिनांक 19/10/2009 पेज 2551 पर किया गया है, के द्वारा मध्यप्रदेश राज्य विद्युत मंडल या उसकी वितरण कम्पनियों द्वारा नियुक्त किये गये फेंचाइजी के समतुल्य अधिकारियों को अधिसूचना दिनांक 30/06/2006, संशोधित अधिसूचना दिनांक 21/08/2008 के अनुसार विद्युत चोरी के अपराध का प्रशमन करने के लिए निर्धारित राशि स्वीकार करने हेतु अधिकृत किया गया है, जो इस प्रकार है :–

अ. समस्त निम्नदाब या लोटेंशन संस्थापनों के लिए जो कि 15 हार्स पावर तक के हो, कार्यपालन यंत्री (एक्जीक्यूटिव इंजीनियर) या फ्रेंचाइजी के समतुल्य रैंक का कोई अधिकारी।

ब. समस्त निम्नदाब या लोटेंशन संस्थापनों के लिए जो कि 15 हार्स पावर से अधिक हो अधीक्षक यंत्री (सुपरीट्रेडिग इंजीनियर) या फ्रेंचाइजी के समतुल्य रैंक का कोई अधिकारी।

स. समस्त उच्च दाब या हाइटेंशन संस्थापनों के लिए मुख्य अभियंता (चीफ इंजीनियर) या फेंचाइजी के समतुल्य रैंक का कोई अधिकारी।

प्रश्न 4 :– कौन से अपराध शमन योग्य है?

उत्तरः– एक मत यह है कि केवल विद्युत की चोरी जो कि धारा 135 विद्युत अधिनियम, 2003 में वर्णित है वहीं शमन योग्य है क्योंकि धारा 152 में यह शब्दावली है कि किसी उपभोक्ता या व्यक्ति जिसने इस अधिनियम के तहत दण्डनीय विद्युत चोरी का कोई अपराध किया है या जिस पर यह युक्तियुक्त संदेह है कि उसने विद्युत चोरी का अपराध किया है इससे यह स्पष्ट होता है कि केवल विद्युत की चोरी का अपराध ही शमन योग्य है।

दूसरा मत यह है कि धारा 138 विद्युत अधिनियम, 2003 भी समझौता योग्य है क्योंकि इसमें भी मीटर या अनुज्ञप्ति धारी के संक्रर्मो में जो बाधा डाली जाती है उसका सामान्यतः उद्देश्य विद्युत चोरी करना ही होता है।

मेरे मत में धारा 135 के तहत विद्युत चोरी में ही समझौता स्वीकार करना अधिक युक्तियुक्त प्रतीत होता है क्योंकि विधायिका ने धारा 152 अधिनियम में जो शब्दावली काम में ली है वह बिल्कुल स्पष्ट है और केवल विद्युत चोरी के संबंध में है।

प्रश्न 5 :– अन्य अपराध जो राजीनामा योग्य नहीं है उसमें क्या किया जा सकता है?

उत्तरः— यदि एक ही मामले में कुछ अपराध समझौता योग्य हो और कुछ न हो जैसे 135 विद्युत अधिनियम समझौता योग्य है और अन्य अपराध जैसे 138, 136, 137 अधिनियम के अपराध भी हो तो परिवादी धारा 321 दण्ड प्रक्रिया संहिता के तहत अन्य अपराधों के मामले वापस ले सकते है या विड्रो कर सकते है।

प्रश्न 6 :— अधिनियम में मामलों को वापस लेने या विड्रा करने के बारे में कोई प्रावधान नहीं है तब क्या किया जा सकता है ?

उत्तरः— धारा 155 विद्युत अधिनियम, 2003 के तहत इस अधिनियम में अन्यथा उपबंधित को छोड़कर दण्ड प्रक्रिया संहिता, 1973 के प्रावधान जहाँ तक कि वे इस अधिनियम के उपबंधों के साथ असंगत नहीं है विशेष न्यायालय के समक्ष कार्यवाहियों को लागू होंगे। इस प्रावधान से यह स्पष्ट है कि दण्ड प्रक्रिया संहिता के अन्य प्रावधान इन कार्यवाहियों में काम में लिये जा सकते हैं अतः धारा 321 दण्ड प्रक्रिया संहिता के तहत मामला वापस लेने या विड्रावल की कार्यवाही की जा सकती है।

प्रश्न 7:— क्या धारा 150 विद्युत अधिनियम के तहत विद्युत चोरी के दुष्प्रेरण का अपराध समझौता योग्य है?

उत्तरः— धारा 320 (3) दण्ड प्रक्रिया संहिता के अनुसार जब कोई अपराध शमनीय है तो ऐसे अपराध का दुष्प्रेरण या ऐसे अपराध को कारित करने का प्रयत्न में भी शमन किया जा सकेगा।

उपर धारा 155 भारतीय विद्युत अधिनियम पर विचार किया गया है जिसके अनुसार दण्ड प्रक्रिया संहिता के प्रावधान विशेष न्यायालय की कार्यवाहियों में यदि वे इससे असंगत नहीं हैं तो लागू किये जा सकते हैं अतः 320 (3) दण्ड प्रक्रिया संहिता को भी लागू किया जा सकता है और धारा 150 विद्युत अधिनियम के तहत चोरी के अपराध का दुष्प्रेरण भी समझौता योग्य है।

प्रश्न 8 :— विद्युत चोरी के अपराध में शमन करने के बारे में परिसीमा क्या है ?

उत्तर :— धारा 152 (4) विद्युत अधिनियम, 2003 के तहत किसी अपराध का शमन करने के लिए किसी व्यक्ति या उपभोक्ता को केवल एक बार अनुमति दी जा सकती है यही परिसीमा है अर्थात् ऐसा व्यक्ति जो बार–बार विद्युत चोरी अपराध के लिए अभियोजित किया जाता है उसे अनुमति नहीं दी जा सकती है और यह प्रावधान आज्ञापक है।

प्रश्न 9 :— शमन शुल्क की दरें क्या है ?

उत्तर :— शमन शुल्क की दरें निम्न प्रकार से है :—

सारणी

क्र.	प्रवर्ग	विद्युत अधिनियम, 2003 की धारा 152 में विनिर्दिष्ट राशि	संशोधित दर जिस पर प्रशमन करने के लिए धनराशि प्रति किलोवाट (के. डब्ल्यू.)/अश्वशक्ति (एच.पी.) या उसका भाग, निम्नदाव (एल.टी.) की सप्लाई और प्रति किलोवाट एम्पीयर (के.वी.ए.) उच्चदाब (एच.टी.) की सप्लाई के लिए संविदात्मक मांग के अनुसार संग्रहित की जानी है।	
1.	औद्योगिक सेवा	रू. 20,000	10 हार्सपावर तक	रू. 2,000 प्रति हार्सपावर और उसका भाग
			10 हार्सपावर से तथा 20 हार्सपावर तक	रू. 5,000 प्रति हार्सपावर और उसका भाग
			20 हार्सपावर से ऊपर और उसका भाग	रू. 10,000 प्रति हार्सपावर
2	वाणिज्यिक सेवा	रू. 10,000	5 किलोवाट तक	रू. 1000 प्रति हार्सपावर और उसका भाग
			5 किलोवाट से ऊपर	रू. 2500 प्रति हार्सपावर और उसका भाग
3	कृषि सेवा	रू. 2,000	—	रू. 1000 प्रति हार्सपावर और उसका भाग
				अधिसूचना दिनांक 21/08/2008 अनुसार संशोधित दर रू. 100 प्रति हार्सपावर और उसका भाग
4	अन्य सेवा	रू. 1,000	—	रू. 1000 प्रति हार्सपावर और उसका भाग

प्रश्न 10 :— पुराने विद्युत अधिनियम, 1910 की धारा 39 के प्रकरणों में भी समझौता किया जा सकता है?

उत्तर :— धारा 152 विद्युत अधिनियम, 2003 की यह शब्दावली स्पष्ट है कि किसी उपभोक्ता या व्यक्ति जिसने इस अधिनियम के तहत दण्डनीय विद्युत चोरी का अपराध किया है इससे स्पष्ट है कि पुराने अधिनियम के अपराध समझौता योग्य नहीं है।

प्रश्न 11:— धारा 152 विद्युत अधिनियम, 2003 के तहत समझौता किस स्टेज पर किया जा सकता है ?

उत्तरः– धारा 152 (2) विद्युत अधिनियम, 2003 से स्पष्ट है कि यदि कार्यवाही संस्थित करने

से पहले ही समझौता हो जाता है तो न्यायालय में कार्यवाही संस्थित नहीं की जायेगी और यदि संस्थित कर दी है तो जारी नहीं रखी जाएगी और ऐसे व्यक्ति को अभिरक्षा से स्वतंत्र कर दिया जाऐगा। इस प्रकार अपराध पंजीबद्ध होने के बाद और निर्णय सुनाने के पूर्व किसी भी समय संबंधित उपभोक्ता या व्यक्ति शमन कर सकता है। शमन की कोई स्टेज निर्धारित नहीं की गयी है।

प्रश्न 12 :– शमन का प्रभाव क्या है?

उत्तर :– धारा 152 (3) विद्युत अधिनियम के तहत शमन का प्रभाव दोषमुक्ति माना जाता है।

प्रश्न 13 :– मध्यप्रदेश पश्चिम क्षेत्र विद्युत वितरण कंपनी लिमिटेड के अतिरिक्त सचिव द्वारा दिनांक 7/12/2007 को जारी प्रपत्र किस संबंध में है ?

उत्तरः– यह प्रपत्र कंपनी के प्राधिकृत अधिकारियों के लिए शमन के निर्देश के संबंध में है लेकिन यह निर्देश विशेष न्यायालय के ध्यान में होना आवश्यक है जो इस प्रकार है :–

(ए) अपराध के शमन के लिए सर्वप्रथम आवश्यक है कि अभियोगी (कंपनी प्राधिकारी) एवं आरोपी (उपभोक्ता या व्यक्ति जिसने विद्युत चोरी का अपराध किया है या जिसके संबंध में युक्तियुक्त रूप से संदेह है कि उसने ऐसा किया है) परस्पर अपराध शमन करने हेतु उचित शर्तों पर राजी हों अर्थात् दोनों पक्षों की स्वीकृति, अपराध शमन हेतु आवश्यक है। यह कार्यवाही एकपक्षीय नहीं हो सकती।

(बी) अपराध शमन हेतु प्रकरण को अधिकृत अधिकारी द्वारा सक्षम प्राधिकारी के समक्ष पेश करना होगा। सक्षम प्राधिकारी की अनुमति लेकर ही अपराध शमन किया जा सकेगा। यह अधिकारी शमन शुल्क स्वीकार करने वाला एक मात्र सक्षम प्राधिकारी है। अन्य कोई नहीं।

(सी) सक्षम प्राधिकारी के लिए आवश्यक नहीं है कि वह प्रत्येक प्रकरण में अपराध शमन स्वीकार करें।

(डी) अपराध का शमन विशेष न्यायालय में प्रकरण दर्ज करने के पूर्व भी किया जा सकेगा अर्थात् ऐसे प्रकरण जिसमें परिवाद दाखिल करने के पूर्व ही अपराध शमन किया गया है को अदालत में प्रस्तुत न किया जावे।

(इ) आरोपी व्यक्ति द्वारा अपराध शमन हेतु आवेदन करने पर अधिकृत/निर्धारण अधिकारी को अपने अभिमत सहित प्रकरण सक्षम प्राधिकारी को प्रस्तुत करना चाहिए जिसमें निम्न जानकारी सम्पादित हो।

1. निर्धारण आदेश अनुसार उपभोक्ता/व्यक्ति द्वारा सम्पूर्ण राशि जमा करा दी गई है और कोई भी बकाया राशि शेष नहीं है।
2. उपभोक्ता/व्यक्ति द्वारा पूर्व में किसी अन्य प्रकरण में अपराध शमन सुविधा का उपयोग नहीं किया गया है। (धारा 152 (4))
3. विशेष न्यायालय द्वारा विचाराधीन प्रकरणों में कोई निर्णय नहीं दिया गया है।

(एफ) सक्षम प्राधिकारी अपराध शमन हेतु प्रस्तुत आवेदन पर विचारोपरांत एतस्मिन पश्चात्

उल्लेखित प्रपत्र क्रमांक 3 में विद्युत शमन शुल्क जमा कराने हेतु आवश्यक सलाह (बैंक संज्ञापन पत्र) संबंधित व्यक्ति को अथवा वह उपलब्ध नहीं हो तो निर्धारण अधिकारी को जारी कर सकेगा। इस कार्य हेतु कृपया ध्यान रहे कि अपराध शमन की कार्यवाही केवल सक्षम प्राधिकारी ही कर सकेगा। सक्षम प्राधिकारी इस कार्य हेतु किसी अन्य अधिकारी को अधिकार प्रत्यायोजित नहीं कर सकेगा।

(जी) विद्युत चोरी के अपराध शमन हेतु प्राप्त किसी भी आवेदन को अस्वीकार करने हेतु भी प्राधिकृत आधिकारी सक्षम होगा यदि उसकी यह राय है कि इसे स्वीकार करने पर कंपनी के हितों पर प्रतिकूल प्रभाव पड़ सकता है।

(एच) केवल धारा 135 के प्रकरण को ही अपराध शमन किया जा सकेगा।

(आई) अपराध शमन स्वीकार करने की दिनांक को ही एक आदेश जारी किया जायेगा। एतस्मिन् पश्चात् उल्लेखित प्रपत्र क्र. (4) अनुसार जारी आदेश के बिना अपराध शमन की प्रक्रिया पूर्ण नहीं मानी जा सकेगी। अपराध शमन स्वीकार करने के पश्चात् विशेष न्यायालय को अपराध शमन स्वीकार करने की सूचना एतस्मिन पश्चात् उल्लेखित प्रपत्र क्र. 5 में प्रेषित करेगा। किन्तु यह सूचना केवल उन्हीं प्रकरणों में भेजी जावेगी जिन प्रकरणों में परिवाद न्यायालय में लंबित है।

(जे) अपराध शमन स्वीकार करने की स्थिति में आरोपी व्यक्ति पर किसी भी न्यायालय में प्रकरण जारी नहीं रह पाएगा तथा दण्ड प्रक्रिया संहिता की धारा 300 अनुसार आरोपी व्यक्ति को दोषमुक्त माना जावेगा। (धारा 152 (4))

(के) ऐसे प्रकरण जिनमें विशेष न्यायालय द्वारा कारावास अथवा अर्थ दण्ड की सजा सुनाई है, अपराध शमन स्वीकार न करें।

(एल) शमन शुल्क निर्धारण तालिका द्वारा अनंतिम/अंतिम आदेश में नहीं जोड़ा जाना चाहिए तथा सक्षम प्राधिकारी द्वारा तालिका अनुसार निर्धारित राशि के अतिरिक्त अन्य राशि जैसे अभिभाषक शुल्क प्रदाय करने की शर्त, शमन शुल्क स्वीकार करने के पूर्व नहीं लगाई जानी चाहिए।

(एम) किसी व्यक्ति/उपभोक्ता को अपराध शमन शुल्क की जानकारी एतस्मिन पश्चात् उल्लेखित निर्धारित संलग्न प्रपत्र क्र. 6 के अनुसार दी जा सकती है।

(एन) विद्युत शमन शुल्क की राशि राज्य शासन के मद में जमा की जाती है ।

(ओ) विद्युत चोरी का प्रकरण तब तक समाप्त नहीं माना जावेगा जब तक विद्युत उपभोक्ता द्वारा निर्धारण राशि जमा नहीं करा दी गई हो तथा अपराध शमन शुल्क लेकर सक्षम अधिकारी द्वारा अपराध शमन स्वीकार न कर लिया गया हो। अर्थात् विद्युत चोरी (धारा 135) के प्रत्येक प्रकरणों में निर्धारित अपराध शमन राशि जमा किये बिना, सक्षम प्राधिकारी स्तर पर ''अपराध खात्मा/शमन'' नहीं किए जा सकेंगे एवं विधि अनुसार अन्य सभी विकल्प यथा परिवाद दाखिल करना आदि खुले रहेंगे।

प्रश्न 14:– विद्युत अधिनियम में पुनर्विलोकन या रिव्यू के बारे में क्या प्रावधान है ?

उत्तर :– धारा 157 विद्युत अधिनियम, 2003 के अनुसार विशेष न्यायालय, किसी याचिका पर या अन्यथा घोर अन्याय या मिस्केरिज ऑफ जस्टिस के रोकने के लिए धारा 154 विद्युत अधिनियम,

2003 के तहत पारित किसी निर्णय या आदेश का पुनर्विलोकन कर सकता है जिसका आधार यह हो सकेगा :–

1. आदेश तथ्य की भूल के तहत पारित किया गया था।

2. आदेश किसी तात्विक तथ्य की अवहेलना में पारित किया गया था।

3. आदेश में अभिलेख के दृश्यमान भाग पर ही कोई त्रुटि है।

कोई भी विशेष न्यायालय प्रभावित पक्षकार को सुने बिना किसी भी पुनर्विलोकन आवेदन को स्वीकार नहीं करेंगे या आदेश में कोई परिवर्तन नहीं करेंगे।

उक्त प्रावधान के तहत कोई भी विशेष न्यायालय धारा 154 के तहत अपने ही द्वारा पारित किसी निर्णय या आदेश का पुनर्विलोकन कर सकते हैं।

प्रश्न – 15 यदि पुलिस ने विद्युत अधिनियम, 2003 के तहत अभियोग पत्र प्रस्तुत किया है और उसके साथ भारतीय दण्ड संहिता के अपराध का भी उल्लेख है तब क्या उस अन्य अपराध के लिये पृथक विचारण के निर्देश देना चाहिये?

उत्तर – न्याय दृष्टांत आनंद द्विवेदी विरूद्ध द स्टेट ऑफ एम.पी. दांडिक पुनरीक्षण 1835/2009 निराकृत दिनांक 22 मार्च 2013 जबलपुर बैंच निर्णय चरण 7 में माननीय उच्च न्यायालय ने यह प्रतिपादित किया है कि विद्युत अधिनियम, 2003 के तहत् गठित विशेष न्यायालय को इस अधिनियम के साथ–साथ अन्य अपराधों के विचारण की भी शक्तियाँ होती है। धारा 155 विद्युत अधिनियम, 2003 के अनुसार विद्युत अधिनियम के अधीन गठित विशेष न्यायालय को सत्र न्यायालय की समस्त शक्तियाँ होती है ऐसे में वह भारतीय दण्ड संहिता के अन्य अपराधों का विचारण भी विद्युत अधिनियम, 2003 के अपराध के साथ–साथ कर सकती है।

न्याय दृष्टांत वाले मामले में धारा 429 भारतीय दण्ड संहिता के तहत भी अभियोग पत्र प्रस्तुत किय गया था।

•

PART - II
NOTES ON IMPORTANT JUDGMENTS

***117. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 5 and 34**

(i) When merits of an arbitral award can be looked into by the Court? Held, when Court finds that the award is said to be in conflict with the public policy of India then in certain specified circumstances, merits of the award can be looked into.

(ii) When it is said that the award is in conflict with the public policy of India? Held, when it is contrary to:

(1) Fundamental policy of Indian law,

(2) The interest of India,

(3) Justice or morality,

(4) It is patently illegal, illegality must go to the root of the matter.

(iii) What are the sub-heads of fundamental policy of India ? Held, the sub-heads are:

(1) Duty to adopt a judicial approach,

(2) Follow the principle of natural justice,

(3) Reasonableness in taking decision,

(4) Compliance with law of precedents.

(iv) What are the sub-heads of patent illegality? Held, the sub-heads are: –

(2) Against the substantive law of India,

(3) Against the provisions of the Act of1996,

(4) Against the terms of contract.

माध्यस्थ और सुलह अधिनियम, 1996 – धारा 5 और 34

(i) कब न्यायालय द्वारा माध्यस्थ अवार्ड के गुणदोषों को देखा जा सकता है? अभिनिर्धारित किया गया, जब न्यायालय यह पाती है कि अवार्ड भारत की लोकनीति के विरूद्ध है तब कुछ विशिष्ट परिस्थितियों में अवार्ड के गुणदोषों को देखा जा सकता है।

(ii) कब यह कहा जा सकता है कि अवार्ड भारत की लोकनीति के विरूद्ध है? अभिनिर्धारित किया गया, जब अवार्ड :–

(1) भारत की मूलभूत नीति के विरूद्ध हो,

(2) भारत के हित के विरूद्ध हो,

(3) न्याय या नैतिकता के विरूद्ध हो,

(4) वह प्रत्यक्षतः अवैध हो, अवैधता मामले की जड़ तक जाना चाहिये।

(iii) भारत की मूलभूत नीति के उपशीर्ष क्या है? अभिनिर्धारित किया गया, उपशीर्ष निम्नलिखित है :–

(1) न्यायिक सोच अपनाने का कर्त्तव्य,

(2) प्राकृतिक न्याय के सिद्धांत का अनुसरण करना,

(3) निर्णय लेने में युक्तियुक्तता होना,

(4) पूर्व निर्णयों का अनुपालन करना।

(iv) प्रत्यक्षतः अवैधता के उपशीर्ष क्या है? अभिनिर्धारित किया गया, उपशीर्ष निम्नलिखित है :–

(1) भारत के तात्विक कानून के विरूद्ध होना,

(2) माध्यस्थ और सुलह अधिनियम, 1996 के विरूद्ध होना,

(3) संविदा के शर्तों के विरूद्ध होना।

Associate Builders v. Delhi Development Authority

Judgment dated 25.11.2014 passed by the Supreme Court in Civil Appeal No.10531 of 2014, reported in (2015) 3 SCC 49

•

***118. CIVIL PROCEDURE CODE, 1908 – Section 11**

(i) Multiple suits – Disposal of by one common judgment – Decree, finality of – Principle of *res judicata*, applicability of – Law explained – One suit filed by respondents and two filed by appellants – In all the suits, question of appellants' title over suit property was directly and substantially involved – There was common trial of all the suits in view of common issues and common evidence involved in all the three suits – By a common judgment, the Trial Court dismissed one suit of the respondents and one suit of the appellants but decreed one suit of appellants regarding arrears of rent – An appeal was filed by respondents against one of the decrees only – Held, non-filing of appeals by respondents and appellants against all the respective adverse decrees resulted in their attaining status of "former suits" and finality – Further held, finding that appellants had title over suit property, contrary to respondents' claim, had become final and operated as *res judicata* and in absence of appeals against adverse decrees, respondents were barred by principle of *res judicata* from challenging finding of the trial court.

(ii) Framing of issues – Duty of Court – Law explained – The obligation and duty to frame issues is solely cast on the Court which may, nevertheless, elicit suggestions from the litigants-adversaries before it – Issues settled by the Court under Order 14 CPC constitute the crystallization of the conflict or the

distillation of the dispute between the parties to the *lis* and are in the nature of disputed questions of fact and/or of law – Further held, while discharging this primary function, the Court is expected to peruse the pleadings of the parties in order to extract their essence, analyse the allegations of the parties and the contents of the documents produced by them.

(iii) Non-framing of issues, effect of – Where parties are aware of the rival cases, failure to formally formulate an issue fades into insignificance, especially when it is prominently present in the connected matters and extensive evidence has been recorded on it without demur.

सिविल प्रक्रिया संहिता, 1908 – धारा–11

(i) कई वाद – एक कामन निर्णय द्वारा निराकृत– डिक्री की अंतिमता– पूर्व न्याय या रेस ज्यूडिकेटा के सिंद्धात का लागू होना – विधि समझायी गई– एक वाद प्रत्यर्थी और दो वाद अपीलार्थीगण ने प्रस्तुत किये – सभी वादों में अपीलार्थीगण का वादग्रस्त संपत्ति पर स्वत्व होने का प्रश्न प्रत्यक्षः और सारतः निहित था – सभी वादों का संयुक्त विचारण समान वाद प्रश्नों को दृष्टिगत रखते हुए किया गया उन तीनों वादों में समान साक्ष्य थी – विचारण न्यायालय ने एक कामन निर्णय द्वारा प्रत्यर्थी का एक वाद ओर अपीलार्थी का एक वाद निरस्त किया किंतु बकाया किराये के बारे में अपीलाथी का एक वाद डिक्री किया – प्रत्यर्थीगण ने केवल एक डिक्री के विरूद्ध अपनी प्रस्तुत की – अभिनिर्धारित किया गया, प्रत्यर्थीगण द्वारा और अपीलार्थी द्वारा उनके विरूद्ध पारित आज्ञप्तियों के विरूद्ध अपील प्रस्तुत न करने का परिणाम 'पूर्व वाद' का स्टेटस होगा और वे अंतिम हो जायेंगे (उनमें पारित डिक्री फायनल या अंतिम हो जाएगी) – यह भी अभिनिर्धारित किया गया कि वाद संपत्ति पर अपीलार्थीगण के स्वत्व के बारे में प्रत्यर्थीगण के क्लेम के विरूद्ध दिये गये निष्कर्ष अंतिम हो चुके थे और वे अपील न करने के कारण रेस ज्यूडीकेटा के रूप में लागू होंगे और प्रत्यर्थीगण विचारण न्यायालय के निष्कर्ष को चुनौती देने से रेस ज्यूडीकेटा के सिद्धांत से बाधित होंगे।

(ii) वाद पदों की रचना – न्यायालय का कर्त्तव्य – विधि समझायी गई – वाद पद विरचित करने का दायित्व और कर्त्तव्य केवल न्यायालय पर होता है वे अर्थात न्यायालय पक्षकारों से इस बारे में सुझाव ले सकते हैं – न्यायालय द्वारा आदेश 14 सी.पी.सी. के तहत निर्मित वाद प्रश्न पक्षकारों के बीच उत्पन्न विवाद को स्पष्ट करने और विधि और तथ्यों के प्रश्नों पर विवाद की प्रकृति वाद प्रश्नों द्वारा स्पष्ट होती है – यह भी अभिनिर्धारित किया गया कि

न्यायालय जब अपना यह प्राथमिक कार्य करते हैं तो उनसे यह आशा की जाती है कि वे पक्षकारों के अभिवचनों, उनके द्वारा प्रस्तुत दस्तावेजों को विचार में लेवें।

(iii) वाद प्रश्न विरचित न करने का प्रभाव – जहां पक्षकार एक दूसरे के मामले से परिचित हो वहां, वाद प्रश्न न बनाना अतात्विक होता है विशेषकर जहां पक्षकार उस संबंध में विस्तृत रूप से साक्ष्य देते हैं और जुड़े हुए अन्य मुद्दे के रूप में वह प्रश्न मौजूद होता है ।

Sri Gangai Vinayagar Temple and another v. Meenakshi Ammal and others

Judgment dated 09.10.2014 passed by the Supreme Court in Civil Appeal No. 4227 of 2003, reported in (2015) 3 SCC 624 (3 Judge Bench)

•

***119. CIVIL PROCEDURE CODE, 1908 – Sections 96, 100, 149 & 151 and Order 7 Rule 11 (c) & Order 41 Rule 33**

(i) Whether deficiency in court fees is curable at appellate stage? Held, Yes – Court is duty-bound to decide whether or not court fees paid on the plaint is deficient and if the court fees is found to be deficient then give an opportunity to the plaintiff to make up such deficiency within a time that may be fixed by the court.

(ii) Powers of appellate court, scope of – Power of the appellate court is co-extensive with that of trial court – An appeal is continuation of the suit and what could be done by the trial court in the proceeding of the suit, can always be done by the appellate court in the interest of justice.

सिविल प्रक्रिया संहिता, 1908 – धारा 96, 100, 149, 151 और आदेश 7 नियम 11 (सी) और आदेश 41 नियम 33

(i) क्या न्यायालय शुल्क की अपर्याप्ता को अपील के स्तर पर सुधारा जा सकता है? अभिनिर्धारित किया गया, हाँ – न्यायालय यह विनिश्चत करने के लिये कर्तव्य से बंधे होते है कि वाद पत्र पर दिया गया न्यायालय शुल्क अपर्याप्त है या नहीं और यदि न्यायालय न्यायालय शुल्क अपर्याप्त पाती है तो वादी को न्यायालय द्वारा नियत समय में न्यायालय शुल्क की कमी को पूरा करने का अवसर देना चाहिये।

(ii) अपील न्यायालय की शक्तियों का विस्तार – अपील न्यायालय की शक्तियाँ विचारण न्यायालय की शक्तियों तक सह–विस्तारित होती है – एक अपील वाद की निरंतरता है जो विचारण न्यायालय द्वारा वाद की कार्यवाही में किया जा सकता था वही सदैव अपील न्यायालय द्वारा न्याय हित में किया जा सकता है।

Tajender Singh Ghambhir and anr. v. Gurpreet Singh and ors.

Judgment dated 12.09.2014 passed by the Supreme Court in Civil Appeal No. 8660 of 2014, reported in (2014) 10 SCC 702 (3 Judge Bench)

•

***120. CIVIL PROCEDURE CODE, 1908 – Section 99 and Order 1 Rules 9 & 10**

Maintainability of suit – Improper and defective description of parties, non-effect of – Plaintiffs were entitled to file the suit for eviction in their own rights as owners of the property in question, becoming party to the suit during trial as a result of their substitution as plaintiffs subsequent to the death of the original plaintiff i.e. their father – Considering that the plaintiffs/appellants entitled to file the present suit were subsequently substituted as plaintiffs before the Trial Court itself, held, the only defect of wrong description of the plaintiffs as heirs of their deceased father instead of owners in their own rights was not of such a nature as to affect the merits of the case or the jurisdiction of the Court as provided under section 99 CPC – Further held, maintainability of the suit is not affected merely on account of such wrong description which did not in any manner caused prejudice to the defendants and such irregularity is curable and could have been corrected either by the Trial Court or by the Appellate Court under Order 1 Rule 8 CPC.

सिविल प्रक्रिया संहिता, 1908 – धारा 99 और आदेश 1 नियम 9 और 10

वाद की प्रचलनशीलता – पक्षकारों के विवरण का अनुचित और त्रुटिपूर्ण होने का प्रभाव न होना – वादीगण निष्कासन का वाद वादग्रस्त संपत्ति के स्वामी के रूप में स्वयं प्रस्तुत करने के हकदार थे, उनके पिता के मृत्यु पर विचारण के दौरान उनका नाम पिता के नाम के स्थान पर प्रतिस्थापित किया गया – विवरण में त्रुटि होने के आधार पर मामले के गुणदोषों पर कोई प्रभाव नहीं पड़ता है और इस आधार पर वाद की प्रचनशीलता पर कोई प्रभाव नहीं पड़ता है।

Kuldeep Kumar Dubey and others v. Ramesh Chandra Goyal (dead) through Legal Representatives

Judgment dated 21.01.2015 passed by the Supreme Court in Civil Appeal No. 1094 of 2015, reported in (2015) 3 SCC 525

•

121. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10

Joinder of party – Addition of party resulting in triangular fight cannot be allowed.

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 10

पक्षकार का संयोजित किया जाना – यदि पक्षकार को जोड़े जाने का परिणाम विवाद को त्रिपक्षीय बना देता हो तब पक्षकार के जोड़े जाने की अनुमति नहीं दी जा सकती।

Nandlal & 2 ors. v. State of M.P. & anr.

Order dated 02.05.2014 passed by the High Court of M.P. in W.P. No. 713 of 2014, reported in 2014 (IV) MPJR 159

Extracts from the order:

In brief, the petitioner has filed the suit for declaration and permanent injunction claiming that the suit property was received by Daulatram S/o Ramrishna Brahmin from the Holker State in Inam and by the registered sale deed dated 30th July, 1973, he had sold it to one Kailashdevi and Kailashdevi by sale deed dated 18/6/1975 had sold it to the petitioners but the respondent State had got the name of the Collector mutated in the revenue record.

