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JABALPUR

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

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SUBJECT- INDEX

(ii) Consolidation of suits – In previously instituted suit, relief of injunction was sought and in subsequently instituted suit relief of declaration and injunction were sought – Final decision in previously instituted suit would not operate as *res judicata* in the subsequent suit – To avoid multiplicity of proceedings, consolidation of both suits would be in the interest of justice.

धाराएं 10 एवं 151 – (i) वाद का रोका जाना – धारा 10 की प्रयोज्यता – परीक्षण यह है कि क्या यदि पूर्व संस्थित वाद में अंतिम विनिश्चय होगा तो ऐसा निर्णय पश्चातवर्ती संस्थित वाद के लिए *पूर्व न्याय* का प्रभाव रखेगा।

(ii) वादों का समेकन – पूर्व संस्थित वाद में निषेधाज्ञा की सहायता चाही गई थी तथा पश्चातवर्ती संस्थित वाद में घोषणा तथा निषेधाज्ञा की सहायता चाही गई थी – पूर्व संस्थित वाद का अंतिम विनिश्चय पश्चातवर्ती संस्थित वाद पर *पूर्व न्याय* का प्रभाव नहीं रखेगा – कार्यवाही की बाहुल्यता को रोकने के लिए, दोनों वादों का समेकन न्यायहित में है। **110*** **120**

Secton 96 r/w Order 41 Rule 31 – First appeal – Mandatory requirements – Conscious application of mind must be reflected in the judgment of the Appellate Court and findings on all questions of fact and law must be supported by reasons – Arguments rendered by parties should also be mentioned in the judgment.

धारा 96 सहपठित आदेश 41 नियम 31 – प्रथम अपील – अनिवार्य अपेक्षाएं – अपीलीय न्यायालय के निर्णय में मस्तिष्क के सचेतन उपयोग का प्रदर्शन होना ही चाहिए एवं तथ्य और विधि के सभी प्रश्नों के निष्कर्ष कारणों से समर्थित होने चाहिए – निर्णय में पक्षकारों द्वारा प्रस्तुत तर्कों का भी विवरण दिया जाना चाहिए। **111** **120**

Order 1 Rule 10 and Order 6 Rule 4 (a) – Impleadment of State as party – Dispute exists between plaintiff and Krishi Upaj Mandi with regard to boundary wall – No agricultural land is involved – Relief could not be sought against the State and provisions of Order 6 Rule 4 (a) of the Code shall not be attracted.

आदेश 1, नियम 10 एवं आदेश 6 नियम 4(क) – राज्य को पक्षकार के रूप में जोड़ा जाना – वादी तथा कृषि उपज मण्डी के बीच चारदीवारी के सम्बंध में विवाद विद्यमान है – कृषि भूमि संलिप्त नहीं है – राज्य के विरूद्ध कोई सहायता नहीं मांगी जा सकती थी और संहिता के आदेश 6 नियम 4(क) के प्रावधान आकर्षित नहीं होंगे। **112*** **121**

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आदेश 14 – वाद प्रश्न की विरचना – जहां पक्षकार दूसरे पक्ष के प्रकरण को पूरी तरह से जानते हुए विचारण के लिए जाते हैं और अपने–अपने दावे के समर्थन में साक्ष्य प्रस्तुत करते हैं, किसी वाद प्रश्न को विरचित करने में चूक विचारण को दूषित नहीं करती है। **162 (ii)** **181**

Common object – Deeming fiction – Offence committed by one member of unlawful assembly to the others having common object – Mere presence in an assembly would not constitute an offence – Courts to be more circumspect and cautious while dealing with a case u/s 149 IPC – Higher degree of onus is on the prosecution to prove the case u/s 149.

Inseparable discrepancies – Material discrepancies shaking the very credibility, leading to a conclusion in the mind of the Court that it is neither possible to separate it nor to rely upon – It is for the Court to either accept or reject it.

धाराएं 96, 97, 149 एवं 302 – प्राइवेट प्रतिरक्षा का अधिकार – प्रारंभिक प्रमाण भार अभियुक्त पर होता है जो संभावनाओं की प्रबलता की सीमा तक उन्मोचित करना होता है जिसके बाद प्रमाण भार राज्य पर आ जाता है – केवल दो प्रश्नों का उत्तर आवश्यक है, क्या प्राइवेट प्रतिरक्षा धारा 96 से धारा 102 भा.दं.सं. के अंतर्गत आती है और क्या प्राइवेट प्रतिरक्षा के अधिकार का अतिक्रमण किया गया।

सामान्य उद्देश्य – उचित कल्पना – विधि विरूद्ध जमाव के सदस्य द्वारा सामान्य उद्देश्य के अग्रसरण में किया गया कार्य – केवल घटना स्थल पर उपस्थित होना अपराध गठित करने के लिये पर्याप्त नहीं – न्यायालय को धारा 149 भा.दं.सं. के मामले में सतर्क और चौकन्ना रहकर कार्य करना चाहिए – धारा 149 भा.दं.सं. को प्रमाणित करने के लिए अभियोजन पर उच्च श्रेणी का प्रमाण भार रहता है।

अपृथक्करणीय विसंगतियाँ – तात्विक विरोधाभास जो साक्षी के कथनों को संदेहास्पद बनाते हों एवं जिन्हें अलग नहीं किया जा सकता, न्यायालय को स्वविवेक से तय करना है कि उन्हें स्वीकार या अस्वीकार करे। **130 (ii), 144 (iii) & (v)**

Sections 120B, 201, 302 and 364 – See Section 439 of the Criminal Procedure Code, 1973.

धाराएं 120ख, 201, 302 एवं 364 – देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 439। **120* 128**

Sections 148 and 302/149 – (i) Testimony of related witness – Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person – The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully.

(ii) Evidence in case of unlawful assembly – Where a crowd of several assailants who are members of unlawful assembly proceed to commit an offence of murder in furtherance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailant or to remember each and every blow delivered to victim – Therefore, some omissions and

contradictions are normal considering the lapse of time, their state of trauma and shock.

धाराएं 148 एवं 302/149 – (i) हितबद्ध साक्षी की विश्वसनीयता – सामान्यतः निकट संबंधी अंतिम ही होगा जो वास्तविक अभियुक्त को बचाये और निर्दोष व्यक्ति को मिथ्या अलिप्त करे। रिश्तेदारी अथवा साक्ष्य की हितबद्ध प्रकृति न्यायालय पर साक्ष्य की जांच और अधिक सतर्कता से करने का उत्तरदायित्व रखती है।

(ii) विधि विरुद्ध जमाव के संबंध में साक्ष्य – जहां कई आक्रामकों की भीड़ जो कि विधि विरुद्ध जमाव के सदस्य हैं, विधि विरुद्ध जमाव के सामान्य उद्देश्य के अग्रसरण में हत्या का अपराध करने के लिए अग्रसर होते हैं, तब बहुधा साक्षियों के लिए यह संभव नहीं होता है कि वे प्रत्येक आक्रामक द्वारा निभाई गई भूमिका का सटीक वर्णन करें अथवा पीड़ित को कारित प्रत्येक प्रहार को याद रखे। इस प्रकार समय के व्यतीत होने और आघात तथा सदमे को विचार में ले तो कुछ लोप और विरोधाभास सामान्य है। **131 146**

Section 149 – Common object – Innocent bystanders should not be implicated for constructive liability – Only if it is proved by the prosecution that common object of the unlawful assembly was shared by any bystander or onlooker then only such bystander or onlooker should be convicted under the principle of constructive liability.

धारा 149 – सामान्य उद्देश्य – निर्दोष तमाशाई को आन्वयिक दायित्व के लिये अपराध में संलिप्त नहीं मानना चाहिए – यदि अभियोजन द्वारा यह प्रमाणित किया जाता है कि किसी तमाशाई या दर्शक द्वारा भी विधि विरूद्ध जमाव के सामान्य उद्देश्य को साझा किया गया था तब ही ऐसे तमाशाई या दर्शक को आन्वयिक दायित्व के आधार पर दोषसिद्ध किया जा सकता है। **132 147**

Sections 279 and 304-A – Punishment – In the case of Section 304-A of IPC, if it is proved at the time of accident driver was drunk or affected by any other substance because of which he was unable to drive carefully, then the punishment must be strict and harsh.

धाराएं 279 एवं 304–क – दण्ड – यदि धारा 304–क भा.दं.सं. के प्रकरण में यह साबित होता है कि दुर्घटना के समय दुर्घटना कारित करने वाले वाहन का चालक मदिरा के प्रभाव में था या किसी ऐसे पदार्थ के प्रभाव में था जिसके कारण वह सावधानीपूर्वक वाहन चलाने में सक्षम नहीं था तब दण्डादेश निश्चित रूप से सख्त होना चाहिए। **133 148**

Sections 300 and 302 – Murder – Once the prosecution establishes the existence of necessary ingredients forming a part of "thirdly" in Section 300, intention or knowledge on the part of accused to cause death is irrelevant.

नियम 18 (6) परन्तुक – अंतरिम अभिरक्षा – क्षेत्राधिकार – प्राधिकृत अधिकारी, न्यायिक मजिस्ट्रेट को अपराध के संबंध में सूचना दिए जाने से पूर्व जप्तशुदा संपत्ति की अंतरिम अभिरक्षा प्रदत्त कर सकता है – न्यायिक मजिस्ट्रेट को सूचना प्राप्त होने के बाद अंतरिम अभिरक्षा प्रदान करना अथवा इंकार करने की शक्ति आत्यांतिक रूप से न्यायिक मजिस्ट्रेट में अंतर्निहित होती है। **149** **167**

MOTOR VEHICLES ACT, 1988
मोटर यान अधिनियम, 1988

Section 147 r/w/s 2 (34) – Public place – Factory premises – Accident took place inside the factory premises which fall under the definition of section 2(34) of the Act as public place – Insurance company is liable.

धारा 147 सपठित धारा 2 (34) – लोक स्थान – दुर्घटना कारखाना परिसर के अंदर हुई – जो अधिनियम की धारा 2(34) के अन्तर्गत लोक स्थान की परिभाषा में आता है – बीमा कम्पनी दायित्वधीन है। **150*** **168**

Section 166 – Assessment of income – Engineering student – Deceased was second year Engineering student at the time of accident – Tribunal awarded a sum of ₹ 7,58,000/- which was enhanced by High Court to ₹ 10,04,937/- – Apex Court further awarded a sum of ₹ 5,00,000/- after considering the facts of education and job probability of the deceased.

धारा 166 – आय का निर्धारण – अभियांत्रिकी का छात्र – मृतक अभियांत्रिकी का द्वितीय वर्ष का छात्र था – अधिकरण ने ₹ 7,58,000/– का अवार्ड पारित किया जिसको उच्च न्यायालय ने बढ़ाकर ₹ 10,04,937/– कर दिया – सर्वोच्च न्यायालय ने मृतक की शिक्षा तथा नौकरी की संभावना के तथ्य को विचार में लेते हुए अवार्ड में अतिरिक्त ₹ 5,00,000/– की वृद्धि की। **150*** **169**

Section 166 – Motor accident – Injury – Claimant suffered serious and grievous injuries including five fractures – No permanent disability was proved – Claimant was not found entitled for compensation for loss of future earnings.

धारा 166 – मोटर दुर्घटना – क्षति – आवेदक को गंभीर क्षति कारित हुई थी जिसमें पांच अस्थिभंग भी थे – स्थाई निर्योग्यता को प्रमाणित नहीं किया गया – आवेदक भविष्य की हानि के मद में प्रतिकर प्राप्त करने का अधिकारी नहीं पाया गया। **152*** **169**

Section 166 – Assessment of compensation – Injured suffered 100 percent permanent disablement – Would require an attendant for the rest of his life – Tribunal awarded ₹ 4,81,000/- – High Court enhanced the compensation to ₹ 13,08,000/- – Apex Court further allowed enhancement and specially ₹ 6,00,000/- for attendant, transportation and special diet.

Sections 138 and 141 – (i) Debt or liability – Advance payment – If there is a breach in the condition of advance payment, it would not incur criminal liability u/s 138 since there was no legally enforceable debt or liability at the time when the cheque was drawn.

(ii) Gift – A cheque given as a gift and not for the satisfaction of a debt or liability would not attract the provision of section 138.

(iii) Post dated cheque – The term 'debt' also includes a sum of money promised to be paid on a future date by reason of a present obligation – A post-dated cheque issued after debt has been incurred would be covered by the definition of debt.

(iv) Offence by company – Incharge Officer – Whether the individual was incharge or responsible for the affairs of the company during the commission of the offence is the test to determine the liability of Director or Managing Director.

(v) Security cheque – Cheque furnished as security is covered under provision of section 138.

धाराएं 138 एवं 141 – (i) ऋण या दायित्व – अग्रिम भुगतान – यदि अग्रिम भुगतान की शर्त का भंग हुआ है तब यह धारा 138 के अन्तर्गत आपराधिक दायित्व उत्पन्न नहीं करता है क्योंकि जब चेक जारी किया गया था तब कोई ऋण या दायित्व नहीं था।

(ii) उपहार – चेक का उपहार स्वरूप न कि किसी ऋण या दायित्व की संतुष्टि हेतु दिया जाना, धारा 138 के प्रावधानों को आकर्षित नहीं करता है।

(iii) उत्तर दिनांकित चेक – शब्द 'ऋण' के अन्तर्गत ऐसी राशि भी सम्मिलित है जिसको वर्तमान दायित्व के कारण भविष्य के किसी दिनांक को भुगतान करने का वचन दिया गया हो – दायित्व उत्पन्न होने के उपरांत जारी किया गया उत्तर दिनांकित चेक ऋण की परिभाषा द्वारा आच्छादित है।

(iv) कम्पनी द्वारा अपराध – भारसाधक अधिकारी – निदेशक या प्रबंध निदेशक के दायित्व का निर्धारण करने के लिए परीक्षा यह है कि क्या वह व्यक्ति अपराध के घटित किए जाते समय कम्पनी के संव्यवहार का भारसाधक एवं जिम्मेदार रहा है।

(v) सुरक्षा चेक – सुरक्षा बतौर जारी किया गया चेक धारा 138 के प्रावधान द्वारा आच्छादित है।

159 177

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005

Sections 2(s) and 19 (1)(f) – Alternate accommodation – Alternate equivalent accommodation as per section 19 (1) (f) of D.V. Act, does not mean that the alternate accommodation must be totally identical to previously shared house hold although, there should be similar luxury and comfort in the alternate accommodation also.

EDITORIAL

Esteemed Readers,

In the past, new judges were expected to somehow acquire the requisite knowledge of how to be a judge at their own. Perhaps it was thought that judicial know-how was absorbed through the process of osmosis. One of the myths of our legal culture was that a judge by dint of their experience as a judge was fully equipped to conduct a judicial trial. (***Chief Justice of Australia Sir Anthony Mason, The State of the Judicature' (1994) 68 Australian L 125-134, 133***). With the passage of time, imparting judicial education as a method to equip the judiciary individually and institutionally to cope with the problems and challenges confronting the courts became a viable option.

As observed by the Law Commission of India, judicial education has an important role to play in helping the courts respond to all germane issues. However, simply training judges in courtroom procedures or updating them on recent court decisions is barely scratching the surface of what needs to be done. Judicial education must focus not only on helping judges to master content but also on helping them to develop multifaceted abilities that they require to meet the complex demands of justice. Judicial education should not be merely confined to the discussion of legal principles, judicial activities and court administration, it should also extend to aspects of the interaction between law and society. Thus, the concept of continuing judicial education has gained considerable importance.

Another aspect of this discourse is that the need for judicial education to be judge-led has become more object-oriented. This catch cry of judicial education can mean a variety of things, including, but not limited to the fact that it can highlight the importance of judges at the helm of their own education programme, it can mean that the continuing education should preserve judicial independence from any risk of indoctrination; and it can also be used to express the view that judges should be the masters of their own learning. Whenever the clouds of vagueness around the word 'judge-led' may dissipate, it is symptomatic of a view that judges, in particular see themselves as the best arbiter of their learning needs and how to meet them and, within this self-image, see any notion of external prescription as anathema. This imperative for judge-led education should not be mazed with the need for expert assistance to facilitate meaningful learning.

In the months of May & June, we conducted Interactive Session on – Key Issues relating to cases under the Protection of Women from Domestic

Violence Act, 2005 for the Judges dealing with such cases, Institutional Advance Training Course for District & Additional Sessions Judges (Entry Level) appointed on promotion, Interactive Session on – Key issues relating to offences and trial under the Electricity Act, 2003 for the Special Judges dealing with cases under the Act. Apart that, under the e-Committee Special Drive Training and Outreach Programme, the Academy conducted Programmes for Master Trainers Programme for New Master Trainers, Advocates/Advocate Clerks E-courts Programme at Taluka level, Court Managers & Administrative Head Staffs of District Judiciary and Technical Staffs and NIC Coordinators at High Court. Around 246 Judges and 1367 other stakeholders of the Justice Dispensation System participated in these eight programmes.

As we are entering the second half of 2022 and when we look back on the roster of achievements of the Academy, the only thing to learn would be that we have achieved many things but we still have more to accomplish. These were unprecedented times, something which even the most farsighted people could not have anticipated. Despite our setbacks during the pandemic, we were able to wade through all these obstacles and come to the other side stronger, sharper and motivated now more than ever.

With every issue of this Journal, we try to bridge the gap between our literature and perfection. Every word of every article is examined with a fine-tooth comb to ensure maximum utility for our readers. A major contribution is attributed to our respected readers who work with us in this pursuit of literary excellence. Hence, to make your opinion heard, kindly send us your feedback as we encourage and appreciate the efforts taken by our esteemed readers in making this part of judicial literature as close to perfection as it can get.

Lastly, while penning the editorial of this 161st issue of JOTI Journal, I am filled with a profound sense of poignance as my present tenure as Director of the Academy has come to a close. A very popular saying goes, part of the journey is the end and thus, it is a good time to look back on all our collective achievements, none of which could have been possible without our combined efforts. I will forever cherish these moments as I move through the twists and turns of life. I am grateful to everyone for the support and guidance.

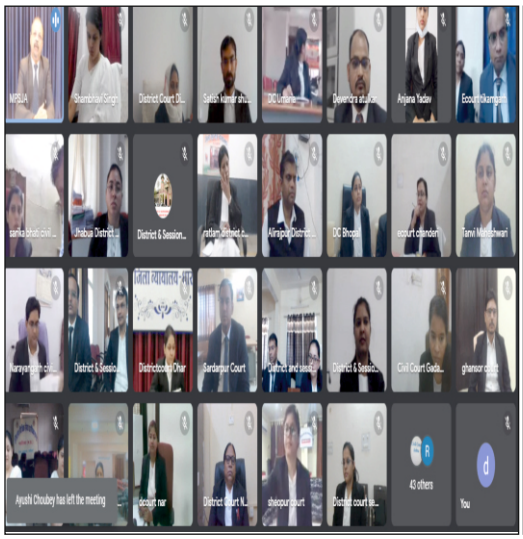
Ramkumar Choubey
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

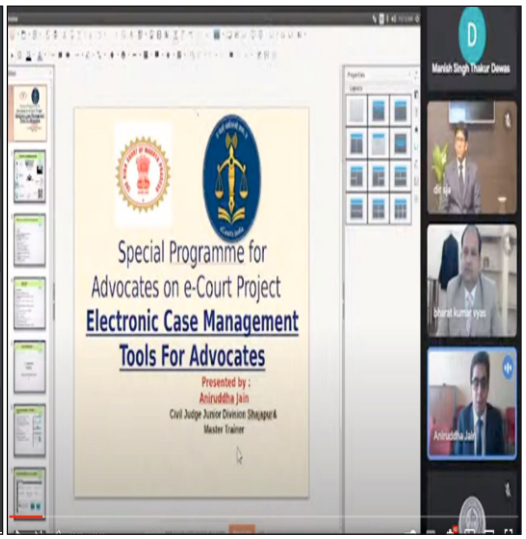
Master Trainers Programme for New Master Trainers (ECT_3_2022) under "e-Committee Special DriveTraining and Outreach Programme through the State Judicial Academies" (15.05.2022 & 16.05.2022)

Institutional Advance Training Course for District & Additional Sessions Judges (Entry Level) (30.05.2022 to 25.06.2022)

GLIMPSES OF EDUCATIONAL PROGRAMMES CONDUCTED ONLINE



Interactive Session on - Key issues relating to cases under the Protection of Women from Domestic Violence Act, 2005 (07.05.2022)



Advocate/Advocate Clerk e-Courts Programme at Taluka/Village (ECT-7-2022) (07.05.2022)

Programme for Court Managers & Administrative Head Staff of District Judiciary and Technical Staffs and NIC (ECT-5-2022) (11.06.2022 & 12.06.2022)

Interactive Session on - Key issues relating to offences & trial under the Electricity act, 2003 (25.06.2022)

TRANSFER OF
HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV
TO DELHI HIGH COURT

Hon'ble Shri Justice Purushaindra Kumar Kaurav, who occupied the august office of the Judge of the High Court of Madhya Pradesh for approximately eight months has been transferred to the High Court of Delhi as Judge.

His Lordship was born on 4th October 1976 at Village Dongargaon, Tehsil Gadarwara District Narsinghpur (M.P.). After obtaining degrees of B.A from RDVV, Jabalpur (M.P.) and LL.B. from NES Law College Jabalpur (M.P.)., enrolled as an Advocate on 31st July, 2001 with State Bar Council of Madhya Pradesh. His Lordship started practice under the able guidance of his maternal uncle Shri V.S Choudhary, Advocate and independent practice from the year 2006 onwards in various fields of Law.

His Lordship held the posts of Deputy Advocate General and Additional Advocate General as also Advocate General twice from 2009 to 2020 till elevation.

His Lordship, as an advocate, served in different capacities as Member, Supreme Court Legal Service Committee, Chairman, Special Committee of the State Bar Council of M.P., Joint Secretary of Madhya Pradesh High Court Bar Association, Member of the Supreme Court Bar Association, New Delhi and M.P. High Court Bar Association, Jabalpur, Member of Executive Council. Served in different capacities with various educational bodies like State Universities and Colleges, Ex-officio member in the Governing Council and Executive Council of the National Law Institute University at Bhopal (M.P.) and Dharmashastra National Law University, Jabalpur (M.P.). Was Special Counsel for the office of the Hon'ble Chancellor of M.P. (who happens to be Hon'ble Governor of Madhya Pradesh), appointed as Amicus Curie by High Court of Madhya and Court Commissioner by the Supreme Court. Was part of various Committees of High Court as Advocate General, such as Arrears Committee, Rule Making Committee, Dispute Resolution Committee etc.

His Lordship represented the State of Haryana and appeared in various cases for High Courts of Madhya Pradesh, Delhi, Chhattisgarh, Allahabad, Andhra Pradesh, etc. as also various Tribunals in Supreme Court and Govt. & PSU's at different Courts & Tribunals. Participated as delegate for India in the "4th virtual meeting of BRICS head for prosecution services. Recognized as Paul Harris Fellow (end Polio now) in appreciation of tangible and significant assistance given for the furtherance of better understanding and friendly relations among people of

the world. Was designated as Senior Advocate by the High Court of Madhya Pradesh on 19th May, 2017.

His Lordship published various articles, viz Continuing writ of Mandamus – Classic Example and Genesis of NGT in Journals such as Madhya Pradesh Judicial Reporter and Madhya Pradesh Law Journal.

His Lordship was appointed as Judge of the High Court of Madhya Pradesh on 8th October, 2021.

As Judge of the High Court of Madhya Pradesh, rendered valuable services as Judge and Member of various Administrative Committees of the High Court.

His Lordship was transferred to High Court of Delhi on 1st June 2022.

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

●

HON'BLE SHRI JUSTICE SATISH KUMAR SHARMA DEMITS OFFICE

Hon'ble Shri Justice Satish Kumar Sharma, demitted office on His Lordship's attaining superannuation.

His Lordship was born on 25th May, 1960. After obtaining degrees of B.Sc., M.A. and LL.B., His Lordship was appointed as Civil Judge-cum-Judicial Magistrate on 19th July, 1985 in Rajasthan Judicial Services. His Lordship was promoted to Higher Judicial Services as officiating District Judge on 19th May, 2001 and as District & Sessions Judge on 13th August, 2008. His Lordship held the post of Registrar General of Rajasthan High Court with effect from 11th April, 2016 till 5th March, 2020.

His Lordship was appointed as Judge of the Rajasthan High Court on 6th March, 2020. His Lordship was transferred to the High Court of Madhya Pradesh and took oath of office on 25th November, 2021.

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

His Lordship was accorded farewell ovation on 13th May, 2022 at Bench Gwalior, High Court of Madhya Pradesh.

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

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PART - I

APPLICABILITY OF SECTION 50 N.D.P.S. ACT IN CASE OF COMPOSITE SEARCH

Rajvardhan Gupta
Principal Judge, Family Court, Satna

The seizure of a contraband is the foundation of prosecution under the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "N.D.P.S. Act"). Thus, this issue has been subject to judicial scrutiny from time to time. The Division Bench of Hon'ble the Supreme Court observed in ***Makhan Singh v. State of Haryana, (2015) 12 SCC 247*** that as per principle of the criminal jurisprudence, the more stringent the punishment, the more heavy is the burden upon the prosecution to prove the offence. Considering the same, several safeguards have been provided by the legislature in the said Act to avoid an innocent to be falsely framed in such cases. One such safeguard is Section 50 N.D.P.S. Act which acts as a vital protection for the innocents. Before delving further, it is necessary to look into the said provision which is a matter of discussion in this article. Section 50 of N.D.P.S. Act reads as under:-

> *"50. Conditions under which search of persons shall be conducted.—*
>
> (1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.
>
> (2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).
>
> (3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.
>
> (4) No female shall be searched by anyone excepting a female.
>
> (5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic

> substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section100 of the Code of Criminal Procedure, 1973 (2 of 1974).
>
> (6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.''

Generally, in most cases under the N.D.P.S. Act, accused comes up and takes the plea of non-compliance of Section 50 N.D.P.S. Act. The basic reason for taking this defence is hidden in the nature of the said provision. The Constitutional Bench of Hon'ble the Supreme Court held in the case of ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172*** that right to be searched before a gazetted officer/ Magistrate is an extremely valuable right which Parliament has granted to an accused having regard to the grave consequences that the possession of illicit articles may entail under the Act. It was also held that non-compliance of Section 50 would invalidate the conviction of the accused. The Constitutional Bench reiterated in the case of ***Vijay Singh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609*** and held the provision to be mandatory giving birth to the concept of ''substantial compliance''. For now, there is no doubt upon the said provision being mandatory. In such circumstances, it is the duty of the officer to make suspected person aware of his statutory right under Section 50 N.D.P.S. and let him exercise his right to be searched before a gazetted officer or Magistrate.

Applicability of Section 50:

Now the next question for a Judge is whether the provision under Section 50 N.D.P.S. Act is applicable in all cases under N.D.P.S. Act. In ***Baldev Singh*** (supra), the Constitutional Bench of Hon'ble Apex Court held:

> ''on its plain reading, Section 50 would come into play only in case of a search of a person as distinguished from search of any premises etc.''

Being a judgment of the Constitutional Bench (comprising of 5 Hon'ble Judges), each word of this judgment is precious, valuable and binding for us. While mentioning the above judgment, special emphasis has been placed on the words ''only'' and ''etc.'' It implies that Section 50 shall come into play only in case of search of a person. The use of word "etc." after the word "premises" clarifies that Section 50 would not apply to other similar things like premises apart from body of the accused applying the rule of ***ejusdem generis***.

Search of person vs. Search of bag, briefcase, vehicle or any such article or container, etc.

As discussed above, Section 50 N.D.P.S. Act is mandatory for the search of person only. In such circumstances, it is important to understand the concept of person. The concept of person has been very specifically clarified by a three-Judge Bench in the case of ***State of Himachal Pradesh v. Pawan Kumar, (2005) 4 SCC 350***, the relevant part of which is reproduced below:-

> ‘‘9. We are not concerned here with the wide definition of the word “person”, which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the Section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad commonsense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilized society. Therefore, the most appropriate meaning of the word “person” appears to be “the body of a human being as presented to public view usually with its appropriate coverings and clothings”. In a civilized society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one’s home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word “person” would mean a human being with appropriate coverings and clothings and also footwear.”
>
> 10. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated

> to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act.''

In the light of the aforesaid pronouncement, the term "person" in simple word implies the part of the human body with its appropriate coverings and clothings. This concept was time and again reiterated in several judgments of Hon'ble Supreme Court and Hon'ble High Court which is to be borne in mind while considering the facts of a case.

Para 11 of ***Pawan Kumar*** (supra) also clarifies the definition "such objects." The law is also crystal clear on this point which is developed in the light of ***Baldev Singh*** (supra). It is a settled aspect of law that there is no requirement of compliance of Section 50 N.D.P.S. Act if there is search of bag, briefcase, vehicle or any such article or container which is not part of a human body and its appropriate covering.

Composite search

Composite search refers to a circumstance where the human body of accused as well as bag/sack/briefcase etc. is searched. The Courts are filled with such cases where composite search is conducted by police/investigation authority and the contraband is recovered from bag, briefcase, sack and other such articles only. In such circumstance, applicability of Section 50 becomes a serious question to be decided by the learned presiding officer in such case.

This question is specifically dealt by Hon'ble the Apex Court in the case of ***Dilip v. State of M.P., (2007) 1 SCC 450*** where personal search of accused alongwith search of scooter was carried out resulting in the recovery of contraband from scooter. It was that Section 50 is to be applicable in such cases. This judgment was followed for a very long time in many cases including ***Union of India v. Shah Alam, (2009) 16 SCC 644*** and other such cases. A Three Judge Bench of the Supreme Court in ***S.K. Raju v. State of West Bengal, (2018) 9 SCC 708*** validated the findings in ***Dilip*** (supra). It was held that as soon as the search of the person takes place, the requirement of mandatory compliance of Section 50 is attracted irrespective of whether contraband is recovered from the person of the detainee or not.

But in case of ***Dilip*** (supra) the view of equal Division Bench of Hon'ble Apex Court in ***Madan Lal & others v. State of H.P., (2003) 7 SCC 465*** was not considered in which it was observed that

> "A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises [see ***Kalema Tumba v. State of Maharashtra, (1999) 8 SCC 257, State of Punjab v. Baldev Singh (1999) 6 SCC 172 and Gurbax Singh v. State of Haryana (2001) 3 SCC 28***). The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in ***Baldev Singh*** (supra) above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance."

A three-Judge Bench of Hon'ble the Supreme Court in ***State of Punjab v. Baljinder Singh, (2019) 10 SCC 473*** expressly overruled the verdict of ***Dilip*** (supra). The Division Bench of Hon'ble Supreme Court in case of ***Thana Kunwar v. State of Haryana, (2020) 5 SCC 260***, clarified the circumstances. The relevant extract of the said judgment is provided below:-

> "17. No doubt we notice the judgment of this Court rendered by a Bench of three learned Judges in ***SK. Raju*** (supra). Therein, the Court referred to the judgment in ***Dilip*** (supra), and thereafter, went on to, inter alia, hold as follows:
>
> > "As soon as the search of the person take place the requirement of mandatory compliance with Section 50 is attracted irrespective of whether contraband is recovered from the person of the detainee or not."
>
> 18. In the said case, the Court went on to hold that requirement of Section 50 was complied with. However, we notice a later development in the form of a judgment rendered by a Bench of three learned judges touching upon the correctness of the view expressed in ***Dilip*** (supra) as contained in paragraph 16 of the judgment.
>
> 19. In ***Baljinder Singh*** (supra), this Court elaborately considered the matter with reference to the applicability of Section 50 in a case where there is a personal search also.
>
> 20. This was the case where 7 bags of poppy husk each weighing 34 kg. were found from the vehicle. A personal

search of the accused was undertaken after their arrest which did not lead to any recovery of contraband. The High Court found violation of Section 50 as the personal search of the accused was not conducted before the Magistrate/ Gazetted Officer and set aside the conviction of the respondent. This Court, in ***Baljinder Singh*** (supra), went on to consider the law laid down by the Constitution Bench in ***Baldev Singh*** (Supra) and, inter alia, held as follows:

"16. The conclusion (3) as recorded by the Constitution Bench in para 57 of its judgment in ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172*** clearly states that the conviction may not be based "only" on the basis of possession of an illicit article recovered from personal search in violation of the requirements under Section 50 of the Act, but if there be other evidence on record, such material can certainly be looked into.

17. In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as "personal search" was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid.

18. The decision of this Court in ***Dilip case*** (supra), however, has not adverted to the distinction as discussed hereinabove and proceeded to confer advantage upon the accused even in respect of recovery from the vehicle, on the ground that the requirements of Section 50 relating to personal search were not complied with. In our view, the decision of this Court in the said judgment in ***Dilip case*** (supra) is not correct and is opposed to the law laid down by this Court in ***Baldev Singh*** (supra) and other judgments."

21. Having regard to the judgment by the three-Judge Bench, which directly dealt with this issue, viz., the correctness of the view in ***Dilip*** (supra) reliance placed by the appellant on paragraph 16 may not be available. As already noticed, we are not oblivious of the observation

> which has been made in the other three Judge Bench judgment of this Court in ***S.K. Raju*** (supra), which it appears, was not brought to the notice to the Bench which decided the case later in ***Baljinder Singh*** (supra). We notice however that the later decision draws inspiration from the Constitution Bench decision in ***Baldev Singh*** (supra). We also notice that this is not a case where anything was recovered on the alleged personal search. The recovery was effected from the bag for which it is settled law that compliance with Section 50 of the Act is not required."

Hon'ble Apex Court in para 18 held that in ***S.K. Raju*** (supra), there was compliance of Section 50 already and ***Baljinder Singh*** (supra) elaborately considered this aspect giving due importance to the presence of the word "only" in the judgment of Constitutional Bench of ***Baldev Singh*** (supra) which is also emphasized before starting of discussion in this article. In this manner, if the judgment of Hon'ble Apex Court in ***Thana Kunwar*** (supra) is closely read, it looks like Hon'ble Apex Court is attempting to say ***S.K. Raju*** (supra) obiter dictum in a case where Section 50 is already complied with. Several jurists have expressed the above view reading ***Thana Kunwar*** (supra) which should be taken note of. In cases of composite search, these aspects of law should be dealt with sincerity considering above aspect of law.

Conclusion

Hon'ble Apex Court in ***Gurbachan Singh v. Satyapal Singh & others, AIR 1990 SC 209***, opined:-

> ''Justice cannot be made sterile on the plea that it is better to let hundred guilty escapes than punish an innocent. Letting guilty escape is not doing justice according to law.''

Therefore, an appropriate balance should be struck considering the factual matrix of the case in hand on the basis of the words of wisdom of Hon'ble Apex Court. After considering the above judgments and keeping the Law of Precedent in mind, it can be concluded that search of a person means search of human being with appropriate covering and clothings and footwear. Bag, briefcase or container carried by person will not fall within the ambit of the word 'person' therefore Section 50 does not apply to search of baggage, article or container carried by person searched.

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PATENT ILLEGALITY: A BIRD'S EYE VIEW

Padmesh Shah
Additional Director, MPSJA

Introduction

Arbitration is an alternative dispute resolution mechanism wherein the parties in dispute agree to appoint an impartial arbitrator based on his expertise, experience and reputation to adjudicate and decide a dispute. The main purpose of enactment of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) is to provide for the procedure for taking recourse to arbitration and ensure the outcome of a valid award with minimal judicial intervention. The term 'Patent Illegality', is a common feature which Judges often come across, while dealing with petition filed under section 34 of the Act. This write-up is penned with an aim to impart information of this term so that its meaning and application can be comprehended.

It was in the case of ***Oil and Natural Gas Company Ltd v. SAW Pipes Ltd., (2003) 5 SCC 705*** that the phrase 'patent illegality' was first introduced and considered within the ambit of the term 'Public Policy of India'. This case laid down the genesis of the significance of patent illegality doctrine as a ground for setting aside an arbitral award. In this case, the Apex Court while dealing the case under section 34 of the Act and interpreting the term "public policy of India" held that an arbitral award may be set aside on the ground of patent illegality. In this case, the term "patent illegality" was introduced and explained in detail as one of the head of the term "against the Public Policy of India" and added with other heads of 'against public policy of India' as held in the case of ***Renusagar v. General Electricals Co., AIR 1994 SC 860***.

It is clear from the judgment of ***SAW Pipes*** (supra) that illegality must go to the root of the matter and if it is so unfair and unreasonable that it shocks the conscience of the Court then only the award could be quashed on the ground of patent illegality. It was also held in ***SAW Pipes*** (supra) that the term 'Public policy of India' should be given wider meaning so that the patent illegal award passed by the Arbitral Tribunal could be set aside. Dealing with the term 'Public Policy', the Apex Court held that this term connotes with public good and the public interest. The Apex Court also cleared that the term 'public policy' has varied from time to time meaning thereby, what was good in past may not necessarily be good in present and vice versa. In a nutshell, the Apex Court in this case held that award could be set aside on the ground of 'against public policy of India' if it is contrary to: -

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality, or

(d) in addition, if it is patently illegal.

Applicability of Patent Illegality on foreign awards

It is clear from the above discussion that patent illegality was recognized as a term for setting aside an arbitral award under the head 'against the public policy of India'. This brings us to the question whether it is applicable on foreign awards as well. It is noteworthy that in the case of ***Phulchand Exports v. O.O.O. Patriot, 2011 SCC Online SC 1368***, the Apex Court held that the term "Patent Illegality" would apply to domestic award as well as foreign arbitral award. It was held that:

> "There is merit in the submission of learned senior counsel that in view of the decision of this Court in ***Saw Pipes Ltd.*** (supra) the expression 'public policy of India' used in Section 48 (2)(b) has to be given wider meaning and the award could be set aside, 'if it is patently illegal".