The respondent No.2 had filed an application under Order 1 Rule 10 CPC stating that the suit property was given in Inam to Daulatrm by Holkar State in his capacity as Vachak and that the respondent No.2 is the son of Daulatram and had hereditary right in the suit property and it could not be sold, therefore, he should be impleaded in the suit and given the opportunity to lead the evidence. The said application was opposed by the petitioner.

The trial Court by order dated 8/1/2014 has allowed the application.

Learned counsel for petitioners submits that the respondent No.2 is not a necessary party in the suit and his presence is not required for the decision of the suit. He has further submitted that the impleadment of the respondent No.2 will lead to triangular fight.

Learned counsel for respondent No.2 has opposed the writ petition. He has submitted that in view of the judgment of the Supreme Court in the matter of ***Anant Kibe & others v. Purushottam Rao & others, 1985 RN 107*** the respondent No.2 has hereditary right in the suit land and that it could not have been sold in favour of the petitioner by Daulatram.

Learned counsel for respondent No.1 State has also opposed the writ petition.

I have heard the learned counsel for parties and perused the record.

A perusal of the impugned order reveals that the trial Court while passing the impugned order has not considered the issue of triangular fight which was specifically raised by the petitioner before the trial Court. This Court also in the matter ***Akshaya Kumar Jain v. Mahendra Kumar Jain, 1992 (1) MPWN 309*** has taken a view that addition of party resulting into triangular fight cannot be allowed. The trial Court while passing the impugned order has also not considered the basic concept of the plaintiff being dominus litus.

In view of this, the order of the trial Court cannot be sustained and is hereby set aside with direction to the trial Court to decide the application under Order 1 Rule 10 CPC filed by the respondent No.2 afresh keeping in view the observations made above.

•

***122. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10**

Suit relating to trust property – Applicant is a beneficiary of the Trust – Filed application under Order 1Rule 10 CPC for making him party – He is not a stranger to the dispute but a proper party – Application allowed.

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 10

न्यास की संपत्ति संबंधी वाद – न्यास के एक हितग्राही ने आदेश 1 नियम 10 सी.पी.सी. का आवेदन स्वयं को पक्षकार बनाने का प्रस्तुत किया – वह विवाद के लिये एक अंजान व्यक्ति या स्ट्रेंजर नहीं है बल्कि एक उचित पक्षकार है – आवेदन स्वीकार किया गया।

Baluram v. P. Chellathangam and others

Judgment dated 10.12.2014 passed by the Supreme Court in Civil Appeal No. 10940 of 2014, reported in AIR 2015 SC 1264

•

***123. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17**

Prayer for amendment contrary to the basic pleading made after seeking several adjournments with an aim to procrastinate the trial – Is impermissible.

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17

संशोधन की प्रार्थना जो कि मूल अभिवचनों के विरूद्ध है कई स्थगन लेने के बाद विचारण को विलंबित करने के उद्देश्य से की गई – यह (संशोधन की प्रार्थना) अनुमति योग्य नहीं है।

Suresh Gupta v. Manoj Dubey

Order dated 28.10.2013 passed by the High Court of M.P. in W.P. No. 7317 of 2013, reported in 2014 (IV) MPJR SN 28

•

124. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 3

SPECIFIC RELIEF ACT, 1963 – Section 38

Suit for relief of permanent prohibitory injunction – Effect of non-mentioning the length and width of the suit land – The suit land is described with boundaries and its municipal number, therefore, non-mentioning the length and width of land becomes immaterial – Suit land is found identifiable – Looking to the nature of relief, decree is executable.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 3

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 38

स्थायी निषेधात्मक व्यादेश के अनुतोष का वाद – वाद संपत्ति की लंबाई व चौड़ाई (वाद पत्र में) दर्ज न करने का प्रभाव – वाद संपत्ति का वर्णन चतुर सीमाओं और

उसके म्यूनिसिपल नंबर से किया गया था – वाद संपत्ति पहचान योग्य होना पाई गई – अनुतोष की प्रकृति को देखते हुये आज्ञप्ति निष्पादन योग्य है।

Zarif Ahmad (D) Thr. LRs. & anr. v. Mohd. Farooq

Judgment dated 27.01.2015 passed by the Supreme Court in Civil Appeal No. 666 of 2015, reported in AIR 2015 SC 1236

Extracts from the judgment:

We have considered the submission of learned counsel for the defendants but we are unable to agree with it for the reason that had it been a case of mandatory injunction requiring restoration of possession of land to the plaintiff or demolition of the construction raised by the defendants, what the defendants have pleaded before us, could have been accepted but the present suit is for the relief of permanent prohibitory injunction in respect of the land which is described with boundaries and its municipal number. Therefore, it cannot be said that the decree passed by the trial court is un-executable.

Order VII, Rule 3 of the Code of Civil Procedure, 1908 (for short "CPC"), which pertains to the requirement of description of immovable property, reads as under:

> "Where the subject-matter of the suit is immovable property: –
>
> Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property, sufficient to identify it, and in case such property can be identified by boundaries in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

The object of the above provision is that the description of the property must be sufficient to identify it. The property can be identifiable by boundaries, or by number in a public record of settlement or survey. Even by plaint map showing the location of the disputed immovable property, it can be described. Since in the present case, the suit property has been described by the plaintiff in the plaint not only by the boundaries but also by the municipal number, and by giving its description in the plaint map, from no stretch of imagination, it can be said that the suit property was not identifiable in the present case. In our opinion, the High Court has rightly held that the first Appellate Court has erred in law in dismissing the suit by holding that the land is not identifiable. It appears that the first Appellate Court wrongly framed the additional issue as to whether the property in dispute is identifiable or not particularly when there was no such plea in the written statement. We are in agreement with the High Court that there was no need on the part of the first Appellate Court to remit the matter to the trial court as contended by the defendants before it (High Court) to allow the parties to adduce evidence on the additional issue, as neither issue on identifiability of land arises from the pleadings nor the evidence was lacking on record.

•

125. CIVIL PROCEDURE CODE, 1908 – Order 11 Rule 14

Power to direct a party to produce documents, conditions stated therefor – Unless the party directly or impliedly admits the possession of a document, direction cannot be issued to such party to produce the documents.

सिविल प्रक्रिया संहिता, 1908 – आदेश 11 नियम 14

एक पक्षकार को दस्तावेज प्रस्तुत करने के निर्देश देने की शक्ति के प्रयोग के लिये शर्तें बतलाई गई – जब तक वह पक्षकार प्रत्यक्ष या परोक्ष रूप से दस्तावेज आधिपत्य में होना स्वीकार नहीं करता है तब तक उसे दस्तावेज प्रस्तुत करने के निर्देश नहीं दिये जा सकते है।

Saraswatibai (Smt.) & two ors. v. Asha (Smt.)

Order dated 02.05.2014 passed by the High Court of M.P. in W.P. No. 1699 of 2014, reported in 2014 (IV) MPJR 158

Extracts from the order:

Under Order 11 Rule 14 CPC the Court can direct at any time during the pendency of the suit production of a document relating to any matter in question in such suit. This Court in the matter of Daya Ram v. Ramesh Chandra Goyal, 2000(II) MPJR 68 has held that the party denying existence of the document cannot be compelled to produce the original. The division bench of Patna High Court in the matter of ***Rameshwar Narayan Singh v. Rikhanth Koeri, AIR 1920 Patna 131*** has held that no direction under Order 11 Rule 14 should be issued against a party unless he directly or indirectly admits the document to be in his possession or power. In the present case, the impugned order of the trial Court reveals that the trial Court has not considered the petitioners objection that they are not in possession of the agreement in question as also the requirement of Order 11 Rule 14 in this regard. The plea of the petitioner in this regard raised in the written statement as well as reply to the application under Order 11 Rule 14 of the CPC needs consideration by the trial Court.

•

***126. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 97**

Application under Order 21 Rule 97 of the Code, procedure therefor – Detailed inquiry for collection of evidence is not necessary – The court has authority to adjudicate the matter on admitted facts or even on the averments made in the application – However, the Court can direct the parties to adduce evidence if it deems necessary.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 97

आदेश 21 नियम 97 के आवेदन पर प्रक्रिया – साक्ष्य एकत्र करने के लिये विस्तृत जांच आवश्यक नहीं होती है – न्यायालय स्वीकृत तथ्यों या आवेदन के अभिवचनों के आधार पर भी मामले के निपटारे के लिये अधिकृत होती है – यदि न्यायालय यह आवश्यक समझती है तो पक्षकारों को साक्ष्य प्रस्तुत करने का निर्देश दे सकती है।

Jamuna Prasad v. Balkishan & ors.

Order dated 05.05.2014 passed by the High Court of M.P. in W.P. No. 12666 of 2013, reported in 2014 (IV) MPJR SN 19

•

127. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 97, 99, 100, 101, 103 and 107

(i) Resistance or obstruction for possession of immovable property by third party, maintainability of – Held, such an objection can be filed by stranger also – Further held, executing court has power to adjudicate upon all questions relating to right, title and interest in the property arising between the parties including those of the stranger.

(ii) Appealable decree/deemed decree and non-appealable order – Law explained – Only those orders which adjudicate the dispute between the parties shall have the same force as if it were a decree – Therefore, the decree contemplated under Order 21 Rule 103 of the Code is a deemed decree – However, if the executing Court declines to adjudicate and expresses its inability to do so by stating that it lacks jurisdiction, such order cannot earn the status of a decree and the same will not be appealable.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 97, 99, 100, 101, 103 और 107

(i) तृतीय पक्ष द्वारा अचल संपत्ति के आधिपत्य लेने में प्रतिरोध या बाधा की प्रचलनशीलता – अभिनिर्धारित किया गया ऐसी आपत्ति अंजान व्यक्ति या स्ट्रेंजर द्वारा प्रस्तुत की जा सकती है – निष्पादन न्यायालय को संपत्ति के अधिकार, स्वत्व और हित के संबंध में सभी प्रश्नों को जो पक्षकारों के बीच उत्पन्न हुए है या अज्ञात व्यक्ति के बारे में भी उत्पन्न हुये है उनको निराकृत करने की शक्तियाँ है।

(ii) अपील योग्य आज्ञप्ति, डीम्ड डिक्री और अपील योग्य न होने वाले आदेश के बारे में विधि समझाई गई।

Sameer Singh and another v. Abdul Rab and others

Judgment dated 14.10.2014 passed by the Supreme Court in Civil Appeal No. 9699 of 2014, reported in (2015) 1 SCC 379

Extracts from the judgment:

Rule 97 deals with resistance or obstruction to possession by the holder of a decree for possession or the purchaser of any such property sold in execution of a decree. It empowers such a person to file an application to the Court omplaining of such resistance or

obstruction and requires the Court under sub-rule (2) to adjudicate upon the application in accordance with the provisions provided therein.

Rule 99 deals with dispossession by decree-holder or purchaser. It stipulates that:

> "99. (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession."

The Court is obliged to adjudicate such an application. Thus this rule, as is manifest, includes any person other than the judgment-debtor.

Rule 101 deals with the questions to be determined. It provides that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the Court dealing with an application and not by a separate suit and for the said purpose, the executing court has been conferred the jurisdiction to decide the same.

Rule 100 deals with orders to be passed upon application complaining of dispossession. It is apt to reproduce the said rule:-

> "100. Order to be passed upon application complaining of dispossession.- Upon the determination of the questions referred in Rule 101, the Court shall, in accordance with such determination,-
>
> (a) make an order allowing the application and directing that the applicant be put into possession of the property or dismissing the application; or
>
> (b) pass such order as, in the circumstances of the case, it may deem fit."

Rule 98 deals with orders after adjudication. Sub-rule (1) provides that upon the determination of questions referred to in Rule 101, the Court in accordance with determination and subject to provisions of sub-rule (2) therein make an order allowing the application and directing that the applicant be put in possession of the property or dismissing the application or pass such other order, as in the circumstances of the case it may deem fit. As far as sub-rule (2) is concerned, the same is not necessary to be taken note of for the purposes of present case. Rule 103 which is significant reads as follows:-

> "Rule 103. Orders to be treated as decrees.- Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree."

The submission of the learned counsel for the appellants is that if the scheme underlying the said Rules is appositely appreciated, it is clear as crystal that the legislature in order to avoid multiplicity of proceedings has empowered the executing court to conduct necessary enquiry and adjudicate by permitting the parties to adduce evidence, both oral and documentary, and to determine the right, title and interest of the parties and, therefore, such an order has been given the status of a decree. As has been put forth by him, a proceeding in terms of Rule 97 or Rule 99 is in the nature of a suit and the adjudication is similar to that of a suit and when in the case at hand, the Court has declined to embark upon any enquiry by calling for reply, recording evidence and appropriately adjudicating the controversy, the order passed cannot be regarded under Rule 103 of Order XXI as a decree. In this context, the authorities that have been commended to us need to be carefully noticed.

In ***Noorduddin v. Dr. K.L. Anand, (1995) 1 SCC 242,*** the executing court had rejected the application of the appellant therein on the ground that the High Court had already adjudicated the lis. Analysing the language employed in Rules 97, 98 and 100 to 104, the Court held:-

> "Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code Amendment Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution."

Elucidating further, the Court opined that adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to meet out justice and, therefore, adjudication under Order XXI, Rules 98, 100 and 101 and its successive

rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution.

In ***Babulal v. Raj Kumar, (1996) 3 SCC 154*** the appellant apprehending that it would be dispossessed in an execution proceeding had filed an application based on possessory title and obtained interim injunction. He had also filed an application stating, inter alia, that he should not be dispossessed. His objection was overruled by the executing court holding that since he had not been dispossessed, an application under Order XXI, Rule 98 was not maintainable. The said view was affirmed by the High Court in Civil Revision Petition. The Court while interpreting the Order XXI, Rules 98 to 102 referred to the decision in ***Bhanwar Lal v. Satyanarain, (1995) 1 SCC 6*** and opined that it is clear that an adjudication is required to be conducted under Order XXI, Rule 98 before removal of the obstruction caused by the objector or the appellant and a finding is required to be recorded in that behalf. The Court ruled that the order is treated as a decree under Order XXI, Rule 103 and it is subject to an appeal. It has been observed in the said case that prior to 1976, the order was subject to suit, but under the amended Code, right of suit under Order XXI, Rule 63 of old Code has been taken away, and the determination of the question of the right, title or interest of the objector in the immovable property under execution needs to be adjudicated under Order XXI, Rule 98 which is an order and is a decree under Order XXI, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. The Court further opined that the procedure prescribed is a complete code in itself and, therefore, the executing court is required to determine the question.

In ***Ghasi Ram v. Chait Ram Saini, (1998) 6 SCC 200*** while making a distinction between the provisions prior to the amendment brought in 1976 in CPC and the situation after the amendment, a two-Judge Bench observed thus:-

> "The position has changed after amendment of the Code of Civil Procedure by the Amendment Act of 1976. Now, under the amended provisions, all questions, including right, title, interests in the property arising between the parties to the proceedings under Rule 97, have to be adjudicated by the executing court itself and not left to be decided by way of a fresh suit."

In the case of ***S. Rajeswari v. S.N. Kulasekaran, (2006) 4 SCC 412,*** the appellant was one of the persons who had obstructed the execution of a decree obtained by the 1st respondent therein and had filed an application under Section 151 of CPC which was rejected by the executing court on the ground that it was not maintainable. Being grieved by the said order he preferred a revision petition which was allowed by the High Court. The Court treated the application preferred under Section 151 of C.P.C. to be one under Order XXI, Rule 97 because the executing court

proceeded to record evidence and thereupon adjudicated the matter. The evidence of the decree-holder was considered and a conclusion

was arrived at that the identity of plot in question had not been established and thereby the plaintiff was disabled from executing the decree for possession of the land. A contention was raised before this Court that the High Court had erred in entertaining a revision petition under Section 115 C.P.C., for the order was a decree under Order XXI, Rule 103 of C.P.C. and hence, an appeal lay. The said contention was accepted by this Court.

At this juncture, we may refer with profit to the pronouncement in ***Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal, AIR 1997 SC 856*** wherein a two-Judge Bench scanning the anatomy of the rules came to hold that:-

> "... a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI, Rule 99. Order XXI, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him."

The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property rising between the parties. It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property. The self-contained Code, as has been emphasised by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order XXI, Rule 101 provides for

the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree. If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different. In the instant case the executing court has expressed an opinion that it has become functus officio and hence, it cannot initiate or launch any enquiry. The appellants had invoked the jurisdiction of the High Court under Article 227 of the Constitution assailing the order passed by the executing court on the foundation that it had failed to exercise the jurisdiction vested in it. The appellants had approached the High Court as per the dictum laid down by this Court in ***Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675.***

Whether the executing court, in the obtaining circumstances, has correctly expressed the view that it has become functus officio or not and thereby it has jurisdiction or not, fundamentally pertains to rectification of a jurisdictional error. It is so as there has been no adjudication. If a subordinate court exercises its jurisdiction not vested in it by law or fails to exercise the jurisdiction so vested, the said order under Section 115 of the Code is revisable as has been held in ***Joy Chand Lal Babu v. Kamalaksha Chaudhury, AIR 1949 PC 239***. The same principle has been reiterated in ***Keshardeo Chamria v. Radha Kissan Chamria, AIR 1953 SC 23*** and ***Chaube Jagdish Prasad and another v. Ganga Prasad Chaturvedi, AIR 1959 SC 492.*** Needless to emphasise, the said principle is well-settled. After the amendment of Section 115, C.P.C. w.e.f. 1.7.2002, the said power is exercised under Article 227 of the Constitution as per the principle laid down in ***Surya Dev Rai*** (supra). Had the executing court apart from expressing the view that it had become functus officio had adjudicated the issues on merits, the question would have been different, for in that event there would have been an adjudication.

•

128. CIVIL PROCEDURE CODE, 1908 – Order 26 Rule 9

Interim application for appointment of commissioner in appeal, determination of – Appellate court is required to hear the appeal first on merits and thereafter, on such interim application – The appellate court is also required to decide the application first and subject to the outcome of such application, the judgment on merits should be delivered.

सिविल प्रक्रिया संहिता, 1908 – आदेश 26 नियम 9

अपील में कमीश्नर नियुक्ति के लिये अंतरिम आवेदन का निर्धारण किया जाना – अपील न्यायालय के लिये यह आवश्यक होता है कि वह पहले अपील को गुणदोष पर सुने और उसी के साथ ऐसे अंतरिम आवेदन पर भी सुने – अपील न्यायालय के लिये यह भी आवश्यक है की वह ऐसे आवेदन को पहले निराकृत करे और उस आवेदन के परिणाम के प्रकाश में गुणदोष पर निर्णय पारित करना चाहिये (अर्थात यदि आवेदन स्वीकार कर

लिया जाता है तब कमीश्नर नियुक्ति की प्रक्रिया और उसका प्रतिवेदन बुलवाना आदि कार्यवाहियाँ करना होगी और गुणदोष पर निर्णय नहीं दिया जायेगा और यदि आवेदन खारिज कर दिया जाता है तो गुणदोष पर निर्णय पारित किया जाना चाहिये)।

Dharam Das Rai v. Chief Municipal Officer & anr.

Order dated 02.09.2013 passed by the High Court of M.P. in W.P. No. 3079 of 2012, reported in ILR (2014) MP 1794

Extracts from the order:

It is undisputed fact between the parties that in pendency of the impugned suit before the trial Court an application for appointment of Commissioner was also filed by the petitioner and on consideration vide order dated 16.4.2010 the trial Court has dismissed the same and at that time such interim order was not challenged on behalf of the petitioner/ plaintiff before any superior Court but subsequently on dismissing his suit he filed the impugned appeal before the appellate Court and in pendency of such appeal he has filed impugned application for appointment of Commissioner to call the report of the disputed place and on dismissing the same the petitioner has come to this Court with this petition.

Having heard the counsel keeping in view their arguments, I have carefully gone through averments of the petition along with the papers placed on record and the impugned order. It is settled proposition of law that every interlocutory application filed by the parties at the appellate stage should be considered and decided by such Court at the time of final hearing of appeal and not at the interlocutory stage except the applications of interim nature filed for grant of interim relief like interim injunction, appointment of Receiver or substitution of the legal representatives etc. The present application filed by the appellant at the appellate stage for appointment of Commissioner, ought to have been considered and decided by the appellate Court at the stage of final hearing of such appeal, such issue could not have been decided in part before hearing the appeal on merits, especially when such question against the findings of the trial Court is also pending for adjudication on final hearing of the appeal.

Keeping in view the aforesaid legal position if the case at hand is examined then it is apparent that in pendency of the suit the petitioner/ plaintiff has filed an application for calling the commissioner report before the trial Court, the same was dismissed on 16.4.2010 against that neither any revision nor writ petition was filed, so in such premises the right to challenge the findings of such interlocutory order of the trial Court did not go away but in view of the provision of Section 105 of CPC the petitioner has a right to challenge such interlocutory order, dismissing his application by the trial Court before the appellate Court. As per existing legal position such question could be considered by the appellate Court at the stage of final hearing of the appeal and not prior to that. In such premises, I am of the considered view that the appellate Court has committed grave error in deciding the impugned application on merits at the interlocutory

stage, especially when the such question is also involved in the appeal and the same is to be considered and decided at the time of final hearing of appeal.

The approach of the appellate Court holding that impugned application of the petitioner/appellant could not be entertained because of the aforesaid interlocutory order dated 16.4.2010 passed by the trial Court, dismissing such application was not challenged at that stage before the superior Court is also not correct, as such after passing the final judgment and decree on filing the appeal the party has a right to challenge any interlocutory order of the trial Court in such appeal. So, in such premises also the approach of the appellate Court is not sustainable.

In view of the aforesaid, I am of the considered view that appellate Court ought to have heard the appeal first on merits and thereafter on the impugned application and then decide the application first and subject to outcome of such application the judgment on merits be delivered by the appellate Court but such process has not been adopted by the appellate Court. In such premises the impugned order being perverse is not sustainable and deserves to be and is hereby set aside. However, it is made clear that setting aside the impugned order does not mean that the impugned application of the petitioner is being allowed by this Court. In fact by setting aside the impugned order, the appellate Court is directed to hear the appeal first on merits and then on the aforesaid application of the petitioner/ appellant and decide the impugned application and the appeal on merits respectively. So, in such premises the appellate Court shall be in a position to consider the arguments of the parties which may be raised by them in response of the aforesaid interlocutory order of the trial Court dated 16.4.2010.

•

129. CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 and 2
SPECIFIC RELIEF ACT, 1963 – Section 41 (b)
Injunction, non-issuance of – Injunction against institution of legal proceeding in a court not subordinate to that from which injunction is sought, cannot be granted.

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 1 और 2
विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 41 (बी)
निषेधाज्ञा जारी न किया जाना – उस न्यायालय में विधिक कार्यवाही संस्थित करने से रोकने की निषेधाज्ञा, जो उस न्यायालय का अधिनस्थ नहीं है जिससे निषेधाज्ञा चाही गई है, ऐसी निषेधाज्ञा नहीं दी जा सकती।

Ramnarayan & ors. v. Arvind & ors.
Order dated 02.07.2014 passed by the High Court of M.P. in Misc. Appeal No. 693 of 2012, reported in 2014 (IV) MPJR 161

Extracts from the order:

The appellants are not entitled for anti suit injunction for the reason that u/s 41(b) of the Specific Relief Act, injunction cannot be granted to restrain any person from instituting or prosecuting any proceedings in a Court not subordinate to that from which the injunction is sought. Meaning thereby a Court cannot grant injunction restraining any person from instituting or prosecuting any proceedings in a court of coordinate or superior jurisdiction. In an appropriate case a court can grant the injunction in instituting or prosecuting any proceedings in a court subordinate to it. Section 41 (b) is attracted even at the stage of grant of temporary injunction since even at that stage the order cannot be passed to nullify or stultify the statutory provision. [See ***Cotton Corporation of India Limited v. United Industrial Bank Limited and others, AIR 1983 SC 1272***].

•

130. CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 and 2

Temporary injunction against alienation – Held, to prevent complications resulting from creation of third party interest, injunction may be granted against creation of such interest.

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 1 और 2

अंतरण के विरूद्ध अस्थायी निषेधाज्ञा – अभिनिर्धारित किया गया, जटिलता को रोकने जो कि तृतीय पक्ष के हित सृजित होने के परिणाम से होगी, निषेधाज्ञा ऐसे हित के सृजन के विरूद्ध जारी की जा सकती है।

Surajmal & ors. v. Harinarayan & ors.

Order dated 25.06.2014 passed by the High Court of M.P. in W.P. No. 1808 of 2014, reported in 2014 (IV) MPJR SN 15

Extracts from the judgment:

The argument of the counsel for petitioners is about temporary injunction against alienation. Counsel for the petitioners has drawn the attention of this Court to prayer made in the application under Order 39 Rules 1 & 2 CPC and has pointed out that the petitioners had additionally prayed for the temporary injunction against alienation. The orders of the courts below show that they have not considered the said prayer. I am of the opinion that in the facts of the present case, if the respondents are allowed to create any third party right or alienate the suit property pending the suit, then it would be unnecessarily complicate the matter. Hence, on due consideration it is directed that the respondents will not alienate or create third party right over the suit property pending the suit.

•

131. CIVIL PROCEDURE CODE, 1908 – Order 41 Rules 31 and 33

HINDU LAW – Partition

(i) Key issues relating to partition suit – Explained in para 24.

(ii) Duties of the first appellate court – Being ordinarily the final court of fact, it is necessary for it to consider the evidence fully, fairly and independently and thereafter to reach on a verdict – If it is not done by the first appellate court then it causes prejudice to the appellant whose valuable rights to prosecute the first appeal on facts and law was adversely affected.

सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 31 व 33

हिन्दू विधि – विभाजन

(i) विभाजन के वाद से संबंधित मुख्य बिन्दु – निर्णय चरण 24 में समझाये गये।

(ii) प्रथम अपील न्यायालय के कर्त्तव्य – सामान्यतः, तथ्य की अंतिम न्यायालय होने के कारण प्रथम अपील न्यायालय के लिये यह आवश्यक होता है कि वह साक्ष्य को पूर्ण रूप से, उचित रूप से, स्वतंत्र रूप से विचार में लेवे उसके बाद एक निर्णय पर पहुंचे – यदि प्रथम अपील न्यायालय ऐसा नहीं करती है तो यह अपीलार्थी के प्रथम अपील को तथ्यों व विधि पर अभियोजित करने के मूल्यवान अधिकारों को प्रतिकूल रूप से प्रभावित करता है।

Shasidhar and others v. Smt. Ashwini Uma Mathad and another

Judgment dated 13.01.2015 passed by the Supreme Court in Civil Appeal No. 324 of 2015, reported in AIR 2015 SC 1139

Extracts from the judgment:

We may consider it apposite to state being a well settled principle of law that in a suit filed by a co-sharerer, coparcener, co-owner or joint owner, as the case may be, for partition and separate possession of his/her share qua others, it is necessary for the Court to examine, in the first instance, the nature and character of the properties in suit such as who was the original owner of the suit properties, how and by which source he/she acquired such properties, whether it was his/her self-acquired property or ancestral property, or joint property or coparcenery property in his/her hand and, if so, who are/were the coparceners or joint owners with him/her as the case may be. Secondly, how the devolution of his/her interest in the property took place consequent upon his/her death on surviving members of the family and in what proportion, whether he/she died intestate or left behind any testamentary succession in favour of any family member or outsider to inherit his/her share in properties and if so, its effect. Thirdly whether the properties in suit are capable of being partitioned effectively and if so, in what manner? Lastly, whether all properties are included in the suit and all co-sharerers, coparceners, co-owners or joint-owners, as the case may be, are made parties to the suit? These issues, being material for proper disposal of the partition suit, have to be answered by the Court on the basis of family tree, inter se relations of family members, evidence adduced and the principles

of law applicable to the case. (see "Hindu Law" by Mulla 17th Edition, Chapter XVI Partition and Reunion – Mitakshara Law pages 493-547).

Being the first appellate Court, it was, therefore, the duty of the High Court to decide the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order XLI Rule 31 of the Code mentioned above. It was unfortunately not done, thereby, causing prejudice to the appellants whose valuable right to prosecute the first appeal on facts and law was adversely affected which, in turn, deprived them of a hearing in the appeal in accordance with law.

•

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

(i) Filing of application for maintenance, limitations therefor – Although no limitation is fixed for filing of maintenance application, yet it must be filed within a reasonable period.

(ii) Second marriage, proof of – Cogent evidence is required to be adduced – Where documentary evidence is available, oral evidence is not sufficient to prove second marriage.

(iii) Maintenance, eligibility therefor – Unless the applicant proves any valid reason for living separately, she is not entitled to get maintenance.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125

(i) भरण पोषण के लिये आवेदन प्रस्तुत करने की परिसीमा – यद्यपि भरण पोषण के लिये आवेदन प्रस्तुत करने के लिये कोई परिसीमा निर्धारित नहीं है फिर भी ऐसा आवेदन एक युक्तियुक्त समय के भीतर प्रस्तुत कर दिया जाना चाहिये।

(ii) द्वितीय विवाह का प्रमाण – इसके लिये अकाट्य प्रमाण आवश्यक होता है – जहां दस्तावेजी साक्ष्य उपलब्ध है, मौखिक साक्ष्य द्वितीय विवाह को प्रमाणित करने के लिये पर्याप्त नहीं होती है।

(iii) भरण पोषण के लिये पात्रता – जब तक आवेदक पृथक रहने का कोई वैध कारण प्रमाणित नहीं करती है वह भरण पोषण की पात्र नहीं होती है।

Shashikala Bai (Smt.) v. Mahendra Singh

Order dated 13.05.2014 passed by the High Court of M.P. in Criminal Revision No. 243 of 2001, reported in 2014 (IV) MPJR 164

•

***133. CRIMINAL PROCEDURE CODE, 1973 – Sections 125 and 128**

Attachment of salary in execution of maintenance order, requirement of – Finding of Magistrate regarding non-payment of allowance is necessary and opportunity of hearing is required to be given before passing an order of attachment of salary – However, future salary cannot be attached.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125 और 128

भरण पोषण के आदेश के निष्पादन में वेतन कुर्की के लिये अनिवार्यतायें – मजिस्ट्रेट का ऐसा निष्कर्ष आवश्यक है की भरण पोषण अदा नहीं किया गया है और वेतन कुर्की का आदेश करने से पूर्व संबंधित को सुनवाई का अवसर दिया जाना आवश्यक है – भविष्य का वेतन कुर्क नहीं किया जा सकता।

Anil Jain v. Shilpa Jain

Order dated 11.11.2014 passed by the High Court of M.P. in Criminal Revision No. 941 of 2013, reported in 2014 (IV) MPJR 185

•

134. CRIMINAL PROCEDURE CODE, 1973 – Section 154

EVIDENCE ACT, 1872 – Section 3

(i) Effect of non-mentioning names of all witnesses in the FIR – It is not the requirement of law to mention names of all witnesses in the FIR – Object of it is only to set the criminal law in motion.

(ii) Appreciation of evidence – Previous animosity – It is a double edged weapon – Can be a basis for false implication, can also be a motive for the crime, decided by the court on facts and circumstances of each case.

दण्ड प्रक्रिया संहिता, 1973 – धारा 154

साक्ष्य अधिनियम, 1872 – धारा 3

(i) सभी गवाहों के नाम प्रथम सूचना प्रतिवेदन में दर्ज न करने का प्रभाव – सभी गवाहों के नाम प्रथम सूचना प्रतिवेदन में दर्ज होना विधि की आवश्यकता नहीं है – इसका (प्रथम सूचना प्रतिवेदन का) उद्देश्य – केवल दांडिक विधि को गति में लाना है।

(ii) साक्ष्य का मूल्यांकन – पूर्व वेमनस्य – यह एक दो धार वाला हथियार है – यह एक असत्य फंसाने का आधार हो सकता है, अपराध करने का हेतू भी हो सकता है, न्यायालय प्रत्येक प्रकरण के तथ्यों और परिस्थितियों में निर्णीत करती है (की पूर्व वेमनस्य का प्रभाव क्या है)।

Kunwarpal @ Surajpal & ors. v. State of Uttarakhand and anr.