But in the year of 2013, in ***Sri Lal Mahal v. Progetto Grano, 2013 SCC Online SC 565***, the Apex Court gave an altogether different perspective and held that foreign award shall not be held invalid on the grounds of Patent Illegality. The Apex Court held in this case as:

> "We think that for the purposes of Section 48(2)(b), the expression public policy of India must be given a narrow meaning and the enforcement of foreign award would be refused on the ground that it is contrary to public policy of India if it is covered by one of the three categories enumerated in ***Renusagar*** (supra). Although the same expression public policy of India is used both in Section 34(2(b)(ii) and Section 48 (2)(b) and the concept of public policy in India is same in nature in both the Sections but, in our view, its application differs in degree in so far as these two Sections are concerned. The application of public policy of India doctrine for the purposes of Section 48(2)(b) is more limited than the application of the same expression in respect of the domestic arbitral award."

The distinction between 'domestic' and 'international' arbitration is important as it will affect the enforcement of the award. The above mentioned cases of the Apex Court bestow two contradictory propositions about the application of the head "Patent Illegality" in petition filed under Section 34 of the Act (for quashment of the domestic award) and Section 48 of the Act (for quashment of the foreign award). Additionally ***SAW Pipes case*** (supra) did not clear on the point that this term would be applied on foreign award or not although the case was in the context of a purely domestic award. ***Phulchand's case*** (supra) was the decision of a two Judge Bench while ***Sri Lal Mahal case*** (supra) was the decision of a three Judge Bench of the Apex Court and ***Sri Lal Mahal case*** (supra) clearly held that the term 'Patent Illegality' is not applicable to foreign award.

Amendment in section 34 of the Act

For brevity on this controversy, the Law Commission in its 246th Report, which was presented in August 2014, suggested amendment in the Act and proposed a new section in section 34 of the Act as (2A) which reads thus:

> (2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:
>
> *Provided that* an award shall not be set aside merely on the ground of an erroneous application of the law or by appreciation of evidence.

This proposed amendment was intended to facilitate and encourage Alternative Dispute Redressal Mechanism for settlement of disputes in a more user friendly, cost effective and expeditious disposal of cases since India is committed to improve legal frame work to obviate in disposal of cases. This amendment was incorporated in the Act w.e.f. 23/10/2015. The amendment has introduced a new ground, namely; section 34 (2A) for setting aside domestic arbitral awards on the ground of 'Patent Illegality'. However this amendment has put to rest the controversy whether the term 'Patent Illegality' would apply on foreign awards too? It is clear from the provision that this ground will be applicable only to arbitration taking place in India as can be made out from the wordings of the section which says "other than International commercial arbitration".

Ambit of Patent Illegality

The main problem which comes to Presiding Officer while dealing with petition filed under section 34 of the Act is what comes within the purview of the term 'Patent Illegality' as this term is not defined anywhere in the Act. It is pertinent to mention here that the proviso of section 34 (2A) of the Act also makes it difficult to figure out the exact ambit of the term 'Patent Illegality'. As per the proviso to section 34(2A), the re-appreciation of evidence, which is what an Appellate Court does, is not permitted and if award passed by arbitrator using an erroneous application of the law, the Court cannot reject the award on the ground of 'Patent Illegality'.

A case study of below mentioned land mark judgments of the Apex Court aids to understand the term 'Patent Illegality'.

i. ***Oil and Natural Gas Co. Ltd. v. SAW pipes, (2003)5 SCC 705***

ii. ***Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49***

iii. ***Ssangyaong Engineering & Construction Co. Ltd., (2019) 15 SCC 131***

iv. ***Patel Engineering v. Northern Eastern Electric Power Corporation Ltd., (2020) 7 SCC167***

i. SAW Pipes case

The facts of the case in brief are:

The petitioner had placed an order on Respondent for supply of equipment for off-shore exploration. The delivery was delayed due to general strike of steel mill workers in Europe. Timely delivery was the essence of the contract. The petitioner granted extension of time, but it invoked the clause for recovery of Liquidated Damages by withholding the amount from the payment to the respondent. The petitioner deducted from the payment Rs. 3,04,970.20 and Rs. 15,75,557 towards customs duty, sales tax and freight charges. The respondent disputed the deduction and matter was referred to arbitration. While the arbitral tribunal rejected respondent's defense of *force majure*, it required the petitioner to lead evidence to establish the loss suffered by breach and proceed to hold, in absence of evidence of financial losses, that the deduction of liquidated damages was wrongful. The award was challenged by the petitioner, inter alia as being opposed to public policy. The petitioner's case was that the arbitral tribunal failed to decide the dispute by not applying the prevailing substantive law, ignoring the terms of the contract and customary practices of usage of trade in such transactions. The petitioner challenged the award as being patently illegal. The Single Judge and Division Bench of the Bombay High Court dismissed the challenge. The Supreme Court set aside the arbitration award directing ONGC to refund Rs. 3,04,970.20 and Rs 15.76 Lakhs towards liquidated damages retained by it while making payment to the company. Para 71 of the judgment may be beneficial to understand why the Apex Court found arbitral award "patent illegal"

> "The arbitrators were required to decide by considering the facts and the law applicable, whether the deduction was justified or not? That itself would indicate that the claim of the contractor was 'disputed claim' and not 'undisputed'. The reason recorded by the arbitrators that as the goods were received and bills are not disputed, therefore, the claim for recovering the amount of bills cannot be held to be 'disputed claim' is, on the face of it, unjust, unreasonable, unsustainable and patently illegal as well as against the expressed terms of the contract. As quoted above, clause 34.4 in terms provides that no interest would be payable on 'disputed claim'. It also provides that in which set of circumstances, interest amount would be paid in case of delay in payment of undisputed claim. In such case, the interest rate is also specified at 1% per month on such undisputed claim amount. Despite this clause, the arbitral tribunal came to the conclusion that it was undisputed claim and held that in law, appellant was not entitled to withhold these two payments from the invoice raised by the

> respondent and hence directed that the appellant was liable to pay interest on wrongful deductions at the rate of 12% p.a. from 01.04.1997 till the date of filing of the statement of claim and thereafter having regard to the commercial nature of the transaction at the rate of 18% p.a. *pendente lite* till payment."

The above para clearly indicates the reasons due to which the Apex Court held the award 'Patent Illegal" because the arbitrator wrongly decided the case holding undisputed claim while it was not really so and arbitrator also awarded interest which was against the terms of contract.

ii. Associated Builders case

The second case study which one should go through to understand Patent Illegality is the judgment delivered by the Apex Court in case of ***Associated Builders v. Delhi Development Authority, (2015) 3 SCC 49***. This judgment was delivered by a two-Judge Bench of the Apex Court on 14.11.2014. The facts of the case in a nutshell are:

The appellant was given a construction contract by the respondent for building 168 middle income group houses and 56 lower income group houses. The contract stated that the construction work will be completed within nine months for Rs. 87,66,678. But, the work was completed only after 36 months. The appellant alleged that the delay arose at the instance of the respondent and subsequently fifteen claims were made. The arbitrator, appointed by the Delhi High Court, held that the respondent was responsible for the delay in the enforcement of the contract. On 3rd April, 2006, the respondent moved the case to the Delhi High Court in accordance with Section 34 of the Act, which was dismissed. The respondent again filed an appeal under Section 37 in the Delhi High Court. The Division Bench found that the arbitral award was incorrect and rejected the claims of the appellant. The Supreme Court rejected the Division Bench's judgment and enforced the award, stating that:

> "… the Division Bench obviously exceeded its jurisdiction in interfering with a pure finding of fact forgetting that the Arbitrator is the sole Judge of the quantity and quality of evidence before him…

In arriving at this decision, the Supreme Court considered the scope of "public policy" grounds for setting aside awards as provided in Section 34 of the Arbitration Act. The Court considered the ***SAW Pipes case*** (supra) and held that an award would violate "public policy" where it was:

- Contrary to the fundamental policy of Indian law;
- Contrary to the interests of India;
- Contrary to justice and morality; or
- Patently illegal.

The judgment of this case was delivered well before the amendment of 2015 and the term 'Patent Illegality' was discussed within the purview of 'public policy'. This was the basic case law and all the judgments delivered afterwards, take guidance from this. It was held in this case that an award would be set aside for being patently illegal under three circumstances; where:

a. The award contravenes the substantive law of India. Even here, the illegality must go to the root of the matter and cannot be of a trivial nature. [please see section 28(1) of the Act]

b. The award contravenes the Arbitration Act itself; for instance where an arbitrator gives no reasons for an award [please see section 31(3) of the Arbitration Act].

c. The tribunal fails to decide the dispute in accordance with the terms of the contract. [please see section 28(3) of the Act]

The ***Associate Builders case*** (supra) is a very important judgment on the term 'Patent illegality' as it lays down basic principles for assessment of patent illegality. The judgment delivered by other Constitutional Courts on patent illegality takes guidance from this judgment whenever situations arise to interpret the term 'patent illegality' though this was delivered before the term got statutory effect i.e. Amendment of 2015.

iii. Ssangyong case

After the judgment of ***Associate Builders*** (supra) case, the other landmark judgment on the point of 'Patent Illegality' was given in case of ***Ssangyong Engineering & Construction Co Ltd*** (supra). The facts of this case in a nutshell are that:

The dispute arose out of a contract between the parties for construction of a four-lane bypass on a National Highway in the State of Madhya Pradesh. The appellant was to be compensated under the contract for inflation in prices of components to be used in construction of the highway. The agreed method of compensation for inflated prices was the Wholesale Price Index ("WPI") following 1993-1994 as the base year. However the respondent subsequently issued a circular revising the WPI to follow 2004-2005 as the base year for calculating the inflated cost, which was disputed by Ssangyong. The parties referred this dispute to a three member arbitral tribunal. The majority upheld the revision of WPI as being within the terms of the contract. The minority decision opined otherwise, and held that the revision was *de hors* the contract. Aggrieved by the majority finding, Ssangyong unsuccessfully challenged the award as being against public policy before the Delhi High Court, and consequently sought remedy from the Supreme Court in appeal.

In this case the Apex Court, following the ***Associate Builder's*** (supra) judgment decided the case. In paras 26 to 30, it was held as:

26. In so far as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within the fundamental policy of Indian law, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

27. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

28. To elucidate, paragraph 42.1 of ***Associate Builders*** (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award.

Paragraph 42.2 of ***Associate Builders*** (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act that would certainly amount to a patent illegality on the face of the award.

29. The change made in Section 28(3) by the Amendment Act really follows what is stated in paragraphs 42.3 to 45 in ***Associate Builders*** (supra), namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrators view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2A).

30. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of ***Associate Builders*** (supra), while no longer being a ground for challenge under public policy of India, would certainly amount to a patent illegality appearing on the face of the

> award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence in as much as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.

The above paras of judgment of the Apex Court in ***Ssangyong case*** (supra) provides four-fold test to decide whether the award comes within the purview of doctrine of "patent illegality". These in short are:

(a) no reasons are given for an award,

(b) the view taken by an arbitrator is an impossible view while construing a contract,

(c) an arbitrator decides questions beyond a contract or his terms of reference, and

(d) if a perverse finding is arrived at based on no evidence, or overlooking vital evidence, or based on documents taken as evidence without notice of the parties

iv. Patel Engineering case

The facts of the fourth and latest judgment of the Apex Court in brief are:

The dispute between the two firms arose with the domestic arbitral award dated 29th March, 2016. The two entities entered into works contracts for three separate packages. Disagreements pertaining to the extra payments for additional quantities of lead were the prime issues of all the three arbitral proceedings. It essentially focussed on the vetting of the clauses of the contract, amongst which one stated the conditions of a contract to be applicable in order to decide the rate at which Patel Engineering Ltd. was entitled to extra payments for additional quantities. The sole arbitrator pronounced the three arbitral awards in favour of Patel Engineering. The three arbitral awards were challenged by North Eastern Electronic Power Corporation Ltd. (NEEPCO) before the Additional Deputy Commissioner (Judicial), Shillong under Section 34 of the Act. The said applications were dismissed at this stage, vide judgment dated 27th April, 2018. The Meghalaya High Court allowed the appeal by NEEPCO under Section 37 of the Act against the orders of the Additional Deputy Commissioner. In the judgment dated 26th February, 2019, the High Court set aside the arbitral awards. Later on, Patel Engineering Ltd. filed Special Leave Petition before the Supreme Court which was dismissed on July 19, 2019. Patel Engineering Ltd. then filed a review petition before the Meghalaya High Court citing that the judgment of the Court

is rife with evident errors as it did not take into consideration the provisions of Amendment Act, which are now embodied under the original legislation. The High Court dismissed the petitions on 10th October, 2019 and the firm subsequently approached the Supreme Court.

The Supreme Court remarking the award to be a domestic award, upheld the ground of patent illegality as a ground to set aside an arbitral award. The Court expounded the ground of patent illegality in the following circumstances:

- if the decision of the arbitrator is found to be perverse, or, so irrational that no reasonable person would have arrived at the same, or,
- the construction of the contract is such that no fair or reasonable person would take, or,
- that the view of the arbitrator is not even a possible view

Conclusion:

Patent Illegality as a ground for setting aside of arbitral award is still gaining momentum in the country. In light of the above discussions, it can be inferred that Patent Illegality is one of grounds for setting aside petition filed under section 34 of the Act but not available to petitions filed under section 48 of the Act. The genesis of the ground 'patent illegality' to ***SAW Pipes*** (supra) where the Apex Court expanded the interpretation of 'public policy of India' to include 'Patent Illegality' whereas in ***Associate Builders*** (supra), the Apex Court formulated three exhaustive subheads of 'Patent Illegality' as a ground to challenge an arbitral award. After amendment in 2015, the term 'Patent Illegality' was given statutory force with a rider that an award shall not be set aside merely on the ground of erroneous application of law or by re-appreciation of evidence. ***Ssangyong*** (supra) followed the above and demarcated the subheads as (1) contravention of the Act (2) the view of arbitrator is not possible view (3) the arbitrator wanders outside the contract and deals with matter not allotted to him. In ***Patel Engineering*** (supra), the Apex Court affirming the ***Ssangyong*** (supra) view added that the ground of patent illegality is a ground available under the statute for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or, so irrational that no reasonable person would have arrived at the same; or, the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. India is on the path of being a hub of arbitration and for that purpose, it is elemental that the grounds enumerated in the Act are well defined. For that very purpose, the Apex Court in different situations clarified the term 'Patent Illegality' and where it should be applicable.

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वक्फ अधिनियम, 1995 के अन्तर्गत व्यादेश तथा निष्कासन के वादों के संबंध में संशोधन अधिनियम, 2013 का सिविल न्यायालय की क्षेत्राधिकारिता पर प्रभाव

संजीव कुमार गुप्ता
जिला एवं अपर सत्र न्यायाधीश
मंडलेश्वर (म.प्र.)

वक्फ अधिनियम, 1955 (जिसे आगे ''अधिनियम'' से संबोधित किया जाएगा) के अंर्तगत आने वाले विवादों की क्षेत्राधिकारिता सिविल न्यायालय को होगी अथवा वक्फ अधिकरण को, यह प्रश्न प्रायः न्यायालयों के समक्ष उपस्थित होता रहता है वर्ष 2013 में अधिनियम में संशोधन किया गया है जिसे आगे ''संशोधन अधिनियम'' से संबोधित किया जाएगा। उच्चतम न्यायालय द्वारा न्यायदृष्टांत ***राशिद वली बेग विरूद्ध फरीद पिंडारी आदि, (2022) 4 एससीसी 414*** में इस संबंध में सिद्धांत प्रतिपादित किये गये है। इस आलेख के द्वारा संशोधन अधिनियम तथा ***राशिद वली बेग*** (पूर्वोक्त) में प्रतिपादित सिद्धांतों के आलोक में अधिनियम के अंतर्गत आने वाले विवादों विशेषकर व्यादेश और किरायेदार के निष्कासन के वादों में सिविल न्यायालय की क्षेत्राधिकारिता के संबंध में स्थिति स्पष्ट करने का प्रयास किया जा रहा है।

अधिनियम की धारा 6(1), 7(1), 83(1) एवं 85 में सिविल न्यायालय के क्षेत्राधिकार से सुसंगत हैं, जो वर्ष 2013 के संशोधन के पूर्व निम्न प्रकार थी –

> **धारा 6. ओकाफ से संबंधित विवाद** –(1) यदि यह प्रश्न उत्पन्न होता है कि कोई विशिष्ट संपत्ति, जो ओकाफ की सूची में वक्फ संपत्ति के रूप में विनिर्दिष्ट है, वक्फ संपत्ति है या नहीं अथवा ऐसी सूची में विनिर्दिष्ट कोई वक्फ, शिया वक्फ है या सुन्नी वक्फ तो बोर्ड या वक्फ का मुतवल्ली अथवा उसमें हितबद्ध कोई व्यक्ति उस प्रश्न के विनिश्चय के लिए अधिकरण में वाद संस्थित कर सकेगा और उस विषय की बावत उस अधिकरण का विनिश्चय अंतिम होगा।
>
> परन्तु अधिकरण द्वारा कोई ऐसा वाद, ओकाफ की सूची के प्रकाशन की तारीख से एक वर्ष की समाप्ति के पश्चात् ग्रहण नहीं किया जाएगा।
>
> **धारा 7. ओकाफ से संबंधित विवाद का अवधारण करने की अधिकरण की शक्ति** – (1) यदि इस अधिनियम के प्रारंभ के पश्चात कोई प्रश्न उत्पन्न होता है कि कोई विशिष्ट संपत्ति, जो ओकाफ की सूची में वक्फ संपत्ति के रूप में विनिर्दिष्ट है, वक्फ संपत्ति है या नहीं अथवा ऐसी सूची में विनिर्दिष्ट कोई वक्फ शिया वक्फ है या सुन्नी वक्फ, तो बोर्ड या वक्फ का मुतवल्ली अथवा कोई हितबद्ध व्यक्ति इस प्रश्न के विनिश्चय के लिये ऐसी संपत्ति के संबंध में अधिकारिता रखने वाले अधिकरण को आवेदन कर सकेगा और उस पर अधिकरण का विनिश्चय अंतिम होगा, परन्तु –

(क) राज्य के किसी भाग से संबंधित और इस अधिनियम के प्रारंभ के पश्चात् प्रकाशित ओकाफ की सूची की दशा में, कोई ऐसा आवेदन ओकाफ की सूची के प्रकाशन की तारीख से एक वर्ष की समाप्ति के पश्चात् ग्रहण नहीं किया जाएगा; और

(ख) राज्य के किसी भाग से संबंधित और इस अधिनियम के प्रारंभ से ठीक पहले एक वर्ष की अवधि के भीतर किसी भी समय प्रकाशित ओकाफ की सूची की दशा में, अधिकरण द्वारा ऐसा आवेदन ऐसे प्रारंभ के एक वर्ष की अवधि के भीतर ग्रहण किया जा सकेगा।

परन्तु यह और कि जहां ऐसे किसी प्रश्न की, ऐसे प्रारंभ के पूर्व संस्थित किसी वाद में किसी सिविल न्यायालय द्वारा सुनवाई कर ली गई है और उसका अंतिम रूप से विनिश्चय कर दिया गया है, वहां अधिकरण ऐसे प्रश्न पर नए सिरे से विचार नहीं करेगा।

धारा 83. अधिकरणों, आदि का गठन – (1) राज्य सरकार, राजपत्र में अधिसूचना द्वारा, इस अधिनियम के अधीन किसी वक्फ सम्पत्ति से संबंधित किसी विवाद, प्रश्न या अन्य मामले के अवधारण के लिए उतने अधिकरण गठित करेगी जितने वह ठीक समझे और ऐसे प्रत्येक अधिकरण की इस अधिनियम के अधीन स्थानीय सीमाएं और अधिकारिता परिनिश्चित करेगी।

धारा 85. सिविल न्यायालयों की अधिकारिता का वर्जन – किसी वक्फ, वक्फ संपत्ति या अन्य मामले से संबधित किसी विवाद, प्रश्न या अन्य मामले की बावत जिसका इस अधिनियम द्वारा या इसके अधीन अधिकरण द्वारा अवधारित किया जाना अपेक्षित है, सिविल न्यायालय में कोई वाद या अन्य विधिक कार्यवाही नहीं होगी।

संशोधन अधिनियम के द्वारा, धारा 6 की उपधारा 1 में ''उसमें हितबद्ध कोई व्यक्ति'' के स्थान पर ''कोई व्यथित व्यक्ति'' प्रतिस्थापित किया गया है। धारा 7 की उपधारा 1 में संशोधन किया जाकर ''कोई प्रश्न'' के स्थान पर ''कोई प्रश्न या विवाद'' तथा ''अथवा कोई हितबद्ध व्यक्ति'' के स्थान पर ''अथवा धारा 5 के अधीन ओकाफ की सूची के प्रकाशन से व्यथित कोई व्यक्ति'' प्रतिस्थापित किये गये हैं। इसके अतिरिक्त धारा 83 की उपधारा 1 और धारा 85 में निम्न महत्वपूर्ण संशोधन किये गये हैं –

83. अधिकरण, आदि का गठन – (1) राज्य सरकार, राजपत्र में अधिसूचना द्वारा इस अधिनयम के अधीन किसी वक्फ या वक्फ संम्पत्ति या किसी अभिधारी की बेदखली से संबधित किसी विवाद, प्रश्न या अन्य मामले के अवधारण के लिए या ऐसी संपत्ति के पट्टाकर्ता या पट्टेदार के अधिकारों या बाध्यताओं का अवधारण करने के लिए उतने अधिकरण का गठन करेगी जितने वह ठीक समझे और ऐसे प्रत्येक अधिकरण की स्थानीय सीमाएं और अधिकारिता परिनिश्चित करेगी।

धारा 85. सिविल न्यायालयों की अधिकारिता का वर्जन – किसी वक्फ, वक्फ संपत्ति या से संबधित किसी विवाद, प्रश्न अथवा अन्य मामले की बावत जिसका इस अधिनियम द्वारा या इसके अधीन अधिकरण द्वारा अवधारित किया जाना अपेक्षित है, (सिविल न्यायालय, राजस्व न्यायालय और किसी अन्य प्राधिकरण) में कोई वाद या अन्य विधिक कार्यवाही नहीं होगी।

धारा 85 का वर्जन न केवल सिविल न्यायालय बल्कि राजस्व न्यायालय और अन्य प्राधिकरण के क्षेत्राधिकार के उन सभी मामलों तक विस्तारित है जिसका अवधारण अधिनियम के अन्तर्गत वक्फ अधिकरण के द्वारा किया जाना है। अतः सिविल न्यायालय में वही वाद प्रचलनशील होंगे जिनका अवधारण 'वक्फ अधिकरण' के द्वारा नहीं किया जाना है, अर्थात् ऐसे मामलों में सर्वप्रथम यह विचार करना होगा कि क्या वक्फ अधिकरण को मामले की सुनवाई का क्षेत्राधिकार है, यदि है, तो निश्चित रूप से सिविल न्यायालय का क्षेत्राधिकार वर्जित माना जावेगा।

जहां तक निश्कासन के वाद का संबंध है उच्चतम न्यायालय द्वारा ***रमेश गोविंदराम विरूद्ध सुगरा हुमायूं मिर्जा वक्फ, (2010) 8 एससीसी 726*** में अधिनियम की धारा 6 तथा 7 की व्याख्या करते हुये मत दिया गया था कि धारा 6 सहपठित धारा 7 के अन्तर्गत अधिकरण का क्षेत्र व्यापक न होकर सीमित है तथा जो संपत्ति निर्विवादित रूप से वक्फ संपत्ति है, उसके किरायेदार के निष्कासन का क्षेत्राधिकार वक्फ अधिकरण को प्रदान किये जाने के संबंध में, अधिनियम में कोई स्पष्ट प्रावधान न होने के कारण, निष्कासन के वाद की सुनवाई का क्षेत्राधिकार केवल सिविल न्यायालय को है। इसी आशय का मत न्यायदृष्टांत ***फसीला एम. विरूद्ध मुनेरूल इस्लाम, एआईआर 2014 एससी 2064*** में भी व्यक्त किया गया। संशोधन के पूर्व मध्यप्रदेश उच्च न्यायालय द्वारा ***वक्फ इमामबाड़ा विरूद्ध श्रीमती खुर्शीदा बी, एआईआर 2009 एमपी 238*** में मत दिया गया था कि वक्फ सम्पत्ति से किरायेदार के निष्कासन सम्बंधी वाद अधिकरण के समक्ष प्रचलनशील है क्योंकि अधिकरण को अधिनियम के द्वारा सिविल न्यायालय की शक्तियां प्रदान की गई है और अधिकरण का क्षेत्राधिकार न केवल वक्फ सम्पत्ति के स्वत्व सम्बंधी वादों पर है अपितु स्वत्व आधारित निष्कासन के वादों पर भी है। किन्तु उच्चतम न्यायालय द्वारा मध्यप्रदेश उच्च न्यायालय के ***वक्फ इमामबाड़ा*** (पूर्वोक्त) में दिए निर्णय को निष्कासन सम्बंधी बिन्दु पर अतिष्ठित (overrule) करते हुये, वक्फ सम्पत्ति से किरायेदार के निष्कासन सम्बंधी वादों की सुनवाई का क्षेत्राधिकार सिविल न्यायालय को ही होने का मत दिया गया।

संशोधन के उपरांत उच्चतम न्यायालय द्वारा न्यायदृष्टांत ***लालशाह बाबा दरगाह ट्रस्ट विरूद्ध मैग्नम डवलॅपर्स, (2015) 17 एससीसी 65*** में विचार करते हुए यह मत दिया गया कि विधायिका इस अधिनियम की धारा 83 के अंतर्गत गठित अधिकरण को ही, न कि किसी अन्य प्राधिकारी को वक्फ संपत्ति, किरायेदार के निष्कासन और पट्टेदार के अधिकार और कर्तव्यों के निर्धारण के संबंध में उत्पन्न विवाद, प्रश्न और अन्य तथ्यों को निराकृत करने का अधिकार देना चाहती थी अर्थात 2013 के संशोधन के पश्चात् सिविल न्यायालय सहित राजस्व न्यायालय और अन्य अधिकरणों का क्षेत्राधिकार अधिनियम की धारा 85 के अंतर्गत बाधित हो गया है। उच्चतम न्यायालय द्वारा न्यायदृष्टांत ***तेलंगाना स्टेट वक्फ बोर्ड एवं अन्य विरूद्ध मोहम्मद मुजफ्फर, (2021) 9 एससी 179*** में यह मत दिया गया है कि यदि निष्कासन के वाद में किरायेदार अपने लिखित कथन में इस आशय का बचाव प्रस्तुत

करता है कि विवादित संपत्ति वक्फ संपत्ति नहीं है और इस कारण ऐसे वाद की सुनवाई का क्षेत्राधिकार वक्फ अधिकरण को नहीं है और वक्फ अधिकरण इस बचाव के बारे में विशिष्ट वाद प्रश्न बनाकर विचार करता है तो वक्फ अधिकरण को निष्कासन के ऐसे वाद को निराकृत करने का क्षेत्राधिकार होता है भले ही संपत्ति की प्रकृति से संबंधित ऐसे विवाद का निराकरण वक्फ अधिकरण द्वारा वक्फ अधिनियम की धारा 6 एवं 7 के अंर्तगत पृथक कार्यवाही नहीं किया गया हो। लेकिन न्यायदृष्टांत ***राशिद वली बेग*** (पूर्वोक्त) में उच्चतम न्यायालय ने अधिनियम में किये गये संशोधन के आलोक में पुनः विचार करते हुए निर्णय की कंडिका 45 और 64 में सिविल न्यायालय की अधिकारिता के संबंध में ***रमेश गोविंदराम*** (पूर्वोक्त) पर विचार करते हुए यह मत दिया कि संशोधन के उपरांत किरायेदारों के निष्कासन एवं पट्टेदार और पट्टाकर्ता के अधिकार और दायित्व के संबंध में उत्पन्न विवाद अधिकरण की क्षेत्राधिकारिता के अंतर्गत आते हैं।

इस प्रकार उच्चतम न्यायालय द्वारा प्रतिपादित विधि के प्रकाश में यह स्पष्ट है कि यदि वक्फ संपत्ति के किरायेदार के निष्कासन का वाद वर्ष 2013 के संशोधन के बाद संस्थित किया गया है तो ऐसे वाद की सुनवाई का क्षेत्राधिकार वक्फ अधिकरण को होगा और सिविल न्यायालय का क्षेत्राधिकार वर्जित होगा तथा यदि किरायेदार के निष्कासन का वाद, धारा 83 में वर्ष 2013 के संशोधन के पूर्व संस्थित किया गया है तो वह असंशोधित प्रावधानों के अनुसार सिविल न्यायालय में विचारित होगा, किंतु यदि उस वाद में किरायेदार के द्वारा विवादित संपत्ति के, वक्फ संपत्ति होने संबंधी तथ्य को विवादित किया गया है तब निष्कासन के वाद की सुनवाई का क्षेत्राधिकार अधिकरण को होगा।

जहां तक व्यादेश का प्रश्न है, उच्चतम न्यायालय द्वारा न्यायदृष्टांत ***पंजाब वक्फ बोर्ड विरूद्ध शाम सिंह हरिके, (2019) 4 एससीसी 698*** में, न्यायदृष्टांत ***रमेश गोविंदराम*** (पूर्वोक्त) के मामले को अनुशरित करते हुये यह माना गया कि व्यादेश के वाद की सुनवाई का क्षेत्राधिकार सिविल न्यायालय को है वक्फ अधिकरण को नहीं। इस प्रकार संशोधन के उपरांत भी ***पंजाब वक्फ बोर्ड*** (पूर्वोक्त) के अनुसार व्यादेश के वादों की सुनवाई का क्षेत्राधिकार सिविल न्यायालय को रहा है तथा पट्टे संबंधी ऐसे मामले, जो संशोधन के पूर्व संस्थित किये जा चुके हैं के विचारण के क्षेत्राधिकार के संबंध में यह मत प्रतिपादित किया गया कि ऐसे वाद जो संशोधन के पूर्व ही प्रस्तुत हो चुके थे उनमें संशोधन के पूर्व की स्थिति अनुसार ही कार्यवाही होगी।

उच्चतम न्यायालय द्वारा न्यायदृष्टांत ***राशिद वली*** (पूर्वोक्त) में ***रमेश गोविंदराम*** (पूर्वोक्त) और ***पंजाब वक्फ बोर्ड*** (पूर्वोक्त) के मामलों को विभेदित करते हुये उक्त न्यायदृष्टांतों पर विचार करते हुये यह मत दिया गया कि विवादित संपत्ति की स्थिति में वक्फ संपत्ति होने की दशा में धारा 83(1) के अंतर्गत केवल अधिकरण को ही क्षेत्राधिकारिता प्राप्त होती है और इसमें अधिनियम की धारा 6(1) और 7(1) कोई बाधा कारित नहीं करते है भले ही विवादित संपत्ति के वक्फ संपत्ति होने का तथ्य विवादित हो अथवा निर्विवादित हो, ऐसी संपत्ति के संबंध में प्रतिषेधात्मक एवं आदेशात्मक व्यादेश के मामलों के विचारण का क्षेत्राधिकार, केवल वक्फ अधिकरण को ही है और इस संबंध में सिविल न्यायालय का क्षेत्राधिकार वर्जित है।

यहां यह भी उल्लेख करना समीचीन होगा कि वर्ष 2013 के अधिनियम संख्या 27 के द्वारा अधिनियम की धारा 83 की उपधारा 4 में संशोधन करके एक सदस्यीय अधिकरण के स्थान पर त्रिसदस्यीय अधिकरण के गठन का प्रावधान किया गया है। यदि राज्य सरकार द्वारा उपरोक्त संशोधन के क्रम में त्रिसदस्यीय अधिकरण का गठन नहीं किया गया है, तो नवीन अधिकरण के गठन

तक, वक्फ अधिकरण के क्षेत्राधिकार में आने वाले मामलों की सुनवाई, संशोधन के पूर्व गठित एक सदस्यीय अधिकरण ही करेगा, सिविल न्यायालय को सुनवाई क्षेत्राधिकार नहीं होगा। इस संबंध में उच्चतम न्यायालय द्वारा ***लाल शाह बाबा दरगाह ट्रस्ट*** (पूर्वोक्त) के मामले में यह मत प्रतिपादित किया गया कि यद्यपि संशोधन के अनुसार राज्य शासन को त्रिसदस्यीय अधिकरण का गठन करने की अधिसूचना राजपत्र में प्रकाशित करनी चाहिए थी जो कि धारा 83 का एक आज्ञापक प्रावधान था परंतु यदि राज्य शासन ने इस कार्य में व्यतिक्रम किया है, तो भी एकल सदस्यीय अधिकरण ही वक्फ अधिनियम के अनुसार त्रिसदस्यीय अधिकरण गठित होने तक क्षेत्राधिकारिता का उपयोग करने के लिये स्वतंत्र है और त्रिसदस्यीय अधिकरण के गठन न होने के कारण यह नहीं कहा जा सकता कि अधिकरण को कोई क्षेत्राधिकारिता प्राप्त नहीं होती।

उपसंहार – संशोधन अधिनियम तथा ***राशिद वली बेग*** (पूर्वोक्त) में प्रतिपादित सिद्धांतों के आलोक में अधिनियम के अंतर्गत आने वाले विवादों विशेषकर व्यादेश और किरायेदार के निष्कासन के वादों में सिविल न्यायालय की क्षेत्राधिकारिता के संबंध में स्थिति निम्नानुसार संक्षेपित की जा सकती है –

1. यदि वक्फ संपत्ति के किरायेदार के निष्कासन का वाद वर्ष 2013 के संशोधन के बाद संस्थित किया गया है तो ऐसे वाद की सुनवाई का क्षेत्राधिकार अधिकरण को होगा और सिविल न्यायालय का क्षेत्राधिकार वर्जित होगा।
2. यदि किरायेदार के निष्कासन का वाद, वर्ष 2013 के संशोधन के पूर्व संस्थित किया गया है तो वह असंशोधित प्रावधानों के अनुसार सिविल न्यायालय में विचारित होगा, किंतु यदि उस वाद में किरायेदार के द्वारा विवादित संपत्ति के, वक्फ संपत्ति होने संबंधी तथ्य को विवादित किया गया है तब निष्कासन के वाद की सुनवाई का क्षेत्राधिकार अधिकरण को होगा।
3. किसी संपत्ति के वक्फ संपत्ति होने का तथ्य विवादित हो अथवा निर्विवादित हो, ऐसी संपत्ति के संबंध में प्रतिषेधात्मक अथवा आदेशात्मक व्यादेश के मामलों के विचारण का क्षेत्राधिकार, केवल वक्फ अधिकरण को ही है और इस संबंध में सिविल न्यायालय का क्षेत्राधिकार वर्जित है।
4. यदि राज्य सरकार द्वारा वक्फ अधिनियम के वर्ष 2013 के संशोधन के क्रम में त्रिसदस्यीय अधिकरण का गठन नहीं किया गया है, तो नवीन अधिकरण का गठन होने तक, वक्फ अधिकरण के क्षेत्राधिकार में आने वाले मामलों की सुनवाई, संशोधन के पूर्व गठित एक सदस्यीय अधिकरण के द्वारा ही की जावेगी, सिविल न्यायालय को सुनवाई का क्षेत्राधिकार नहीं होगा।

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*टीपः– **जोति जनरल के अंक अगस्त, 2021 के खण्ड ''विधिक समस्याएँ एवं समाधान'' में वक्फ अधिनियम, 1995 के अन्तर्गत निष्कासन के वादों के संबंध में सिविल न्यायालय के क्षेत्राधिकार के संबंध में प्रकाशित समस्या में संशोधन अधिनियम, 2013 को विचार में नहीं लिया गया है।***

●

TRADEMARK INFRINGEMENT

Namita Dwivedi
Civil Judge, Senior Division
Khandwa

Amidst the pandemic, Patanjali Ayurvedic Co. Ltd. introduced to the world, the immunity booster ‘’Coronil’’ and triggered a trademark infringement debate. A Chennai based Audra Engineering pvt ltd, claimed that they had registered the trademark for Coronil-92 B in 1993 as an acid inhibitor product for industrial cleansing. It was claimed that Patanjali was infringing their trademark rights. Initially, an injunction was passed in favour of Audra restraining Patanjali from using the name ‘Coronil’, however, a Division Bench of Hon’ble Madras High Court vacated the stay observing that Audra had not claimed monopoly over the word ‘coronil’ by obtaining a separate registration. Also, the use of the word coronil as immunity booster will not be detrimental to the distinctive repute of the registered trademark of Audra. The Hon’ble Supreme Court on an appeal, in this matter, upheld the order of the division bench and refused to intervene. This recent case highlighted the immense ramification a trademark infringement carries on the goodwill and monetary turn out of a business and compels us to ponder upon the concept.

A Trade Mark identifies the services or goods of one person and distinguishes it from those of another. They provide a distinctive identity in the market place. When a trade mark has been registered, nobody else can use this trade mark or one that is confusingly similar. If this happens, legal actions may ensue. Such is the significance of trademark that small scale business and services are also increasingly trademarking their products and services, so as to, ensure uniqueness in the field of trade.

Before venturing into the details of what constitutes a trademark infringement, it is pertinent to mention of what exactly is a trademark. ‘Trademark’ has been defined under section 2(zb) of the Trademark Act, 1999 (hereinafter referred to as Act) as *‘‘Trademark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours*. Having a Trademark, is a pre-requisite to brand building. A recognition is followed only after a lot of investment and any threat to trademark is viewed seriously. Consequently, it is the need of the hour to view and comprehend this issue of ‘trademark infringement’.

Trademarks which cannot to be registered

Trademark can be a brandname, slogan or even a logo. It could be about the manner of packaging, the way a logo is affixed and even extends to the

advertisements. So it may appear as if anything can be trademarked howsoever, special provision has been laid down by the legislature to ensure that the trademark carries a distinctive characteristics and does not causes confusion. This brings us to the question as to which trademarks cannot be registered. Section 9(1) r/w/s 9(2) of the Act provides that a mark shall not be registered as a trade mark if –

- it is of such nature as to deceive the public or cause confusion
- it contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India
- it comprises or contains scandalous or obscene matter,
- if its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950,
- it is devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person,
- it comprises of such marks or indications which consist exclusively of marks or indications which have become customary in the current language or in the *bona fide* and established practices of the trade.