Judgment dated 09.12.2014 passed by the Supreme Court in Criminal Appeal No. 820 of 2010, reported in 2015 (1) Crimes 217 (SC)

Extracts from the judgment:

It cannot be denied that the occurrence took place during harvest season and PW3 Atmaram was harvesting the crop of wheat in his land with the help of PW4 Chaman Lal. Their presence near the occurrence place is natural and they cannot be termed as chance witnesses as contended by the appellants. It is true that their names are not found mentioned in the FIR. As already seen, the complaint was lodged by PW1 Gajendra Singh on the basis of information

furnished by PW2 Suggan about the occurrence. There is no requirement of law for mentioning the names of all the witnesses in the FIR, the object of which is only to set the criminal law in motion [***Nirpal Singh & ors. v. State of Haryan, (1977) 2 SCC 131, Bhagwan Singh & ors. v. State of Madhya Pradesh, (2002) 4 SCC 85*** and ***Raj Kishore Jha v. State of Bihar & ors,. (2003) 11 SCC 519***]. In this context it is relevant to point out that the statements of all witnesses were recorded by the Investigation Officer in the night of the occurrence day itself. Non mention of the names of PW3 Atmaram and PW4 Chaman Lal in the FIR does not affect the prosecution case as rightly held by the courts below.

According to the complainant there was litigation between them and the accused persons leading to enmity. PW3 Atmaram has also stated that there was litigation between them and it culminated in the occurrence. Animosity is a double edged sword. While it can be a basis for false implication, it can also be a basis for the crime [***Ruli Ram & anr. v. State of Haryana, (2002) 7 SCC 691*** and ***State of Punjab v. Sucha Singh & ors., (2003) 3 SCC 153***]. In the instant case there is no foundation established for the plea of false implication advanced by the accused and on the other hand evidence shows that enmity has led to the occurrence. The conviction and sentence imposed on the appellants is based on proper appreciation of evidence on record and does not call for any interference.

•

135. CRIMINAL PROCEDURE CODE, 1973 – Sections 156 (3), 190 and 202 (1)

Power to direct investigation u/s 156 (3) of the Code – Re-exercise is impermissible.

After directing investigation under section 156 (3) of the Code, subsequent direction to register FIR and hold inquiry and to submit report is impermissible.

दण्ड प्रक्रिया संहिता, 1973 – धारा 156 (3), 190 और 202 (1)

धारा 156 (3) द.प्र.सं. के अधीन अनुसंधान का निर्देश देने की शक्ति – इस शक्ति का पुनः प्रयोग (उसी मामले में दोबार प्रयोग) अनुमत नहीं है।

धारा 156 (3) द.प्र.सं. के अधीन अनुसंधान के निर्देश दे देने के बाद, पश्चातवर्ती प्रक्रम पर प्रथम सूचना प्रतिवेदन दर्ज करने और जांच करके प्रतिवेदन प्रस्तुत करने के निर्देश देना अनुमत नहीं है।

Bachhulal Sharma & ors. v. State of Madhya Pradesh

Order dated 05.12.2012 passed by the High Court of M.P. in Misc. Cr. Case No. 4351 of 2012, reported in 2014 (IV) MPJR 148 (DB)

Extracts from the order:

It is clear that in ordering an investigation under section 156(3) of the Code, the trial Magistrate is not empowered to take cognizance of the offence

and such cognizance is taken only on the basis of the complaint of the facts received by him which includes a police report of such facts or information

received from any person, other than a police officer under section 190 of the Code. Section 200 of the Code which falls in Chapter XV indicates the manner in which the cognizance has to be taken and that the Magistrate may also inquire into the case himself or direct an investigation to be made by police officer before issuing process. In the present case, the trial Judge at preliminary stage under section 156 (3) of the Code by an order dated 6th September, 2011 directed that the complaint of the complainant under Section 156 (3) of Cr.P.C. is sent for inquiry to the Police Superintendent Economic Offences Wing Gwalior. Thereafter, on receipt of the report dated 11th December, 2011, the direction by an order dated 7th April 2012 is again issued to the effect that since the matter in complaint is related to the misappropriation of Government money and cognizable by the police, hence, after due consideration, it has forwarded to the State EOW Gwalior the complaint and documents filed for registration of the F.I.R. and then to investigate and submit further report. This direction is against the law because once the power conferred under section 156 (3) of Cr.P.C. is exercised, same could not be re-exercised after receiving the report from the Investigating Agency. It is trite in law that the trial Judge ought to have proceeded with the procedure after recording the statements of complainant and witnesses and after considering the documents filed with the complaint and also on due consideration of the report filed by the EOW Gwalior, as laid down in Chapter XV of the Code, he could have passed the order either under section 203 or section 204 Cr.P.C. Therefore, subsequent order given by him for investigation after lodging the FIR by the same investigating agency, which has already submitted the report in terms of the directions contemplated in law is not inconformity with the provisions as laid down above.

•

***136 CRIMINAL PROCEDURE CODE, 1973 – Section 233 (3)**

Revision against order to refuse to recall the witnesses, maintainability of – If trial court already afforded full opportunity to cross-examine the prosecution witnesses and to examine defence witnesses, revision petition against refusal to recall defence witnesses cannot be allowed under the pretext of plea of failure of justice.

दण्ड प्रक्रिया संहिता, 1973 – धारा 233 (3)

गवाह को पुनः बुलाने से इंकार करने के आदेश के विरूद्ध पुनरीक्षण की प्रचलनशीलता – यदि विचारण न्यायालय ने अभियोजन गवाहों को प्रतिपरीक्षित करने व बचाव गवाहों के परीक्षण का पूर्ण अवसर पहले ही दे दिया गया हो ऐसे में गवाहों को पुनः बुलाने से इंकार करने के आदेश के विरूद्ध पुनरीक्षण न्याय की हानि के तर्क के बहाने स्वीकार नहीं की जा सकती।

Deepak Vishwakarma v. State of M.P.

Order dated 27.06.2013 passed by the High Court of M.P. in Criminal Revision No. 727 of 2013, reported in 2014 (IV) MPJR SN 29

•

137. CRIMINAL PROCEDURE CODE, 1973 – Section 427

NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

When benefit of provision of section 427 Cr.P.C. may be extended to accused ? Held, when all the cases arise out of a single transaction, benefit of that provision may be extended to the accused – But where the accused takes loans from different persons or institutions, and different cases are filed by them for offence punishable under section 138 N.I. Act, he is not entitled for the benefit of section 427 Cr.P.C.

दण्ड प्रक्रिया संहिता, 1973 – धारा 427

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

कब धारा 427 द.प्र.सं. के प्रावधानों का लाभ अभियुक्त को दिया जा सकता है? अभिनिर्धारित किया गया, जहां सभी प्रकरण एक ही संव्यवहार से उत्पन्न हुये हो वहां इस प्रावधान का लाभ अभियुक्त को दिया जा सकता है – किन्तु जहां अभियुक्त ने विभिन्न व्यक्तियों से या संस्थाओं से ऋण लिया हो व उनके द्वारा धारा 138 ए.आई. एक्ट के विभिन्न मामले प्रस्तुत किये हो वहां अभियुक्त धारा 427 द.प्र.सं. का लाभ पाने का हकदार नहीं होता है।

Inayat v. Adarsh Vyapari Sakh Sahkarita Myd.

Order dated 16.12.2014 passed by the High Court of M.P. In Criminal Revision No. 1177 of 2013, reported in 2015 (1) MPWN 113

Extracts from the order:

To decide, whether the present applicant is entitled for the benefit of provisions under section 427 of CrPC, the judgment of Hon'ble apex Court delivered in the case of ***Mohd. Akhtar Hussain v. Asstt. Collector of Customs, AIR 1988 SC 2143*** may be referred, in which principle of single transaction was propounded by Hon'ble apex Court for concurrent sentence. When all the cases arise out of single transaction, benefit of section 427 of CrPC may be extended. However, when person suffers jail sentence in various cases, which arise from different transactions, such benefit cannot be extended. In the case of ***Sumlo alias Sumla Bhuriya v. State of Gujarat and another, 2007 CriLJ 634 (Guj)***, it was held that when a person is convicted in three different cases at three different places, such benefit such benefit cannot be extended. Also when, the conviction of accused is based on two different cases on two entirely different facts and transaction benefit of Section 427 of CrPC cannot be extended.

Applying this single transaction rule on the present cases, it is apparent that the present applicant obtained loans from different persons/societies.

Criminal liability arises from different transactions. Five different cases were filed against him, in which, the respondents are five different persons/Societies. In such situations, the present applicant is not entitled for the benefit of section 427 Cr. P.C. I find that the present criminal revisions being devoid of merit are liable to be dismissed. Accordingly, the present criminal revisions are dismissed.

•

138. CRIMINAL PROCEDURE CODE, 1973 – Section 451

FOREST ACT, 1927 – Sections 52 (4) (a), 52 (c) and 54

Who can start proceeding of confiscation of the property which was seized in offence relating to Forest Act, 1927? Held, the proceeding should be started by a Forest Officer, who is authorized by the State Government on this behalf – The intimation in prescribed form should be sent to the concerned Magistrate about initiation of proceeding of confiscation of the property – In this case, request for confiscation has been made by the S.P, who is not a Forest Officer, to D.M. – Trial court and ASJ refused to give seized JCB machine on interim custody – Orders of both the Courts were set aside by the High Court and directed to give seized property on supurdgi to applicant.

दण्ड प्रक्रिया संहिता, 1973 – धारा 451

वन अधिनियम, 1927 – धारा 52 (4) (ए), 52 (सी) और 54

वन अधिनियम, 1927 से संबंधित अपराध में जब्त संपत्ति के संबंध में सम्पहरण या कॉन्फेसिकेशन की कार्यवाही कौन प्रारंभ कर सकता है? अभिनिर्धारित किया गया, ऐसी कार्यवाही एक वन अधिकारी, जिसे राज्य शासन ने इस हेतु अधिकृत किया हो, वह प्रारंभ कर सकता है – संपत्ति के सम्पहरण की कार्यवाही प्रारंभ करने के बारे में सूचना विहित प्रारूप में संबंधित मजिस्ट्रेट को भेजना चाहिये – इस मामले में सम्पहरण का निवेदन पुलिस अधीक्षक ने जिला मजिस्ट्रेट को किया जो की वन अधिकारी नहीं है – विचारण न्यायालय व अपर सत्र न्यायाधीश ने जब्त जे.सी.बी. मशीन अंतरिम अभिरक्षा में देने से इंकार कर दिया – उच्च न्यायालय ने उक्त दोनों न्यायालयों के आदेशों को अपास्त किया – यह निर्देश दिये की जब्त संपत्ति अपीलार्थी को सुपुर्दगी पर दी जाये।

Firoz v. State of M.P.

Judgment dated 05.02.2015 passed by the High Court of M.P. in Miscellaneous Criminal Case No. 7077 of 2014, reported in 2015 (1) MPWN 111

Extracts from the judgment:

Section 52(4)(a) of Indian Forest Act Provides that intimation in prescribed form should be sent to the concerning Magistrate about initiation of proceedings of confiscation of the property. The proceedings should be started by a Forest Officer, Who is authorized by the State Government on this behalf.

Applying these statutory provisions to the present case, it is apparent that the intimation was sent by Superintendent of Police who is not Forest Officer under Indian Forest Act to District Magistrate who is not a concerning Judicial Magistrate in this case. Many opportunities where granted to the State for production of the case diary and also the status of the confiscation proceedings if any, however, no intimation is produced before the Court and in such situation, an adverse inference may be drawn that no confiscation proceedings are pending in respect of the seized machine in this case.

•

139. CRIMINAL TRIAL:

(i) Sentencing policy :

(a) Sentence, object of – It serves a three-fold purpose; punitive, deterrent, and protective – Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct.

(b) Death sentence, imposition of – Aggravating and mitigating circumstances, consideration of – The Apex Court has evolved the doctrine of 'the rarest of the rare case' and put it to test by a medium of charting out the aggravating and mitigating circumstances in a case and then balancing the two in the facts and circumstances of a case – As a norm, the most significant aspect of sentencing policy is independent consideration of each case by the Court and to extricating a sentence which is the most appropriate and proportional to the culpability of the accused – It would be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with clear evidence and diabolic acts – To award the lesser punishment would be to render the justice system of this country suspect due to which the common man would lose faith in Courts.

(ii) Victimology – It is the paramount duty of the Court to provide justice to the incidental victims of the crime (i.e. the family members of the deceased persons) – Appropriate and proportional sentence requires to be imposed – On one hand, such sentence would demonstrate respect to those most personally affected by the grief and horror of murder whereas on the other hand, it would also be in accordance with the goals of the victims rights and the principles of restorative justice – The substantial sufferings of the victims cannot be ignored – It is not only the victims of crime that require soothing balm, but also the incidental victims like the family, the co-sufferers and to a relatively large extent, the society too.

दांडिक विचारण :

(i) दंड नीति

(a) दंड का उद्देश्य – इसके तीन उद्देश्य है दांडात्मक, निवारक और सुरक्षात्मक – कठोर दंड अपराध की गंभीरता को दर्शाता है, विधि का सम्मान अग्रसर करना अपराध के लिये युक्तियुक्त दंड देने के लिये होता है साथ ही उसी प्रकार के अपराध से समुदाय को सुरक्षित करना और दांडिक आचरण में सुधार लाना भी इसका लक्ष्य होता है।

(b) मृत्यु दण्ड दिया जाना – परिस्थितियाँ स्पष्ट की गई ।

(ii) विक्टिमोलॉजी – अपराध से पीड़ित के प्रति न्यायालय के कर्तव्य स्पष्ट किये गये।

Mofil Khan and another v. State of Jharkhand

Order dated 09.10.2014 passed by the Supreme Court in Criminal Appeal No. 1795 of 2009, reported in (2015) 1 SCC 67 (3-Judge Bench)

Extracts from the order:

Awarding of death penalty has been a matter of serious academic and judicial debate to discern an objective and rational basis for the exercise of the power and to evolve sound jurisprudential principles governing the exercise thereof. In this regard the Constitution Bench decision of this Court in ***Jagmohan Singh v. State of U.P., (1973) 1 SCC 20*** and ***Bachan Singh v. State of Punjab, (1980) 2 SCC 684*** a three-Judge Bench decision in ***Machhi Singh v. State of Punjab, (1983) 3 SCC 470,*** are the leading cases wherein certain principles in the matter of sentencing has been evolved by this Court. The broad principles tailored by this Court in its judgments provide guidelines to ensure that the discretion vested in the court is not unbridled.

This Court in the aforesaid decisions has evolved the doctrine of the “rarest of the rare case” and put it to test via medium of charting out the aggravating and mitigating circumstances in a case and then balancing the two in the facts and circumstances of the case. As a norm, the most significant aspect of sentencing policy is independent consideration of each case by the court and extricating a sentence which is the most appropriate and proportional to the culpability of the accused. It may not be apposite for the court to decide the quantum of sentence with reference to one of the classes under any one of the heads while completely ignoring classes under the other head. That is to say, what is required is not just the balancing of these circumstances by placing them in separate compartments, but their cumulative effect which the court is required to keep in its mind so as to better administer the criminal justice system and provide an effective and meaningful reasoning by the court as contemplated under Section 354(3) Cr.P.C. while sentencing.

The following broad heads have been culled out by the successive judgments of this Court:

AGGRAVATING CIRCUMSTANCES:

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed, to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.PC.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

MITIGATING CIRCUMSTANCES:

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.

While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

PRINCIPLES:

(1) the court has to apply the test to determine, if it was the 'rarest of rare' case for imposition of a death sentence.

(2) In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity etc) in which the crime was committed and the circumstances leading to commission of such heinous crime.

We remind ourselves that the doctrine of the "rarest of rare" does not classify murders into categories of heinous or less heinous. The different between the two is not in the identity of the principles, but lies in the realm of application thereof to individual fact situations. Sentences of severity are imposed to reflect the seriousness of the crime, to promote respect for the imposed to reflect the seriousness of the crime, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrent to criminal conduct and to protect the community from further similar conduct. It serves a threefold purpose – punitive, deterrent and protective.

In the instant case, the time, place and manner of the commission of crime are indicative of the motive of the appellant-accused. The appellant-accused have ruthlessly and successively butchered their own kith and kin for obtaining possession of certain passbook, money and immovable property without any provocation. They chose a day when most of the residents of the village including PW1 had gone out to attend a wedding at adjacent village and ensured that their despicable act did not suffer any resistance from them. At first, they entered the mosque where the deceased was offering namaz and indiscriminately attacked him with the sword and bhujali. Thereafter, they proceeded towards his house and slew the deceased two sons, Gufran Khan and Imran Khan, who had come out of the house on hearing their father's cries for help. Committed to their premeditated object, the appellant-accused forced themselves into the deceased's house and killed Kasuman Bibi and her four minor children including a physically disabled child. Being armed with sharp-edged weapons such as sword, tangi, bhujali and spade, the quick succession with which the appellant-accused proceeded to slaughter the eight members of their family classifies their act as pre-planned and reflects the cold-blooded fashion with which the callous design was executed.

The appellant-accused in their unquenched thirst for land and money extirpated eight innocent lives. The soured relations between the brothers did not restrict them from eliminating the family of Haneef Khan, thereby killing his two young sons, his wife and his four minor sons aged 5, 8, 12 and 18 approximately, respectively, one of whom was physically disabled. Their lack of remorse is reflected from the act of extending threat of life to other members of the family present in the house should they dare to inform the police.

It is heart-wrenching to fathom the plight of an old mother who witnesses her own sons kill their brother and his family. PW 2, the sole eyewitness, despite being the mother of both the appellant-accused has supported the prosecution case and testified against them. Her testimony has been unassailed, corroborated by her statement under section 164 of the Code and other witness to the incident. No oblique motive has surfaced from the record which would impregnate her statement with suspicion against her own sons. Usually a brother, a sister or a parent who has seen the commission of crime, may resile in the court from a statement recorded during the course of investigation. It happens instinctively, out of natural love and affection, not out of persuasion by the accused person. The witness has an obvious stake in the innocence of the accused and therefore tries to save him from the guilt. Here, PW 2 has not only come forward by testifying for the prosecution but has also stood unshaken by the family ties in her tryst for justice to the slain half of her family. It would be the paramount duty of the court to provide justice to the incidental victims of the crime – the family members of the deceased persons. Therefore, appropriate and proportional sentence requires to be imposed. On one hand, such sentencing would demonstrate respect to those most personally affected by the grief and horror of murder, on

the other it would also be in accordance with the goals of the victims' rights and the principles of restorative justice.

In our considered view, the "rarest of rare" case exists when an accused would be a menace, threat and antithetical to harmony in the society. Especially in cases where an accused does not act on provocation, acting on the spur of the moment but meticulously executes a deliberately planned crime in spite of understanding the probable consequence of his act, the death sentence may be the most appropriate punishment. We are mindful that criminal law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society. Keeping in view the said principle of proportionality of sentence or what it termed as "just deserts" for the vile act of slaughtering eight lives including four innocent minors and a physically infirm child whereby an entire family is exterminated, we cannot resist from concluding that the depravity of the appellants' offence would attract no lesser sentence than the death penalty.

•

140. DIVISION OF PROPERTY OF CHRISTIANS:

PROPERTY LAW :

(i) Christian Family – Concept of joint family property or coparceners under Hindu Law, non-applicability of – The concept of coparceners or joint family property is exclusive to the Hindu Law and is not existent amongst Christians.

(ii) Absolute owner – A Christian who inherited property from his parents is the absolute owner of such property – He can divide and distribute property as per his wish.

ईसाईयों में संपत्ति का विभाजन :

संपत्ति विधि :

(i) ईसाई परिवार – संयुक्त हिन्दू परिवार की संपत्ति या सहदायिक की हिन्दू विधि के अधीन धारणा का लागू न होना – सहदायिक या संयुक्त हिन्दू परिवार की संपत्ति की धारणा केवल हिन्दू विधि के लिये है इसका विस्तार ईसाईयों तक नहीं है।

(ii) निरपेक्ष या पूर्ण स्वामी – एक ईसाई जो उसके माता–पिता से संपत्ति उत्तराधिकार में प्राप्त करता है वह ऐसी संपत्ति का पूर्ण स्वामी होता है – वह उस संपत्ति को उसकी इच्छा अनुसार विभाजित और वितरित कर सकता है।

Lalitha Theresa Sequeria (since died) by L.Rs. v. Dolfy A Pias alias Adolphys Joseph Pais and anr.

Judgment dated 09.10.2014 passed by the Supreme Court in Civil Appeal No. 6197 of 2010, reported in (2014) 10 SCC 731

Extracts from the judgment:

The learned trial court dismissed the suit by its judgment and decree dated 22.7.1997 holding that the property having devolved on the father from his

mother it was open for him to divide the same amongst his children, as he desired. As the plaintiff had no pre-existing right to the said property, she could not have questioned the division of the same made in the year 1962. The learned trial court further held that the Will dated 18.5.1976 specifically refers to the division of the family property in the year 1962 and though the Will itself is un-probated, its execution stood proved on the basis of the evidence of the attesting witnesses. Therefore, the Will can be looked into for collateral purpose.

The learned trial court also came to the conclusion that the evidence of PW1, husband of the plaintiff, clearly demonstrated that there were four buildings on the suit land prior to the year 1968 and, therefore, the provisions of the Urban Land Ceiling Act were not applicable to the suit property. In these circumstances, the learned trial court came to the conclusion that the validity of the compromise decree cannot be doubted on the grounds urged. The learned trial court also took note of the fact that after the compromise decree was passed, its authenticity and genuineness had not been questioned by the father of the parties and the facts subsequent thereto, i.e. execution of the sale deed (Ext. D-1) by the father and the testimony of DW-1 would go to show that the compromise decree was given due effect. The learned trial court further held that the compromise decree was not required to be registered in view of the fact that the decree was only declaratory of the shares of the parties made as far back as in the year 1962.

The First Appellate Court overturned the findings of the learned Trial Court, primarily, on the ground that the partition effected in the year 1962 was without any legal effect as the concept of coparceners or joint family property was exclusive to Hindu Law and was not existent amongst Christians. The execution of the Will dated 18.5.1976; the filing of the suit by the defendants (OS No.397/76) and the passing of the compromise decree dated 18.07.1976, in view of the close proximity of time to each other, were held to be relevant facts leaning in favour of the version put forward by the plaintiff and casting a serious doubt on the bona fides of the defendants in filing OS No.397/76, so as to warrant the conclusion that the decree in the said suit was intended to overcome the effect of the Urban Land Ceiling Act on the suit property.

In the second appeal, the High Court following the two substantial questions of law for its determination:

> "1. Whether the lower appellate court is right in holding that the compromise arrived at was liable to set aside without going into the question that plaintiff had locus stand to question the compromise?
>
> 2. Whether the Urban Land Ceiling Act is applicable to this case?"

Both the substantial questions of law framed by the High Court are interconnected inasmuch as the answer to either revolves around the legal validity of the compromise decree dated 16.08.1976. In answering the aforesaid

question the existence or otherwise of the oral partition of the year 1962; the will dated 18.05.1976; the circumstances surrounding the compromise leading to the decree dated 16.08.1976 in O.S. No.397 of 1976 as also the facts subsequent thereto, namely, the sale of the Schedule 'C' property by the father and acknowledgment of the compromise decree in the sale deed (Exbt.1), would all be relevant. We find no basis to hold that what was claimed by the defendants to have occurred in the year 1962 is a partition of the joint family property as understood in Hindu Law. The property was inherited by the father of the plaintiff from his mother and the parties being Christians, the father must be understood to be absolute owner of such property. In that capacity he was certainly entitled to divide or distribute the property as he considered fit. What had actually happened in the year 1962 is, therefore, an oral division of the property at the instance of the absolute owner thereof i.e. the father in three more or less equal shares. So far as Schedule 'C' property which fell to the share of the father is concerned, a part of it was sold by Exhibit D-1 and the remaining devolved on 2 daughters including the plaintiff. The aforesaid arrangement was acknowledged in the will dated 18.05.1976 though the same has been referred to, and one must understand such reference to be loosely made, as a partition of the property. The execution of the will dated 18.05.1976 has been proved by one of the attesting witnesses who had been examined in the trial. The above understanding of the facts would dispel the arguments advanced on behalf of the plaintiff-appellant that the partition effected in 1962 has been wrongly accepted by the High Court though no question of partition of joint family properties could arise in the present case, the parties being Christians by faith.

•

141. ELECTRICITY ACT, 2003 – Section 154

Filing of private complaint in respect of an offence relating to unauthorized consumption of electricity, necessity therefor – Submission of complaint to police prior to filing of complaint before Special Court is not sine qua non – Electricity Company may directly file private complaint before the Court.

विद्युत अधिनियम, 2003 – धारा 154

विद्युत के अनाधिकृत उपभोग के संबंध में निजी परिवाद का प्रस्तुत किया जाना – विशेष न्यायालय के समक्ष परिवाद प्रस्तुत करने के पूर्व पुलिस को शिकायत करना आवश्यक शर्त नहीं है – विद्युत कंपनी न्यायालय के समक्ष सीधे परिवाद प्रस्तुत कर सकती है।

M.P. Madya Kshetra Vidyut Vitran Company Ltd. v. Kalyan Singh Chauhan and others

Order dated 03.12.2014 passed by the High Court of M.P. in Misc. Cr. Case No. 1602 of 2009, reported in 2015 (1) MPLJ 589

Extracts from the order:

Under section 151-A of the Act is in relation to power of police to investigate alike chapter XII of the Code of Criminal Procedure, 1973. It runs as below:-

> "151-A. Power of police to investigate. – For the purposes of investigation of an offence punishable of this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973."

Similarly in this case one more relevant aspect is that a Notification was issued on 8/6/2005 by the Central Govt. in exercise of powers under section 176 of the Electricity Act. This also requires a mention. Vide this Notification the Electricity Rules 2005 have been framed and Rule 12 which is relevant reads as under:-

> "12. Cognizance of the offence.– (1) The police shall take cognizance of the offence punishable under the Act on a complaint in writing made to the police by the appropriate Government or the appropriate Commission or any of their officers authorised by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorised officer of licensee or a generating company, as the case may be.
>
> (2) The police shall investigate the complaint in accordance with the general law applicable to the investigation of any complaint. For the purposes of investigation of the complaint the police shall have all the powers as available under the Code of Criminal Procedure, 1973.
>
> (3) The police shall, after investigation, forward the report along with the complaint filed under sub-clause (1) to the court for trial under the Act.
>
> (4) Notwithstanding anything contained in sub-clauses (1)(2) and (3) above the complaint for taking cognizance of an offence punishable under the Act may also be filed by the appropriate Government or the appropriate Commission or any of their officers authorised by them or a Chief Electrical Inspector or an Electrical Inspector or an authorised officer of licensee or a generating company, as the case may be directly in the appropriate court.
>
> (5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every Special Court may take cognizance of an offence referred to in Sections 135 to 139 of the Act without the accused being committed to it for trial."

On perusal of the Rule 12 sub-clause (4) again it is clear like a noon that even after lodging the written complaint before the police and matter has already been investigated by the police even then complainant has a right to file a complaint as provided in section 151 of the Act and if such kind of private complaint is filed then the court is competent to take cognizance of the offence by virtue of the vested right given under section 151 of the Act which otherwise were not affected by declaring the offences under sections 135 to 140 of the Electricity Act as cognizable and non-bailable under section 151-B of the Act to lay down that private complaint cannot be entertained or cognizance cannot be taken by the court.

To understand the matter easily it is pertinent to mention here that as per mandatory provisions given in proviso of section 135(1-A) of the Act, a written complaint in regard to commission of offence shall be lodged before the concerning police station within 24 hrs. Thereafter because of offences are cognizable and non-bailable, the police shall investigate the matter in view of the powers under section 151-A of the Act and thereafter may file final report before the appropriate court. It is strange to note that nowhere it is mentioned in the Act that private complaint cannot be filed under Section 151 of the Act. For an example suppose if written complaint is not filed before the police station concerned even then there is no bar to file a private complainant under section 151 of Cr.P.C. Similarly, if written complainant is filed before the police station concerned in that event a private complaint can also be filed and the court competent can take cognizable as provided under section 151 of the Act.

•

142. EVIDENCE ACT, 1872 – Section 32 (1)

Dying declaration of 'A' relating to cause of death of herself and 'B' – Whether it is admissible for cause of death of 'B'? Held, when a D.D. relating to circumstances of the transaction which resulted in death of a person making the D.D. is integral part of circumstances is resulting in death of any other person, such D.D. has relevance for death of such other person also.

साक्ष्य अधिनियम, 1872 – धारा 32 (1)

ए का मृत्यु पूर्व कथन जो उसकी स्वयं की व बी की मृत्यु के कारण के बारे में था – क्या यह (मृत्यु कालिन कथन) बी की मृत्यु के कारण के बारे में ग्राह्य है? अभिनिर्धारित किया गया, जहां एक मृत्यु पूर्व कथन जो एक व्यक्ति की मृत्यु की परिस्थितियों के संव्यवहार के संबंध में जिसमें उसकी मृत्यु हुई थी और वह किसी अन्य व्यक्ति की मृत्यु के कारण की परिस्थितियों का भी आवश्यक भाग हो तब वह उस अन्य व्यक्ति की मृत्यु के कारण के बारे में भी सुसंगत होता है।

Tejram Patil v. State of Maharashtra

Judgment dated 26.02.2015 passed by the Supreme Court in Criminal Appeal No. 1330 of 2009, reported in 2015 (1) Crimes 275 (SC)

Extracts from the judgment:

On a plain reading, the statement is admissible about the cause of death or the circumstances of the transaction which resulted in the death of the person making the statement. Question is what happens when two deaths have taken place in the same transaction and circumstances of the transaction resulting in one death is closely interconnected with the other death. Admittedly, the DD of Prabhabai is admissible as to cause of her death as well as the circumstances of the transaction which resulted in her death. Such statement may not by itself be admissible to determine the cause of death of anyone other than the person making the statement. However, when the circumstances of the transaction which resulted in death of the person making the statement as well as death of any other person are part of the same transaction, the same will be relevant also about the cause of death of such other person.

Expressions "Relevant" and "facts in issue" are defined in the Evidence Act as follows:

> "Relevant" – One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts. "Facts in issue" -The expression "facts in issue" means and includes—any fact from which, either by itself or in connection with other facts, the existence, nonexistence, nature or extent of any right, liability, or disability asserted or denied in any suit or proceeding, necessarily follows. Section 6 is as follows :
>
> > "6. *Relevancy of facts forming part of same transaction* – Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.
>
> Illustrations xxxxxxx"

Thus, when a dying declaration relating to circumstances of the transaction which resulted in death of a person making the declaration are integral part of circumstances resulting in death of any other person, such dying declaration has relevance for death of such other person also.

•

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

CRIMINAL PROCEDURE CODE, 1973 – Sections 173 and 190

(i) Cognizance is a process where the court takes judicial notice of an offence – The court is not bound by the report submitted by the police under section 173 (2) Cr.P.C.– If the Magistrate finds *prima facie* case is made out he can reject the report

and take cognizance – In this case, the conversation between complainant and accused is inaudible – It was the "crux" of the case registered under P.C. Act – Once the crux goes, the superstructure also falls, lacking in legs – Unmerited and undeserved prosecution is an infringement of the guarantee under Article 21 of the Constitution of India also – Order of Magistrate not taking cognizance held, proper.

(ii) Admissibility of an electronic evidence – Source and authenticity are the two key factors for an electronic evidence, so, at the time of admitting such evidence, court should bear in mind the above two factors.