Trademark infringement

Section 29 of the Act provides for the scenarios where an act can be construed as Trademark infringement. A registered trademark is infringed by a person when -

A person is not a registered proprietor or who is not a person using a registered trademark by way of permitted use, and, uses the registered trademark in the course of trade, a mark which is identical with, or deceptively similar to, the trademark in relation to goods or services in respect of which the trade mark is registered and in such manner as to render the use of the mark likely to be taken as being used as a trade mark.

Factors which determine trademark infringement

There are several factors which the courts bear in mind while adjudicating, if there exists a trademark infringement:

A. ***The plaintiff should have a valid trademark***

A trademark is deemed valid when it is officially registered. The procedure for the same is laid down under the Act. Under the scheme of the Act, offices of Registrar of trademark have been established at various places. One has to apply for registration of a tardemark in such offices established under the act in prescribed profarma. After, a due hearing, scrutiny of the proposed trademark and giving others an opportunity to oppose, the trademark is either registered

or application is rejected. A provision for appeal has also been made so as to ensure compliace of principles of natural justice.

It is pertinent to mention that there are situations where a product, service or packaging garners such popularity that it gets a claim under common law. In such a case, the unregistered trademark is expected to have a good recognition and substantial goodwill amongst the masses. However, for an unregistered trademark a remedy under civil law alone can be claimed.

At this juncture, it is pertinent to make mention of the case ***Texmo Industries v. Taxmo Aqua Engineering India Private Limited and ors., 2017 SCC Online Mad 20306***. In this case Hon'ble Madras High Court held that various parameters provided under Section 11(6) and (7) of the Trademarks Act, 1999 are to be taken into consideration by the Registrar of Trade Marks in declaring a trademark as a well-known mark. The Court observed that the parameters revolve around the recognition of the trademark in the relevant section of the public, in short the reach and exposure that the mark has among the relevant section of the public has to be primarily considered.

Likewise, in the case of ***Tata Sons Ltd. v. Manoj Dodia and ors, 2011 SCC Online Del 1520***, Hon'ble Delhi High Court has held that a well known trademark is a mark which is widely known or recognized by the relevant general public. The Court referred to Article 6 of Paris Convention, 1967 and also Article 16 of TRIPS Agreement 1994. The Court observed that as per Article 16 of TRIPS Agreement 1994, in determining whether the trademark is well known, the members shall take account of the knowledge of the trademark in relevant sectors of the public, including knowledge in the member concerned which has been obtained as a result of the promotion of the trademark.

Similarly, in ***Yonex Kabushiki Kaisha v. The Registrar of Trademarks, 2020 SCC Online IPAB 31*** the Intellectual property appellate board, Mumbai held that YONEX was a well known brand established in 1973 and popular for providing badminton raquets. It is well acknowledged amongst people connected to this sport. Hence, it set aside the order of Registrar of trademarks and declared YONEX as a trademark.

B. ***Whether the trademark is being used by the defendant***

Trademark should be 'used' by the defendant in such a manner as to create a sense of association with that of registered trademark. The usage should showcase identity or similarity to that of registered trademark. The same is further elaborated by the examples below-

Illustration-1. In ***Bennett, Coleman & Company Limited & ors. v. Rising India Entertainment Production & ors., CS (COMM) No. 359/2019 decided on 04.09.2019***, Bennett, Coleman and Company (Times Group) filed a trademark infringement

suit against Rising India for using the titles 'Miss India' and 'Mr. India' for a beauty pageant organized by them. Times Group contended in the suit that they have been organizing beauty pageants with the said titles since 1964 and the same have gained great reputation and goodwill in India and abroad. The Delhi High Court, approved of the contentions of the plaintiff and passed an order restraining the defendant organization from using the titles 'Miss India' and/or 'Mr. India' or any other trademark which is deceptively similar to these.

Illustration-2. It is noteworthy that the usage must be such as to create an impression that the service or product is the same as that of the original trademark. However, not every resemblance amounts to trademark infringement. In ***M/s ITC Limited v. Nestle India Limited, 2020 SCC Online Mad 5457***, Madras High Court held that trademark protection cannot be extended to words which are common to trade and commerce. In this case, the ITC Limited wanted to trademark its serving ''magic masala'' however, it was held by the court that the words 'magic' and 'masala' are commonly used in trade and hence, cannot be monopolised. The words being used commonly in trade, does not amount to trademark infringement and the suit was dismissed.

C. ***The defendant's use of the mark is in commerce and the use is connected to the sale, offer, distribution, or advertising of a product***

The burden of proof lies on the plaintiff to establish that the trademark is being used in trade and such usage has caused or likely to cause him loss. For instance, in ***Titan Co. Ltd. v. Rohit Kumar Jain & ors., CS(COMM) No. 380/2019 dated 29.07.19***, the Titan Company filed a trademark infringement suit against counterfeit sellers, and Snapdeal, an online website known for selling commodities, alleging the sale of counterfeit/infringing Fastrack branded watches on their website. Delhi High Court held such publication in website to be usage of a mark in trade and passed an *ex-parte ad-interim* injunction restraining the sellers from marketing, selling or dealing with goods bearing the marks TITAN and FASTRACK of Titan. The High Court further directed Snapdeal to take down the products from its website within 24 hours of the said order.

D. ***The defendant's use of the trademark is likely to confuse consumers*****.**

Consumer confusion can be said to be the ultimate test for adjudicating a trademark infringement case. The likelihood, similarity of the usage of marks are often tested in the background of consumer confusion.

Illustration 1 - In ***Hotel Panchavati & anr. v. The Panchavati Hotel, 2019 SCC Online Bom 6584***, the Hotel Panchavati, a well-known hospitality service provider filed a request for a trademark injunction to restrain the Panchvati Hotel from infringing and passing off on the former's registered trademark "Panchavati" in respect of hotel and food services. In the first week of 2019, Hotel Panchavati came across the existence of the domain name www.hotel-panchvati-pachmarhi-

mptdc.hotelsgds.com running identical services under the deceptive trademark 'Panchvati'. The Bombay High Court observed that Hotel Panchavati had obtained wide and enviable reputation and goodwill due to its open and continuous use of the mark since early 80's. In its further observation, the Court stated that it would cause public confusion considering the close similarity in the trademarks and the nature of business, and therefore, an *ex-parte interim* injunction was passed against the Panchvati Hotel from using the descriptively similar name.

Illustration 2 - ***Cadila Health Care Ltd. v. Cadila Pharmaceutical Ltd., (2001) 5 SCC 73***. In this case, the parties to the case were the successors of the Cadila group. The dispute arose on the issue of selling of a medicine by the defendant under the name "Falcitab" which was similar to the name of a medicine which was being manufactured by the plaintiff under the name "Falcigo". Both the drugs were used to cure the same disease and hence, the contention was that the defendant's brand name is creating confusion between the consumers. Injunction was demanded by the plaintiff. As a defence, the defendant claimed that the prefix "Falci" has been derived from the name of the disease, i.e., Falcipharam malaria. The Hon'ble Supreme Court whilst laying down guidelines for adjudication of such matters held that it is important that confusion of marks should be strictly prevented in pharmaceuticals and drugs. The Court, thereby, held that in medical products much more precaution and care must be taken with regards to the names of the brand because likelihood of damage owing to confusion to a consumer can have serious consequences. Therefore, being phonetically similar shall amount to being deceptively similar. The Judgment identified the following criteria in order to decide an action of passing off on the basis of unregistered trademark :

- The nature of the marks (i.e. whether they are word, label or composite marks);
- The degree of resemblance between the marks;
- The nature of the goods for which they are used as trademarks;
- Similarities in the nature, character and performance of goods of rival traders;
- The class of purchasers who are likely to buy goods bearing the marks;
- The method of purchasing the goods or placing orders;

The parameters laid down above are not exhaustive but illustrative in nature as the Hon'ble Court acknowledged 'Other circumstances that may be relevant' as another factor as well. Hence, when adjudicating cases pertaining to 'passing off' the facts of the case matter heavily.

Landmark Judgments:

Enumerated below are landmark Judgments on the topic of trademark infringement so as to broaden the understanding of the subject.

1. **Celebrity merchandising :** ***Star India Private Limited v. Leo Burnett (India) Private Limited, 2002 SCC Onilne Bom 942***

This case is the first and a landmark judgement on the issue of celebrity merchandising. In this case, Hon'ble Bombay High Court dealt with the issue of celebrity merchandising. In this case, the plaintiff approached the High Court claiming that they have the absolute rights to the serial 'KYUKI SAAS BHI KABHI BAHU THI' and the 'Tide detergent' advertisement prepared by the defendant no.2 involved similar characters as that of their serial which might give an impression that the "tide detergent' product launched by defendant no.2 is endorsed by them. The plaintiffs further claimed that the characters of the serial have acquired distinct uniqueness and any work involving the characters will give an impression that the product is connected to the plaintiff.

The Hon'ble High Court held that to succeed in a case of character merchandising the plaintiffs must establish as a fact, by material and evidence, that the public would look at the character and consider it to represent the plaintiffs or to consider the product in relation in which it is used as has been made with the plaintiffs' approval.'' In this case, the likelihood of real damage was not found to be meted out. The court held that there is no irreparable loss to the plaintiff and in case a damage takes place, a monetary compensation could be meted out. Hence, the case was dismissed.

2. **First Landmark decision on the protection of IP rights on the Internet -*Yahoo! Inc. v Akash Arora & anr., 1999 SCC Online Del 133*:**

The brief facts of the case are that the defendant was running a website under the name 'Yahoo India!', the plaintiff Yahoo! Inc approached the court praying that the defendant be restrained from using such a domain name on the ground that it is deceptively similar and creates an impression of association with their domain. The Hon'ble Delhi High Court held that ''the domain name serves same function as the trademark and is not a mere address or like finding number on the Internet and, therefore, it is entitled to equal protection as trademark. It was further held that a domain name is more than a mere Internet address for it also identifies the Internet site to those who reach it, much like a person's name identifies a particular person or more relevant to trade mark disputes, a company's name identifies a specific company.''

In this case, the domain name of the plaintiff 'Yahoo!' and defendant 'Yahoo India!', were inferred to be nearly identical and phonetically similar and it was inferred that there existed a likelihood of public confusion giving an impression

that the defendant is associated with plaintiff. The case of the plaintiff succeeded and the defendant was restrained from using the domain name of 'yahoo! India!'. This case is the first in the country which acknowledged and protected the IP internet rights and also known for being a landmark judgment on the issue of 'cyber squatting'

3. **Rights of Prior User of Trademark Prevails over Registered Proprietor-** ***M/s R. J. Components and Shafts v. M/s Deepak Industries Limited, 2017 SCC Online Del 11071***

This case was instituted by one, Rajeev Kumar who claimed to be the sole proprietor of M/s. R.J. Components & Shafts (Plaintiff Company) against the Defendants to restrain them in any manner using the plaintiff's registered trademark NAW. The Plaintiff alleged that the defendants in the case who are also engaged in a similar business have recently started manufacturing gears and have adopted an exactly similar trademark NAW of the plaintiff. Hon'ble Delhi High Court recognized the legal principle of prior use of a mark. The Court's verdict in the case has reiterated the law that prior user of a trademark will override the subsequent user even if the subsequent user has registered the trademark. The court granted injunction against the defendant thereby restraining them from usage of such trademark.

4. **Acquiescence is a valid defence in Trademark Infringement Suit:** ***Makemytrip (India) Private Limited v. Orbit Corporate Leisure Travels, CS(COMM) 643/2017 Decided on 13 December 2017***

In this case, Delhi High Court delved into the law of acquiescence. Facts of the case are that the Plaintiff was aware of the Defendant's mark and still did not take any action for long. It was held that Delay *perse* may not be a defence but the plaintiff knew about the defendant's business since 2013 and let the defendant run the trademark GETMYTRIP and invest money in the same. The Delhi High Court while referring to If a registered proprietor of a mark ignores repeated infringements of its mark then it can even be considered as an abandonment of its mark. In view of the settled position of law of acquiescence, the Court did not restrain the Defendant from using the mark GETMYTRIP which Plaintiff alleged was deceptively similar to its mark MAKEMYTRIP.

5. **For a trademark renewal, sending of O-3 Notice mandatory prior to trademark removal:** ***Kleenage Products (India) Private Limited v. The Registrar of Trademarks & Ors., 2018 SCC Online Bom 46***

In this recent case, the Bombay High Court has reiterated the settled principle of Trademark Law that a mark cannot be removed from the register of trademarks for non-renewal unless the Registrar of Trademarks has sent O-3 Notice to the registered proprietor of the mark. The petitioner in the case was aggrieved by removal of its registered trademark KLITOLIN for non-renewal by

the Respondent from Register of Trademarks and accordingly, prayed that the Court direct the respondent to allow restoration and renewal the impugned mark. The court allowed the same on the ground that the notice was not issued to the plaintiff before the trademark removal.

6. **Any drawback in renewal application has to be communicated to the applicant:** ***M/s Epsilon Publishing House Pvt. v. Union of India, 2017 SCC Online Del 10607***

The Hon'ble Delhi High Court in the instant case has emphasized on the legal proposition that a registered proprietor of a trademark cannot be penalized for non-compliance of rules by the Registrar of Trademarks without extending an opportunity for hearing. Thus, any deficiency in a renewal application has to be communicated to the registered proprietor, so that the proprietor gets the opportunity to cure the defects in application. However, if no deficiency is communicated then, the disputed mark cannot be later removed from the Register of registered trademarks.

Conclusion

A trademark infringement results in unimaginable loss to the plaintiff. In many a cases, such infringement not only results in monetary damage but also impacts the goodwill of the business. It is for this very reason, that in a case where it is *prima facie* established that the alleged usage has caused confusion to public then, the courts are duty bound to presume such a scenario in accordance to section 29(3) of the Act. Section 29(7) of the Act extends the ambit of trademark infringement to even material intended to be used for labelling or packaging goods and also, to advertisements of goods or services. *Mens rea* has been given due importance, for a provision has also been carved out by providing that the infringer whilst causing infringement must have known or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee. With the growth of economy, the law of Trademark is constantly evolving in our country. Increasingly, the courts are confronting the disputes pertaining to trademark infringement. The above mentioned illustrative case laws amongst many settled propositions, establish the proactive role taken up by Judiciary in Intellectual property matters so as to safeguard the interest of traders and consumers.

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PROCEDURE OF DELAYED REGISTRATION OF BIRTHS AND DEATHS

Varun Chouhan
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INTRODUCTION

Recently, Hon'ble High Court of Madhya Pradesh in the matter of ***Kallu Khan v. State of M.P. and ors.*** [Writ Appeal No. 120 of 2021 (Gwalior Bench) order dated 11.02.2022] has struck down Rule 9 of the Madhya Pradesh Registration of Births and Deaths Rules, 1999 (in short Rules of 1999), which empowers the Executive Magistrate to deal with matters relating to delayed registration of births and deaths. In the aforesaid matter, it has been categorically held that the said Rule 9 is against the legislative intent, since section 13(3) of the Registration of Births and Deaths Act, 1969 (in short Act of 1969) only authorizes Judicial Magistrate First Class or Metropolitan Magistrate to verify the correctness of delayed registration of births and deaths.

Before this pronouncement, almost all applications for delayed registration of births and deaths in the State of Madhya Pradesh were entertained by Executive Magistrates. After the aforesaid judgment, there is a steep rise in filing of such applications before the Judicial Magistrates First Class. Since, detailed procedure is not provided both in the Act and Rules, there is a need to address the procedure to be followed in dealing with such applications and allied issues therewith. This article is an attempt to address the same.

RELEVANT PROVISIONS

In order to move further, it is vitally important to refer section 13(3) of the Act of 1969, which reads as under –

"13. Delayed registration of births and deaths:-

(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefore but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action."

From the perusal of the above section, it is clear that when any birth or death is not registered within one year of its occurrence, it will only be registered after verification of the correctness of birth or death. This verification can only be done by the Judicial Magistrate First Class. After verification, the order shall be made in connection to the delayed registration of death or birth.

WHAT IS EXPECTED FROM JMFCS?

The term 'verification' in normal parlance means to establish the accuracy or to confirm or to substantiate in law by oath. Therefore, the Judicial Magistrate First Class is required to gauge the accuracy concerning the correctness of births or deaths. In the matter of ***Kallu Khan*** (supra), it has also been held that:-

> "33. Section 3(4)(a) establishes authority of JMFC in the realm of Section 13(3) of Act of 1969 because appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or any penalty or detention in custody pending investigation etc. is in the domain of Judicial Magistrate only. Here section 23 of Act of 1969 talks about penalties and any omission or failure on the part of a person as referred in said provision may attract penalty and therefore, delayed registration of births and deaths is a serious business which can only be resolved by way of appropriate proceedings before JMFC because of operation of section 13(3) of Act of 1969 which involves appreciation/sifting of evidence and use of all the adjudicatory tools to reach to the conclusion."

Hence, it becomes clear that section 3(4)(a) of the CrPC has applicability in relation to section 13(3) of the Act of 1969. Section 3(4)(a) of the CrPC contains provision related to the jurisdiction of a Judicial Magistrate in matters where there is an involvement of the appreciation or shifting of evidence or formulation of any decision thereon. It becomes evident that while dealing with the applications for verification of delayed registration of births and deaths, JMFC need to record and appreciate evidence. This process also involves shifting of evidence and formulation of the decision thereon.

PROCEDURE TO BE FOLLOWED

No procedure is laid down either in CrPC or the Act of 1969 or Rules of 1999 regarding verification of delayed registration of births and deaths. Hon'ble High Courts of Gujarat and Karnataka have had opportunity to deal with the procedure which can be followed by JMFCs while dealing with the verification of delayed registration of births and deaths.

In matter of ***Karimabibi w/o Gulam Mohammad Mustufa Karodiawad and ors v. Ankleshwar Municipality, AIR 1998 Guj. 42***, the Hon'ble High Court of Gujarat has laid down the procedure, which in a nutshell, is as under –

(1) The applicant shall state the grounds/reasons in the application regarding the delay, that is why the earlier entry in the death or birth register could not be made and why he could not give the information regarding the same to the competent authority. There must be specific averments in the application so as to justify the delay.

(2) The purpose for which the applicant applies for the registration must also be mentioned in the application.

(3) The applicant must also mention the necessary details of the persons who are going to be affected/likely to be affected by the prospective entries. Thereafter, the magistrate should issue notice to the people who are likely to be affected by the entries.

(4) The issuance of the proclamation as required while issuing the succession certificate must be insisted upon.

Similarly, in the case of ***Smt. Muniyamma, C. Sandeep Babu v. Devegowda, the Tahsildar, 2014 (1) KarLJ 714***, Hon'ble High Court of Karnataka opined:

> "The applicant has to state at least the following particulars in the application filed under Section 13(3) of the Act for entering the date of death:
>
> (i) The reasons/grounds as to why entry in the death register could not be made earlier and why he could not give information regarding the same to the competent authority.
>
> (ii) The purpose for which he wants entry in the death register.
>
> (iii) Wife and children of the deceased have to be made parties in the application as also the Jurisdictional Registrar of Births and Deaths.
>
> (iv) The particulars of the person/persons, who are likely to be affected by the entry in the death register.
>
> (v) The Magistrate can also direct the applicant to furnish such other particulars as he may deem fit and proper in the circumstances of the case.
>
> (vi) If the application contains the above particulars, the Magistrate should not only issue notice to the respondents but also to those persons who are likely to be affected by the order. He should also direct the issue of notice in two local daily newspapers, one of them should be in vernacular language, having wide circulation. The Magistrate may also issue such other directions as he may deem fit and proper depending upon the facts of the case. He should hold an enquiry

> and pass appropriate orders thereon in accordance with law. If there is a serious dispute with regard to the date of death, the Magistrate has to dismiss the petition with liberty to the parties to approach the Civil Court for appropriate reliefs."