साक्ष्य अधिनियम, 1872 – धारा 65.ए और 65.बी

दण्ड प्रक्रिया संहिता, 1973 – धारा 173 और 190

(i) प्रसंज्ञान एक प्रक्रिया है जब न्यायालय एक अपराध के बारे में न्यायिक अवेक्षा या ज्यूडिशियल नोटिस लेते है – न्यायालय पुलिस द्वारा प्रस्तुत प्रतिवेदन धारा 173 (2) द.प्र.सं. से बंधे हुये नहीं रहते है – यदि मजिस्ट्रेट यह पाता है कि प्रथम दृष्ट्या अपराध बनता है तो वह पुलिस प्रतिवेदन को खारिज करके प्रसंज्ञान ले सकता है – इस मामले में परिवादी व अभियुक्त के बीच का संवाद अश्रव्य (सुनाई देने योग्य न होना) था – वह (संवाद) भ्रष्टाचार निवारण अधिनिमय के तहत पंजीबद्ध मामले का मर्म (मुख्य साक्ष्य था) – एक बार जब मर्म चला जाता है या समाप्त हो जाता है तब अधोरचना भी आधार के अभाव में गिर जाती है – अनर्जित और अपात्र अभियोजन भारतीय संविधान के अनुच्छेद 21 के तहत दिये गये आश्वाश्न या ग्यारंटी का भी उल्लघंन होते है – मजिस्ट्रेट का प्रसंज्ञान न लेने का आदेश उचित होना अभिनिर्धारित किया गया।

(ii) एक इलेक्ट्रोनिक साक्ष्य की ग्राह्यता – स्त्रोत व अधिकृतता एक इलेक्ट्रोनिक साक्ष्य के दो मुख्य कारक होते हैं अतः न्यायालय को ऐसी साक्ष्य ग्राह्य करते समय उक्त दो कारक मस्तिष्क में रखना चाहिये।

Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others

Judgment dated 16.01.2015 passed by the Supreme Court in Criminal Appeal No.97 of 2009 reported in (2015) 3 SCC 123

Extracts from the judgment:

In ***Bhushan Kumar and another v. State (NCT of Delhi), (2012) 5 SCC 424*** it was held that:

> "11. In ***Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC 492*** (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'.

> It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code."

In ***Nagawwa v. Veeranna Shivalingappa Kinjalgi, (1976) 3 SCC 736*** the extent to which the Magistrate can go at the stage of taking cognizance has been discussed. To quote:

> "5. ... It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused."

Cognizance is a process where the court takes judicial notice of an offence so as to initiate proceedings in respect of the alleged violation of law. The offence is investigated by the police. No doubt, the court is not bound by the report submitted by the police under Section 173(2) of Cr.PC. If the report is that no case is made out, the Magistrate is still free, nay, bound, if a case according to him is made out, to reject the report and take cognizance. It is also open to him to order further investigation under Section 173 (8) of Cr.PC.

The Magistrate, having seen the records and having heard the parties, has come to the conclusion that no offence is made out against the appellant under the provisions of the PC Act so as to prosecute him. Even according to the High Court, "the crux of the matter is the conversation between the complainant and the accused no.1 of 22.11.2010". That conversation is inaudible and the same is not to be taken in evidence. Therefore, once the 'crux' goes, the superstructure also falls, lacking in legs. Hence, prosecution becomes a futile exercise as the materials available do not show that an offence is made out as against the appellant. This part, unfortunately, the High Court missed.

> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course."

[***Pepsi Foods Limited v. Judicial Magistrate, (1998) 5 SCC 749 para 28.***] The process of the criminal court shall not be permitted to be used as a weapon of harassment.

> Once it is found that there is no material on record to connect an accused with the crime, there is no meaning in prosecuting him. It would be a sheer waste of public time and money to permit such proceedings to continue against such a person.

[See ***State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699, SCC p. 703, para 8***.]

•

144. EVIDENCE ACT, 1872 – Section 90

Nature of presumption under section 90 of the Evidence Act for 30 years old document – It is discretionary – Whether it can be taken for 29½ year old document? Held, No – Being a statutory requirement, Courts cannot alter the operation of the statue by reading into it as allowing a document aged 29½ year to be open to the law's presumption.

साक्ष्य अधिनियम, 1872 – धारा 90

30 वर्ष पुराने दस्तावेज के बारे में धारा 90 साक्ष्य अधिनियम की उपधारणा की प्रकृति – यह विवेकीय है – क्या साढ़े उनतीस वर्ष (29½ वर्ष) पुराने दस्तावेज के बारे में यह उपधारणा ली जा सकती है? अभिनिर्धारित किया गया नहीं – एक वैधानिक अनिवार्यता के कारण न्यायालय इसमें परिवर्तन नहीं कर सकता वह कानून को इस तरह नहीं पढ़ सकता कि साढ़े 29½ वर्ष पुराने दस्तावेज के लिये उपधारणा लागू कर ली जाये।

Om Prakash (Dead) Th. his LRs. v. Shanti Devi and others

Judgment dated 05.01.2015 passed by the Supreme Court in Civil Appeal No. 20 of 2015, reported in AIR 2015 SC 976

Extracts from the judgment:

The first and fatal stumbling block of the Appellant's case, then, is that at the time of tendering of the Gift Deed before the Trial Court, the thirty-years

maturation period provided by Section 90 was not satisfied, the Gift Deed having been tendered in evidence after around 29 and one-half years, since he had alluded to it in the course of the Defendant/Appellant examining himself unlike the state of pleadings this incontrovertibly partook the nature of tendering evidence. The time prerequisite to even essay availing of the Court's discretionary powers under Section 90 had not been met. Being a statutory requirement, Courts cannot alter the operation of the statute by reading into it as allowing a document aged 29 and one-half years to be open to the law's presumption. The judgment of the High Court below has considered the issue of this document's eligibility under Section 90, and repudiated this submission, the document not even, echoing the words of Section 90, "purporting" to be thirty years old at the time of tendering. We hasten to add that even if the document purported or proved to be thirty years old, the Appellant would not axiomatically receive a favourable presumption, the Section 90 presumption being a discretionary one.

•

145. HINDU MARRIAGE ACT, 1955 – Section 13

Dissolution of marriage as per custom, validity of – Dissolution of marriage took place with the permission of the Panchayat – It was permissible according to their caste – To such effect, during the proceedings of Panchayat certain documents were also executed and such documents were permitting remarriage of parties – Thereafter, the husband married another woman and both the parties were living separately – Held, a decree for dissolution of marriage can be granted as per the rites and custom of the parties.

हिन्दू विवाह अधिनियम, 1955 – धारा 13

प्रथा के अनुसार विवाह के विघटन की वैधता – पंचायत की अनुमति से विवाह का विघटन किया गया – उनकी (पक्षकारों की) जाति में पक्षकारों के अनुसार यह अनुमत था – पंचायत की कार्यवाही के दौरान कुछ दस्तावेज भी निष्पादित किये गये और पक्षकारों को द्वितीय विवाह की अनुमति संबंधी दस्तावेज थे – उसके बाद पुरूष ने अन्य महिला से विवाह किया तथा पक्षकार पृथक रहने लगे – पक्षकारों की प्रथा के अनुसार विवाह के विघटन की अज्ञाप्ति दी जा सकती है यह अभिनिर्धारित किया गया।

Ranjit Singh v. Sugan Bai

Order dated 29.04.2014 passed by the High Court of M.P. in First Appeal No. 490 of 2002, reported in 2014 (IV) MPJR 176 (DB)

Extracts from the order:

Having considered the submissions made and the documents available on record, it is seen that the parties are living separately since 1990 and during this period the appellant husband is also married to another person and two children have been born out of his wedlock. One of the moot question warranting

consideration is as to whether as per the rites and customs of the parties, a decision was taken in the panchayat as is indicated in the document Exhibit P/1

and P/2. P.W. 1 Ranjit Singh and his witnesses P.W.2 and P.W.3 testify with regard to execution of this document in the panchayat. Both P.W.2 and P.W.3 have stated that when the proceeding of the Panchayat were held on 4.3.90 respondent wife's uncle Bapu Bhura and her brother Puran were present and certain relatives of the appellant husband were also present before whom the decision was taken and the document Exhibit P/2 executed. P.W.4 Padam Singh Malviya who had conducted the proceedings of the Panchayat also testifies to the same. He also says that the persons who were present there had affixed their thumb impression or signature on the document Exhibit P/2. If the documents available on record Exhibit P/1 and P/2 are taken note of, it would be seen that in this document signature and thumb impression of various persons are present which include the signature of Bapu Bhura the so called uncle of Sugan Bai respondent wife and her brother Puran. At place marked as "C" to "C" is the signature of Bapu and portion marked as "G" to "G" is signature by Puran in Exhibit P/1. Similarly in Exhibit P/2 their signature marked at places 'A' to 'A' and 'B' to 'B' respectively. The respondent wife examined herself as D.W.1 and denied the proceedings held in the Panchayat. She also produced her brother D.W.2 Moti to testify that he was not present in the panchayat. However, neither Moti nor the respondent wife say anything with regard to presence of Puran and Bapu Bhure in the proceedings of the Panchayat nor do they deny existance of such a custom in the community for separation. On the contrary P.W.2, P.W.3 and P.W.4 who were not members of the family testify to the execution of the document in the panchayat. When the appellant had come out with a specific case that in the proceedings of the Panchayat brother of the respondent Puran and her uncle were present as this proceeding was held as per the custom and usage prevailing in their community and when PW2 and PW3 say that they affixed their signature in the portion marked in the document. The respondent should have explained or produced either Bapu or Puran to deny their signature in the document. The evidence of witnesses does show that as per the custom prevailing in the caste to which the parties belong, certain proceedings of the panchayat took place and if documents Exhibit P/1 and P/2 are taken note of, it would be seen that this document speaks about breaking of the relationship, their separation, redistribution of their assets and payment of Rs.3,300/- by the respondent wife to the appellant. The document also says that now the parties can remarry and it is an admitted position that after execution of this document the appellant husband has married one Kalpana Bai and two children have been born out of this wedlock. From the evidence in this regard as is available on record it is clear that parties are living separately since 1990 and in certain proceedings of the Panchayat held on 4.3.90, they have decided to separate themselves and thereafter, the appellant husband got married and since 4.3.90 i.e. atleast from the date when the documents were executed, both the parties are living separately. That being so, it is a case where as per the religious custom and tradition applicable between the parties, a decision has been taken to separate themselves and the decision having been put to execution and the

execution of the decision vide Annexure P/1 and P/2 having been proved from the evidence available on record, it is a fit case where a decree for dissolution of marriage should be granted. Accordingly, the appeal is allowed. The marriage solemnized between the parties is permitted to be dissolved. The decree be passed accordingly. The appeal is allowed in part.

•

146. INDIAN PENAL CODE, 1860 – Section 188

CRIMINAL PROCEDURE CODE, 1973 – Section 195 (1) (a) (i)

What is the condition precedent for taking cognizance of offence under section 188 of IPC? – There should be a complaint in writing by the concerned public servant as provided under section 195 (1) (a) (i) Cr. P.C. – *(1994) 4 SCC 95* followed.

भारतीय दण्ड संहिता, 1860 – धारा 188

दण्ड प्रक्रिया संहिता, 1973 – धारा 195(1)(a)(i)

धारा 188 भारतीय दण्ड संहिता के अपराध का प्रसंज्ञान लेने के लिये पूर्ववर्ती शर्त क्या है ? – संबंधित लोक सेवक द्वारा की गई एक लिखित शिकायत जैसा की धारा 195(1)(a)(i) दंप्र.सं. में प्रावधान है; होना चाहिये – *(1994) 4 एस.सी.सी. 95* का अनुसरण किया गया।

Preetam Lodhi v. State of M.P.

Order dated 28.01.2015 passed by the High Court of M.P. in Misc. Criminal Case No. 794 of 2015, reported in 2015 (2) MPHT 163

Extracts from the order:

The Hon'ble Apex Court in ***State of U.P. v. Mata Bhikh and others, (1994) 4 SCC 95,*** in paras 6 and 7 observed as under:

> "6. The object of this section is to protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill–will or frivolity of disposition at the instance of private individuals for the offences specified therein. The provisions of this section, no doubt, are mandatory and the Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the section without, which the trial under Section 188 of the Indian Penal Code becomes void ab initio. See : ***Daulat Ram v. State of Punjab, 1962 Supp 2 SCR 812***. To say in other words, a written complaint by a public servant concerned is sine qua non to initiate a criminal proceeding under Section 188 of the IPC against those who, with the knowledge that an order has been promulgated by a public servant directing either 'to abstain from a certain act, or to take certain order, with

certain property in his possession or under his management' disobey that order. Nonetheless, when the Court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the section itself, which is to the effect that no Court can take cognizance of any offence punishable under Section 172 to 188 of the IPC except on the written complaint of 'the public servant concerned' or of some other public servant to whom he (the public servant who promulgated that order) is administratively subordinate.

7. A cursory reading of Section 195 (1) (a) makes out that in case a public servant concerned, who has promulgated an order, which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the superior public servant to whom the officer who initially passed the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The word 'subordinate' means administratively subordinate, i.e., some other public servant who is his official superior and under whose administrative control he works."

•

147. INDIAN PENAL CODE, 1860 – Section 300 Exception 4, Sections 302 and 304

When Exception 4 to section 300 IPC is attracted? Held, to attract Exception 4 of section 300 IPC four requisites must be satisfied, namely:

(1) It was a sudden fight;

(2) There was no premeditation;

(3) The act was committed in a heat of passion; and

(4) The assailant had not taken any undue advantage or acted in a cruel manner.

When above Exception is attracted, conviction can be altered to section 304 part 1 IPC instead of section 302 IPC.

भारतीय दण्ड संहिता, 1860 – धारा 300 का अपवाद 4, 302 और 304

कब धारा 300 भा.द.सं. का अपवाद 4 आकर्षित होता है? अभिनिर्धारित किया गया जहां 4 अनिवार्यतायें संतुष्ट हो जाती है वहां धारा 300 का अपवाद 4 आकर्षित होता है:

(1) वह एक अचानक लड़ाई थी,

(2 कोई पूर्व योजना या पूर्व विचार विमर्श नहीं था,

(3) कृत्य आवेश या उत्तेजना में किया गया था,

(4) आक्रमणकारी ने कोई असम्यक लाभ नहीं लिया था या क्रूर तरीके से कार्य नहीं किया था।

जहां उक्त अपवाद आकर्षित होता है वहां धारा 302 भा.द.सं. के स्थान पर दोषसिद्धि 304 भाग 1 भा.द.सं. में परिवर्तित करना चाहिये।

Ahmed Shah and another v. State of Rajasthan

Judgment dated 09.01.2015 passed by the Supreme Court in Criminal Appeal No.1889 of 2008, reported in (2015) 3 SCC 93

Extracts from the judgment:

As per Exception 4 to Section 300 IPC, culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. To invoke Exception 4 to Section 300 IPC, four requisites must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was committed in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner.

This Court in ***Sridhar Bhuyam v. State of Orissa, (2004) 11 SCC 395*** held as under:

> "For bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.
>
> The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self–control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. Three is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more

appropriately applicable would be Exception 1. there is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

In ***Satish Narayan Sawant v. State of Goa, (2009) 17 SCC 724,*** the same principle was reiterated.

•

148 INDIAN PENAL CODE, 1860 – Section 302

EVIDENCE ACT, 1872 – Section 106

(i) As many as 20 injuries, all incised wounds, were found all over the body of deceased/wife – Immediately before the death of the deceased/wife, where the accused/husband and deceased/wife were living together, the entire burden was upon the accused to show as to who else was responsible for killing of the deceased – Plea of dacoity and plea of alibi raised by the accused found unreliable – Conviction, held proper.

(ii) Submission of lesser sentence by accused – Denied, because the deceased was assaulted in such a brutal manner that the body was like minced meat in the process of her killing.

भारतीय दण्ड संहिता, 1860 – धारा 302

साक्ष्य अधिनियम, 1872 – धारा 106

(i) बीस चोटे, जो सभी छेदित घाव या इंसाइज्ड वूंड थी, मृतक/पत्नी के पूरे शरीर पर पाई गई थी – जब अभियुक्त/पति और मृतक/पत्नी, मृतक/पत्नी की मृत्यु के ठीक पूर्व साथ–साथ रह रहे थे अभियुक्त पर यह पूरा भार (प्रमाण भार) था कि वह यह दर्शावे की मृतक की हत्या के लिये कौन उत्तरदायी है – डकैती व घटना स्थल पर न होने के बचाव जो अभियुक्त द्वारा लिये गये थे वे अविश्वसनीय पाये गये – दोषसिद्धि उचित होना अभिनिर्धारित किया गया।

(ii) अभियुक्त का कम दण्ड देने का तर्क – नकारा गया, क्योंकि मृतक पर इतने विभत्स तरीके से हमला किया गया था कि हत्या के दौरान उसका शरीर मांस के टुकड़े–टुकड़े के समान हो गया था।

Ratnesh Kumar Pandey v. State of Uttar Pradesh

Judgment dated 15.01.2015 passed by the Supreme Court in Criminal Appeal No. 454 of 2011, reported in (2015) 3 SCC 536

Extracts from the judgment:

The question for consideration is: whether the chain of circumstances noted and found proved against the appellant leads to the only hypothesis in respect of the guilt alleged against the appellant? With that perspective in mind, when we consider the circumstances noted by the trial court which we have in seriatim referred to in the earlier part of the judgment we find that when the appellant and the deceased were living together immediately before the death of the deceased the whole burden was upon the appellant to show as to who else was responsible for the killing of the deceased. Except the evidence relating to the prior grievances expressed on behalf of the deceased to PW 1 as regards the beatings inflicted on her by the in–laws of the deceased there was no other version placed before the court for implicating anybody else to have any grievance as against the deceased. Keeping the said situation in mind when we consider the circumstances noted by the courts below which were duly supported by the legally acceptable evidence on record, it will have to be stated that the burden was heavily upon the appellant to show that he had nothing to do with the killing of the deceased.

Learned counsel of appellant in his submissions lastly contended that the appellant has already suffered more than 10 years' imprisonment and subsequently got married when he was on bail and that he has also got children after such marriage, therefore, the offence can be modified into one under

Section 304–B and a lesser punishment can be awarded. However persuasive such submission may be on behalf of the appellant, when we considered the

injuries found on the body of the deceased, we find that the deceased had suffered as many as 20 injuries and all of them were incised wounds caused by Ext. 1, the knife used by the appellant for the killing. The deceased was assaulted in such a manner that the body was like minced meat in the process of her killing. Therefore, that very fact dissuades us from showing any lenience to the appellant for showing any sympathy in the matter of punishment. Therefore, we do not find any scope to modify the sentence imposed on the appellant. Consequently the appeal fails and the same is dismissed.

•

149. INDIAN PENAL CODE, 1860 – Sections 302 and 304 Part 1

Conviction can be altered under section 304 Part 1 IPC in place of section 302 IPC, where there was no motive or intention on the part of accused person to eliminate deceased – No previous animosity was there – Accused person had gone to the spot for taking possession of the cattle shed and not with the intention to kill any body – Accused person inflicted only one blow to 'M' who survived –Deceased died due to burn injuries, which she suffered because accused person ablazed the cattle shed by pouring kerosene on it – The accused person should have been convicted for the offence punishable under section 304 Part 1 instead of section 302 IPC.

भारतीय दण्ड संहिता, 1860 – धारा 302 और 304 भाग 1

दोषसिद्धि धारा 302 भा.द.सं. के स्थान पर 304 भाग 1 भा.द.सं. में परिवर्तित की जा सकती है – जहां अभियुक्त का कोई हेतुक या आशय पीड़ित को मार डालने का न हो – कोई पूर्व रंजिश नहीं थी – अभियुक्तगण मौके पर केटल शेड का आधिपत्य लेने गये थे किसी को मारने के आशय से नहीं गये थे – अभियुक्तगण ने केवल एक वार ऐम पर किया, जो जिन्दा बच गया – मृतक जलने से आयी चोटों के कारण मरी जो चोटे अभियुक्तगण द्वारा केरोसिन उड़ेलकर केटल शेड को जला देने के कारण आयी थी – अभियुक्तगण को उक्त परिस्थितियों में धारा 302 भा.द. सं. के स्थान पर धारा 304 भाग 1 भा.द.सं में दंडित किया जाना चाहिये।

Balu & ors. v. The State of Maharashtra

Judgment dated 02.02.2015 passed by the Supreme Court in Criminal Appeal No. 175 of 2015, reported in 2015 (1) Crimes 181 (SC)

Extracts from the judgment:

The learned Judge Vivian Bose in his distinctive style of writing and speaking for the Court succinctly stated as under:

> "In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury

found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.

To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death.

> No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional."

Relying on the aforesaid principle of law, recently this Court in ***Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh, (2006)11 SCC 444,*** again examined the issue as to what relevant factors should be kept in consideration while deciding the question as to whether case in hand falls under Section 302 or 304 Part-I or Part-II. Justice Raveendran speaking for the Court held in para 29 as under:

> "29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters-plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts murder punishable under Section 302, are under Section 304 Part I culpabl murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of to insure that the case of not converted into offenses punishable or case of homicidal not amounting to a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such

provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

•

150. INDIAN PENAL CODE, 1860 – Sections 302, 326 and 460

Offence under sections 302, 326 and 460 of IPC – Acid attack – Death of a married woman by acid burn caused by accused who had evil eye and wanted to keep her and also caused injuries to other persons who went to her rescue – Offences charged were proved beyond reasonable doubt by duly proved dying declaration and statements of eye witnesses – FIR was also lodged promptly – Imposition of death penalty – Reference under section 366 Cr.P.C., confirmation of – Held, Trial Court rightly awarded death penalty to accused – Further held, persons who suffered disfiguration and burn injuries are entitled to adequate compensation.

भारतीय दण्ड संहिता, 1860 – धारा 302, 326 और 460

धारा 302, 326 और 460 के अधीन अपराध – अम्ल या एसिड द्वारा हमला. अभियुक्त द्वारा कारित अम्ल द्वारा हमले से एक विवाहित महिला की मृत्यु हुई जिस पर अभियुक्त बुरी नजर रखता था और उसे उसके साथ रखना चाहता था तथा बचाने आये एक व्यक्ति को उपहति कारित हुई – प्रत्यक्ष साक्षीगणों के कथन और सम्यक रूप से प्रमाणित मृत्यु पूर्व कथन से अपराध युक्तियुक्त संदेह से परे प्रमाणित हुआ – प्रथम सूचना तत्काल दर्ज करवाई गई थी – मृत्यु दंड अधिरोपित किया गया – धारा 366 द.प्र.सं. के अधीन उसकी पुष्टि के लिये निर्देश – अभिनिर्धारित किया गया विचारण न्यायालय ने अभियुक्त को मृत्यु दंड सही दिया है – व्यक्ति जिन्हें जलने के कारण चोटे आयी और विद्रूपीकरण हुआ, पर्याप्त प्रतिकर पाने के हकदार है।

State of M.P. v. Yogenda alias Jogendra Singh

Judgment dated 12.12.2014 passed by the High Court of M.P. in Criminal Ref. Capital No. 01 of 2014, reported in 2015 (2) MPHT 102 (DB)

Extracts from the judgment:

In view of the evidence led by the prosecution, documentary as well as oral, the vivid picture that emerges is that the FIR of the incident was lodged promptly without any delay. Injured witness Chandrakala, Raju and Janu all have stated in one voice that the accused had thrown acid on the deceased as well as on their bodies and there is nothing on record to question their testimony. Their presence on the spot also could not be doubted since all of them sustained

acid burn injuries in the same incident. The Trial Court itself noted disfiguration of face of one of the witnesses at the time of recording his deposition. There was enough light at the place of incident as deposed by the eye witnesses to identify the accused. The death of the deceased is due to acid burn injuries as opined by the doctor in the postmortem report. Dying declaration of the deceased was recorded immediately after the incident at 3.10 AM by the Executive Magistrate. In the dying declaration the deceased had specifically named the accused to have thrown acid on her. The dying declaration (Ex.P/14) of the deceased could not be doubted with and it has evidentiary value to be fully relied upon, in view of the judgment of Hon'ble the Supreme Court in ***Nallapati Sivaiah v. Sub Divisional Officer, Guntur, (2007) 15 SCC 465***. A bear bottle used for carrying the acid was recovered from the possession of the accused on his memorandum and on the bear bottle finger prints of the deceased were also found which did match with the specimen finger prints of the accused by the Finger Print Expert. Statements of the injured witnesses and other witnesses were recorded promptly nailing the accused to the commission of the offence.

From the above evidence, it is conclusively proved that it is the accused Yogendra alias Jogendra Singh, who committed this heinous crime. In such circumstances, in our opinion, the Trial Court has rightly held that the prosecution has proved its case against the accused beyond reasonable doubt. In our opinion, the findings recorded by the Trial Court are just and proper and the accused has rightly been convicted by the Trial Court for the offences for which he was charged.

Now, the next question is whether the death penalty imposed on the accused is proper and whether the act of the accused falls within the four corners of the "rarest of rare case", as held by the Supreme Court in a catena of cases, so as to warrant death penalty.

Constitution Bench of Supreme Court in ***Bachan Singh v. State of Punjab, (1980) 2 SCC 684*** has opined in regard to mitigating circumstances.

Supreme Court in ***Vashram Narshibhai Rajpara v. State of Gujarat, (2002) 9 SCC 168*** has further explained the approach of mitigating circumstances after considering the dictum of the Constitution Bench and held as under:

> "As to what category a particular case would fall depends, invariably on varying facts of each case and no absolute rule for invariable application or yardstick as a ready reckoner can be formulated. In ***Panchhi v. State of U.P., (1998) 7 SCC 177*** it has been observed that the brutality of the manner in which the murder was perpetrated may not be the sole ground for judging whether the case is one of the 'rarest of rate cases', as indicated in ***Bachan Singh v. State of Punjab, (1980) 2 SCC 684*** and that every murder being per se brutal, the distinguishing factors should really be the mitigating or aggravating features surrounding the

murder. The intensity of bitterness, which prevailed, and the escalation of simmering thoughts into a thirst for revenge or retaliation were held to be also a relevant factor."

In the present case, one lady lost her life, other persons namely Chandrakala, Raju and Janu alias Janki Prasad also received acid injuries. There is disfiguration of one person Janu alias Janki Prasad. They will face the agony throughout their life.

In these circumstances, in our opinion, the trial court has rightly awarded death sentence to the accused and we affirm the same.

Supreme court in the case of ***Laxmi v. Union Of India, (2014) 4 SCC 426*** issued following directions in regard to payment of compensation to the victims of acid attack:

> "We are informed that pursuant to this provision, 17 States and 7 Union Territories have prepared "Victim Compensation Scheme" (for short "the Scheme"). As regards the victims of acid attacks, the compensation mentioned in the Scheme framed by these States and Union Territories is un-uniform. While the State of Bihar has provided for compensation of Rs.25,000/- in such Scheme, the State of Rajasthan has provided for Rs.2 lakhs of compensation. In our view, the compensation provided in the Scheme by most of the States/Union Territories is inadequate. It cannot be overlooked that acid attack victims need to undergo a series of plastic surgeries and other corrective treatments. Having regard to this problem, the learned Solicitor General suggested to us that the compensation by the States/Union Territories for acid attack victims must be enhanced to at least Rs.3 lakhs as the aftercare and rehabilitation cost. The suggestion of the learned Solicitor General is very fair.
>
> We, accordingly, direct that the acid attack victims shall be paid compensation of at least Rs.3 lakhs by the State Government/Union Territory concerned as the aftercare and rehabilitation cost. Of this amount, a sum of Rs.1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs.2 lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance with the above directions."

On the basis of the principle laid down by the Supreme Court in the case of Laxmi (supra), in our opinion, Janu alias Janki Prasad, whose face was disfigured, as mentioned by the trial court in the judgment, would be entitled to receive compensation of Rs.3,00,000 (Rupees Three Lakh) and other two persons namely – Chandrakala and Raju, who received acid injuries, but there was no permanent disability or disfiguration of face, would be entitled to get compensation of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) each. The aforesaid compensation as ordered by this court, shall be paid to the above mentioned persons within a period of three months from the date of receipt of copy of the judgment by the Collector Morena. CJM Morena shall inform the aforesaid persons about the judgment of this court and ensure compliance of these directions within the time stipulated.

•

151. INDIAN PENAL CODE, 1860 – Sections 302 and 376

EVIDENCE ACT, 1872 – Sections 8 and 27

(i) Offence of rape alongwith murder – Death sentence, confirmation of – Law explained.

(ii) Discovery of fact and recovery of articles under section 27 of the Evidence Act – Law explained.

(iii) Distinction between the conduct of an accused, admissible under section 8 and the statement made to police in the course of investigation – Law explained.

What is excluded by section 162 of CrPC is the statement made to Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation.

Facts of the case:

Accused having acquaintance with the four year old girl child took her on the pretext of giving chocolates and raped her in a brutal manner – Thereafter crushed her to death with two heavy stones – Autopsy report clearly indicated that there was forcible sexual intercourse with the deceased and the death was homicidal – Blood group of blood stains found on stones and on accused's clothes matched with that of the deceased – Dead body and other incriminating articles recovered at behest of accused – Accused did not render any explanation with regard to the incriminating circumstance in his examination under section 313 CrPC warranting an adverse inference against him – Deceased was last seen with accused – Promptly lodged FIR also corroborated the prosecution case – Held, the circumstantial evidence on which case is based, is fully proved and conclusive in nature – Further held, accused did not commit the diabolic, barbaric, inhuman, savage and uncommon act under any mental stress or emotional disturbance – His conduct

and criminal antecedents reveal that he is and will be a menace to society and cannot be reformed – Conviction of the accused and awarding of death sentence affirmed.

भारतीय दण्ड संहिता, 1860 – धारा 302 और 376

साक्ष्य अधिनियम, 1872 – धारा 8 और 27

(i) हत्या सहित बलात्कार का अपराध – मृत्यु दण्ड की पुष्टि – विधि समझाई गई।

(ii) धारा 27 साक्ष्य अधिनियम के तहत तथ्यों का पता लगना और वस्तुओं की बरामदगी संबंधी विधि समझाई गई।

(iii) अभियुक्त के आचरण जो की धारा 8 साक्ष्य अधिनियम के तहत ग्राह्य है और उसके द्वारा अनुसंधान के दौरान पुलिस को दिये गये कथन में अंतर – विधि समझाई गई।

Vasanta Sampat Dupare v. State of Maharashtra

Judgment dated 26.11.2014 passed by the Supreme Court in Criminal Appeal No. 2486 of 2014, reported in (2015) 1 SCC 253

Extracts from the judgment:

From the medical evidence, it is clear as crystal that there was forcible sexual intercourse with the girl and the death was homicidal in nature.

The next circumstance which has been taken note of by the learned trial Judge as well as by the High Court pertains to leading to discovery by the appellant. As is evincible, the panch witness, Anand Borkar, PW-8, has proved Exhibit 29, the statement of the accused relating to discovery of the spot wherefrom the dead body was found. He has also supported the seizure panchnama, Exhibit 31, wherefrom the blood stained earth, two stones, nikar, Minto Fresh chocolate and one empty rapper were seized. According to the said witness the said articles were seized vide Exhibit 31. PW-10, Santosh Keche, has proved the seizure of the bicycle from the godown at the instance of the appellant. The spot which was shown by the appellant and the godown from which bicycle was seized, as has come in the evidence, is in the vicinity where the dead body was found. Vide Exhibit 34, the clothes, handkerchief and foot wear of the accused were seized. The stones smeared with blood had been seized at the instance of the accused.

Learned counsel for the appellant has submitted that the seizure witnesses cannot be believed as the proper procedure has not been followed. As we find from the evidence on record the appellant was in custody and he had led to recovery. The search and seizure has also been supported in minute detail by the Investigating Officer. It is also evident that the search witnesses are independent witnesses and their evidence inspire confidence.

While accepting or rejecting the factors of discovery, certain principles are to be kept in mind. The Privy Council in ***Pulukuri Kotayya v. King Emperor, AIR 1947 PC 67*** has held thus:

> "It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

In ***Mohd. Inayatullah v. The State of Maharashtra, (1976) 1 SCC 828*** while dealing with the ambit and scope of Section 27 of the Evidence Act, the Court held that:-

> "Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements. The section says:
>
> "27. How much of information received from accused may be proved. –– Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."

The expression "provided that" together with the phrase "whether it amounts to a confession or not" show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last

but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact [see ***Sukhan v. Emperor, AIR 1929 Lah 344; Ganu Chandra Kashid v. Emperor, AIR 1932 Bom 286***]. Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this [see ***Palukuri Kotayya (supra); Udai Bhan v. State of U.P., AIR 1962 SC 1116***]."

In ***Aftab Ahmad Anasari v. State of Uttaranchal, (2010) 2 SCC 583*** after referring to the decision in ***Palukuri Kotayya*** (supra), the Court adverted to seizure of clothes of the deceased which were concealed by the accused. In that context, the Court opined that:-

> "The part of the disclosure statement, namely, that the appellant was ready to show the place where he had concealed the clothes of the deceased is clearly admissible under Section 27 of the Evidence Act because the same relates distinctly to the discovery of the clothes of the deceased from that very place. The contention that even if it is assumed for the sake of argument that the clothes of the deceased were recovered from the house of the sister of the appellant pursuant to the voluntary disclosure statement made by the appellant, the prosecution has failed to prove that the clothes so recovered belonged to the deceased and therefore, the recovery of the clothes should not be treated as an incriminating circumstance, is devoid of merits".

In ***State of Maharashtra v. Damu, (2000) 6 SCC 269*** it has been held as follows:

> "... It is now well settled that recovery of an object is not discovery of a fact as envisaged in [Section 27 of the Evidence Act, 1872]. The decision of the Privy Council in ***Pulukuri Kotayya*** (supra) is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

The similar principle has been laid down in ***State of Maharashtra v. Suresh, (2000) 1 SCC 471, State of Punjab v. Gurnam Kaur, (2009) 11 SCC 225, Aftab Ahmad Anasari v. State of Uttaranchal, (2010) 2 SCC 583, Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396, Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 and Rumi Bora Dutta v. State of Assam, (2013) 7 SCC 417***.

In the case at hand, as is perceptible, the recovery had taken place when the appellant was accused of an offence, he was in custody of a police officer, the recovery had taken place in consequence of information furnished by him and the panch witnesses have supported the seizure and nothing has been brought on record to discredit their testimony.

Additionally, another aspect can also be taken note of. The fact that the appellant had led the police officer to find out the spot where the crime was committed, and the tap where he washed the clothes eloquently speak of his conduct as the same is admissible in evidence to establish his conduct. In this context we may refer with profit to the authority in ***Prakash Chand v. State (Delhi Admn.), (1979) 3 SCC 90*** wherein the Court after referring to the decision in ***H.P. Admn. v. Om Prakash, (1972) 1 SCC 249*** held thus:

> "... There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 of the Criminal Procedure Code. What is excluded by Section 162, Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8

> of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act."

In ***A.N. Vekatesh and another v. State of Karnataka, (2005) 7 SCC 714*** it has been ruled that:-

> "By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in ***Prakash Chand*** (supra). Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act."

We have referred to the aforesaid authorities only to highlight that in the present case the provision under Section 27 of Evidence Act is clearly attracted and we see no illegality in the seizure and the Panch witness have remained embedded in their version. Nothing has been suggested to disregard their evidence. Therefore, we have no hesitation in holding that there is ample proof of seizure of the articles. That apart, we have also additionally considered the conduct of the appellant that speaks eloquently, for it is worthy of being considered within the admissible parameters.

The next circumstance which has been accepted by the learned trial Judge and the High Court is the identification of the clothes and matching of blood stains of the appellant's clothes. On the clothes that has been seized, the stains of human blood of 'A' Group are detected. The chemical analysis report, Exhibit 77, has indicated that stains of human blood of 'A' group which is detected on seized clothes, and the blood group that has been found on the clothes of the

accused including his underwear and handkerchief is the same. The matching of the blood group gains signification in such a circumstance. The incriminating articles, namely, stones smeared with blood, the clothes and the blood group matching is an important circumstance showing complicity of the appellant in the crime in question.

Another facet which has immense significance is the injury report. It graphically depicts the injuries on the private parts of the minor girl which has been caused by sexual intercourse. Stains of human blood of 'A' group have also been noticed on the front portion of the nikar of the accused as per Exhibit 77 which matches the blood group found on the stones.

The other relevant circumstance that weighs against the appellant is that the dead body of the deceased was recovered at the instance of the appellant. It was within his special knowledge. The tap where he had washed his clothes was quite nearby. In this context, it is worthy to note that the accused had disclosed the facts and on the basis of his disclosure statement he had led to the place where the dead body of the victim was found. In ***Deepak Chandrakant Patil v. State of Maharashtra, (2006) 10 SCC 151*** it was observed by this Court:

> "... The fact that he knew about the dead body of the deceased lying in the garden behind the house of A-1 is almost clinching in nature and leaves nothing to doubt..."

Regard being had to the aforesaid circumstances, it is to be seen whether on the basis of the said circumstances, it can be held whether such circumstances lead towards the guilt of the accused regard being had to the principle that they lead to a singular conclusion that the appellant is guilty of the offence and it does not allow any other probability which is likely to allow the presumption of innocence of the accused. In this context, we may refer with profit to the decision rendered more than six decades back in ***Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343*** wherein it has been held as follows:

> " ... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

We may also take note of the fact that the appellant in his statement under Section 313 CrPC, except making a bald denial, has not stated anything. In this context, we may refer with profit to a decision in ***Suresh*** (supra) wherein it has been held that there can be three possibilities when an accused points to the place where the incriminating material is concealed without stating that it was concealed by himself. Elucidating on the three possibilities, the Court observed thus:

> " ... One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by himself."

On a critical analysis of the evidence on record, we are convinced that the circumstances that have been clearly established are that the appellant was seen in the courtyard where the minor girl and other children were playing; that the appellant was seen taking the deceased on his bicycle; that he had gone to the grocery shop owned by PW-6 to buy Mint chocolate along with her; that the accused had told PW-2 that the child was the daughter of his friend and he was going to 'Tekdi-Wadi' along with the girl; that the appellant had led to discovery of the dead body of the deceased, the place where he had washed his clothes and at his instance the stones smeared with blood were recovered; that the medical report clearly indicates about the injuries sustained by the deceased on her body; that the injuries sustained on the private parts have been stated by the doctor to have been caused by forcible sexual intercourse; that the stones that were seized were smeared with blood and the medical evidence corroborates the fact that injuries could have been caused by battering with stones; that the chemical analysis report shows that the blood group on the stones matches with the blood group found on the clothes of the appellant; that the appellant has not offered any explanation with regard to the recovery made at his instance; and that nothing has been stated in his examination under Section 313 CrPC that there was any justifiable reason to implicate him in the crime in question. Thus, we find that each of the incriminating circumstances has been clearly established and the chain of circumstances are conclusive in nature to exclude any kind of hypothesis, but the one proposed to be proved, and lead to a definite conclusion that the crime was committed by the accused. Therefore, we have

no hesitation in affirming the judgment of conviction rendered by the learned trial Judge and affirmed by the High Court. When the crime is diabolical in nature and invites abhorrence of the collective, it shocks the judicial conscience and impels it to react keeping in view the collective conscience, cry of the community for justice and the intense indignation the manner in which the brutal crime is committed. We are absolutely conscious that Judges while imposing sentence, should never be swayed away with any kind of individual philosophy and predilections. It should never have the flavour of Judge-centric attitude or perception. It has to satisfy the test laid down in various precedents relating to rarest of the rare case. We are also required to pose two questions that has been stated in ***Machhi Singh v. State of Punjab, (1983) 3 SCC 470***.

In the case at hand, as we find, not only the rape was committed in a brutal manner but murder was also committed in a barbaric manner. The rape of a minor girl child is nothing but a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a girl child and the soul of the society and such a crime is aggravated by the manner in which it has been committed. The nature of the crime and the manner in which it has been committed speaks about its uncommonness. The crime speaks of depravity, degradation and uncommonality. It is diabolical and barbaric. The crime was committed in an inhuman manner. Indubitably, these go a long way to establish the aggravating circumstances.

•

152. INDIAN PENAL CODE, 1860 – Section 304B
CRIMINAL PROCEDURE CODE, 1973 – Section 154

(i) Appreciation of documentary evidence – FIR – It should contain the essential features of the prosecution case but cannot be expected to be an encyclopedia of whole prosecution case.

(ii) Accused/husband was acquitted by the High Court – Claim of mother–in–law on parity basis – Held, if sufficient and good evidence is available on recored against mother-in-law of the victim in case of dowry death – She may be lawfully convicted even in the absence of conviction of the husband.

भारतीय दण्ड संहिता, 1860 – धारा 304बी
दण्ड प्रक्रिया संहिता, 1973 – धारा 154

(i) दस्तावेजी साक्ष्य का मूल्यांकन – प्रथम सूचना प्रतिवेदन – इसमें अभियोजन के प्रकरण के आवश्यक मुख्य तथ्य होना चाहिये किन्तु यह अपेक्षा नहीं की जा सकती कि यह अभियोजन के पूरे प्रकरण के विश्व ज्ञान कोष या इनसाइक्लोपीडिया के समान होगा।

(ii) अभियुक्त/पति उच्च न्यायालय द्वारा दोषमुक्त किया गया था – सास द्वारा समानता का दावा – अभिनिर्धारित किया गया यदि अभिलेख पर पर्याप्त व

अच्छी साक्ष्य दहेज मृत्यु प्रकरण की आहत् की सास के विरूद्ध उपलब्ध हो – उसे

विधिक रूप से दोषसिद्ध किया जा सकता है चाहे पति को दोषसिद्ध नहीं किया गया हो।

Kanchanben Purshottambhai Bhanderi v. State of Gujarat
Judgment dated 05.12.2014 passed by the Supreme Court in Criminal Appeal No. 1152 of 2009, reported in 2015 (1) Crimes 177 (SC)

Extracts from the judgment:

It stands to reason that all minute details and all items relating to demand by way of dowry may not come to the mind of grieving mother of the deceased at the time of lodging of FIR. It is well established in law that FIR should contain the essential features of the prosecution case but it cannot be expected to be an encyclopedia of whole prosecution case. It may be quite natural for a friend of the deceased such as PW 18 not to remember the exact figure which was disclosed by the deceased sometime back as the amount demanded by the mother-in-law. Learned counsel for the State also placed reliance upon the judgment of this Court in the case of ***Satish Chandra and anr. v. State of Madhya Pradesh, 2014 (6) SCC 723*** in support of the proposition that if sufficient and good material is available on record then mother-in-law of the victim in a case under Section 304B IPC may lawfully be convicted for such an offence even in the absence of conviction of the husband.

•

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

(i) Offence under section 304-B IPC, ingredients of and word 'shown', connotation of – It is imperative to construe the word 'shown' in section 304-B as to, in fact, connote 'prove' – If the word 'shown' has to be given its ordinary meaning, then it would only require the prosecution to merely present its evidence in Court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution – In other words, it is for the prosecution to prove that 'dowry death' has occurred, namely;

(a) that the death of a woman has been caused in abnormal circumstances by her having been burnt or having been bodily injured;

(b) within seven years of marriage;

(c) and that she was subjected to cruelty or harassment by her husband or any relative of her husband;

(d) in connection with any demand for dowry;

(e) that the cruelty or harassment meted out to her continued to have a casual connection or a live link with the demand of dowry.

(ii) Offence under section 304-B IPC – The word 'soon', interpretation of – It is to be interpreted not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past but should be the continuing cause for the death under section 304-B or the suicide under section 306 of the IPC.

(iii) Initial presumption of innocence of the accused, replacement of by an assumption of guilt – Burden of proof – On proof of aforementioned ingredients, the initial presumption of innocence is replaced by an assumption of guilt by an accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt – Further held, what Parliament intended by using the word 'deemed' was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt – 'Deemed' has to read down to mean "presumed".

(iv) Dowry death – Cruelty – Soon before death – Wife committed suicide within one year of her marriage – It cannot be said that cruelty was not soon before death.

(v) Presumption of innocence, importance of – The inroad into or dilution of the presumption of innocence of an accused has, even *dehors* statutory sanction, been recognized by Courts in those cases where death occurs in home where only the other spouse is present; as also where an individual is last seen with the deceased – The deeming provision in section 304-B is therefore, neither a novelty in nor an anathema to our criminal law jurisprudence.

(vi) Dowry death – Family members of husband, implication of – If accused husband not lives with parents and/or other family members, stronger proof is required to implicate family members of the accused husband.

(vii) Guilt of accused husband – Acquittal of father, brother or other family members, non-effect of – Law explained.

(viii) FIR – Delay, non-effect of – Wife died allegedly by consuming poison – FIR lodged on the next day i.e. after 10 hours of incident – Held, in fact delay has no effect as it cannot be said to be inordinate delay.

भारतीय दण्ड संहिता, 1860 – धारा 304–बी

(i) धारा 304–बी भा.द.सं. के अपराध के घटक में शब्द ''दर्शाया'' का अर्थ – वास्तव में इसका अर्थ ''प्रमाणित करना'' है – यदि शब्द ''दर्शाना'' का साधारण अर्थ लिया जायेगा तो अभियोजन को न्यायालय में केवल साक्ष्य पेश कर देना आवश्यक होगा साक्षीगण के कथन करवाकर साक्ष्य पेश करना आवश्यक नहीं

होगा – अभियोजन को दहेज मृत्यु का अपराध प्रमाणित करने के लिये निम्नलिखित तत्व प्रमाणित करवाना होता है :–

(a) महिला की मृत्यु जलने से या शारीरिक चोटों के कारण असामान्य परिस्थितियों में हुई है;

(b) मृत्यु विवाह के 7 वर्ष के भीतर हुई है;

(c) महिला के साथ उसके पति या पति के नातेदारों द्वारा क्रूरता की है या उसे तंग किया है;

(d) ऐसा दहेज की मांग के संबंध में किया गया है;

(e) क्रूरता या तंग करना दहेज की मांग के लिये था जिसका मृत्यु से सीधा संबंध रहा है।

(ii) धारा 304–बी भा.द.सं. का अपराध – शब्द ''कुछ पूर्व'' या ''soon'' का अर्थान्वयन – इसका अर्थ दिनों या महिनों या वर्षों में नहीं लगाया जा सकता बल्कि यह आवश्यक रूप से यह दर्शाता है कि दहेज की मांग पुरानी या भूतकालिक न होकर महिला के मृत्यु के कारण से धारा 304–बी भा.द.सं. के अधीन या आत्महत्या से धारा 306 भा.द.सं. से लगातार जुड़ी हो।

(iii) अभियुक्त के निर्दोष होने की प्रारंभिक उपधारणा का स्थान दोषसिद्धि की धारणा द्वारा लिया जाना – प्रमाण भार – ऊपर लिखे घटक या तत्व प्रमाणित हो जाने पर अभियुक्त के निर्दोष होने की प्रारंभिक उपधारणा उसके दोषी होने की धारणा का स्थान ले लेती है, और अभियुक्त पर यह भारी प्रमाण भार अंतरित हो जाता है कि वह उसके दोषी होने के तथ्य के विपरीत साक्ष्य पेश करे – संसद का आशय यह है की पति और उसके परिवार के सदस्यों पर अभिसंभावनाओं की प्रबलता का प्रमाण देना पर्याप्त नहीं है – शब्द मांग को उपधारित किया के अर्थों में विचार करना चाहिये।

(iv) दहेज मृत्यु – मृत्यु के ठीक पूर्व क्रूरता पत्नी ने विवाह के 1 वर्ष के भीतर आत्महत्या की – यह नहीं कहा जा सकता की मृत्यु के ठीक पूर्व क्रूरता नहीं थी।

(v) निर्दोष होने की उपधारणा का महत्व – स्पष्ट किया गया।

(vi) दहेज मृत्यु – पति के परिवार के सदस्यों को लिप्त किया जाना – यदि अभियुक्त पति उसके माता–पिता या परिवार के अन्य सदस्यों के साथ नहीं रहता था तब अभियुक्त के परिवार के सदस्यों को अपराध में लिप्त करने के लिये अपेक्षाकृत दृढ़ प्रमाण आवश्यक होते हैं।

(vii) अभियुक्त पति का दोषी होना – पिता, भाई या परिवार के अन्य सदस्यों की दोषमुक्ति का प्रभाव न होना – विधि समझाई गई।

(viii) प्रथम सूचना प्रतिवेदन – विलंब का प्रभाव न होना – अभिकथित रूप से जहर का सेवन करने से पत्नी की मृत्यु – घटना के 10 घंटे बाद अगले दिन प्रथम सूचना दर्ज करवायी गई

– अभिनिर्धारित किया गया, विलंब का कोई प्रभाव नहीं है क्योंकि यह असामान्य विलंब नहीं है।

Sher Singh alias Partapa v. State of Haryana

Judgment dated 09.01.2015 passed by the Supreme Court in Criminal Appeal No. 1592 of 2011, reported in 2015 CriLJ 1118 (SC)

•

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

Dowry death – Bride burning

(i) Acquittal of co-accused (i.e. sister-in-law of deceased) – Criminal liability of the other accused person (i.e. mother-in-law of deceased), non-effect of – Both the accused persons were convicted by the Trial Court while the High Court partially allowed the appeal in respect of sister-in-law – Held, since there is enough evidence to prove the complicity of mother-in-law in the commission of offence charged, the acquittal of the other accused will have no impact in so far as the criminal liability of the mother-in-law is concerned.

(ii) Dowry death, proof of – A young girl in her early twenties ended her life by suffering 100% burns within eight months of marriage – Her mother-in-law used to treat her with cruelty because she had not brought sufficient dowry and pressurized her to bring gold and cash, new clothes etc. from her parents – Held, there was enough evidence to prove the complicity of the accused mother-in-law and the best person to prove the case of the accused was her husband who was living in the same house – On the other hand there is evidence on record that sometimes he used to intervene and warned the accused of her behaviour towards the deceased – Further held, the accused was responsible for the death of the deceased and her conviction was also proper.

(iii) Dowry death – Bride burning – Sentencing – Undue sympathy is not warranted with respect to crime against women and children – Looking to the seven years imprisonment awarded by the Trial Court to the accused person, the Apex Court observed that the accused should feel fortunate to suffer only seven years imprisonment which could have been more than what has been awarded.

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

दहेज मृत्यु – बहु को जलाना

(i) ननंद सह–अभियुक्त की दोषमुक्ति – अन्य अभियुक्त सास के दांडिक दायित्व पर इसका प्रभाव न होना – ननंद और सास दोनों अभियुक्तगण को विचारण न्यायालय ने दोषसिद्ध किया था उच्च न्यायालय ने ननंद के

संबंध में अपील स्वीकार कर ली – अभिनिर्धारित किया गया सास के विरूद्ध अपराध को प्रमाणित

करने के लिये पर्याप्त साक्ष्य उपलब्ध है अतः अन्य अभियुक्त की दोषमुक्ति का सास के दांडिक दायित्व पर कोई प्रभाव नहीं होगा।

(ii) दहेज मृत्यु का प्रमाण – जब एक 20 वर्ष के लगभग की युवा लड़की का जीवन 100 प्रतिशत जलने के कारण विवाह के 8 माह के भीतर समाप्त हो जाता है – उसकी सास उसके द्वारा पर्याप्त दहेज न लाने के कारण उसके साथ क्रूरता का व्यवहार करती है और उसके माता–पिता से सोना, नगद और नये कपड़े लाने का दबाव डालती थी – अभियुक्त सास के विरूद्ध अपराध प्रमाणित करने के लिये पर्याप्त साक्ष्य थी और उसका पति जो उसी घर में उसके साथ रहता था वह श्रेष्ठ व्यक्ति था जो अभियुक्त के मामले को प्रमाणित कर सकता था – अभिलेख पर यह साक्ष्य है कि वह कुछ अवसरों पर हस्तक्षेप करता था और अभियुक्त को मृतक के प्रति उसके अनुचित व्यवहार के लिये चेतावनी भी देता था – दोषसिद्धि उचित पाई गई अभियुक्त बहू की मृत्यु के लिये उत्तरदायी थी।

(iii) दहेज मृत्यु – बहु का जलाना – दंड – महिलाओं और बच्चों के विरूद्ध अपराध के संबंध में अनावश्यक दयालुता आवश्यक नहीं होती है – अभियुक्त को विचारण न्यायालय ने 7 वर्ष का कारावास दिया था – सर्वोच्च न्यायालय ने यह अभिमत दिया कि अभियुक्त को स्वयं को भाग्यशाली समझना चाहिये की उसे 7 वर्ष का कारावास दिया है दंड तो इससे ज्यादा दिया जाना चाहिये था।

Tarabai v. State of Maharashtra

Judgment dated 20.01.2015 passed by the Supreme Court in Criminal Appeal No. 552 of 2012, reported in (2015) 3 SCC 530

Extracts from the judgment:

Coming to the submission of the appellant that since benefit of doubt was given to other accused, i.e., Belabai by the High Court, on parity the same benefit should be extended to the appellant by acquitting her has no substance for the reason that there was enough evidence to prove the complicity of the appellant in commission of offence whereas the prosecution failed to adduce any evidence to prove the complicity of Belabai-accused No.2.

This is a case where the death of Krishnabai occurred within seven years of her marriage. It was within one year because the marriage was performed on 12.05.1989 whereas she died on 26.02.1990. In view of this admitted position emerging from the case, the basic ingredients of Section 113-A of the Evidence Act, 1872 read with Sections 304-B and 498-A of IPC stood against the accused persons for their prosecution for the offences punishable under Section 304-B and Section 498-A IPC.

It has come in evidence that soon after the marriage, the appellant started making demand of gold, cash and clothes etc. from the deceased coupled with beating and ill-treating her for not satisfying the demands made by her.

A young girl in early twenties ending her life with 100 % burns within 8 months of her marriage due to ill treatment, beating and demands made by mother-in-law cannot be over-looked to show sympathy towards the appellant. Indeed, it was the appellant who was responsible for her death.

As rightly urged by the learned counsel for the respondent, the best person to prove the case of the appellant was the appellant's husband because he was living in the same house. He was in a position to tell as to what used to happen in the house and whether relations between the appellant and the deceased were cordial or strained. On the other hand, it has come in evidence that sometimes husband used to intervene and warned the appellant of her behavior towards the deceased.

So far as sentencing part is concerned, the Courts below have awarded seven years' simple imprisonment to the appellant. The appellant should feel fortune to suffer only 7 years because having regard to the nature of commission of the offence and her complicity in the offence, it could have been even more than what has been awarded. We, however, do not wish to say anything more on this issue except to uphold the conviction and sentence.

•

155. INDIAN PENAL CODE, 1860 – Sections 304-B and 498-A
EVIDENCE ACT, 1872 – Section 32 (1)
CRIMINAL PROCEDURE CODE, 1973 – Section 313
CRIMINAL TRIAL :

(i) Court, duty of – The Court cannot be a mute spectator, particularly in criminal cases and shun its primary duty of finding out the truth from the material on record – It has to punish the guilty and protect the innocent.

(ii) Appreciation of evidence – Minor discrepancies and infirmities in investigation, non-effect of – Available overwhelming evidence proving the offence alleged, cannot be discredited or rejected on account of minor discrepancies in evidence and infirmities in investigation.

(iii) False plea taken by accused, effect of – A false plea is to be taken as an additional circumstance against the accused.

(iv) Omission to bring the attention of the accused to an inculpatory material in his examination under section 313 CrPC, effect of – It does not *ipso facto* vitiate the proceedings – The accused must show the failure of justice was occasioned by such omission – Further held, in the event of an inculpatory material not having been put to the accused, the appellate court can always make good the lapse by calling upon the counsel for the accused to show what explanation the accused has as regards the circumstance established against the accused but not put to him.

(v) **Appeal against acquittal – Power of Appellate Court, scope and exercise of – If a possible view has been taken, interference is not warranted – However, if the view taken is not legally sustainable, the Appellate Court has ample powers to interfere with the order of acquittal.**

(vi) **Dowry death, proof of – Death of the deceased was within seven years of marriage – Was subjected to harassment for dowry soon before her death by her husband and mother-in-law who were living together – Death was in circumstances other than natural and not accidental – Accused persons husband and mother-in-law of the deceased living in the same house took false plea that they had no idea that the deceased received burn injuries – Although subsequent dying declaration recorded by Magistrate was inconsistent but the same recorded earlier by the Police Officer was consistent with the circumstances on record – Held, offences duly proved – Allowing the appeal against acquittal, conviction recorded by the Trial Court restored.**

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

साक्ष्य अधिनियम, 1872 – धारा 32 (1)

दण्ड प्रक्रिया संहिता, 1973 – धारा 313

दांडिक विचारण :

(i) न्यायालय का कर्तव्य – न्यायालय एक मूक दर्शक नहीं हो सकता है, विशेषकर दांडिक मामलों में यह उसका प्राथमिक कर्तव्य है कि वह अभिलेख पर उपलब्ध सामग्री से सत्य का पता लगाये – उसे दोषी को दंडित करना चाहिये और निर्दोष को संरक्षित करना चाहिये।

(ii) साक्ष्य का मूल्यांकन छोटे विरोधाभास और अनुसंधान की कमी का प्रभाव न होना – अभिलेख पर अभिकथित अपराध को प्रमाणित करने के लिये पर्याप्त साक्ष्य उपलब्ध है उस पर केवल छोटे विरोधाभासों और अनुसंधान की कमियों के आधार पर अविश्वास नहीं किया जा सकता।

(iii) अभियुक्त द्वारा एक असत्य बचाव लेने का प्रभाव – अभियुक्त द्वारा एक असत्य बचाव लेना उसके विरूद्ध परिस्थिति की एक अतिरिक्त श्रृंखला होती है।

(iv) धारा 313 द.प्र.सं. के परीक्षण में अभियुक्त का ध्यान उसे अपराध में लिप्त करने वाली सामग्री पर न लाने का प्रभाव – इसके कारण कार्यवाही दूषित नहीं होती – अभियुक्त को यह दर्शाना होगा की ऐसी चूक से न्याय की हानि हुई है – अपील न्यायालय ऐसे समय पर अपराध में लिप्त करने वाली वह सामग्री अभियुक्त ध्यान में ला सकता है उस परिस्थिति के बारे में उसका स्पष्टीकरण ले सकते है और इस कमी को पूर्ण कर सकते हैं।

(v) दोषमुक्ति के विरूद्ध अपील – अपील न्यायालय की शक्ति का विस्तार और प्रयोग – यदि एक संभाव्य मत लिया गया है तब हस्तक्षेप आवश्यक नहीं होता है – यदि लिया गया मत विधिक रूप से स्थिर रखे जाने योग्य नहीं हो तो अपील न्यायालय को दोषमुक्ति के आदेश में हस्तक्षेप करने की पूरी शक्तियाँ होती हैं।

(vi) दहेज मृत्यु का प्रमाण – मृत्यु विवाह के 7 वर्ष के भीतर हुई – सास और पति द्वारा मृत्यु के ठीक पूर्व पत्नी को दहेज की मांग को लेकर तंग किया जाना प्रमाणित हुआ है – मृत्यु सामान्य से भिन्न परिस्थितियों में हुई थी और दुर्घटनावश नहीं हुई थी – अभियुक्तगण पति और सास उसी घर में मृतक के साथ रहते थे और उन्होंने यह असत्य बचाव लिया की मृतक को जलने से कैसे चोटे आई उसकी उन्हें कोई जानकारी नहीं – मजिस्ट्रेट द्वारा अभिलिखित किये गये मृत्यु पूर्व कथन में विसंगतता थी किन्तु पुलिस द्वारा उसके पूर्व अभिलिखित मृत्यु पूर्व कथन में स्थिरता थी – अभिनिर्धारित किया गया अपराध सम्यक रूप से प्रमाणित हुआ – दोषमुक्ति के विरूद्ध अपील को स्वीकार किया गया और विचारण न्यायालय द्वारा दिये गये दोषसिद्धि के आदेश को पुनः कायम किया गया।

State of Karnataka v. Suvarnamma and another

Judgment dated 14.10.2014 passed by the Supreme Court in Criminal Appeal No. 785 of 2010, reported in (2015) 1 SCC 323

Extracts from the judgment:

The Court dealing with a criminal trial is to perform the task of ascertaining the truth from the material before it. It has to punish the guilty and protect the innocent. Burden of proof is on the prosecution and the prosecution has to establish its case beyond reasonable doubt. Much weight cannot be given to minor discrepancies which are bound to occur on account of difference in perception, loss of memory and other invariable factors. In the absence of direct evidence, the circumstantial evidence can be the basis of conviction if the circumstances are of conclusive nature and rule out all reasonable possibilities of accused being innocent.

Once the prosecution probabilises the involvement of the accused but the accused takes a false plea, such false plea can be taken as an additional circumstance against the accused. Though Article 20 (3) of the Constitution incorporates the rule against self incrimination, the scope and the content of the said rule does not require the Court to ignore the conduct of the accused in not correctly disclosing the facts within his knowledge. When the accused takes a false plea about

the facts exclusively known to him, such circumstance is a vital additional circumstance against the accused.

It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence.

Admittedly, the marriage of the deceased took place within seven years of her death. Her death is by burn injuries. There is evidence of demand of dowry soon before the death. Plea of the deceased who were living with the deceased is that they had no idea about the incident and were sleeping when police picked them up at the night.

During the trial, inference of death being an accident is sought to be drawn on the basis of alleged dying declaration (Exhibit D-7) coupled with the conduct of the prosecution in not producing the said dying declaration recorded by the Executive Magistrate, PW-22 in the presence of Dr. Rajeshwari Devi and also the fact that though PW-1 admitted that the police came to the hospital in the night itself, the stand of the Investigating Officer was that he came in the morning.

Does the alleged suppression or unfair conduct of the investigating agency absolve the Court of its duty to find out the truth? Though we are governed by the adversorial system, the Court cannot be a mute spectator, particularly in criminal cases and shun its primary duty of finding out the truth from the material on record. Thus merely showing that the prosecution withheld dying declaration (Exhibit D-7) could not be a ground for the Court not finding out the cause of death from the material on record and inferring that the death was accidental. Once dying declaration (Exhibit D-7) was produced even by defence, the Court has to go into the authenticity of two rival versions in the dying declarations. It was required to be ascertained whether (Exhibit D-7) was a genuine and reliable dying declaration or the oral dying declarations made before PW-1, PW-3, PW-4, PW-5, PW-8, PW-14, PW-15 and PW-16 were more reliable in the circumstances on record.

What is surprising and wholly unacceptable is the stand of the accused who were husband and mother in-law of the deceased, living in the same house and that they had no idea that the deceased received burn injuries. This stand is clearly incompatible with the stand in Exhibit D-7 that the accused mother in-law of the deceased was very much present in the house and she shifted the deceased to the hospital. Even if the dying declaration (Exhibit D-7) was recorded, the fact remains that when it was recorded, even according to the said dying declaration, the deceased was accompanied by her mother in-law who is one of the accused. The deceased could not have made any voluntary and independent dying declaration in such circumstances as the influence of the accused could not be ruled out.

According to the said dying declaration, she raised hue and cry when she received burn injuries which attracted her mother in-law and the tenant, while according to the mother in-law as well as the tenant they never heard such cries. There is no evidence of struggle or cries and the burn injuries are to the

extent of 95%. In the case of an accident, the deceased would have tried to run away or escape. In these circumstances, there is hardly any possibility of accidental burn injuries. Extensive burns and other circumstances support the version of unnatural death. In these circumstances, the dying declaration (Exhibit P-10) is consistent with the circumstances on record while Exhibit D-7 is not.

The overwhelming evidence to prove the demand of dowry has been rejected on account of minor discrepancies about the place at which the negotiations took place or the persons in whose presence demand was made. Such minor contradictions are not enough to discredit the version of demand of dowry.