Thus, the above procedure can be followed by the JMFC while dealing with the matter involving verification of the correctness of births and deaths. Moreover, evidence should also be recorded and public record can also be requisitioned whenever it appears to be expedient for the just decision of the application. Procedure of summons trial may be followed as these proceedings are not summary in nature. Thereafter, being satisfied with the correctness of birth or death, an order shall be made by the JMFC. On the basis of this order, the delayed registration of birth and death can be made in the concerning registers by the appropriate authority. In the event where there is a dispute regarding correctness or in relation to the date of birth/death, the application shall be dismissed and the applicant can proceed to the civil court for appropriate relief.

Considering the objective of verification of delayed registration of births and deaths and above judicial pronouncements, the appropriate procedure, which can be followed by the JMFCs may be suggested as under –

(1) The applicant shall specifically state in the application as to under what circumstances he could not cause entries to be made in Birth/ Death Register and the reason behind not giving relevant information to the competent authority within prescribed time.

(2) The applicant shall also specifically mention purpose for which he requires entries.

(3) The applicant shall make a true and full disclosure concerning the people who are affected or likely to be affected by entries to be made in the register. The manner, in which they are going to be affected, shall also be mentioned precisely.

(4) The jurisdictional Registrar of Death and Birth should also be made a party. In case of the deceased person, in relation of whom entries are required to be made in death register, spouse and children (if any) should also be made parties to the proceedings.

(5) Looking into the facts and circumstances, JMFC may also direct applicant to furnish such other particulars, as are required for just decision.

(6) The applicant shall submit the application supported with affidavit after the payment of prescribed court fees, and process fees as per rule 546 and 546-A of the M.P. Rules and Orders (Criminal).

(7) Notice should be issued to respondents who are affected or likely to be affected by the proposed entries.

(8) Notice should also be published in at least one local daily having wide circulation in the concerned area.

(9) Thereafter, the inquiry may be initiated. The evidence on oath shall be taken thereon. More so, the public record may be also requisitioned by the JMFC. For e.g., record of public hospital etc. Subsequently, the order can be passed.

(10) If the JMFC verifies the correctness of birth or death, then the order should be made directing the Registrar to register the birth or death accordingly. In the event, JMFC is not satisfied with the correctness of birth or death, application should be rejected.

(11) JMFC may follow the procedure of summons trial for recording of evidence in such cases.

(12) Thereafter, the applicant can move to civil court for appropriate remedy.

NATURE OF ORDER OF JMFC

Since, the proceedings before JMFC are of summary nature, the order passed by JMFC on application preferred u/s 13(3) of the Act of 1969 shall be limited to the registration of birth or death and for issuance of relevant certificate. Such order will not be conclusive or final adjudication upon the date of birth or death of the person concerned. As held by Hon'ble High Court of Karnataka in ***Smt. Muniyamma, C. Sandeep Babu*** (supra), affected party may move to civil court for final adjudication of their claims.

REGISTRATION OF APPLICATIONS

Applications u/s 13(3) of the Act is not enumerated in the list of cases to be registered as Miscellaneous Judicial Case under Rule 575, Rules and Orders (Criminal). However, since they require adjudication and are of quasi-judicial nature, such applications may be registered as Miscellaneous Judicial Case (MJC) in the same manner as applications u/s 12 of the Protection of Women from Domestic Violence Act, 2005 are registered.

COURT FEES

Schedule II, Article 1 of the Court Fees Act, 1870 is applicable to the applications filed u/s 13(3) of the Act of 1969 and court fees of ₹ 10/- is payable thereon. Further, ₹ 100/- is payable as process fee as per Rules 546 and 546-A MP Rules and Orders (Criminal) which has to be amalgamated with the court fees payable with main application.

CONCLUSION

The process of verification of delayed registration of births and deaths is an important function as it has central role to play in juvenile justice system, issuance of passport, service matters and guardianship also in various innumerable proceedings. The abovementioned procedure may be followed by the JMFCs so as to perform the task of verifying the correctness of births or deaths.

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विधिक समस्यायें एवं समाधान

(इस स्तम्भ के अन्तर्गत मध्यप्रदेश के अधीनस्थ न्यायालयों के न्यायाधीशों द्वारा अकादमी के संज्ञान में लाई गई विधिक समस्याओं का उपयुक्त हल प्रस्तुत करने का प्रयास किया जाता है। इस स्तम्भ के लिये न्यायाधीशगण अपनी विधिक समस्याएं अकादमी को भेज सकते हैं। चयनित समस्याओं के समाधान आगामी अंको में प्रकाशित किये जाएंगे।)

1. परिवाद पर संस्थित मामलों में क्या दण्डादेश की वृद्धि हेतु परिवादी द्वारा पुनरीक्षण याचिका प्रचलनशील है?

यदि परिवाद पर संस्थित मामले में विचारण न्यायालय द्वारा दण्डादेश दिया गया है और परिवादी को लगता है कि वह अपर्याप्त है तब परिवादी को क्या उपचार उपलब्ध है यह प्रश्न प्रायः न्यायालय के समक्ष आता है। ऐसे मामलों में चूँकि दण्डादेश दिया गया है इस कारण दोषमुक्ति के विरूद्ध अपील के प्रावधान लागू नहीं होते है। धारा 372 के परन्तुक में ''पीड़ित'' को किन्हीं मामलों में अपील प्रस्तुत करने का अधिकार दिया गया है किन्तु न्यायदृष्टांत ***धर्मवीर सिंह विरूद्ध रामराज सिंह, 2011(1) एमपीएचटी 491*** के अनुसार परिवाद पर संस्थित मामलों में परिवादी, ''पीड़ित'' की श्रेणी में नहीं आता है अतः परिवादी धारा 372 के परन्तुक के अन्तर्गत अपील प्रस्तुत नहीं कर सकता है। परिवाद पर संस्थित मामलों में परिवादी को केवल दोषमुक्ति के विरूद्ध अपील प्रस्तुत करने का अधिकार दिया गया है जो धारा 378(4) के अन्तर्गत उच्च न्यायालय में की जा सकती है। संहिता के अन्तर्गत परिवादी को दण्डादेश में वृद्धि के लिए अपील का कोई प्रावधान नहीं है।

न्यायदृष्टांत ***टी. जयराजन (1999 सीआरएलजे 1856) केरला*** के अनुसार ऐसे मामलों में परिवादी सक्षम न्ययालय के समक्ष पुनरीक्षण याचिका प्रस्तुत कर सकता है। इस सम्बंध में ***संजीव मिश्रा विरूद्ध मनोज जैन, 2002 सीआरएलजे 1704 एमपी*** अवलोकनीय है।

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2. क्या सिविल मामलों में केवल निष्कर्ष (finding) के विरूद्ध अपील प्रचलनशील है?

सिविल प्रक्रिया संहिता की धारा 96 मूल डिक्री की अपील से संबंधित है जिसकी प्रक्रिया आदेश 41 में उल्लेखित है। इससे स्पष्ट है कि मूल डिक्री की अपील होती है न कि निर्णय की। लेकिन यदि निर्णय में कोई निष्कर्ष वादी के विरूद्ध दिया जाता है तब यह प्रश्न उत्पन्न होता है कि यदि डिक्री वादी के पक्ष में है तो क्या वादी केवल उस निष्कर्ष के विरूद्ध अपील प्रस्तुत कर सकता है? यदि धारा 96 तथा आदेश 41 को विचार में लिया जाए तो केवल निष्कर्ष के विरूद्ध उस पक्षकार की अपील प्रचलनशील नहीं है जिसके पक्ष में डिक्री पारित की गई है। उदाहरण के लिए यदि **ए** द्वारा **बी** के विरूद्ध धारा 12(1)(ए) तथा 12(1)(ई) स्थान नियंत्रण अधिनियम के अन्तर्गत वाद प्रस्तुत किया जाता है और विचारण न्यायालय द्वारा केवल धारा 12(1)(ए) के

अन्तर्गत आधार प्रमाणित मानते हुए निष्कासन की डिक्री पारित की जाती है तब धारा 12(1)(ई) के आधार के संबंध में निष्कर्ष के विरूद्ध वादी अपील नहीं कर सकता है क्योंकि डिक्री वादी के पक्ष में है लेकिन वादी उस निष्कर्ष को क्रास आब्जेक्शन के जरिये चुनौती दे सकता है। लेकिन यदि ऐसा निष्कर्ष *रेस जुडिकेटा* का प्रभाव रखता है तो ऐसे निष्कर्ष के विरूद्ध अपील प्रचलनशील होती है इस संबंध में न्यायदृष्टांत ***गेंदालाल विरूद्ध रघुनाथ, 2006 (4) एमपीएलजे 510*** अवलोनकीय है। इसके अतिरिक्त न्यायदृष्टांत ***रजत विधार्थी विरूद्ध नरेन्द्र गोपाल, 2006 (2) एमपीएलजे 545*** के अनुसार विचारण न्यायालय द्वारा निकाले गये केवल निष्कर्ष के विरूद्ध कोई अपील नहीं की जा सकती है। लेकिन ऐसा निष्कर्ष यदि डिक्री के क्रियाशील भाग में है तब उससे व्यथित व्यक्ति उसके विरूद्ध अपील कर सकता है। अतः स्पष्ट है कि केवल निष्कर्ष (finding) के विरूद्ध अपील प्रचलनशील नहीं है किन्तु यदि ऐसा निष्कर्ष *रेस जुडिकेटा* का प्रभाव रखता है अथवा डिक्री के क्रियाशील भाग में है तब अपील की जा सकती है।

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3. क्या एक बार किसी साक्षी के कथन धारा 164 दण्ड प्रक्रिया संहिता के अन्तर्गत लेखबद्ध करने के उपरांत पुनः उसी साक्षी के कथन दुबारा लेखबद्ध किये जा सकते हैं?

धारा 164 दण्ड प्रक्रिया संहिता अभियुक्त द्वारा की जा रही संस्वीकृति तथा साक्षी के कथन लेखबद्ध किए जाने का प्रावधान करती है। धारा 164 के अधीन लेखबद्ध साक्षी के कथनों को धारा 161 के अन्तर्गत अन्वेषण अधिकारी द्वारा लेखबद्ध कथन से उच्च स्थान पर रखा गया है और इसका अधिक महत्व है। मजिस्ट्रेट को साक्षी के कथन लेखबद्ध करने में उच्चतम न्यायालय द्वारा न्यायदृष्टांत ***कर्नाटक राज्य विरूद्ध शिवन्ना, (2014) 8 एससीसी 913*** में दिए निर्देशों के अनुसार कथन लेखबद्ध करना चाहिए। कभी–कभी अन्वेषणकर्ता उस साक्षी के कथन लेखबद्ध करने की प्रार्थना करते हैं जिसका कथन पूर्व में धारा 164 के अधीन लेखबद्ध किया जा चुका है। यद्यपि संहिता में साक्षी के कथन दुबारा लेखबद्ध करने पर कोई रोक नहीं है लेकिन जब एक बार मजिस्ट्रेट द्वारा न्यायिकतः कार्य करते हुए साक्षी के कथन लेखबद्ध किए जा चुके हैं तब अन्वेषण अधिकारी यदि उस साक्षी के दुबारा कथन अभिलिखित करने का वांछा करता है तब मजिस्ट्रेट को उसके उद्देश्य को बारीकी से समझना चाहिए क्योंकि वर्तमान में कई ऐसे मामले देखे गए हैं जिनमें साक्षी पहले लेखबद्ध कथन में अभियोजन की कहानी का समर्थन करता है लेकिन पश्चातवर्ती प्रक्रम पर या तो अभियुक्त से समझौता होने के कारण या अन्यथा वह अपने कथन बदलना चाहता है और बदली हुई परिस्थितियां बताकर साक्षी का पुनः कथन का प्रयास किया जा सकता है। ऐसे मामलों में दुबारा कथन लेखबद्ध करवाने का एकमात्र उद्देश्य पूर्व लेखबद्ध कथनों के प्रभाव को समाप्त करना हो सकता है तब दुबारा कथन लेखबद्ध करना युक्तियुक्त नहीं होगा। लेकिन यदि अन्वेषण में कुछ नये तथ्य ज्ञात हुये हैं जिसके सम्बंध में

अन्वेषण अधिकारी साक्षी के दुबारा कथन लेखबद्ध करवाना चाहता है तब ऐसी आपवादिक परिस्थितियों में विधि में दुबारा कथन लेखबद्ध करने पर कोई रोक नहीं है।

इस सम्बंध में न्यायदृष्टांत ***नफीसा विरूद्ध उत्तर प्रदेश राज्य, 2015 सीआरएलजे 4111 (इला), मनीषा साहू विरूद्ध उत्तर प्रदेश राज्य, Cri. Misc. W.P. No. – 2027/2028 दिनांक 19.03.2018 (इला.)*** तथा ***धर्मेन्द्र/पत्रा विरूद्ध उत्तर प्रदेश राज्य, Cri. Misc. Bail Application No. – 31695/2021 दिनांक 01.10.2021 (इला.)*** अवलोकनीय है।

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4. क्या सेशन न्यायालय पुनरीक्षण याचिका को आपराधिक अपील में तथा आपराधिक अपील को पुनरीक्षण याचिका में परिवर्तित कर सकता है?

धारा 401(5) दं.प्र.सं. के अनुसार जहां इस संहिता के अधीन अपील होती है किन्तु उच्च न्यायालय को किसी व्यक्ति द्वारा पुनरीक्षण के लिये आवेदन किया गया है और उच्च न्यायालय का यह समाधान हो जाता है कि ऐसा आवेदन इस गलत विश्वास के आधार पर किया गया था कि उससे कोई अपील नहीं होती है और न्याय के हित में ऐसा करना आवश्यक है तो उच्च न्यायालय पुनरीक्षण के लिये आवेदन को अपील की अर्जी मान सकता है और उस पर तद्नुसार कार्यवाही कर सकता है। यह उपधारा पुनरीक्षण आवेदन को अपील की याचिका में सम्परिवर्तित करने की विवेकाधीन शक्तियाँ उच्च न्यायालय में निहित करती है। यह तब प्रभाव में आती है जब – 1. अपील हो सकती हो; 2. परंतु इस गलत विश्वास की आधार पर कि अपील नहीं हो सकती पुनरीक्षण आवेदन कर दिया गया है; 3. उच्च न्यायालय यह अनुभव करता है कि पुनरीक्षण को अपील में सम्परिवर्तित किया जाना न्याय हित में आवश्यक है।

अब प्रश्न यह है कि क्या सेशन न्यायालय को उक्त शक्तियाँ प्राप्त हैं ? धारा 399(2) दं.प्र.सं. पुनरीक्षण के संबंध में सेशन न्यायालय को यह शक्ति प्रदान करती है कि जहां सेशन न्यायालय के समक्ष पुनरीक्षण के रूप में कोई कार्यवाही उपधारा (1) के अधीन प्रारंभ कि गई है वहां धारा 401 की उपधारा (2), (3), (4) और (5) के उपबंध, जहां तक हो सके ऐसी कार्यवाहियों पर लागू होंगे और उक्त उपधाराओं में उच्च न्यायालय के प्रति निर्देशों का यह अर्थ लगाया जायेगा कि वे सेशन न्यायाधीश के प्रति निर्देश है। अर्थात पुनरीक्षण के मामले में सेशन न्यायालय की शक्तियाँ उच्च न्यायालय के समान है। न्यायदृष्टांत ***सुलेमान खान विरूद्ध मोहम्मद अब्दुल नजीर अलफारूक एवं अन्य, आपराधिक पुनरीक्षण क्रमांक 26/2013*** निर्णय दिनांक 30.08.2013 में यह अवधारित किया गया है कि धारा 399(2) दं.प्र.सं. सहपठित धारा 401(5) दं.प्र.सं. के अनुसार सेशन न्यायालय को यह देखना चाहिये कि क्या पुनरीक्षण को अपील में सम्परिवर्तित किया जाना न्याय हित में आवश्यक है और यदि वह ऐसा पाता है तो पुनरीक्षण याचिका को आपराधिक अपील में परिवर्तित किया जा सकता है। लेकिन यहां यह ध्यान रखना आवश्यक होगा कि ऐसा सम्परिवर्तन सत्र न्यायालय द्वारा परिवाद पर संस्थित मामले में

दोषमुक्ति के विरूद्ध प्रस्तुत अपील में नहीं किया जा सकेगा क्योंकि परिवाद पर संस्थित मामले में दोषमुक्ति के विरूद्ध केवल धारा 378(4) दं.प्र.सं. के अन्तर्गत उच्च न्यायालय में ही की जा सकती है।

आपराधिक अपील को पुनरीक्षण याचिका में सम्परिवर्तित किये जाने के संबंध में दंड प्रक्रिया संहिता के अंतर्गत कोई विशिष्ट प्रावधान नहीं है परंतु सेशन न्यायालय न्याय के उद्देश्य की पूर्ति के लिये ऐसा करने में सक्षम है। न्यायदृष्टांत ***एफ. प्रवीण विरूद्ध टीडी नायडू, आपराधिक अपील क्रमांक–1257/200***2 निर्णय दिनांक 20.04.2009 में इस प्रश्न का निर्धारण किया गया है कि दण्ड प्रक्रिया संहिता में आपराधिक अपील को पुनरीक्षण याचिका में परिवर्तित करने का कोई प्रावधान नहीं है, तब किस आधार पर अपील को पुनरीक्षण याचिका में सम्परिवर्तित किया जा सकता है? इस संबंध में इलाहाबाद उच्च न्यायालय द्वारा ***जगबीर एवं अन्य विरूद्ध स्टेट ऑफ पंजाब, ए.आई.आर. 1998 एससी 3130*** के न्यायदृष्टांत का अवलम्ब लिया गया, जिसमें उच्चतम न्यायालय ने यह अवधारित किया कि उच्च न्यायालय में पुलिस रिपोर्ट पर संस्थित मामले की दोषमुक्ति के विरूद्ध अपील परिवादी द्वारा प्रस्तुत नहीं की जा सकती तब ऐसी अपील को उच्च न्यायालय द्वारा पुनरीक्षण में सम्परिवर्तित कर सुना जाना चाहिये। इलाहाबाद उच्च न्यायालय ने यह निर्धारित किया कि बिना किसी विशिष्ट प्रावधान के भी, न्याय के उद्देश्य की पूर्ति के लिये आपराधिक अपील को पुनरीक्षण में परिवर्तित कर सुना जा सकता है।

इस संबंध में न्यायदृष्टांत ***महेश कुमार एवं अन्य विरूद्ध राज्य, 1978 सीआरएलजे 390*** भी अवलोकनीय है जिसमें अपील को पुनरीक्षण में तथा पुनरीक्षण को अपील में सम्परिवर्तित करने का अभिमत दिया गया है लेकिन पुनरीक्षण याचिका को आपराधिक अपील में परिवर्तित करते समय परिसीमा विधि के प्रावधानों को भी ध्यान में रखना होगा।

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PART - II

NOTES ON IMPORTANT JUDGMENTS

108. ARBITRATION AND CONCILIATION ACT, 1996 – Section 34

Rewriting of contract – Award based on changed circumstances after execution of contract does not mean that the contract has been rewritten by the Arbitrator.