The High Court has not at all discussed the truthfulness or otherwise of the plea of the accused that though they were at home, they had no knowledge of burn injuries. This stand in their statement under Section 313 Cr.P.C. is clearly false. They were expected to know the incident and make disclosure thereof, absence of which was a circumstance against them. Mere contradiction of PW-1 admitting presence of the police in the night while I.O. stating that he came in the morning was not enough to discard the entire evidence. Even if dying declaration Exhibit D-7 was recorded and not produced, this could not absolve the Court from considering the truthfulness of available evidence. There is no justification to hold that death was accidental nor to reject evidence of demand of dowry. There is objective medical evidence which by itself shifts the burden on the accused to explain circumstances in which burn injuries were caused in their house. In these circumstances, any infirmity in the statement under Section 313 Cr.P.C. could not be treated to be fatal.

As a result of above discussion, it is clearly established that :

(i) Death of the deceased was within 7 years of marriage and she was subjected to harassment for dowry soon before her death. The death was in circumstances other than natural, and not accidental;

(ii) Mere lapse of investigating agency could not be enough to throw out overwhelming evidence clearly establishing the case of the prosecution.

(iii) False plea of the accused that they had no knowledge of burn injuries having been caused to the deceased was an additional circumstance against them.

In view of the above, the view taken by the High Court is clearly unsustainable.

In appeal against the acquittal, if a possible view has been taken, no interference is required, but if the view taken is not legally sustainable, the Court has ample powers to interfere with the order of acquittal.

Accordingly, we hold that the case against the accused stands fully established. The view taken by the High Court for acquittal is not a possible view.

The appeal is allowed. The order passed by the High Court is set aside and that passed by the Trial Court is restored with the modification that the sentence of imprisonment awarded to the accused under Section 304B will stand reduced to R.I. for seven years while maintaining sentence under other heads.

The accused may be arrested to serve out the sentence imposed by the Trial Court, as modified above.

•

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

Offence under section 304-B and 498-A IPC are not mutually inclusive – If an accused is acquitted under one offence, it does not mean that the accused cannot be convicted in another offence.

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

धारा 304–बी और 498–ए भा.द.सं. के अधीन अपराध परस्पर एक दूसरे में शामिल नहीं है – यदि अभियुक्त को इनमें से एक अपराध में दोषमुक्त कर दिया गया हो तो इसका अर्थ यह नहीं है कि उसे दूसरे अपराध में दोषसिद्ध नहीं किया जा सकता।

Amrutlal Liladharbhai Kotak & ors. v. State of Gujarat

Judgment dated 26.02.2015 passed by the Supreme Court in Criminal Appeal No. 186 of 2010, reported in 2015 (1) Crimes 251 (SC)

Extracts from the judgment:

Going by the version provided by PW-1, PW-7, PW-8 and PW-9, there is a reasonable apprehension of the crime committed by the accused. With regard to the position of law involving applicability of Sections 498-A, 304-B and 306 of the IPC, in the case of ***Balwant Singh and Ors. v. State of Himachal Pradesh, (2008) 15 SCC 497***, it has been held that Section 304-B and Section 498-A of the IPC are not mutually inclusive. If an accused is acquitted under one section, it does not mean that the accused cannot be convicted under another section. According to Section 113-B of the Indian Evidence Act, presumption arises when a woman has committed suicide within a period of seven years from the date of the marriage. In this case, after going through the documentary evidence and the version of the witnesses, the accused were convicted under Sections 304-B and 498-A of the IPC. In the present case that we are dealing with, a reasonable apprehension can be raised, for that the accused committed a crime under Section 304-B of the IPC and a presumption can be raised under Section 113-B of the Indian Evidence Act, since seven years of marriage had not been completed.

•

157. INDIAN PENAL CODE, 1860 – Sections 353 and 503

A page created by traffic police on the Facebook – Posting comment on it by accused – Whether constitute offences under sections 353 and 503 of IPC? Held, No, because it is a forum for the public to put forth their grievances – Accused may have *bona fide* belief that it was within permissible limits – No ingredients of the alleged offences are *prima facie* satisfied.

भारतीय दण्ड संहिता, 1860 – धारा 353 और 503

यातायात पुलिस द्वारा फेसबुक पर एक पेज या पृष्ठ सृजित किया गया – अभियुक्त द्वारा उस पेज पर कमेंट या टिप्पणी दर्ज की गई – क्या धारा 353 व 503 भा.द.सं. के अपराध का गठन होता है ? अभिनिर्धारित किया गया, नहीं क्योंकि यह आमजन के लिये एक फोरम है जिसमें वे अपनी शिकायत दर्ज कर सकते है – अभियुक्त को यह सद्भावनापूर्ण विश्वास हो सकता है कि उसने अनुमत सीमा में टिप्पणी या कमेंट किये है – प्रथम दृष्ट्या अभिकथित अपराध के धटक संतुष्ट नहीं होते है।

Manik Taneja & anr. v. State of Karnataka & anr.

Judgment dated 20.01.2015 passed by the Supreme Court in Criminal Appeal No. 141 of 2015, reported in 2015 (1) Crimes 221 (SC)

Extracts from the judgment:

Brief facts which led to the filing of this appeal are as under:–

The appellant No.1 and his wife Sakshi Jawa met with an accident with an auto rickshaw on 13.06.2013 at about 10.30 in the morning, while Sakshi Jawa was driving Maruti SX4 KA-03-MM–8646. One of the passengers, who was travelling by the auto, namely Mrs. Laxmi Ganapati, sustained injuries and she was duly admitted in the Santosh Hospital for treatment. Sakshi Jawa, the appellant No.2, is said to have paid all the hospital expenses of the injured and the matter is said to have been amicably settled between the injured and the appellants and no FIR was lodged. The Constable, who was present at the time of incident, directed the appellants to meet Mr. Kasim, Police Inspector, Pulakeshi Nagar Traffic Police Station, Bangalore City. The appellants allege that as soon as they entered the office of Mr. Kasim, he behaved in a rude manner. Further, Mr. Kasim summoned the appellant No.2 to produce her driving licence and other documents. As at that time no FIR was lodged, the appellant No. 2 questioned the Police Inspector as to why she was being asked to produce those documents. Mr. Kasim, in reply, is alleged to have threatened appellant No.2 by saying that he would drag her to court if she continued to argue and she was also thrown out of his office. On the orders of Mr. Kasim, his deputy told the appellants that they are booking them on the charge of rash and negligent driving.

Being aggrieved with the manner with which they were treated, the appellants posted comments on the Bangalore Traffic Police Facebook page,

accusing Mr. Kasim of his misbehaviour and also forwarded an email complaining about the harassment meted out to them at the hands of the Respondent Police Inspector. The Respondent No.2-Police Inspector filed a complaint regarding the posting of the comment on the Facebook by the appellants and subsequently FIR was registered against the appellants for offences punishable under Sections 353 and 506 IPC on 14.06.2013.

•

158. INDIAN PENAL CODE, 1860 – Sections 363 and 364-B
EVIDENCE ACT, 1872 – Section 3
CRIMINAL PROCEDURE CODE, 1973 – Sections 378 and 386

(i) Hon'ble the Apex Court has recapitulated the general principles related to powers of the appellate court while deciding the appeal against acquittal:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal –Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused – Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law – Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

(ii) How to take the discrepancies in the evidence? Held, minor discrepancies on trivial matters not going to the root of the case could not result in rejection of the evidence as a whole – No true witness can possibly escape from making some discrepant details, but the court should keep in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that it would be justified in jettisoning his evidence – The court should ignore the discrepancies which do not shed the basic version of the prosecution – The court should take aid by its vast experience of men and matters in different cases to evaluate the entire material on record.

भारतीय दण्ड संहिता, 1860 – धारा 363 और 364–बी

साक्ष्य अधिनियम, 1872 – धारा 3

दण्ड प्रक्रिया संहिता, 1973 – धारा 378 और 386

(i) दोषमुक्ति के विरूद्ध अपील को निराकृत करते समय अपील न्यायालय की शक्तियों के संबंध में सामान्य सिद्धांतों को माननीय सर्वोच्च न्यायालय ने संक्षेप में दोहराया।

(ii) साक्ष्य में आये विरोधाभासों को किस तरह लिया जाये ? अभिनिर्धारित किया गया छोटे विरोधाभास जो तुच्छ बातों के बारे में और जो मामले की जड़ तक न जाते हो उनका परिणाम साक्ष्य को पूरी तरह नकारने में नहीं हो सकता है – कोई भी सत्य गवाह ऐसा नहीं हो सकता जो कुछ विरोधाभासी कथन से बच सके किन्तु न्यायालय को मस्तिष्क में यह रखना चाहिये की किसी साक्षी के साक्ष्य में केवल वे विरोधाभास जो उसकी विश्वसनीयता को प्रभावित करते हो वे ही महत्वपूर्ण होते है – न्यायालय को उन विरोधाभासों को अनदेखा करना चाहिये जो अभियोजन के मूलभूत मामले को प्रभावित नहीं करते हो – न्यायालय को विभिन्न मामलों में व्यक्तियों और मामलों के बारे में अपने विस्तृत अनुभवों की सहायता अभिलेख पर उपलब्ध सामग्री के मूल्याकन में लेना चाहिये।

Vinod Kumar v. State of Haryana

Judgment dated 08.01.2015 passed by the Supreme Court in Criminal Appeal No.1401of 2008 reported in (2015) 3 SCC 138

Extracts from the judgment:

The learned trial Judge has found discrepancies with regard to the handing of letter by Santosh to Manphul; the discrepancies relating to the place and time pertaining to various aspects stated by witnesses and the identity of the accused at the time of arrest. The discrepancies which have been noted are absolutely

minor. The High Court has correctly observed that the minor discrepancies like who met whom, at what time and who was dropped and at whose place and at what time, etc. have been given unnecessary emphasis. It is well settled in law that minor discrepancies on trivial matters not touching the core of the case or not going to the root of the matter could not result in rejection of the evidence as a whole. It is also well accepted principle that no true witness can possibly escape from making some discrepant details, but the Court should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that it would be justified in jettisoning his evidence. It is expected of the Courts to ignore the discrepancies which do not shed the basic version of the prosecution, for the Court has to call into aid its vast experience of men and matters in different cases to evaluate the entire material on record. [See: ***State of U.P. v. M.K. Anthony, (1985) 1 SCC 505, Rammi v. State of M.P., (1999) 8 SCC 649*** and ***Appabhai v. State of Gujarat, 1988 SUPP SCC 241***]

•

159. INDIAN PENAL CODE, 1860 – Section 420

CRIMINAL PROCEDURE CODE, 1973 – Section 200

Vicarious liability of Managing Director or any other official of a company, wqhen arises? There should be specific allegation against the Managing Director or any other official – Company must be made an accused – In this case, according to complainant the accused company has cheated by delivering old and accidental vehicle to her at the cost of a new truck – Allegations against M.D. were vague – Company has not been made accused – Criminal proceeding quashed.

भारतीय दण्ड संहिता, 1860 – धारा 420

दंड प्रक्रिया संहिता 1973 – धारा 200

एक कंपनी के प्रबंध संचालक या किसी अन्य पदाधिकारी की वायकेरीयस लायबेलिटी – कब उत्पन्न होती है – प्रबंध संचालक या अन्य पदाधिकारी के विरूद्ध विनिर्दिष्ट अभिवचन होना चाहिये – कंपनी को एक अभियुक्त बनाना चाहिये – इस मामले में परिवादी के अनुसार अभियुक्त कंपनी ने उसे पुराना व दुर्घटनाग्रस्त वाहन नये ट्रक की कीमत लेकर दे दिया और उसके साथ छल किया – प्रबंध संचालक के विरूद्ध (परिवाद में) अभियोग अस्पष्ट थे, कंपनी को अभियुक्त नहीं बनाया गया था – दांडिक कार्यवाही आपास्त की गई।

Sharad Kumar Sanghi v. Sangita Rane

Judgment dated 10.02.2015 passed by the Supreme Court in Criminal Appeal No. 1584 of 2007, reported in 2015 (1) Crimes 271 (SC)

Extracts from the judgment:

The allegations which find place against the Managing Director in his personal capacity seem to be absolutely vague. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In ***Maksud Sajyad v. State of Gujarat, (2008) 5 SCC 668*** it has been held, thus:

> "Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156 (3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligator on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

The same principle has been reiterated in ***S.K. Alagh v. State of UP, (2008) SCC 662, Maharashtra State Electricity Distribution Company Ltd. v. Datar Switchgear Ltd., (2010) 10 SCC 479*** and ***GHCL Employees Stock Option Trust v. India Infoline Ltd., (2013) 4 SCC 505***.

•

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

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007 – Rule 12 (3) (b)

Applicant is deaf and dumb – Never admitted in any school – Only possible method to decide his claim of juvenility is to obtain medical opinion from the duly constituted Medical Board in terms of Rule 12 (3) – If the Court considers it necessary can give him benefit of one year on the lower side while determining his age.

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000 – धारा 7–ए

किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2007 – नियम 12 (3) (बी) आवेदक गूंगा और बहरा है – उसे कभी किसी स्कूल में दाखिल नहीं करवाया गया – उसके किशोरावस्था का दावा निराकृत करने का एक मात्र संभव उपाय, सम्यक रूप से गठित मेडिकल बोर्ड से नियम 12 (3) के अनुसार राय लेना है – यदि न्यायालय ऐसा करना आवश्यक समझती है तो उसे एक वर्ष का लाभ उसकी आयु के निर्धारण के समय दे सकती है।

Darga Ram @ Gunga v. State of Rajasthan

Judgment dated 08.01.2015 passed by the Supreme Court in Criminal Appeal No. 513 of 2008, reported in AIR 2015 SC 1016

Extracts from the judgment:

The appellant is reported to be a deaf and dumb. He was never admitted to any school. There is, therefore, no officially maintained record regarding his date of birth. Determination of his age on the date of the commission of the offence is, therefore, possible only by reference to the medical opinion obtained from the duly constituted Medical Board in terms of Rule 12(3) (b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Rule 12(3)(b) reads as under:

> "12. Procedure to be followed in determination of Age. –
> (1) xxxxxxxxxxxxxxx
> (2) xxxxxxxxxxxxxxx
> (3)
> (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law".

The medical opinion given by the duly constituted Board comprising of Professors of Anatomy, Radio diagnosis and Forensic Medicine has determined his age to be "about" 33 years on the date of the examination. The Board has not been able to give the exact age of the appellant on medical examination no matter advances made in that field. That being so in terms of Rule 12 (3) (b) the appellant may even be entitled to benefit of fixing his age on the lower side within a margin of one year in case the Court considers it necessary to do so in the facts and circumstances of the case. The need for any such statutory concession may not however arise because even if the estimated age as determined by the Medical Board is taken as the correct/true age of the appellant he was just about 17 years and 2 months old on the date of the occurrence and thus a juvenile within the meaning of that expression as used in the Act aforementioned. Having said that we cannot help observing that we have not felt very comfortable with the Medical Board estimating the age of the appellant in a range of 30 to 36 years as on the date of the medical examination. The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radio diagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart even if the age of the appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12 (3) (b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile.

•

161. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Sections 12, 52 and 53
N.D.P.S. Act, 1985 – Sections 8 and 20
Legal position regarding bail of juvenile in conflict with law:–

(i) Heinousness, seriousness, severity, gravity of crime are no ground for rejection of bail.

(ii) The bail can only be rejected on the grounds (or exceptions) stated in section 12 of J.J. Act.

(iii) The provisions of section 12 of J.J. Act are independent of general provisions of bail enshrined in section 437 and 439 of Cr.P.C.

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000 – धारा 12, 52 और 53

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 – धारा 8 और 20 विधि संबंधित विरोध में किशोर की जमानत संबंधित विधिक स्थितिः–

(i) अपराध की जघन्यता, गंभीरता, प्रचंडता, विकटता जमानत निरस्त करने के आधार नहीं है।

(ii) जमानत केवल धारा 12 अधिनियम, 2000 में बतलाये आधारों (या अपवादों) पर निरस्त की जा सकती है।

(iii) धारा 12 अधिनियम, 2000 के प्रावधान धारा 437 और 439 दं.प्र.सं. के सामान्य प्रावधानों से स्वतंत्र प्रावधान है।

Pradumna v. State of M.P.

Order dated 28.01.2015 passed by the High Court of M.P. in Criminal Revision No. 2646 of 2014, reported in 2015 (2) MPHT 166

Extracts from the order:

From the perusal, it appears that the language employed in enacting the provisions of section 12 of the Act is plain, clear and unambiguous, hence, there is no difficulty in understanding the intent of the legislature behind it. The following may be called out on perusal of the section : –

"(i) That, the provisions are independent of general provisions of bail enshrined in Section 437 and 439 of the Cr.P.C.

(ii) That, the factors such as, heinousness, seriousness, severity gravity of crime (s) are no grounds for rejection of bail.

(iii) That the bail of a juvenile can only be rejected on the grounds, namely, –

(a) If there appear reasonable grounds for believing that the release of a juvenile is likely to bring him into association with any known criminal. The purport of the expression reasonable grounds is that the grounds must be based on some sorts of evidence/facts and mere apprehension of the concerned Court is not enough, or

(b) Expose him to moral, physical and psychological danger. The conditions mentioned in (a) and (b) are in the interest and welfare of a juvenile. Hence, these two conditions must be considered in favour of a juvenile at the time of dealing with the bail application, or

(c) That his release would defeat the ends of justice. This expression does not relate even obliquely to the seriousness or heinousness of the crime. The tenor of the expression in the context of the section must be confined to the point that how far it will be the possibility to bring a juvenile to the justice if he is released on bail. In case, he goes absconding, then the ends of justice will be certainly defeated otherwise not."

Thus, it is a mandate of the section that the relief of bail can be denied to a juvenile only when any one of the above mentioned conditions goes against him otherwise he is entitled to be released on bail.

•

162. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Section 15

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007 – Rules 12 and 98

On the date of offence, If it is proved that the accused was juvenile, the maximum period for which he could be kept in a special home is three years – Where such period has already lapsed, he should be released immediately – *Ajay Kumar v. State of M.P., (2010) 15 SCC 83* relied on.

किशोर न्याय (बालकों की देख–रेख और संरक्षण) अधिनियम, 2000 – धारा 15

किशोर न्याय (बालकों की देख–रेख और संरक्षण) नियम, 2007 – नियम 12 और 98

यदि यह प्रमाणित होता है कि अपराध करने की तारीख पर अभियुक्त किशोर था – उसे अधिकतम अवधि जिसके लिये विशेष गृह में रखा जा सकता है वह 3 वर्ष होती है – जहां ऐसी अवधि पहले से निकल चुकी हो उसे तत्काल रिहा कर देना चाहिये – *अजय कुमार विरूद्ध स्टेट ऑफ एम.पी., (2010) 15 एस.सी.सी. 83* पर विश्वास किया गया।

Hakkim v. State Represented by Deputy Superintendent of Police

Judgment dated 6.08.2014 passed by the Supreme Court in Criminal Appeal No. 1410 of 2011, reported in 2015 (1) Crimes 205 (SC)

Extracts from the judgment:

Once it is shown that the Appellant in Criminal Appeal No.1410 of 2011, who was A-1, was only 17 years and 9 months on the date of the occurrence, the decision reported in ***Ajay Kumar v. State of Madhya Pradesh, 2010 (15) SCC 83*** applies wherein in the similar circumstances it was held as under:

"Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the Juvenile Justice Rules, 2007") provides the procedure as to how a case of a juvenile who is in conflict with law should be disposed of. The same reads as follows:

"98. Disposed off cases of juveniles in conflict with law – The State Government or as the case may be the Board may, either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and Rule 12 of these Rules and pass an appropriate order in the interest of the juvenile in conflict with law under Section 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in Section 15 of the said Act.

In the light of the aforesaid provisions, the maximum period for which a juvenile could be kept in a special home is for three years. In the instant case, we are informed that the appellant who is proved to be a juvenile has undergone detention for a period of about approximately 14 years. In that view of the matter, since the appellant herein was a minor on the date of commission of the offence and has already undergone more than the maximum period of detention as provided for under Section 15 of the Juvenile Justice Act, by following the provisions of Rule 98 of the Juvenile Justice Rules, 2007 read Section 15 of the Juvenile Justice Act, we allow the appeal with a direction that the appellant be released forthwith."

•

163. LAND ACQUISITION ACT, 1894 – Sections 4, 6 and 11

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

Land acquisition proceeding initiated under the Act of 1894, lapse of after coming into force of section 24 (2) of the new Act of 2013 – Law explained – If the award was made prior to five years or more after the commencement of the Act of 2013 i.e. 01.01.2014 and either physical possession of the land has not been taken or compensation in respect of acquisition has not been paid, the acquisition proceedings with respect to the land in question shall be deemed to have lapsed.

Whether depositing the compensation amount in the Government treasury can be held to be equivalent to compensation paid to the land owners/persons interested? Held, No. [*Pune Municipal Corporation v. Harakchand Mishrimal Solanki, (2014) 3 SCC 183* relied on]

भूमि अधिग्रहण अधिनियम, 1894 – धारा 4, 6 और 11

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

भूमि अधिग्रहण की कार्यवाही अधिनियम, 1894 के तहत प्रारंभ की गई, धारा 24 (2) अधिनियम, 2013 के लागू होने के बाद लेप्स होना – विधि समझाई गई – यदि अवार्ड अधिनियम, 2013 के लागू होने अर्थात 01.01.2014 से 5 वर्ष पहले या उससे अधिक पूर्व पारित किया गया और भूमि का भौतिक आधिपत्य नहीं लिया गया है और प्रतिकर भी भुगतान नहीं किया गया तब अधिग्रहण की कार्यवाही उक्त भूमि के संबंध में समाप्त या लेप्स मानी जायेगी ।

क्या शासकीय कोषालय में प्रतिकर की राशि जमा करवा देना भूमिस्वामी या हितबद्ध व्यक्ति को प्रतिकर भुगतान करने के समान होता है? अभिनिर्धारित किया गया नहीं।

Rajiv Chowdhrie HUF v. Union of India and others

Judgment dated 10.12.2014 passed by the Supreme Court in IA No. 4 of 2014 in Civil Appeal No. 8785 of 2013, reported in (2015) 3 SCC 541

Extracts from the judgment:

On examining the facts and circumstances of the case on hand, it is an undisputed fact that the award was made 5 years prior to the date of commencement of the Resettlement Act, 2013 i.e. on 06.08.2007 vide Award No. 1/2007-2008 and either physical possession of the land should have been taken or compensation has been paid to the appellant in respect of his acquired land. Therefore, the acquisition proceedings of the land of the appellant are lapsed in view of Section 24(2) of the Act of 2013, which provision has been rightly interpreted by this Court by a three Judge Bench decision in the case of Pune ***Municipal Corporation v. Harakchand Mishrimal Solanki, (2014) 3 SCC 183, Bharat Kumar v. State of Haryana, (2014) 6 SCC 586, Bimla Devi v. State of Haryana, (2014) 6 SCC 583 and Union of India v. Shiv Raj, (2014) 6 SCC 564,*** the relevant paras of the aforesaid case [***Pune Municipal Corporation*** (supra)] are extracted hereunder:-

> "20.....it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/ persons interested nor deposited in the court. The deposit of

compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

•

164. LAND REVENUE CODE, 1959 (M.P.) – Sections 162 and 248

(i) Section 162 of the Code, applicability of – Would come into play only in respect of lands belonging to the State Government which have been notified in the official gazette by the State Government for that purpose – Is applicable only to rights of occupants in the specified land and to the unauthorized structures erected thereon.

(ii) Section 248 of the Code, eviction thereunder – Law explained – Any person occupying the Government land unauthorisedly can be summarily evicted by the order of Tahsildar – Allotee of the Government land is liable for eviction if there is breach of conditions of allotment on his part.

मध्यप्रदेश भू–राजस्व संहिता, 1959 – धारा 162 और 248

(i) धारा 162 का लागू होना – यह धारा उस भूमि के संबंध में जो राज्य शासन से संबंधित है और राज्य शासन ने उस उद्देश्य के लिये शासकीय राज पत्र में

अधिसूचित की है, लागू होगी – विनिर्दिष्ट भूमि के उपयोग करने के अधिकार पर लागू होगी और उस पर खड़े किये गये अनाधिकृत निर्माण पर लागू होगी।

(ii) धारा 248 के अधीन निष्कासन – विधि समझाई गई – कोई भी व्यक्ति जो शासकीय भूमि पर अनाधिकृत रूप से कब्जा बनाये हुये है उसे तहसीलदार संक्षिप्त जांच करके निष्कासित कर सकता है – शासकीय भूमि का आवंटि यदि आबंटन की शर्तों को भंग करता है तो वह भी निष्कासन का उत्तरदायी होगा।

Krishnanand and ors. v. State of M.P. and ors.

Order dated 24.04.2014 passed by the High Court of M.P. in R.P. No. 239 of 2014, reported in 2015 (1) MPLJ 347 (DB)

Extracts from the order:

We may turn to Section 162 of the Code of 1959, as inserted by Amending Act No.34 of 2013. The same reads, thus:

> "162. Disposal of certain land in unauthorised possession – (1) Notwithstanding anything contained in Section 248 and subject to rules made in this behalf, any land belonging to the State Government in such areas as notified in the official Gazette by the State Government, which is in unauthorised possession, shall be disposed of for agricultural and residential purposes, in government lessee rights by the Collector to such extent and on payment of such amount of premium and lease rent as may be prescribed.
>
> (2) If any land is disposed of under sub-section (1), all proceedings pending in any revenue court under Section 248 in respect of such land shall stand abated."

We may also advert to the Statement of Objects and Reasons for which this Amending Act No.34 of 2013 came into being. The same reads, thus:

> "Statement of Objects and Reasons – It is experienced that in some areas, a large number of people are in unauthorised possession of Government land for a long time which is causing hardship to them. It has been decided by the Government that such land shall be identified and notified in the official Gazette and shall be allotted in government lessee rights in such manner as may be prescribed. Therefore, a new Section 162 is proposed to be inserted in the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959)."

No doubt Section 162 opens with the non obstante clause. However, the said provision would come into play only in respect of lands belonging to the State Government, which have been notified in the official Gazette by the State

Government for that purpose. It is nobody's case that Khasra No.7 or Khasra No.2, which are the subject matter of this proceeding, has been notified for the purposes of Section 162 of the Code. In absence of such Notification, Section 162 will have no application to such land. Further, Section162 is applicable only to rights of occupants in the specified land and not to the unauthorized structures erected thereon.

•

165. MUSLIM LAW:

(i) Divorce (*Khula*), meaning of – *Khula* is a mode of dissolution of marriage when the wife does not want to continue with the marital tie.

(ii) Khula, when can be effected? When the wife adopts mode of khula for dissolution of marriage, she is required to propose her husband for dissolution of marriage with or without her offer to give something in return – Mere *Fatwah* of Mufti will not suffice, unless the husband accepts the proposal or Qazi issues *Quaza* (judgment) of *khula* as per the sheriat – Definite pleading and evidence is required to prove that *khula* became effective.

(iii) Application u/s 12 of Protection of Women from Domestic Violence Act by divorced Muslim wife, maintainability of – Divorce to Muslim wife is well within the definition of aggrieved person, if she was subjected to domestic violence at the time of living in shared household together with her husband – Can file an application u/s 12 of the Act – Subsequent decree of divorce would not have any effect over maintainability of such application.

मुस्लिम विधिः

(i) तलाक (खुला) का अर्थ – खुला, विवाह के विघटन का एक तरीका है जब पत्नी वैवाहिक संबंध को जारी नहीं रखना चाहती। (तब यह तरीका या विधि काम में लेती है)।

(ii) खुला, कब प्रभावशील किया जा सकता है? जब पत्नी विवाह के विघटन के लिये ''खुला'' का तरीका अपनाती है तब उसके लिये यह आवश्यक है कि वह उसके पति के सामने विवाह विघटन का प्रस्ताव, बदले में कुछ लेकर या न लेकर; रखे – मुफ्ती का फतवा पर्याप्त नहीं होगा जब तक की पति ऐसा प्रस्ताव स्वीकार न करे या काजी, शरियत के अनुसार, खुला का निर्णय जारी न करे – खुला प्रभावशील हो चुका था इस बारे में सुनिश्चित अभिवचन और प्रमाण होना आवश्यक होता है।

(iii) तलाक शुदा पत्नी द्वारा धारा 12 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम के आवेदन की प्रचलनशीलता – तलाक शुदा मुस्लिम पत्नी व्यथित व्यक्ति की परिभाषा में आती है यदि पति के साथ साझा गृहस्थी में रहते हुए उसके साथ घरेलू हिंसा हुई हो – वह धारा 12 अधिनियम का आवेदन दे सकती है – पश्चातवर्ती तलाक की अज्ञाप्ति ऐसे आवेदन की प्रचनलशीलता को प्रभावित नहीं करेगी।

Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and anr.

Judgment dated 18.09.2014 passed by the Supreme Court in Criminal Appeal No. 2069 of 2014, reported in (2014) 10 SCC 736

Extracts from the judgment:

The concept of dissolution of marriage under Muslim Personal Law was noticed and discussed by the Single Judge of the High Court of Delhi in ***Masroor Ahmed v. State (NCT of Delhi), ILR (2007) 2 Del 1329***. In the said case, the High Court noticed different modes of dissolution of marriage under the Muslim Personal Law (Shariat) and held:

> "The question which arises is, given the Shariat and its various schools, how does a person proceed on an issue which is in dispute? The solution is that in matters which can be settled privately, a person need only consult a mufti (jurisconsult) of his or her school. The mufti gives his fatwa or advisory decision based on the Shariat of his school. However, if a matter is carried to the point of litigation and cannot be settled privately then the Qazi (Judge) is required to deliver a qaza (judgment) based upon the Shariat [A Qazi (or qadi) is a Judge appointed by the political authority or State. He or she may pass judgments in his or her jurisdiction in respect of many legal matters, including divorce, inheritance, property, contractual disputes, etc. Schacht, p. 188. A qaza or kada is a judgment, which must be given according to the madhab to which the Qadi belongs. Schacht, p. 196. More information on qazis and qazas can be found at pp. 188-98]. The difference between a fatwa and a qaza must be kept in the forefront. A fatwa is merely advisory whereas a qaza is binding. Both, of course, have to be based on the shariat and not on private interpretation dehors the shariat [Abdur Rahim, p. 172 (in respect of Qazis)].
>
> The Muslim Personal Law (Shariat) Application Act, 1937 and the various forms of dissolution of marriage recognised by it.
>
> In India, the confusion with regard to application of customary law as part of Muslim law was set at rest by the enactment

of the Muslim Personal Law (Shariat) Application Act, 1937. Section 2 of the 1937 Act reads as under:

'2. Application of personal law to Muslims.—Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of personal law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).'

The key words are 'notwithstanding any customs or usage to the contrary' and 'the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)'. This provision requires the court before which any question relating to, inter alia, dissolution of marriage is in issue and where the parties are Muslims to apply the Muslim Personal Law (Shariat) irrespective of any contrary custom or usage. This is an injunction upon the court (see ***C. Mohammad Yunus v. Syed Unnissa, AIR 1961 SC 808***). What is also of great significance is the expression—'dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat....' This gives statutory recognition to the fact that under the Muslim Personal Law, a dissolution of marriage can be brought about by various means, only one of which is talaq. Although Islam considers divorce to be odious and abominable, yet it is permissible on grounds of pragmatism, at the core of which is the concept of an irretrievably broken marriage. An elaborate lattice of modes of dissolution of marriage has been put in place, though with differing amplitude and width under the different schools, in an attempt to take care of all possibilities. Khula, for example, is the mode of dissolution when the wife does not want to continue with the marital tie. She proposes to her husband for dissolution of the marriage. This may or may not accompany her offer to give something in return. Generally, the wife offers to give up her claim to Mahr (dower). Khula is a divorce which proceeds from the wife which the husband cannot refuse subject only to reasonable negotiation with regard to what

> the wife has offered to give him in return. Mubaraat is where both the wife and husband decide to mutually put an end to their marital tie. Since this is divorce by mutual consent there is no necessity for the wife to give up or offer anything to the husband. It is important to note that both under khula and mubaraat there is no need for specifying any reason for the divorce. It takes place if the wife (in the case of khula) or the wife and husband together (in the case of mubaraat) decide to separate on a no-fault/no-blame basis. Resort to khula (and to a lesser degree, mubaraat) as a mode of dissolution of marriage is quite common in India."

From the discussion aforesaid, what we find is that "khula" is a mode of dissolution of marriage when the wife does not want to continue with the marital tie. To settle the matter privately, the wife need only to consult a Mufti (juris consult) of her school. The Mufti gives his fatwa or advisory decision based on the Shariat of his school. Further, if the wife does not want to continue with marital tie and takes mode of "khula" for dissolution of marriage, she is required to propose her husband for dissolution of marriage. This may or may not accompany her offer to give something in return. The wife may offer to give up her claim to Mahr (dower). The "khula" is a mode of divorce which proceeds from the wife, the husband cannot refuse subject only to reasonable negotiation with regard to what the wife has offered to give him in return. The Mufti gives his fatwa or advisory decision based on the Shariat of his school. However, if the matter is carried to the point of litigation and cannot be settled privately then the Qazi (Judge) is required to deliver a qaza (judgment) based upon the Shariat.

In ***V.D. Bhanot v. Savita Bhanot, (2012) 3 SCC 183,*** this Court held that the conduct of the parties even prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. The wife who had shared a household in the past, but was no longer residing with her husband can file a petition under Section 12 if subjected to any act of domestic violence. In ***V.D. Bhanot*** (supra) this Court held as follows:

> "We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005."

In ***Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588*** the appellant Inderjit Singh and Respondent 2 of the said case got married on 23-9-1998. The parties to the marriage could not pull on well together and decided to get divorce and, therefore, filed a case for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955. After recording the statement in the said case, the proceedings were adjourned for a period of more than six months to enable them to ponder over the issue. The parties again appeared before the Court on second motion and on the basis of their statement, the District Judge, Ludhiana vide judgment and order dated 20-3-2008 allowed the petition and dissolved their marriage. After dissolution of marriage, the wife filed a complaint before the Senior Superintendent of Police, Ludhiana against Inderjit Singh under the provisions of the Domestic Violence Act alleging that the decree of divorce obtained by them was a sham transaction. It was further alleged that even after getting divorce both of them had been living together as husband and wife. In the said case, the Superintendent of Police, City I conducted the full-fledged inquiry and reported that the parties had been living separately after the dissolution of the marriage. Hence, no case was made out against Inderjit Singh. In this context, this Court held that Section 12 "application to Magistrate" under the Domestic Violence Act challenging the said divorce was not maintainable and in the interest of justice and to stop the abuse of process of court, the petition under Section 482 CrPC was allowed. The law laid down in the said case is not applicable for the purpose of determination of the present case.

An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.

•

166. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 20

Issuance of blank/partly filled cheque, effect of – Where the drawer of the cheque issues blank or partly filled cheque after putting his signature, the holder enjoys the authority under section 20 of the Act to make or complete the instrument – The impact of issuance of such a blank signed cheque is so wide that the holder may fill any amount which may exceed the limited authority of him available under the contract.

परक्राम्य लिखत अधिनियम, 1881 – धारा 20

कोरा/आंशिक रूप से भरा हुआ चैक जारी करने का प्रभाव – जब चैक जारी करने वाला कोरा या आंशिक रूप से भरा हुआ चैक उसके हस्ताक्षर करके जारी

करता है तब धारा 20 अधिनियम के तहत चैक के धारक को यह प्राधिकार होता है कि वह उस

लिखत को भर ले या पूर्ण कर ले – ऐसे कोरे और हस्ताक्षरित चैक जारी करने का प्रभाव इतना विस्तृत होता है की चैक का धारक संविदा के अधीन उपलब्ध सीमा से बढ़कर कोई भी राशि उसमें भर सकता है।

Sunita Dubey v. Hukum Singh Ahirwar
Order dated 01.12.2014 passed by the High Court of M.P. in Criminal Revision No. 56 of 2014, reported in 2015 (1) MPLJ 574

Extracts from the order:

A bare perusal of the provisions shows that there is a clear mandate under section 20 of the Negotiable Instruments Act to the effect that such an instrument can be negotiated by the maker thereof by simply signing and delivering the same to the holder in due course giving thereby ample authority to the latter to fill up the content of the instrument as intended by the maker thereof. Once the execution is admitted, it shall be taken that the cheque was issued by the accused in favour of the complainant towards the discharge of the liability.

In the present case, it is admitted position that the cheques were signed by the accused persons. The provisions given in section 20 of the NI Act extracted above makes it clear that the instrument may be wholly blank or incomplete in any particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one. The authority implied by a signature to a blank instrument is so wide that the party so signing is bound to a holder in due course even though the holder was authorised to fill for a certain amount. Section 20 of the Act declares that inchoate instruments are also valid and legally enforceable. In the case of a signed blank cheque, the drawer gives authority to the drawee to fill up the agreed liability.

Now coming to the facts of the present case, though the respondent/accused had admitted that the signed cheque was issued by him but it was denied that the same was issued voluntarily by him in favour of the petitioner against due payment. On the other hand, it was sought to be contended that the cheque had been issued for the security purposes but was misused by the petitioner/complainant after having filled up the details by herself. But as discussed above, as per Section 20 of the NI Act, an individual is authorised to complete the inchoate instrument deliver to him by filling up the blanks. Moreover, a blank cheque could be filled up by the 'Holder thereof', which will be a valid instrument in the eye of Law.

•

***167. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138**
Offence under section 138, liability of – Law explained.
Facts of the case:

Dishonoured cheques were allegedly signed by 'A' for and on behalf of 'A jewellers' as proprietor of the concern – He was described as

proprietor of the concern in the demand notice also – On cheques being dishonoured, complaint in respect of an offence under section 138 N.I. Act was filed against 'A' and his brother 'B' – There was no evidence to show that the firm was partnership firm and 'B' was one of the partners – Held, complaint for the offence under section 138 of the Negotiable Instruments Act is not maintainable against 'B'.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

धारा 138 के अधीन अपराध का दायित्व – विधि समझाई गई।

प्रकरण के तथ्य :

अनादरित चैकों पर अभिकथित रूप से ''ए'' द्वारा हस्ताक्षर किये गये थे जो उसने ''ए ज्वेलर्स कंसर्न'' के प्रोपराईटर के हैसियत से किये थे – उसे मांग सूचना पत्र में भी उक्त कंसर्न का प्रोपराईटर वर्णित किया गया था – चैकों के अनादरण होने पर धारा 138 एन.आई. एक्ट का परिवाद ए और उसके भाई बी के विरूद्ध प्रस्तुत किया गया – ऐसी साक्ष्य नहीं थी जो यह दर्शाती हो कि वह पंजीकृत भागीदारी फर्म थी और बी भी उसका भागीदार था – अभिनिर्धारित किया गया बी विरूद्ध परिवाद चलने योग्य नहीं है।

Manish v. K.G. Sharma

Judgment dated 16.12.2014 passed by the High Court of M.P. in Misc. Criminal Case No. 5169 of 2014, reported in 2015 (2) MPHT 137

•

***168. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 142**

Cheque was issued by accused on bank situated at Karnataka – Same was presented for collection by complainant in bank situated at Kerala – Dishonoured due to insufficiency of funds– Complaint under section 138 N.I. Act filed in the court situated at Kerala – Returned by the Magistrate for presentation before proper court at Karnataka – Held, presentation of cheque by complainant at a place of his choice or issuance of demand notice from a particular place, not confer jurisdiction upon the courts situated at that places – *Dashrath Rupsingh Rathod's case, AIR 2014 SC 3519* followed.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138 और 142

अभियुक्त ने कर्नाटक स्थित एक बैंक का चैक जारी किया – परिवादी ने वह चैक संग्रहण या कलेक्शन के लिये केरल स्थित बैंक में पेश किया – चैक अपर्याप्त निधि के कारण अनादरित किया गया – धारा 138 एन.आई. एक्ट का परिवाद केरल स्थित न्यायालय में पेश किया गया – मजिस्ट्रेट ने परिवाद कर्नाटक के उचित न्यायालय में पेश करने के लिये लौटा दिया – अभिनिर्धारित किया गया,

परिवादी द्वारा उसके पसंद के स्थान पर चैक पेश कर देने या मांग सूचना पत्र किसी स्थान विशेष

से दिलवा देना उन स्थानों पर स्थित न्यायालयों को कोई क्षेत्राधिकार (प्रादेशिक) प्रदान नहीं करता है *दशरथ रूप सिंह राठौर, ए.आई.आर. 2014 एस.सी. 3519* के मामले का अनुसरण किया गया।

Suku v. Jagdish and another

Judgment dated 04.09.2014 passed by the Supreme Court in Criminal Appeal No. 1917 of 2014, reported in AIR 2015 SC 1006 (Three judge bench)

Note:– Same view has been taken in *Times Business Solution Limited v. Databyte, AIR 2015 SC 1138* (3 Judge Bench).

नोट – यही मत न्याय दृष्टांत *टाईम्स बिजनश सालूसन लिमिटेड विरूद्ध दाता बाइट, ए.आई.आर. 2015 एस.सी. 1138* (3 न्यायमूर्तिगण की पीठ) में भी लिया गया।

•

169. PREVENTION OF CORRUPTION ACT, 1988 – Sections 5 and 13 (1) (d)

Offences under Prevention of Corruption Act, 1988 – Power of Special Judge of taking cognizance, scope of – The Special Judge may take cognizance of the offence without the accused being committed to him for trial – He enjoys all the powers conferred on the Court of original jurisdiction functioning under the High Court except those specifically conferred under the PC Act – Court of the Special Judge is deemed to be a Court of Sessions – Once cognizance has been taken by the Magistrate/Special Judge, he takes cognizance of an offence and not the offenders – If he comes to the conclusion that apart from the persons sent by the police, some other persons are involved, it is his duty to proceed against those persons and summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.

भष्टाचार निवारण अधिनियम, 1988 – धारा 5 और 13(1)(डी)

भ्रष्टाचार निवारण अधिनियम, 1988 के अधीन अपराध – विशेष न्यायाधीश की प्रसंज्ञान लेने की शक्तियों का विस्तार – विशेष न्यायाधीश अभियुक्त को विचारण के लिये उपार्पित किये बिना अपराध का संज्ञान ले सकते है – उसे मूल क्षेत्राधिकार के न्यायालय की समस्त शक्तियों का उपयोग करने की शक्तियॉं है – विशेष न्यायाधीश का न्यायालय सेशन न्यायालय समझा जायेगा – एक बार यदि मजिस्ट्रेट/विशेष न्यायाधीश द्वारा प्रसंज्ञान लिया जा चुका हो, वे अपराध का संज्ञान लेता है अपराधी का संज्ञान नहीं लेता है – यदि वह इस निष्कर्ष पर पहुचता है की पुलिस द्वारा भेजे गये व्यक्तियों के साथ कुछ अन्य व्यक्ति अपराध में लिप्त है तब यह उसका कर्तव्य है कि वह उन व्यक्तियों के विरूद्ध संमन जारी करे और प्रसंज्ञान लेकर कार्यवाही प्रारंभ करे।

R.N. Agarwal v. R.C. Bansal and others

Judgment dated 14.10.2014 passed by the Supreme Court in Criminal Appeal No. 2199 of 2014, reported in (2015) 1 SCC 48

Extracts from the judgment:

A bare reading of section 5 of the Prevention of Corruption Act, 1988 would show that the special judge may take cognizance of the offence without the accused being committed to him for trial and the court of special judge shall be deemed to be a court of session. The special judge in trying the accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial of warrant cases by the Magistrate. Indisputably, a person holding the post of either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge is appointed as Special Judge and shall follow the procedure prescribed in the Code for trial of warrant cases.

The Constitution Bench in ***A. R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500***, was of the view that the special judge appointed under the Prevention of Corruption Act, enjoys all powers conferred on the Court of original jurisdiction functioning under the High Court except those specifically conferred under the Act.

In ***Harshad S. Mehta v. State of Maharashtra, (2001) 8 SCC 257,*** the Bench while dealing with the case under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 observed that special court is a Court of exclusive jurisdiction in respect of offences under Section 3(2) of the Act, like special court under Prevention of Corruption Act it has original criminal jurisdiction. The special court per se is not a Magistrate and also it is not a court to which the commitment of a case is made.

In ***State of T.N. v. V. Krishnaswami Naidu, (1979) 4 SCC 5,*** this Court while answering a question, as to whether the special judge under the Criminal Law (Amendment) Act, 1952 can exercise the power conferred on a Magistrate under Section 167 Cr.P.C. to authorise the detention of the accused in the custody of police, held that a special judge is empowered to take cognizance of the offence without the accused being committed to him for trial.

In ***Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167,*** this Court while dealing with the similar matter held that once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders and once he comes to the conclusion that apart from the persons sent by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.

In ***Kishun Singh v. State of Bihar, (1993) 2 SCC 16 ,*** the scope and power of a Court under Sections 193, 209 and 319 observed as:-

"We have already indicated earlier from the ratio of this Court's decisions in the cases of ***Raghubans Dubey*** (supra) and ***Hareram Satpathy v. Tikaram Agarwala, (1978) 4 SCC 58*** that once the court takes cognizance of the offence (not the offender) it becomes the court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the court's duty to summon them to stand trial along with those already named, since summoning them would only be a part of the process of taking cognizance. We have also pointed out the difference in the language of Section 193 of the two Codes; under the old Code the Court of Session was precluded from taking cognizance of any offence as a court of original jurisdiction unless the accused was committed to it whereas under the present Code the embargo is diluted by the replacement of the words the accused by the words the case. Thus, on a plain reading of Section 193, as it presently stands once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record."

•

170. PREVENTION OF CORRUPTION ACT, 1988 – Sections 7 and 13

Twin requirements are sine qua non for proving the offence under section 7 of the Act – First, the demand and second, the voluntary acceptance of illegal gratification – If these are proved by evidence, then conviction must follow under section 7 of the Act.

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 7 और 13

धारा 7 अधिनियम, 1988 के अपराध को प्रमाणित करने के लिये 2 अनिवार्यतायें आवश्यक होती है – पहली अवैध परितोषण की मांग, दूसरी उसको स्वेछा से स्वीकार कर लेना – यदि साक्ष्य से ये दो तथ्य प्रमाणित हो जाते है तो धारा 7 अधिनियम, 1988 के तहत् दोषसिद्धि होना चाहिये।

Kallappa Mallappa v. State of Karnataka

Judgment dated 12.02.2015 passed by the Supreme Court in Criminal Appeal No. 1765 of 2012, reported in 2015 (1) Crimes 294 (SC)

Extracts from the judgment:

It is a settled principle in law laid down by this Court in a number of decisions that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence, then conviction must follow under section 7 *ibid* against the accused. Indeed, these twin requirements are sine qua non for proving the offence under Section 7 ibid. (See ***C.M. Sharma v. State of Andhra Pradesh, (2010) 15 SCC 1)***.

•

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

(i) Nature of second proviso of section 24 (2) (as inserted vide Amendment Ordinance of 2014 w.e.f. 01.01.2015) –It is prospective in operation.

(ii) Interpretation of Statues – Fresh legislation, whether prospective or retrospective? Where repeal of provisions of an enactment is followed by fresh legislation by an Amending Act, such legislation is prospective in operation – Does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment – There is a presumption against the retrospective operation of a statue – But an Amending Act which affects the procedure is presumed to be retrospective, unless amending Act provides otherwise.

(iii) Award was passed on 06.08.2007 under old Act of 1894 – Neither physical possession has been taken nor compensation paid – More than five years have already been passed – Land acquisition proceeding are deemed to have lapsed in terms of section 24 (2) of the Act of 2013.

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

(i) धारा 24 (2) के द्वितीय परंतुक की प्रकृति (जिसे संशोधन अध्यादेश 2014 दिनांक 01.01.2015 से प्रभावशील द्वारा जोड़ा गया है) – यह भविष्यलक्षी लागू होता है।

(ii) विधि का अर्थान्वयन – एक नवीन विधान – भूतलक्षी या भविष्यलक्षी कैसा होगा – जहां एक कानून का निरसित या रद्द प्रावधान एक संशोधित अधिनियम द्वारा

एक नये कानून द्वारा अनुसरित होता है वहां ऐसा विधान या कानून भविष्यलक्षी लागू होता है – वह पक्षकारों के तात्विक या निहित अधिकारों को प्रभावित नहीं करता है जब तक की प्रत्यक्ष या आवश्यक आशय द्वारा उसे भूतलक्षी नहीं बनाया गया हो – एक कानून के भूतलक्षी या रेटरोस्पेक्टिव न होने के बारे में उपधारणा रहती है – लेकिन एक संशोधित अधिनियम जो प्रक्रिया या प्रोसीजर को प्रभावित करता है उसके भूतलक्षी होने की उपधारणा होती है जब तक की उस संशोधित अधिनियम में अन्यथा प्रावधान न हो।

(iii) अवार्ड भूमि अर्जन अधिनियम, 1894 के तहत् दिनांक 6.8.2007 को पारित किया गया – न तो भूमि का भौतिक आधिपत्य लिया गया था न ही प्रतिकर भुगतान किया गया था – 5 वर्ष से अधिक समय बीत चुका था – भूमि अधिग्रहण कार्यवाही धारा 24 (2) अधिनियम, 2013 के अर्थों में समाप्त या लेप्स हो जाना मानी जायेगी।

Karnail Kaur and others v. State of Punjab and others

Judgment dated 22.01.2015 passed by the Supreme Court in I.A. No. 8 of 2014 in Civil Appeal No. 7424 of 2013, reported in (2015) 3 SCC 206

Extracts from the judgment:

After referring to the decisions in ***Pune Municipal Corportion v. Harakchand Misirimal Solanki, (2014) 3 SCC 183, Union of India v. Shiv Raj, (2014) 6 SCC 564, Bimla Devi v. State of Haryana, (2014) 6 SCC 583, Bharat Kumar v. State of Haryana, (2014) 6 SCC 586 and Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353*** with reference to the facts and circumstances of the case on hand, we are of the view that physical possession of the land belonging to the appellants has neither been taken by the respondents nor compensation paid to them even though the award was passed on 6.8.2007, and more than five years have lapsed prior to date on which the 2013 Act came into force. Therefore, the conditions mentioned in Section 24 (2) of the 2013 Act are satisfied in this case for allowing the plea of the appellants that the land acquisition proceedings are deemed to have lapsed in terms of Section 24 (2) of the 2013 Act. The said legal principle laid down by this Court in ***Pune Municipal Corpn. (supra)*** and other cases referred to supra with regard to the interpretation of Section 24 (2) of the Act, with all fours are applicable to the fact situation in respect of the land covered in these appeals for granting the relief as prayed by the appellants in the applications.

Further in ***Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24,*** the Constitution Bench of this Court held thus:

"In ***Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602*** this Court laid down the ambit and scope of an amending Act and its retrospective operation as follows:

‘(i) A Statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.’

In ***K.S. Paripoornan v. State of Kerala, (1994) 5 SCC 593,*** this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus:

> ‘In the instant case we are concerned with the application of the provisions of sub–section (1–A) of Section 23 as introduced by the amending Act to acquisition proceedings which were pending on the date of commencement of the amending Act. In relation to pending proceedings, the approach of the courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is changed before the hearing of the case at the first instance or while an appeal is pending. (See Halsbury’s Laws of England, 4th Edn., Vol. 44, Para 922.)’

When a repeal of an enactment is followed by a fresh legislation such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless amending Act provides otherwise."

•

***172. SERVICE MATTER:**

Correction of date of birth – Matriculation or Higher Secondary Certificate, admissibility of – Such certificate can be accepted, if they are issued prior to the date of employment – In other cases, the matter must be referred to the age determination committee.

सेवा संबंधी मामला :

जन्म तिथि में सुधार – मेट्रिकुलेशन या हायर सेकेण्ड्री प्रमाण पत्र का ग्राह्य होना – ऐसा प्रमाण पत्र स्वीकार किया जा सकता है यदि उसे नियोजन में आने से पहले जारी किया गया था – अन्य दशा में मामला आयु निर्धारण समिति को निर्देशित करना चाहिये।

Western Coalfields Ltd. (The) & anr. v. Faggulal

Order dated 15.05.2013 passed by the High Court of M.P. in WA. No. 676 of 2013, reported in 2014 (IV) MPJR SN 16 (DB)

•

173. TORTS:

(i) Maxim *res ipsa loquitor*, applicability of – The maxim applies to a case in which certain facts proved by one party, by itself would call for an explanation from the opposite side without the first party having to allege and prove any specific act or omission from the opposite party – The doctrine would apply to a situation when mere happening of the accident is more consistent with the negligence of the opposite party than with other causes.

(ii) Maxim *res ipsa loquitor*, objective of – Main function of the maxim is to prevent injustice which would result if the plaintiff was invariably required to prove the precise cause of the accident when the relevant facts are unknown to him but are within the knowledge of the defendant.

दुष्कृति विधिः

(i) सुक्ति रेस इप्सा लोकिटर का लागू होना – यह सुक्ति तब लागू होती है जब प्रथम पक्ष द्वारा कुछ तथ्य प्रमाणित कर दिये जाते है उसके बाद विपक्षी का कोई विनिर्दिष्ट कृत्य या लोप अभिवचन और प्रमाणित किये बिना विपक्षी पर स्पष्टीकरण देने का भार आ जाता है – यह सिद्धांत उस स्थिति में लागू होगा जब केवल दुर्घटना होना अन्य कारण के बजाय विपक्षी की उपेक्षा से सुसंगत होगा।

(ii) सुक्ति रेस इप्सा लोकिटर का उद्देश्य – इस सुक्ति का मुख्य उद्देश्य अन्याय को रोकना है जो हो सकता है यदि वादी के लिये वे तथ्य प्रमाणित करना अनिवार्य कर दिया जाये जो सुसंगत तथ्य उसके लिये अज्ञात है और विपक्षी के ज्ञान में है।

Ashish Kumar Mazumdar v. Aishi Ram Batra Charitable Hospital Trust and others

Judgment dated 22.04.2014 passed by the Supreme Court in Civil Appeal No. 4010 of 2010, reported in 2015 (1) MPLJ 280 (SC) (Three Judge Bench)

Extracts from the judgment:

The maxim *res ipsa loquitur* in its classic form has been stated by Erle C.J.

(1) "……..where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care." [***Scott v. London & St. Katherine Docks, (1865) 3 H & C 596, 601***]

The maxim applies to a case in which certain facts proved by the plaintiff, by itself, would call for an explanation from the defendant without the plaintiff having to allege and prove any specific act or omission of the defendant.

In ***Shyam Sunder and others v. State of Rajasthan, 1974 (1) SCC 690*** it has been explained that the principal function of the maxim is to prevent injustice which would result if the plaintiff was invariably required to prove the precise cause of the accident when the relevant facts are unknown to him but are within the knowledge of the defendant. It was also explained that the doctrine would apply to a situation when the mere happening of the accident is more consistent with the negligence of the defendant than with other causes.

•

PART - III

CIRCULARS/NOTIFICATIONS

IMPORTANT NOTIFICATIONS OF STATE GOVERNMENT UNDER THE INDIAN PENAL CODE DECLARING OFFENCES COGNIZABLE & NON-BAILABLE & AMENDMENTS MADE THEREUNDER

(1) Notification No. 33205-F.No. 6-59-74-B-XXI, dated the 19th November 1975. – In exercise of the powers conferred by sub-section (1) of section 10 of the Criminal Law Amendment Act, 1932 (No. XXIII of 1932) and in supersession of all the notifications previously issued on the subject, the State Government hereby declares that any offence punishable under section 186, 189, 190, 228, sub section (1) of section 505, 506 or 507 of the Indian Penal Code (No. XLV of 1860) when committed in any area of the State of Madhya Pradesh, shall be cognizable.

[Published in M.P. Rajpatra Part 1, dated 12-03-76 page 473].

•

(2) Notification No. 33207-F.No. 6-59-74-B-XXI, dated the 19th November 1975. – In exercise of the powers conferred by sub-section (2) of section 10 of the Criminal Law Amendment Act, 1932 (No. XXIII of 1932) and in supersession of all the notifications previously issued on the subject the State Government hereby declares that any offence punishable under section 188 or 506 of the Indian Penal Code (No. XLV of 1860), when committed in any part of State of Madhya Pradesh shall be non-bailable.

[Published in M.P. Rajpatra Part I, dated 12-03-76 page 473].

•

विधि और विधायी कार्य विभाग

भोपाल, दिनांक 9 अगस्त 2000

क्र, 17 (ई) 76–99–इक्कीस–ब (दो). – दण्ड विधि संशोधन अधिनियम, 1932 (1932 का सं. 23) की धारा 10 की उपधारा (2) द्वारा प्रदत्त भाक्तियों को प्रयोग में लाते हुए, राज्य सरकार, एतद् द्वारा, इस विभाग की अधिसूचना क्रमांक 33207–एफ–एन, ओ–6–59–74–बी–एक्कीस, दिनांक 19 नवम्बर, 1975 में निम्नलिखित संशोधन करती है, अर्थात्:–

उक्त अधिसूचना में, शब्द और अंक ''या 506'' का लोप किया जाये।

(3) No. 17-E-76-99-XXX-B(II). – In exercise of the powers conferred by sub-section (2) of Section 10 of the Criminal Law (Amendment) Act, 1932 (No. 23 of 1932), the State Government hereby make the following amendment in this department Notification No. 33207-F-No.-6-59-74-B-XXXI, dated the19th November, 1975, namely : –

In the said notification, the word and figures “or 506” shall be omitted.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,

टी.पी. शर्मा
अतिरिक्त सचिव

•

PART - IV
IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

मध्यप्रदेश अपराध पीड़ित प्रतिकर योजना, 2015

भोपाल, दिनांक 31 मार्च 2015

क्र. 1686–2015–दो–सी–1.– दण्ड प्रक्रिया संहिता 1973 (1974 का 2) की धारा 357–क की उपधारा (1) और (2) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य सरकार, एतद् द्वारा केन्द्र सरकार के साथ मिलकर ऐसे अपराध पीड़ितों या उनके आश्रितों को, जिन्हें अपराध के परिणामस्वरूप हानि या क्षति कारित हुई है और जिन्हें पुनर्वास की आवश्यकता है, प्रतिकर के प्रयोजन के लिए निधियां उपलब्ध कराने और प्रतिकर की मात्रा का विनिश्चय करने के लिए निम्नलिखित योजना बनाती हैं, अर्थात्:–

योजना

1. संक्षिप्त नाम, विस्तार और प्रारंभ –

(क) इस योजना का संक्षिप्त नाम मध्यप्रदेश अपराध पीड़ित प्रतिकर योजना, 2015 है.

(ख) इसका विस्तार सम्पूर्ण मध्यप्रदेश राज्य पर होगा,

(ग) यह योजना मध्यप्रदेश राजपत्र में इसके प्रकाशन की तारीख से लागू होगी.