माध्यस्थम एवं सुलह अधिनियम, 1996 – धारा 34

संविदा का पुनर्लेखन – संविदा के निष्पादन के पश्चात् परिवर्तित परिस्थितियों पर आधारित अधिनिर्णय का तात्पर्य यह नहीं होता है कि मध्यस्थ द्वारा संविदा का पुनर्लेखन किया गया है।

State of Haryana v. Shiv Shankar Construction Company and anr.

Judgment dated 14.12.2021 passed by the Supreme Court in Civil Appeal No. 7379 of 2021, reported in (2022) 3 SCC 109

Relevant extracts from the judgment:

Now the submission on behalf of the appellant is that by awarding Rs. 45,000/- per km per month the Arbitrator has rewritten the contract with respect to the amount payable than what was specified in the contract. It is urged that under the contract mutually agreed contractual rate was Rs.1,000/- per km per month and therefore any amount higher than Rs.1,000/- per km per month is beyond the terms and conditions of the contract, is also without substance. It is noted that at the time when the contract was entered into the mutually agreed, the rate fixed was Rs.1,000/- per km per month and the estimated traffic was 3364 PCUS per day. The cause of action arose subsequently due to diversion of traffic from Palwal Aligarh Road and plying of more heavy vehicles due to which the contractor was required to incur additional expenditure for maintenance of the road. Therefore, the contractor was entitled to the loss on account of the additional expenditure incurred for maintenance of the road due to increase in the traffic because of the closure of the Palwal Aligarh Road and diversion of the traffic to the present road. Therefore, by no stretch of imagination it can be said that there was rewriting the terms of the contract as submitted on behalf of the appellant.

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

SPECIFIC RELIEF ACT, 1963 – Section 34

Jurisdiction of Civil Court – Jurisdiction to decide nature of sale deed is vested with the Civil Court and not with the Revenue Courts.

सिविल प्रक्रिया संहिता, 1908 – धारा 9

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34

सिविल न्यायालय का क्षेत्राधिकार – विक्रय पत्र की प्रकृति विनिश्चित करने का क्षेत्राधिकार सिविल न्यायालय में निहित है न कि राजस्व न्यायालयों में।

Naresh Soni v. Shankar Singh

Order dated 13.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No.1333 of 2021, reported in 2022 (1) MPLJ 592

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***110. CIVIL PROCEDURE CODE, 1908 – Sections 10 and 151**

(i) Stay of suit – Applicability of Section 10 – Test is whether on final diceision being reached in the previously instituted suit, such decision would operate as *res judicata* in the subsequently instituted suit.

(ii) Consolidation of suits – In previously instituted suit, relief of injunction was sought and in subsequently instituted suit relief of declaration and injunction were sought – Final decision in previously instituted suit would not operate as *res judicata* in the subsequent suit – To avoid multiplicity of proceedings, consolidation of both suits would be in the interest of justice.

सिविल प्रक्रिया संहिता, 1908 – धाराएं 10 एवं 151

(i) वाद का रोका जाना – धारा 10 की प्रयोज्यता – परीक्षण यह है कि क्या यदि पूर्व संस्थित वाद में अंतिम विनिश्चय होगा तो ऐसा निर्णय पश्चातवर्ती संस्थित वाद के लिए *पूर्व न्याय* का प्रभाव रखेगा।

(ii) वादों का समेकन – पूर्व संस्थित वाद में निषेधाज्ञा की सहायता चाही गई थी तथा पश्चातवर्ती संस्थित वाद में घोषणा तथा निषेधाज्ञा की सहायता चाही गई थी – पूर्व संस्थित वाद का अंतिम विनिश्चय पश्चातवर्ती संस्थित वाद पर *पूर्व न्याय* का प्रभाव नहीं रखेगा – कार्यवाही की बाहुल्यता को रोकने के लिए, दोनों वादों का समेकन न्यायहित में है।

Pooja Soni v. Dinesh Kumar and ors.

Order dated 12.11.2021 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No.600 of 2019, reported in 2022 (1) MPLJ 703

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111. CIVIL PROCEDURE CODE, 1908 – Secton 96 r/w Order 41 Rule 31

First appeal – Mandatory requirements – Conscious application of mind must be reflected in the judgment of the Appellate Court and findings on all questions of fact and law must be supported by reasons – Arguments rendered by parties should also be mentioned in the judgment.

सिविल प्रक्रिया संहिता, 1908 – धारा 96 सहपठित आदेश 41 नियम 31

प्रथम अपील – अनिवार्य अपेक्षाएं – अपीलीय न्यायालय के निर्णय में मस्तिष्क के सचेतन उपयोग का प्रदर्शन होना ही चाहिए एवं तथ्य और विधि के सभी प्रश्नों के निष्कर्ष कारणों से समर्थित होने चाहिए। निर्णय में पक्षकारों द्वारा प्रस्तुत तर्कों का भी विवरण दिया जाना चाहिए।

Manjula and ors. v. Shyamsundar and ors.

Order dated 27.01.2021 passed by the Supreme Court in Civil Appeal No. 6744 of 2013, reported in (2022) 3 SCC 90

Relevant extracts from the order:

Section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC') provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 of the CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state

(a) points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for re-consideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment.

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***112. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10 and Order 6 Rule 4(a)**

Impleadment of State as party – Dispute exists between plaintiff and Krishi Upaj Mandi with regard to boundary wall – No agricultural land is involved – Relief could not be sought against the State and provisions of Order 6 Rule 4(a) of the Code shall not be attracted – Trial Court rightly rejected the application.

सिविल प्रक्रिया संहिता, 1908 – आदेश 1, नियम 10 एवं आदेश 6, नियम 4(क)

राज्य को पक्षकार के रूप में जोड़ा जाना – वादी तथा कृषि उपज मण्डी के बीच चारदीवारी के सम्बंध में विवाद विद्यमान है – कृषि भूमि संलिप्त नहीं है – राज्य के विरूद्ध कोई सहायता नहीं मांगी जा सकती थी और संहिता के आदेश 6 नियम 4(क) के प्रावधान आकर्षित नहीं होंगे – विचारण न्यायालय ने आवेदन उचित रूप से नामंजूर किया।

Indira Chaurasia (deceased) through LRs. Bipin Bihari Chaurasia and ors. v. Director, Krishi Upaj Mandi Board and ors.
Order dated 26.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No.1914 of 2021, reported in 2022 (1) MPLJ 625

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113. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 97, 99 and 101
Execution of a decree for possession – Objection/ obstruction – All questions including questions relating to right, title or interest, resistance or obstruction to possession of the property arising between the parties to proceeding shall have to be determined by the executing court on an application filed under rules 97, 99 and 101 – Separate suit is not required to be instituted.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 97, 99 एवं 101

आधिपत्य की डिक्री का निष्पादन – आपत्ति/अवरोध – संपत्ति के अधिकार, स्वत्व या हित, आधिपत्य में प्रतिरोध या अवरोध सहित सभी प्रश्न, जो कार्यवाही के पक्षकारों के मध्य उत्पन्न होते है, नियम 97, 99 एवं 101 के अन्तर्गत आवेदन प्रस्तुत करने पर निष्पादन न्यायालय द्वारा अवधारित किए जाएंगे – पृथक से वाद संस्थित करने की आवश्यकता नहीं है।

Bangalore Development Authority v. N. Nanjappa and anr.
Judgment dated 06.12.2021 passed by the Supreme Court in Civil Appeal No.6996 of 2021, reported in AIR 2022 SC 81

Relevant extracts from the judgment:

At the outset, it is required to be noted that the BDA is claiming right, title or interest in the land in question being acquired under the provisions of the 1976 Act. It is required to be noted that the lease agreement between the decree holder and the judgment debtor is subsequent to the acquisition of the suit land. Therefore, it is the case on behalf of the appellant – BDA that such a transaction is null and void once the suit land for which the lease agreement was executed was acquired under the provisions of the 1976 Act. Moreover, the award was also declared and a notification under Section 16(2) of the Land Acquisition Act evidencing taking over possession of the land by BDA was also published.

Therefore, when the appellant-BDA which has submitted the obstruction/objection in the execution proceedings filed by the decree holder against the judgment debtor with respect to suit land which was acquired by BDA and when the BDA claims right, title or interest in the suit property, such obstruction/objection was required to be adjudicated upon by the Executing Court while considering the application/obstruction under Order XXI Rule 97 or Rule 99 CPC.

Therefore, as per Order XXI Rule 101 CPC, all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Order XXI rule 97 or rule 99 CPC and relevant to the adjudication of the application shall have to be determined by the Court dealing with the application. For that a separate suit is not required to be filed. Order XXI Rule 97 is with respect to resistance/obstruction to possession of immovable property.

In the instant case, it is the specific case of the appellant – BDA that pursuant to the acquisition of the land in question, the BDA has become the absolute owner and the said land is vested in the BDA and possession was already taken over by the BDA and the land was handed over to the Engineering Section. Therefore, the applications submitted by BDA for impleadment in the execution proceedings and the obstruction against handing over the possession to the decree holder were required to be adjudicated upon by the Executing Court by impleading the BDA as a party to the execution proceedings. Though, in the present case, a substantive suit being O.S. No. 2070/2013 filed by the BDA against the decree holder and the judgment debtor to declare the lease agreement as null and void is pending, irrespective of the same, considering Order XXI Rule 101 CPC, the question relating to right, title or interest of the BDA in the suit property was required to be adjudicated upon by the Executing Court.

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114. CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1, 2 and 2-A
Effect and implementation – Implementation of order of temporary injunction and order of contempt do not fall in the same category – For violation of temporary injunction order, Civil Courts have very vast power and for such violation, property of violator may be attached and he may also be imprisoned – In case of contempt, offender may be punished with fine or jail or both.

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 1, 2 एवं 2–ए
प्रभाव एवं क्रियान्वयन – अस्थायी व्यादेश एवं अवमान आदेश का क्रियान्वयन समान श्रेणी में नहीं आता है – अस्थायी व्यादेश के उल्लंघन की दशा में सिविल न्यायालय की शक्तियां अधिक विस्तृत हैं और ऐसे उल्लंघन के लिये उल्लंघनकर्ता की संपत्ति भी कुर्क की जा सकती है और उसे कारावास में भी भेजा जा सकता है – अवमान के प्रकरण में अवमानकर्ता को जुर्माने से या कारावास से या दोनों से दण्डित किया जा सकता है।

Amazon.com NV Investment Holdings LIC v. Future Retail Limited and ors.

Judgment dated 06.08.2021 passed by the Supreme Court in Civil Appeal No. 4492 of 2021, reported in (2022) 1 SCC 209

Relevant extracts from the judgment:

Suffice it to say that there is a vast difference between enforcement of orders passed under Order XXXIX, Rules 1 and 2 and orders made in contempt of court. Orders which are in contempt of court are made primarily to punish the offender by imposing a fine or a jail sentence or both. On the other hand, Order XXXIX, Rule 2-A is primarily intended to enforce orders passed under Order XXXIX, Rules 1 and 2, and for that purpose, civil courts are given vast powers which include the power to attach property, apart from passing orders of imprisonment, which are punitive in nature.

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115. CONSUMER PROTECTION ACT, 1986 – Section 21

Deficiency in service – The insurer is duty bound to inform the policy holders about the limitations which it was imposing in the policy renewed – Failure to inform the policy holders resulted in deficiency of service.

उपभोक्ता संरक्षण अधिनियम, 1986 – धारा 21

सेवा में कमी – बीमाकर्ता इस दायित्व के अधीन था कि वह पॉलिसी धारक को उन सीमाओं के संबंध में जानकारी दे जो नवीनीकृत पॉलिसी में अधिरोपित की गई थी – पॉलिसी धारक को सूचना देने में असफलता सेवा में कमी के रूप में परिणित होगी।

Jacob Punnen and anr. v. United India Insurance Co. Ltd.

Judgment dated 09.12.2021 passed by the Supreme Court in Civil Appeal No. 6778 of 2013, reported in 2022 ACJ 450

Relevant extracts from the judgment:

In view of the discussion, this Court is of the opinion that the findings of the State Commission and the NCDRC cannot be sustained. The insurer was clearly under a duty to inform the appellant policy holders about the limitations which it was imposing in the policy renewed for 2008-2009. Its failure to inform the policy holders resulted in deficiency of service. The impugned order of the NCDRC as well as the order of the State Commission are hereby set aside. The order of the District Forum is accordingly restored. Consequently, the appeal is allowed; in the circumstances of this case, the respondent shall bear additional costs, quantified at ₹ 50,000/-.

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116. CONSUMER PROTECTION ACT, 1986 – Section 21

(i) Duty of insured – It is the duty or obligation of insured to disclose any material fact at the time of making the proposal.

(ii) Duty of insurance company – If any query or column in a proposal form is left blank, then the insurance company must ask the insured to fill it up – If inspite of any column being left blank, the insurance company accepts the premium and issues a policy, it cannot, at a later stage, when a claim is made under the policy, say that there was a suppression or non-disclosure of a material fact and seek to repudiate the claim.

उपभोक्ता संरक्षण अधिनियम, 1986 – धारा 21

(i) बीमा धारक का कर्तव्य – बीमाधारक का यह कर्तव्य या बाध्यता है कि वह प्रस्ताव किए जाते समय किन्हीं तात्विक तथ्य के सम्बन्ध में प्रकटन करे।

(ii) बीमा कंपनी का कर्तव्य – यदि प्रस्ताव पत्रक में कोई भी प्रश्न या कॉलम रिक्त छोड़ दिया जाता है, तब बीमा कंपनी को निश्चित रूप से उसे पूर्ण करने हेतु बीमाधारक को कहना चाहिए – यदि कॉलम के रिक्त छूटा रहने के बाद भी बीमा कंपनी प्रीमियम प्राप्त कर पॉलिसी जारी करती है जब पॉलिसी के अंतर्गत दावा किया जाता है तब पश्चात्वर्ती स्तर पर यह नहीं कहा जा सकता कि तात्विक तथ्यों का छिपाव अथवा अप्रकटन किया गया है और दावा अस्वीकार करने की प्रार्थना नहीं की जा सकती है।

Manmohan Nanda v. United India Insurance Co. Ltd. and anr.
Judgment dated 06.12.2021 passed by the Supreme Court in Civil Appeal No. 8386 of 2015, reported in 2022 ACJ 496

Relevant extracts from the judgment:

On a consideration of various judgments, the following principles would emerge:

(i) There is a duty or obligation of disclosure by the insured regarding any material fact at the time of making the proposal. What constitutes a material fact would depend upon the nature of the insurance policy to be taken, the risk to be covered, as well as the queries that are raised in the proposal form.

(ii) What may be a material fact in a case would also depend upon the health and medical condition of the proposer.

(iii) If specific queries are made in a proposal form then it is expected that specific answers are given by the insured who is bound by the duty to disclose all material facts.

(iv) If any query or column in a proposal form is left blank then the insurance company must ask the insured to fill it up. If in spite of any column being left

blank, the insurance company accepts the premium and issues a policy, it cannot at a later stage, when a claim is made under the policy, say that there was a suppression or non-¬disclosure of a material fact, and seek to repudiate the claim.

(v) The insurance company has the right to seek details regarding medical condition, if any, of the proposer by getting the proposer examined by one of its empanelled doctors. If, on the consideration of the medical report, the insurance company is satisfied about the medical condition of the proposer and that there is no risk of pre-¬existing illness, and on such satisfaction it has issued the policy, it cannot thereafter contend that there was a possible pre¬-existing illness or sickness which has led to the claim being made by the insured and for that reason repudiate the claim.

(vi) The insurer must be able to assess the likely risks that may arise from the status of health and existing disease, if any, disclosed by the insured in the proposal form before issuing the insurance policy. Once the policy has been issued after assessing the medical condition of the insured, the insurer cannot repudiate the claim by citing an existing medical condition which was disclosed by the insured in the proposal form, which condition has led to a particular risk in respect of which the claim has been made by the insured.

(vii) In other words, a prudent insurer has to gauge the possible risk that the policy would have to cover and accordingly decide to either accept the proposal form and issue a policy or decline to do so. Such an exercise is dependant on the queries made in the proposal form and the answer to the said queries given by the proposer.

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117. CRIMINAL PRACTICE:

Contradiction – A prosecution case may be discredited on the basis of completely contrary version between ocular and medical evidence.

दाण्डिक प्रथाः

विरोधाभास – चक्षुदर्शी एवं चिकित्सकीय साक्ष्य के मध्य पूर्णतः विपरीत वृतान्त के आधार पर अभियोजन के प्रकरण को अविश्वसनीय माना जा सकता है।

Viram alias Virma v. State of Madhya Pradesh

Judgment dated 23.11.2021 passed by the Supreme Court in Criminal Appeal No. 31 of 2019, reported in (2022) 1 SCC 341

Relevant extracts from the judgment:

The oral evidence discloses that there was an indiscriminate attack by the accused on the deceased and the other injured eye-witnesses. As found by the Courts below, there is a contradiction between the oral testimony of the witnesses and the medical evidence. In ***Amar Singh v. State of Punjab (1987) 1 SCC 679*** this Court examined the point relating to inconsistencies between the oral evidence

and the medical opinion. The medical report submitted therein established that there were only contusions, abrasions and fractures, but there was no incised wound on the left knee of the deceased as alleged by a witness. Therefore, the evidence of the witness was found to be totally inconsistent with the medical evidence and that would be sufficient to discredit the entire prosecution case.

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118. CRIMINAL PROCEDURE CODE, 1973 – Sections 41 and 170

Arrest – It is not obligatory for SHO to arrest the accused while filing charge-sheet when he has reasons to believe that accused will obey the summons and will not flee away – Such accused who cooperates with investigation should not be arrested in routine manner.

दण्ड प्रक्रिया संहिता, 1908 – धाराएं 41 एवं 170

गिरफ्तारी – थाने के भारसाधक अधिकारी के लिये अभियोग पत्र प्रस्तुति हेतु अभियुक्त को गिरफ्तार करना बाध्यकारी नहीं है जहां उसके पास यह विश्वास करने का कारण है कि अभियुक्त समन का पालन करेगा और भागेगा नहीं – ऐसा अभियुक्त जो अन्वेषण में सहयोग करता है, नियमित अनुक्रम में गिरफ्तार नहीं किया जाना चाहिए।

Siddharth v. State of Uttar Pradesh and anr.

Judgment dated 16.08.2021 passed by the Supreme Court in Criminal Appeal No. 838 of 2021, reported in (2022) 1 SCC 676

Relevant extracts from the judgment:

It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the chargesheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the chargesheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody.

We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it.4 If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the

investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

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119. CRIMINAL PROCEDURE CODE, 1973 – Section 438

Anticipatory bail – Second bail application – Maintainability of – First bail application rejected on incorrect facts whereas subsequent bail filed on correct facts – Held, Court can reconsider such application as it would not amount to review or re-appreciation.