2. परिभाषाएं. –

इस योजना में जब तक कि संदर्भ से अन्यथा अपेक्षित न हो, –

(क) ''आवेदक'' से अभिप्रेत है, पीड़ित या पीड़ित का कोई आश्रित, जो प्रतिकर के लिए आवेदन करता है;

(ख) ''संहिता'' से अभिप्रेत है, दण्ड प्रकिया संहिता, 1973 (1974 का 2)

(ग) ''निधि'' से अभिप्रेत है कंडिका 03 के अधीन गठित पीड़ित प्रतिकर निधि;

(घ) ''क्षति'' से अभिप्रेत है, इस योजना से संलग्न अनुसूची में विनिर्दिष्ट कोई क्षति;

(ड़) ''हानि'' में सम्मिलित है, किसी सम्पत्ति को कोई हानि जो अभियुक्त की ओर से किए गए किसी आपराधिक कृत्य अथवा लोप के कारण हुई क्षति के परिणामस्वरूप हुई हो;

(च) ''अपराध'' से अभिप्रेत है, कोई कृत्य अथवा लोप जिसे तत्समय प्रवृत किसी विधि द्वारा दण्डनीय बनाया गया हो और इसके अंतर्गत कोई ऐसा कृत्य भी सम्मिलित है, जिसके बारे में पशु अतिचार अधिनियम, 1871 (क्रमांक 1 सन् 1871) की धारा 20 के अधीन परिवाद किया जा सकता हैं;

(छ) ''परिवीक्षा अधिकारी'' से अभिप्रेत है, कोई परिवीक्षा अधिकारी जिसकी नियुक्ति राज्य शासन द्वारा प्रोबेशन ऑफ औफेन्डरस् एक्ट, 1958 (1958 का 20) की धारा 13 के अधीन की गई है;

(ज) ''अनुसूची'' से अभिप्रेत है, इस योजना से संलग्न ''अनुसूची'';

(झ) ''राज्य'' से अभिप्रेत है, मध्यप्रदेश राज्य;

(ञ) ''पीड़ित'' से अभिप्रेत है, ऐसा व्यक्ति जिसे अभियुक्त के आपराधिक कृत्य या लोप के कारण कोई हानि या क्षति कारित हुई है और ''पीड़ित'' पक्ष के अन्तर्गत उसका संरक्षक या विधिक वारिस भी है किन्तु इसमें ऐसा कोई व्यक्ति सम्मिलित नहीं है जो ऐसे व्यक्ति को क्षति के लिए उत्तरदायी हो;

(ट) ''आश्रित'' से अभिप्रेत है, और उसमें सम्मिलित हैं पीड़ित की पत्नी, पति, पिता, माता, अविवाहित पुत्री, अवयस्क बच्चे जो आश्रित होने का प्रमाण पत्र जारी करने के लिए सशक्त किसी प्राधिकारी द्वारा या सरकार द्वारा इस निमित्त प्राधिकृत किसी अन्य प्राधिकारी द्वारा इस प्रकार अवधारित किए गए हों;

(ठ) उन समस्त शब्दों तथा अभिव्यक्तियों के जो इसमें प्रयुक्त हुए हैं और परिभाषित नहीं किए गये हैं किन्तु दण्ड प्रक्रिया संहिता, 1973 (केन्द्रीय अधिनियम, 1974 का 2), भारतीय दण्ड संहिता, 1860 (केन्द्रीय अधिनियम 1860 का 45) या मध्यप्रदेश साधारण खण्ड अधिनियम में परिभाषित किए गए हैं, क्रमशः वे ही अर्थ होंगे जो कि उक्त अधिनियमों में उन्हें दिए गए हैं।

3. अपराध पीड़ित प्रतिकर निधि का गठन. –

(क) ''पीड़ित प्रतिकर निधि'' के नाम से एक निधि का गठन किया जाएगा

(ख) पीड़ित प्रतिकर निधि निम्नलिखित से मिलकर बनेगी .–

(एक) राज्य द्वारा वार्षिक बजट में किया गया बजट आबंटन

(दो) संहिता की धारा 357 के अधीन संहिता द्वारा प्रदान किए गए प्रतिकर को पटाने के पश्चात् अधिरोपित जुर्मानों की राशि की प्राप्ति

(तीन) अंतर्राष्ट्रीय या राष्ट्रीय पूर्त संस्थाओं, संगठनों तथा व्यक्तियों से प्राप्त दान तथा अभिदान।

(ग) निधि की राशि नवीन खाता शीर्ष के अधीन लोक लेखा में रखी जाएगी।

(घ) विद्यमान खाता शीर्ष जिसमें कि संहिता की धारा 357 के अनुसार जुर्माने तथा शुल्क (फीस) जमा किए जाते हैं, नए खोले गए खाता शीर्ष में जमा किए जाएंगे।

(ड़) योजना का विनियमन करने, उसे प्रशासित करने तथा उसकी मानीटरिंग करने के लिए गृह विभाग नोडल विभाग होगा।

(च) मध्यप्रदेश राज्य विधिक सेवा प्राधिकरण का सदस्य सचिव, स्कीम नं. 03 के अधीन गठित निधि का संचालन करेगा;

(छ) राज्य विधिक सेवा प्राधिकरण योजना के अधीन इसके कृत्यों के लिए तथा राज्य सरकार द्वारा उन्हें आबंटित की गई राशियों की नोडल विभाग के माध्यम से कालिक विवरणी प्रस्तुत करने के लिए उत्तरदायी होगा।

4. **योजना की निगरानी** – योजना की निगरानी करने के लिए राज्य और जिला स्तरीय समितियां गठित की जाएंगी और जो निम्नलिखित से मिलकर बनेंगी –

राज्य स्तरीय

(एक) प्रमुख सचिव, म.प्र. शासन, गृह विभाग	–	अध्यक्ष
(दो) प्रमुख सचिव, म.प्र. शासन, विधि और विधीय कार्य विभाग	–	सदस्य
(तीन) राज्य विधिक सेवा प्राधिकरण, म.प्र. शासन	–	सदस्य
(चार) उप सचिव, म.प्र. शासन, गृह विभाग	–	सचिव

जिला स्तरीय समिति

(एक) जिले का जिला एवं सत्र न्यायाधीश	–	अध्यक्ष
(दो) जिले का जिला दण्डाधिकारी	–	सदस्य
(तीन) जिले का जिला पुलिस अधीक्षक	–	सदस्य
(चार) जिला विधि सेवा प्राधिकरण	–	सचिव

(क) राज्य स्तरीय समिति द्वारा लंबित आवेदनों एवं अपीलों की समीक्षा बैठक त्रैमासिक आधार पर की जाएगी।

(ख) राज्य विधिक प्राधिकरण राज्य स्तरीय डाटा संबंधित जिलों से एकत्रित करने के पश्चात् राज्य स्तरीय समिति को प्रस्तुत करेगा।

(ग) जिला स्तरीय समिति प्रत्येक माह के प्रथम सप्ताह में लंबित प्रकरणों का परीक्षण और पुनरावलोकन करेगी।

5. **प्रतिकर के लिए पात्रता** – निम्नलिखित मामलों में पीड़ित अथवा उसका आश्रित योजना के अधीन प्रतिकर प्राप्त करने के लिए पात्र होगा, अर्थात् :–

(1) जहां कि संहिता की धारा 357–क की उपधारा (2) अथवा (3) के अधीन न्यायालय द्वारा कोई सिफारिश की जाती है, तो जिला विधिक प्राधिकरण अथवा राज्य विधिक प्राधिकरण प्रतिकर की राशि का निर्धारण करेगा।

(2) जहां कि विचारण न्यायालय, विचारण की समाप्ति पर कोई सिफारिश करता है, जबकि इस बात का समाधान हो जाता है कि संहिता की धारा 357 के अधीन प्रदान किया गया प्रतिकर ऐसे पुनर्वास के लिए पर्याप्त नहीं है अथवा जहां कि मामलें में दोषमुक्ति या उन्मोचन हो जाता है और पीड़ित का पुनर्वास किया जाना है, अथवा

(3) जहां कि अपराधी को खोजा या पहचाना नहीं गया है परंतु पीड़ित की पहचान की गई है और जहां कोई विचारण नहीं होता है अथवा विचारण न्यायालय द्वारा पीड़ित को प्रतिकर अदायगी के बारे में कोई आदेश नहीं दिया गया हो और वहां पीड़ित या उसका आश्रित जिला विधिक सेवा प्राधिकरण को आवेदन कर सकता है।

(4) वह अपराध, जिसके कारण योजना के अधीन प्रतिकर का भुगतान किया जाना है, राज्य के भीतर घटित हुआ हो, या राज्य के भीतर घटना की शुरूआत हुई हो।

अपवाद – यदि अपराध राज्य के बाहर घटित हो और पीड़ित राज्य की सीमा के भीतर पाया जाता है तो वह संहिता की धारा 357 –क की उप–धारा (6) के अधीन अनुध्यात अंतरिम अनुतोष के लिए पात्र होगा।

6. प्रतिकर प्रदान करने की प्रकिया –

(1) संहिता की धारा 357 क की उप–धारा (4) के अधीन आवेदन पर, विचारण न्यायालय, अपीलीय न्यायालय, उच्च न्यायालय या जिला एवं सत्र न्यायालय जो अपनी शक्तियों का प्रयोग कर रहे हैं, उनके द्वारा सिफारिश प्राप्त होने पर राज्य या जिला विधिक सेवा प्राधिकरण, समुचित प्राधिकारी के माध्यम से सम्यक् जांच के पश्चात् जैसा कि राज्य या जिला विधिक सेवा प्राधिकरण उचित समझे, दो माह के भीतर जांच पूर्ण करके पर्याप्त प्रतिकर प्रदान करेगा।

(2) जिला विधिक सेवा प्राधिकरण, पीड़ित को अपराध से उद्भूत हानि या क्षति से संबंधित दावे की विषयवस्तु का परीक्षण एवं सत्यापन करेगा। प्राधिकरण दावे की सत्यता निर्धारित करने के लिए आवश्यक सुसंगत जानकारी मंगा सकेगा। दावे का सत्यापन और सम्यक् जांच करने के पश्चात्, जिला विधि सेवा प्राधिकरण, योजना के उपबंधों के अनुसार दो माह के भीतर पर्याप्त प्रतिकर प्रदान करेगा।

(3) जिला विधिक सेवा प्राधिकरण, पुलिस थाने के भारसाधक अधिकारी से अनिम्न श्रेणी के पुलिस अधिकारी या न्यायिक या कार्यपालक मजिस्ट्रेट या संबंधित क्षेत्र के सक्षम चिकित्सा अधिकारी के प्रमाण–पत्र पर तत्काल प्राथमिक उपचार सुविधा या चिकित्सा लाभों को निःशुल्क उपलब्ध कराए जाने हेतु या किसी अन्य अंतरिम अनुतोष का, जैसा कि प्राधिकरण द्वारा उचित समझा जाए, आदेश दे सकेगा।

(4) प्रतिकर की राशि जिला विधिक सेवा प्राधिकरण द्वारा योजना से संलग्न अनुसूची में दिए गए मानक मानदण्डों के आधार पर विनिश्चित की जाएगी।

(5) जिला विधिक सेवा प्राधिकरण द्वारा यथा विनिश्चत प्रतिकर एक मुश्त या दो किश्तों में संदत्त किया जाएगा।

(6) जिला विधिक सेवा प्राधिकरण, अनुशंसा की प्राप्ति के साठ दिवस के भीतर संहिता की धारा 357 क की उपधारा (2) तथा (3) के अधीन प्रतिकर की मात्रा विनिश्चित करेगा।

(7) जिला विधिक सेवा प्राधिकरण, पीड़ित को कारित हानि, उपचार पर हुए चिकित्सा व्यय, पुनर्वास हेतु अपेक्षित न्यूनतम निर्वहन राशि के आधार पर प्रतिकर की मात्रा विनिश्चित करेगा।

(8) बलात्संग वाइडर ट्रॉमा के पीड़ित को प्रतिकर के मामले में, संबंधित जिले के परिवीक्षा अधिकारी को प्रभावी पुनर्वास तथा सतत् मूल्यांकन के लिए सूचित किया जाएगा।

(9) यदि विचारण न्यायालय, प्रतिकर के अनुतोष के पश्चात् की तारीख में निर्णय पारित करते समय संहिता की धारा 357 की उपधारा (3) के अधीन प्रतिकर के रूप में अभियुक्त को रकम संदत्त करने की लिए आदेश करता है तो अभियुक्त, संहिता की धारा 357 की उपधारा (3) के अधीन प्रतिकर की रकम के बराबर या संदत्त की जाने वाली आदेशित रकम, जो भी कम हो, देगा। पीड़ित या उसके दावेदार द्वारा, प्रतिकर की रकम के संवितरण के पूर्व इस प्रभाव का एक वचनबंध दिया जाएगा।

(10) योजना के अधीन विनिश्चित प्रतिकर की रकम पीड़ित प्रतिकर निधि से पीड़ित या उसके आश्रित को संवितरित की जाएगी। किसी अन्य अधिनियम के अधीन या राज्य की कोई अन्य स्कीम के अधीन अपराध के संबंध में कोई प्रश्न अर्थात् बीमा, जिसकी किश्तों का भुगतान राज्य अथवा केन्द्र शासन द्वारा किया गया हो से प्राप्त अनुग्रह राशि या प्राप्त भुगतान से पीड़ित को प्राप्त होगा, इस स्कीम के अधीन प्रतिकर की रकम का एक अंश के रूप में विचारण किया जाएगा, पीड़ित या उसके आश्रित जो उपरोक्त उल्लिखित समस्त स्त्रोतों से प्रतिकर की रकम प्राप्त करता है इस योजना के अधीन प्रतिकर का एक भाग समझा जाएगा तथा इस योजना के अधीन पृथक प्रतिकर का हकदार नहीं होगा। उपरोक्त समस्त स्त्रोतों से प्राप्त राशियां अनुसूची में प्रदत्त प्रतिकर की राशि से कम हो तो बकाया रकम निधि से प्रदाय की जाएगी।

(11) मोटरयान अधिनियम, 1988 (केन्द्रीय अधिनियम,1988 का 59) के अधीन आने वाले मामले, जिनमें मोटर दुर्घटना दावा अभिकरण द्वारा अनुतोष पारित किया जाता है, इस योजना में सम्मिलित नहीं होंगे।

(12) पीड़ित पक्षकार की समग्र स्त्रोतों से वार्षिक आय 5.00 लाख रूपये से अधिक होने पर अनुसूची एक में दी गई समस्त शीर्षों में प्रतिकर राशि 50 प्रतिशत देय होगी।

(13) इस स्कीम के अधीन जिला विधिक सेवा प्राधिकरण द्वारा पारित प्रतिकर के आदेश की एक प्रति, संहिता की धारा 357 की उपधारा (3) के अधीन प्रतिकर के आदेश पारित करने में समर्थ बनाने के लिए विचारण न्यायालय के अभिलेख में रखी जाएगी।

(14) जिला विधिक सेवा प्राधिकरण, पीड़ित या उसके आश्रित को प्रदत्त प्रतिकर राशि की वसूली के लिए विधि के सक्षम न्यायालय के समक्ष कार्यवाहियां संस्थित करेगा यदि बाद में वे अपात्र पाए जाते हैं या किसी अन्य अपराध में न्यायालय द्वारा दोषी करार दिए गए हों।

7. प्रतिकर का संवितरण.–

(1) प्रतिकर का संवितरण बैंक खाते से जुड़े आधार के माध्यम से किया जाएगा।

(2) पीड़ित, जो कि अवयस्क है, के मामले में, प्रतिकर की राशि अवयस्क के खाते में सावधि निक्षेप के रूप में, जमा की जाएगी, जो केवल उसके वयस्क होने पर ही निकाली जा सकेगी, आपवादिक मामलों में प्रतिकर की राशि, शैक्षणिक अथवा चिकित्सीय

आवश्यकताओं के लाभ हेतु जिला विधिक सेवा प्राधिकरण/अपील प्राधिकारी द्वारा निर्णीत सक्षम व्यक्ति द्वारा निकाली जा सकती है।

(3) अम्ल हमले के मामले में, ऐसे पीड़ित को ऐसी घटना होने के 15 दिवस के भीतर रूपये 1 लाख (एक लाख) संदत्त किया जाएगा।

8. प्रतिकर का नामंजूर किया जाना, रोकना अथवा कम करना .–

जिला विधिक सेवा प्राधिकरण प्रतिकर की राशि नामंजूर कर सकेगा, रोक सकेगा एवं कम कर सकेगा, जहां कि प्राधिकरण यह समझता है कि :–

(क) आवेदक, बिना युक्तियुक्त देरी के पुलिस अधिकारी को अपराध की सूचना देने में असफल रहा है;

(ख) आवेदक, अभियुक्त को न्यायाधिपति के समक्ष लाने में पुलिस अधिकारी अथवा अन्य प्राधिकारी के साथ सहयोग करने में असफल रहा है।

(ग) आवेदक, जिला विधिक सेवा प्राधिकरण तथा आवेदक से संबंधित अन्य किसी प्राधिकरी को युक्तियुक्त सहायता देने में असफल रहा है;

(घ) पीड़ित की पात्रता जो तथ्यों तथा मामलों की परिस्थितियों से प्रकट होती हों, प्रतिकर की राशि को न्यायाचित नहीं ठहराती हों।

9. आश्रित होने का प्रमाण–पत्र – प्रार्थी की तहसील के तहसीलदार या शासन द्वारा समय–समय पर नामित सक्षम प्राधिकारी द्वारा आश्रित प्रमाण–पत्र प्रार्थी द्वारा प्रार्थना पत्र जमा करने के पन्द्रह दिवस के अंदर जारी करेगा।

10. समय सीमा – पीड़ित अथवा उसके आश्रित द्वारा संहिता की धारा 357 क की उपधारा (4) के अधीन किया गया कोई भी दावा, अपराध घटित होने के एक सौ अस्सी दिवस की अवधि के पश्चात् ग्रहण नहीं किया जाएगा। जिला विधिक सेवा प्राधिकरण, यदि उसका समाधान हो जाता है तो लिखित में अभिलिखित किए जाने वाले कारणों से, उक्त दावे को फाइल करने में हुई देरी को माफ कर सकेगा।

11. अपील –

(1) कोई पीड़ित अथवा उसका आश्रित जो जिला विधिक सेवा प्राधिकरण द्वारा उसके दावे के खारिज किये जाने से व्यथित हो, नब्बे दिवस की कालावधि के भीतर राज्य विधिक सेवा प्राधिकरण के समक्ष अपील फाइल कर सकता है।

(2) प्रथम अपील प्राधिकारी जैसे राज्य विधिक सेवा प्राधिकरण के विनिश्चिय के विरूद्ध आदेश के दिनांक से 30 दिवस की कालावधि के भीतर द्वितीय अपील, सरकार के गृह विभाग को की जाएगी और द्वितीय अपील प्राधिकारी का विनिश्चिय अंतिम होगा :

परंतु यदि राज्य विधिक सेवा प्राधिकरण/सरकार का समाधान हो गया है तो वह लिखित में अभिलिखित किए जाने वाले पर्याप्त कारणों से अपील फाइल करने में हुए विलंब के लिए माफी दे सकेगी।

(3) जिला विधिक सेवा प्राधिकरण द्वारा किया गया तथा आवेदक द्वारा स्वीकार किया गया कोई विनिश्चिय सामान्य तौर पर अंतिम माना जाएगा। राज्य विधिक सेवा प्राधिकरण/सरकार यद्यपि बाद में किसी मामले का पुनः खोल सकेगी जहां कि पीड़ित की चिकित्सीय अवस्था मे ऐसा सारवान परिवर्तन हो गया है यदि प्रतिकर मूल निर्धारण के ज्यों का त्यों रखा जाना अनुज्ञात किए जाने से अन्याय हो सकताहै अथवा जहां कि उपहति के परिणामस्वरूप पीड़ित की मृत्यु हो गई है।

अनुसूची

पीड़ित को क्षति/हानि पर प्रतिकर राशि

नोट : पीड़ित पक्षकार की समग्र स्त्रोतों से वार्षिक आय 5.00 लाख रूपये से अधिक होने पर प्रतिकर राशि 50 प्रतिशत देय होगी।

स.क्र.	हानि या क्षति का विवरण	प्रतिकर की अधिकतम सीमा	
01	(क) जीवन की हानि (मृत्यु)	क. आय अर्जित करने वाले की मृत्यु की दशा में	अधिकतम रूपए 4.00 लाख तक
		ख. आय अर्जित न करने वाले की मृत्य की दशा में	अधिकतम रूपए 2.00 लाख तक
	(ख) भ्रूण की हानि या क्षति		रूपए 50 हजार तथा शासकीय चिकित्सालय में निःशुल्क इलाज
02	शरीर में स्थायीनिःशक्तता 100 प्रतिशत से अधिक होने पर	क. जहां पीड़ित आय अर्जित करता हो।	अधिकतम रूपए 3.00 लाख तक (शासकीय चिकित्सालय में निःशुल्क इलाज)
		ख. जहां पीड़ित कोई आय अर्जित न करता हो।	अधिकतम रूपए 1.50 लाख तक (शासकीय चिकित्सालय में निःशुल्क इलाज)
03	शरीर में स्थायी निःशक्त्ता 40 प्रतिशत से अधिक होने पर।	क. जहां पीड़ित आय अर्जित करता हो।	अधिकतम रूपए 2.00 लाख तक (शासकीय चिकित्सालय में निःशुल्क इलाज)
		ख. जहां पीड़ित कोई आय अर्जित न करता हो।	अधिकतम रूपए 1.00 लाख तक (शासकीय चिकित्सालय में निःशुल्क इलाज)
04	(क) महिला की प्रजनन क्षमता की स्थायी क्षति (बलात्कार को छोड़कर अन्य आपराधिक घटना में)		अधिकतम रूपए 1.50 लाख तक (शासकीय चिकित्सालय में निःशुल्क इलाज)

	(ख) शरीर के महत्वपूर्ण भाग पर गंभीर चोट अथवा शल्य क्रिया	क. जहां पीड़ित आय अर्जित करता हो।	अधिकतम रूपए 50 हजार तक (शासकीय चिकित्सालय में निःशुल्क इलाज)
		ख. जहां पीड़ित कोई आय अर्जित न करता हो।	अधिकतम रूपए 25 हजार तक (शासकीय चिकित्सालय में निःशुल्क इलाज)
05	(क) सामूहिक बलात्कार		अधिकतम रूपए 3.00 लाख तथा शासकीय चिकित्सालय में निःशुल्क इलाज
	(ख) अवयस्क बच्चों के साथ लैंगिक अपराध		अधिकतम रूपए 2.00 लाख तथा शासकीय चिकित्सालय में निःशुल्क इलाज
06	(क) एसिड अटैक से कुरूपता 40 प्रतिशत से अधिक होने पर		अधिकतम रूपए 3.00 लाख तक जिसमें से 1.00 लाख रूपए सूचना दिनांक के 15 दिवस के अंदर एवं शेष राशि 2.00 के अंदर एवं शेष राशि 2.00 लाख रूपए दो माह के अंदर तथा शासकीय चिकित्सालय में निःशुल्क इलाज
	(ख) एसिड अटैक से कुरूपता 40 प्रतिशत से कम होने पर		अधिकतम रूपए 1.50 लाख तक जिसमें से 50 हजार रूपए सूचना दिनांक के 15 दिवस के अंदर एवं शेष राशि दो माह के अंदर तथा शासकीय चिकित्सालय में निःशुल्क इलाज

•

MADHYA PRADESH CRIME VICTIM COMPENSATION SCHEME, 2015

S.No. 1686-2015-two-C-1:-In exercise of the powers conferred by section 357A of the Code of Criminal Procedure.1973 (2 of 1974), the State Government in co-ordination with the Central Government, hereby make the following scheme for providing funds for the purpose of compensation and deciding the quantum of compensation to the crime victims or their dependents, according to their financial Status, who have suffered loss or injury as a result of the crime and who require rehabilitation, namely :-

1. Short title, extent and commencement –

(a) This scheme may be called the Madhya Pradesh Crime Victim Compensation Scheme, 2015.

(b) It shall extend to the whole State of Madhya Pradesh.

(c) It shall come into force from the date of its publication in the Madhya Pradesh Gazette.

2. Definitions. - In this scheme, unless the context otherwise requires, -

(a) “Applicant” means a victim or the depended of a victim who applies for compensation ;

(b) “Code” means the Code of Criminal Procedure, 1973 (No. 2 of 1974)

(c) “Fund” means the Victim Compensation Fund constituted under para 3 of the said Scheme :

(d) “injury” means any injury specified in the Schedule appended to this Scheme ;

(e) “loss”, includes loss to any property occurred as a result of any injury caused by reason of the criminal act or omission on the part of the accused ;

(f) “Offence” means, any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (No. 1 of 1871) ;

(g) “Probation Officer” means an officer appointed by the State Government as a Probation Officer under section 13 of the Probation of Offenders Act, 1958 (No. 20 of 1958)

(h) “Schedule” means the Schedule appended to this Scheme:

(i) “State” means the State of Madhya Pradesh.

(j) “Victim” means a person who has suffered any loss or injury caused by reason of the criminal act or omission on the part of the accused and who requires rehabilitation under this scheme and includes the guardian or legal heir of such person, but does not include a person who is responsible for injury to such person ;

(k) "Dependent" means and includes wife, husband, father, mother, unmarried daughter and minor children of victim as determined by the authority empowered to issue dependency certificate or any other authority authorized by Government in this regard ;

(l) All other words and expressions used herein and not defined, but defined in the Criminal Procedure Code, 1973 (No. 2 of 1974), Indian Penal Code, 1860 (No. 45 or 1860) or the Madhya Pradesh General Clauses Act have the same meanings respectively as assigned to them in the said Acts.

3. Constitution of Crime Victim Compensation Fund. -

(a) There shall be constituted a Fund to be called by the "Victim Compensation Fund"

(b) The Victim Compensation Fund shall consist of :-

(i) Budgetary allocation made in the annual budget by the State:

(ii) Receipt of amount of fines imposed-under section 357 of the Code;

(iii) Donations and contributions received from International or National Charitable Institutions, Organizations and individuals.

(c) The amount in the Fund shall be deposited in Public Account under a new head of account.

(d) The existing head of account in which the fines and fees are deposited as per section 357 of the Code have to be credited to the newly opened head of account.

(e) The Home Department shall be the Nodal Department for regulating, administering and monitoring the said Scheme.

(f) The member-Secretary of the Madhya Pradesh State Legal Services Authority shall operate the Fund constituted under the Scheme.

(g) The State Legal Service Authority shall be accountable for its functions under the scheme and also for furnishing periodical returns of the amounts allotted to them by the State Government through the Nodal Department.

4. Monitoring of Scheme :- For the purpose of monitoring the scheme the State and District level Committees shall be constituted and shall consist of the following :-

State Level Committee

(i)	Principal Secretary, Government of Madhya Pradesh Home Department	-	Chairman
(ii)	Principal Secretary, Government of Madhya Pradesh Law and Legislative Affairs Department	-	Member

(iii) State Legal Services Authority, Government of Madhya Pradesh - Member

(iv) Deputy Secretary, Government of Madhya Pradesh Home Department - Secretary

District Level Committee

(i) District and Sessions Judge of the District - Chairman

(ii) District Magistrate of the District - Member

(iii) District Superintendent of Police of the District - Member

(iv) District Legal Services Authority - Secretary

(a) The State Level Committee shall hold quarterly meeting to review the pendency of applications and appeals.

(b) The State Legal Service Authority, Shall present state level data after collecting the data from the concerned district and shall submit to the State level Committee.

(c) The District level committee shall meet and review the pending cases in the first week of every month.

5. Eligibility for compensation –

The victim or his dependent shall he eligible for compensation under the scheme in the following cases, namely :-

(1) Where a recommendation is made by the Court under sub-section (2) or sub-section (3) of section, 357 A of the Code, the District Legal Services Authority or State Legal Services Authority will decide the amount of compensation;

(2) Where the trial Court makes a recommendation, on conclusion of the trial, when it is satisfied that the compensation awarded under section 357 of the Code is not adequate for such rehabilitation or where the case ends in acquittal or discharge and the victim has to be rehabilitated; or

(3) Where the offender is not traced or identified, but the victim is identified and where no trial takes place or the Trial Court has not passed any order for award/compensation to the victim and in which case, the victim or his dependent may make an application to the District Legal Services Authority;

(4) The crime, on account of which the compensation is to be paid under the scheme, should have been occurred within the State or crime started in the State.

Exception – In case, the crime has occurred outside the State and the victim is found within the limit of the State, he shall be eligible for interim relief contemplated under sub-section (6) of section 357-A of the Code.

6. Procedure for grant of compensation –

(1) On receipt of the recommendation by the trial Court, appellate Court, High Court or Court of Session when exercising its power on application under sub-section (4) of section 357-A of the Code, the State or the District Legal Services Authority shall, after due enquiry through appropriate authority as deemed fit by the State or the District Legal Services Authority, award adequate compensation by completing the enquiry within two months.

(2) The District Legal Services Authority shall examine and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the crime. The Authority may call for any relevant information's necessary to determine the genuineness of the claim. After verifying the claim and conducting due enquiry, the District Legal Services Authority shall award adequate compensation within two months, in accordance with the provisions of the scheme.

(3) The District Legal Services Authority may order for immediate first-aid facility or medical benefits to be made available free of cost, on the certificate of the Police Officer not below the rank of an officer-in-charge of the police station or a Judicial or Executive Magistrate or a competent medical officer of the area concerned or any other interim relief as deemed fit by the Authority.

(4) The amount of compensation will be decided by the District Legal Services Authority based on the standard criteria give in the Schedule appended to the scheme.

(5) Compensation shall be paid as a single lump sum or in two installments as decided by the District Legal Services Authority

(6) The District Legal Services Authority shall decide the quantum of compensation under sub-section (2) and (3) of section 357-a of the Code within sixty days of the receipt of the recommendation.

(7) The District Legal Services Authority shall decide the quantum of compensation on the basis of loss caused to the victim, medical expenses occurred on treatment, minimum sustenance amount required for rehabilitation.

(8) In the case of compensation to victim of rape/victim wide trauma, the matter shall be informed to the probation officer in the district concerned for effective rehabilitation and continuous evaluation.

(9) If the trial Court, while passing judgment at a date later than the award of compensation, order the accused person to pay any amount by way of compensation under sub-section (3) of section 357 of the Code, the accused person shall remit an amount equal to the amount of compensation or the amount ordered to be paid under sub-section (3) of section 357 of the Code, whichever is less. An undertaking to

this effect shall be given by the victim or his claimant before the disbursal of the compensation amount.

(10) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependent from the Victim Compensation Fund. Compensation received by the victim from the State in relation to crime in question, namely, insurance whose premium has been paid by the State or Central Government, ex-gratia or payment received under any other Act or any other State scheme, shall be considered as part of the compensation amount under this scheme. The victim or his dependent who has received compensation amount from collateral sources mentioned above shall be deemed to have been compensated under this scheme and shall not be entitled to separate compensation under this scheme. If the eligible compensation amount exceeds the payment received by the victim from collateral sources mentioned above, the balance amount shall be paid out of the Fund.

(11) The cases covered under the Motor Vehicles Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accidents Claims Tribunal, Shall not be covered under the Scheme.

(12) If the annual income of the victim person, from all the sources of income, exceeds Rupees Five Lakh (Rupees 5 Lakh) then, the compensation as given in different categories of Schedule, amount payable would be 50% (Fifty Percent only)

(13) Copy of the order of compensation passed by the District Legal Services Authority under this scheme shall be placed on record of the trial court to enable the court to pass an order of compensation under sub-section (3) of section 357 of the Code.

(14) The District Legal Services Authority, shall institute proceedings before the competent court of law for recovery of the compensation, granted to the victim or his dependent, from the accused if found ineligible later.

7. Disbursement of compensation.

(1) Disbursement of compensation will be done, through the Aadhar Linked Bank account.

(2) In the case of a victim who is a minor, the amount of Compensation awarded shall he deposited in the account of the minor as fixed deposit, to be withdrawn only on attainment of his majority. In exceptional cases, the amount of compensation can be withdrawn for educational or medical needs of the beneficiary by the competent person as decided by the District Legal Services Authority/Appeal Authorities.

(3) In case of acid attack a sum of 1 lakh (one lakh) shall be paid to such victim within 15 days of such incidents.

8. Rejection, withholding or reduction of compensation –

The District Legal Services Authority may reject, withhold or reduce the award of compensation where the Authority considers that –

(a) The applicant failed to inform the crime to the Police Officer without reasonable delay :

(b) The applicant failed to co-operate with the police officer or other Authority to bring the accused before justice ;

(c) The applicant failed to give all reasonable assistance to the District Legal Services Authority or other related authorities in connection with the application.

(d) The eligibility of the victim as shown by the facts and circumstances of the case does not justify award of compensation.

9. Dependency Certificate –

The Tehsildar concerned or the authority designated as competent authority by the Government from time to time, shall issue Dependency Certificate within a period of fifteen days from the date of the application.

10. Limitation –

No claim made by the victim or his dependent under sub-section (4) of section 357 A of the Code shall be entertained after a period of one hundred and eighty days from the occurrence of the crime. The District Legal Services Authority, if satisfied, for reasons to be recorded in writing, may condone the delay in filing the said claim.

11. Appeal.

(1) any victim or his dependents aggrieved by the rejection of his/her claim by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days ;

(2) A second appeal shall lie to Government in Home Department against the decision of 1st Appeal Authority, viz. State Legal Services Authority within a period of 30 days from the date of decision of the first Appeal Authority and the decision of section Appeal Authority shall be final :

Provided that the State Legal Services Authority /Government if satisfied, for sufficient reasons to be recorded in writing, may condone the delay in filing the appeal.

(3) A decision made by the District Legal Services Authority and accepted by the applicant will normally be considered as final; The State Legal Services Authority/Government may, however, subsequently re-open a case where there has been such a material change in the medical condition of the victim

that injustice would occur if the original assessment of compensation where allowed to stand, or where the victim has died in consequence of the injury.

SCHEDULE
COMPENSATION TO VICTIMS FOR INJURY/LOSS

Note : If annual income of the victim person, from all the sources of income, exceeds Rupees Five Lakh (Rupees 5 Lakh) then, the Compensation amount payable would be 50% of the limit prescribed.

Sl. No.	Details of Loss or Injury	Maximum limit of Compensation	
1	a. Loss of life (Death)	a. Death of an earning member	Maximum upto Rs. 4.00 Lakh
		b. Death of a non earning member.	Maximum upto Rs. 2.00 Lakh
	b. Loss of Fetus		Maximum upto Rs. 50,000 and free medical treatment in Government Hospitals
2	In case of permanent disability being 100%	a. Victim being the earning member	Maximum upto Rs. 3.00 Lakh (Free medical treatment in Government Hospital)
		b. Victim not being the earning member	Maximum upto Rs. 1.50 Lakh (Free Medical treatment in Government Hospital)
3	In case of Permanent disability being more than 40%	a. Victim being the earning member	Maximum upto Rs. 2.00 Lakh (Free medical treatment in Government Hospital)
		b. Victim not being the earning member	Maximum upto Rs. 1.00 Lakh (Free Medical treatment in Government Hospital)
4	(a) Loss of fertility (due to other criminal incident except rape)		Maximum upto Rs. 1.50 Lakh (Free Medical treatment in Government Hospital)
	(b) Serious injury to vital part of body or surgery	a. Victim being the earning member	Maximum up to Rs. 50,000 (Free medical treatment in Government Hospital)
		b. Victim not being the earning member	Maximum up to Rs. 25,000 (Free Medical treatment in Government Hospital)

5	a. Gang Rape	Maximum up to Rs. 3.00 Lakh and Free medical treatment in Government Hospital
	b. Sexual crime with minors	Maximum up to Rs. 2.00 Lakh and Free medical treatment in Government Hospital
6	a. Acid attack leading to disfiguration of more than 40%	Maximum up to Rs. 3.00 Lakh out of which Rs. 1.00 Lakh to paid within 15 days of intimation date and balance amount Maximum Rs. 2.00 Lakh within 2 months and Free medical treatment in Government Hospital
	b. Acid Attack leading to disfiguration of less than 40%	Maximum up to Rs. 1.50 Lakh out of which Rs. 50,000 to paid within 15 days of intimation date and balance amount within 2 months and Free medical treatment in Government Hospital.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
देव प्रकाश गुप्ता, सचिव.

•