दण्ड प्रक्रिया संहिता, 1973 – धारा 438

अग्रिम जमानत – द्वितीय जमानत आवेदन – पोषणीयता – प्रथम जमानत आवेदन गलत तथ्यों के आधार पर अस्वीकार किया गया जबकि पश्चातवर्ती आवेदन सही तथ्यों पर प्रस्तुत किया गया – अभिनिर्धारित, न्यायालय ऐसे आवेदन पर पुनर्विचार कर सकता है क्योंकि इसका परिणाम पुनर्विलोकन या पुनर्मूल्यांकन नहीं होगा।

Haneef Khan v. State of M.P.

Order dated 25.11.2021 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 38255 of 2021, reported in ILR (2022) MP 205

Relevant extracts from the order:

Second application for grant of anticipatory bail is maintainable on change facts and circumstances of the case. If first bail application has been rejected on merits, repeat application based on same facts for grant of anticipatory bail is not maintainable. Learned Senior Counsel appearing for applicant has argued that incorrect fact has been mentioned by the Court, therefore, repeat bail application on merits of the case is maintainable.

If incorrect facts are relied on by Court for rejecting first anticipatory bail application then repeat bail application on correct facts is maintainable though first bail application was decided on merits. In repeat bail application Court is considering correct facts which were not before Court in first application. Reconsideration will not amount to review or to re-appreciate facts as sitting in appeal.

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***120 CRIMINAL PROCEDURE CODE, 1973 – Section 439**

INDIAN PENAL CODE, 1860 – Sections 120B, 201, 302 and 364

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3(2)(v)

Bail – Law of parity – While deciding bail on parity, court should also consider the allegations in FIR, role attributed to accused, likelihood to tamper the evidence if enlarged on bail, seriousness and gravity of the offence.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439

भारतीय दण्ड संहिता, 1860 – धाराएं 120बी, 201, 302 एवं 364

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 3(2)(v)

जमानत – समानता का आधार – समानता के आधार पर जमानत आवेदन के निराकरण के समय न्यायालय को अभियुक्त के द्वारा किया गया विशिष्ट कृत्य, प्रथम सूचना रिपोर्ट एवं विवेचना के दौरान अभियुक्त के विरूद्ध एकत्रित की गई साक्ष्य, जमानत पर छोड़े जाने की दशा में साक्ष्य को प्रभावित करने की संभावना, अपराध की गंभीरता को भी देखा जाना चाहिये।

Mahadev Meena v. Praveen Rathore and anr.

Judgment dated 27.09.2021 passed by the Supreme Court in Criminal Appeal No. 1089 of 2021, reported in 2022 CriLJ 671

Relevant extracts from the judgment:

When the Court is called upon to evaluate whether a case for the grant of bail has been made out, it is inappropriate to enter upon matters which would form the subject of the trial when evidence is adduced by the prosecution. Bail was granted to the co-Accused Anita Meena primarily and substantially on the ground that she had a child of eleven months with her in jail. This cannot be the basis to a claim of parity on the part of the first Respondent. The first Respondent cannot claim parity with the co-Accused since the allegations in the FIR and the material that has emerged from the investigation indicate that a major role has been attributed to him in the murder of the deceased.

The consideration that twenty-five witnesses out of seventy-six witnesses had been examined must equally be weighed with the seriousness of the crime, the role attributed to the first Respondent and the likelihood of the evidence being tampered with if the first Respondent were to remain on bail during the course of the trial.

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121. EVIDENCE ACT, 1872 – Section 32

(i) Dying declaration – Evaluation of – Under the Indian law, dying declaration is relevant whether the person making it was or was not under the expectation of death at the time of declaration.

(ii) Dying declaration – Credibility of – General principle – When a party is at the point of death and every hope of world is gone, motive to falsehood is silenced and mind is induced by the most powerful consideration to speak only the truth – Weightage can be given to such dying declaration.

(iii) Dying declaration – Points to be considered – Court is duty bound to analyze the dying declaration according to the surrounding facts of the case.

साक्ष्य अधिनियम, 1872 – धारा 32

(i) मृत्युकालिक कथन – मूल्यांकन – भारतीय विधि के अंतर्गत मृत्युकालिक कथन सुसंगत है, भले ही मृत्युकालिक कथन करने वाला व्यक्ति इसकी घोषणा के समय मृत्यु से आशंकित रहा हो अथवा नहीं।

(ii) मृत्युकालिक कथन – विश्वसनीयता – सामान्य सिद्धांत – जब एक पक्ष मृत्यु की कगार पर होता है और दुनिया की सारी उम्मीद समाप्त हो जाती है, तब झूठ का उद्देश्य शांत हो जाता है और सर्वशक्तिमान विचार मस्तिष्क को केवल सच बोलने के लिये प्रेरित करता है – इस तरह के मृत्युकालिक कथन को महत्व दिया जा सकता है।

(iii) मृत्युकालिक कथन – विचारणीय बिंदु – न्यायालय मामले से संबंधित तथ्यों के अनुसार मृत्युकालिक कथन के विश्लेषण हेतु कर्तव्यबद्ध है।

Durgesh Singh Bhadauria v. State of M.P.

Judgment dated 12.08.2021 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Appeal No. 427 of 2007, reported in ILR (2022) MP 138 (DB)

Relevant extracts from the judgment:

On the basis of the judgments passed by the Apex Court in ***Kishanlal v. State of Rajasthan, AIR 1999 SC 3062, Smt. Paniben v. State of Gujarat, (1992) 2 SCC 474, K. Ramachandra Reddy & anr. v. The Public Prosecutor, (1976) 3 SCC 618, Kundula Bala Subrahmanyam & anr. v. State of Andhra Pradesh, (1993) 2 SCC 684, Laxman v. State of Maharashtra, (2002) 6 SCC 710 (5-Judge Bench), Chacko v. State of Kerala, (2002) 8 SCC 83, Jagbir Singh v. State (NCT of Delhi), (2019) 8 SCC 779, Bhagwan v. State of Maharashtra, (2019) 8 SCC 95*** and ***Md. Farooq v. The State of A.P., (2017) 1 SCC 529***, following points are required to be considered:

(a) Sole dying declaration may be the basis of conviction. No corroboration is required if the Court considers that the dying declaration is true.

(b) In case of multiple dying declarations the Court analyzing the dying declaration is duty bound to analyze the dying declaration recorded in surrounding facts of the case;

(c) The person while recording dying declaration is duty bound to first explain mental status of the victim;

(d) The person while recording dying declaration is duty bound to facilitate the favourable condition to the victim to express truth of the case;

(e) The person while recording dying declaration is duty bound to ensure that the dying declaration is not recorded in presence of any person

who can directly or indirectly affect the freedom or free state of mind of victim;

(f) While considering the dying declaration the Court must satisfy that the statement is not the result of tutoring or prompting. In the eventuality of more than one dying declarations, the Court must analyze the facts and circumstances of the case in which the statement was recorded and should consider the dying declaration which has been given under most appropriate and reasonable situation;

(g) Any contradiction and omission, if exists in the dying declaration, will not be taken into consideration and the Court is free to link the circumstances of the case most reasonable and suitable to the dying declaration.

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122. EVIDENCE ACT, 1872 – Sections 63 and 65(c)

Secondary evidence – Admissibility of – When photocopy of document can be admitted? Held, parties are required to lay factual foundation that alleged copy is true copy of the original – Possession of original and circumstances under which photocopies were prepared and compared with original – Mere production does not satisfy the condition u/s 63 – Benefit u/s 65 cannot be granted. [*Anita v. Saraswati, (2012) 4 MPLJ 561* relied on.]

साक्ष्य अधिनियम, 1872 – धाराएं 63 एवं 65 (ग)

द्वितीयक साक्ष्य – ग्राह्यता – दस्तावेजों की छायाप्रति कब स्वीकार की जा सकती है? अभिनिर्धारित, इस आशय का वास्तविक आधार प्रस्तुत करना होगा कि कथित प्रति, असल दस्तावेज की सत्यप्रति है – दस्तावेज किसके आधिपत्य में था और किन परिस्थितियों में उसकी छायाप्रति तैयार की गई और असल से मिलान की गई इसके वास्तविक आधार बताना आवश्यक है – केवल दस्तावेज को प्रस्तुत कर देने मात्र से धारा 63 की शर्तें पूर्ण नहीं होती और धारा 65 का लाभ प्रदान नहीं किया जा सकता। (*अनिता विरूद्ध सरस्वती, (2012) 4 एम.पी.एल.जे. 561,* अवलंबित)

Shiv Kumar Singh and anr. v. State of M.P.

Order dated 16.12.2021 passed by the High Court of M.P. in Miscellaneous Criminal Case No. 52754 of 2021, reported in 2022 CriLJ 734

Relevant extracts from the order:

….In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be

authenticated by foundational evidence that the alleged copy is in fact a true copy of the original." (***H. Siddiqui (dead) by L.Rs. v. Ramalingam, (2011) 4 SCC 240***).

It has been further held that mere admission of a document in evidence does not amount to its proof. Therefore, it is the obligation of the Court to decide the question of admissibility of a document in secondary evidence before making endorsement thereon.

This Court in the matter of ***Aneeta w/o Ramkesh Rajpoot v. Saraswati w/o Chhatradhari Gupta, (2012) 4 MP LJ 56*** has held that for admitting the document as secondary evidence not only the satisfaction of Sec. 65 is required, but it is also required that photocopy was compared with the original in terms of Sec.63(3).

The application under Section 63 of the Act as well as the provisions of Section 65 of the Act, it is nowhere stated that the photocopies in question were made by mechanical manner from the original and it was compared with the original. Thus, the prosecution has completely failed to establish as to whether the produced documents satisfy the conditions enumerated in Section 63 of the Act. Therefore, question of invoking the provisions of Section 65(c) of the Act does not arise.

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123. EVIDENCE ACT, 1872 – Section 68
SUCCESSION ACT, 1925 – Section 63
CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 1

(i) Will – Suspicious circumstances – Redefined – Evidence produced to establish that testator had suffered paralytic stroke affecting his speech, mobility of right arm and right leg – Treating doctor and scriber not examined – No evidence to show as to whom the testator gave instruction to write the Will – No cordial relationship established – Held, Will not proved according to law.

(ii) Civil appeal – Duty of Appellate Court – Right of appeal is a creature of Statute – Duty cast on the Appellate Court to adjudicate first appeal both on question of law and facts.

(iii) Civil appeal – Reversing a judgment – Appellate court must be more conscious of its duty in assigning reason for doing so.

साक्ष्य अधिनियम, 1872 – धारा 68
उत्तराधिकार अधिनियम, 1925 – धारा 63
सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 1

(i) वसीयत – संदेहास्पद परिस्थितियां – पुनर्परिभाषित – यह स्थापित करने हेतु साक्ष्य प्रस्तुत की गई कि वसीयतकर्ता लकवाग्रस्त था जिससे उसका बोलना, दाहिनी भुजा और दाहिने पैर की गतिशीलता प्रभावित थी – उपचार करने वाले चिकित्सक एवं लेखक परीक्षित नहीं किये गये – यह दर्शाने हेतु कि

वसीयतकर्ता ने वसीयत लिखने हेतु किसे निर्देश दिये, कोई साक्ष्य नहीं – कोई सौहाद्रपूर्ण संबंध स्थापित नहीं – अभिनिर्धारित, वसीयत विधि अनुसार प्रमाणित नहीं।

(ii) सिविल अपील – अपीलीय न्यायालय का कर्तव्य – अपील का अधिकार विधि का सृजन है – अपीलीय न्यायालय पर प्रथम अपील को कानून और तथ्यों दोनों के प्रश्नों पर न्यायनिर्णीत करने का कर्तव्य अधिरोपित किया गया है।

(iii) सिविल अपील – निर्णय को उलटना – अपीलीय न्यायालय को निर्णय को उलटने का कारण बताने में अपने कर्तव्य के प्रति अधिक सचेत होना चाहिए।

Murthy and ors. v. C. Saradambal and ors.
Judgment dated 10.12.2021 passed by the Supreme Court in Civil Appeal No 4270 of 2010, reported in (2022) 3 SCC 209

Relevant extracts from the judgment:

It was contended that the evidence of PW1, the propounder of the Will, does not inspire confidence. We shall highlight the same:

(i) PW1 has stated that Ex-P1 was executed about fifteen days prior to the death of the testator who was her father-in- law and the same was in the custody of the testator. Ex-P1 has seen light of the day, only after the demise of the testator's son who was unaware of the will and during the pendency of the suit filed by the appellants herein seeking partition and separate possession of the property or the estate left behind by their father. There is no explanation regarding the custody of the will after the demise of the testator and for over fifteen years.

(ii) PW1 has stated that the will was kept in a secret place in her husband's almirah and that she took it out only after fifteen days of his death. This admission implies that only PW1 was aware of the execution of the will as well as the secret place where it was kept. If the will was in the custody of the testator as deposed by PW1, there is no explanation as to how the document found a place in the almirah belonging to her husband, particularly, when the testator was bedridden during the last few months (ten months) before his demise and was not in a position to move around.

(iii) PW1 has stated that the will was written by a person known to her father-in-law but the name of the person who wrote the will has not been mentioned therein. There is no mention of or evidence of the scribe of the will.

(iv) PW1 has also admitted that no date has been mentioned on top of the will. Thus, the date of the execution of the will has also not found a place on Ex- P1. This aspect also casts a doubt as to whether the will was executed by the testator during his lifetime.

(v) PW1 has stated that Ex-P1 was executed by her father-in-law and she was present when it was executed but PW2, the attestor has stated that PW1 was outside the room at the time of execution of the will.

In view of the above, we find much force in the submission of appellant's counsel.

On the other hand, the evidence of DW1 in relation to the fact that the testator was not in a good health and he was suffering from a paralytic attack and was not in a position to write, is in corroboration with what PW2 has also admitted in his evidence, that the testator could not be taken to the sub- Registrar's office for the registration of the will as he was suffering from a paralytic stroke.

It has also come in evidence that there was no cordial relationship between the first plaintiff and her husband S. Damodaran and in fact proceedings for dissolution of marriage were initiated which became infructuous on his demise.

For the aforesaid reasons, we hold that the respondents-plaintiffs have not been successful in proving the validity of the will in accordance with law inasmuch as the suspicious circumstances surrounding the very execution of the will have not been cleared by any cogent evidence, rather, the genuineness of Ex-P1 remains in doubt. It is observed that the will (Ex-P1) did not come into existence at the instance of the testator but it is a concocted document and has been got up after the demise of S. Damodaran.

In view of the aforesaid discussion, we hold that the respondents-plaintiffs have failed to prove the will (Ex-P1) in accordance with law inasmuch as they have not removed the suspicious circumstances, surrounding the execution of the will. Hence, Ex-P1, not being a valid document in the eye of law, no Letters of Administration can be granted to the respondents-plaintiffs.

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124. EVIDENCE ACT, 1872 – Section 118

(i) Child witness – Factors to be considered while recording evidence of child witness – Enumerated.

(ii) Credibility of evidence of child witness – Not required to be discarded *per se* – Court can consider such evidence with close scrutiny and look for corroboration to make sure about its credibility.

साक्ष्य अधिनियम, 1872 – धारा 118

(i) बाल साक्षी – बाल साक्षी की साक्ष्य का अभिलेखन करते समय विचारण योग्य तथ्य – प्रगणित किये गए।

(ii) बाल साक्षी की साक्ष्य की विश्वसनीयता – स्वतः ही अलग करने की आवश्यकता नहीं – न्यायालय इस तरह की साक्ष्य को सूक्ष्म परीक्षण के साथ विचार में ले सकता है और इसकी विश्वसनीयता सुनिश्चित करने के लिए संपुष्टि देख सकता है।

Naresh v. State of M.P.

Judgment dated 12.08.2021 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Appeal No. 215 of 2010, reported in ILR (2022) MP 157 (DB)

Relevant extracts from the judgment:

From the judgments passed by the Apex Court in ***Sidhartha Vashist v. State (NCT of Delhi), AIR 2010 SC 2352, Mohamed Sugal Esa v. The King, AIR 1946 P.C. 3, Rameshwar v. State of Rajasthan, AIR 1952 SC 54, Arbind Singh v. State of Bihar, 1995 (Supp) 4 SCC 416, Jibhau Vishnu Wagh v. State of Maharashtra, 1996 (1) CriLJ 803, Panchhi and ors. v. State of U.P., (1998) 7 SCC 177, Dhani alias Dhaneswar Naik v. The State, 1999 (3) CriLJ 2712, Bhagwan Singh and others v. State of M.P., (2003) 3 SCC 21, Ratansingh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64, Sakshi v. Union of India and ors., (2004) 5 SCC 518*** and ***Golla Yelugu Govindu v. State of A.P., (2008) 16 SCC 769***, following factors must be considered at the time of recording of evidence of

(i) There is no disqualification for a child witness;

(ii) The Court must conduct a preliminary enquiry before allowing a child witness to be examined;

(iii) The Court must be satisfied about the mental capability of a child before giving evidence;

(iv) While sifting the evidence, the possibility of a bias or the child being tutored should be taken note of;

(v) The evidence of a child witness should be corroborated;

(vi) The child cannot be administered oath or affirmation and it is incompetent to do so;

(vi) The Court cannot allow a minor to make an affirmation.

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125. HINDU LAW:

HINDU SUCCESSION ACT, 1956 – Sections 6 and 8

Self-acquired and coparcenary property – Devolution of interest – When the son as heir of Class I of the Schedule inherits the property, does he do so in his individual capacity or as *karta* of his undivided family? Held, the property devolved on a Hindu u/s 8 of the Act would not be the HUF property. (*Commissioner of Wealth-tax, Kanpur v. Chander Sen, AIR 1986 SC 1753* relied on) – Further held, where the property in question was self-acquired property, section 6 has no application – Share in such property would devolve according to section 8 that too among the heirs of Class I equally.

हिन्दू विधिः

हिन्दू उत्तराधिकार अधिनियम, 1956 – धाराएं 6 एवं 8

स्वअर्जित एवं सहदायिकी संपत्ति – हित का न्यागमन – जब अनुसूची के वर्ग–1 के उत्तराधिकारी के रूप में पुत्र ने संपत्ति उत्तराधिकार में प्राप्त की, तब क्या वह व्यक्तिगत या उसके अविभाजित परिवार के *कर्ता* की हैसियत में प्राप्त करता है? अभिनिर्धारित – धारा 8 के अधीन एक हिन्दू को न्यागमत संपत्ति हिन्दू अविभाजित परिवार की नहीं होगी। (*कमीशन ऑफ वेल्थ टेक्स, कानपुर विरूद्ध चंदर सेन, एआईआर 1986 सु.को. 1753* अनुसरित) आगे अभिनिर्धारित – जहाँ वादग्रस्त संपत्ति स्वअर्जित संपत्ति है वहाँ धारा 6 प्रयोज्य नहीं है – ऐसी संपत्ति में अंश धारा 8 के अनुसार यानि वर्ग–1 के उत्तराधिकारियों को बराबर न्यागमत होगा।

Govind Singh Yadav (Dead) thr. LRs. Rammurti Yadav & ors. v. Dilip Singh Yadav & ors.

Judgment dated 27.09.2021 passed by the High Court of Madhya Pradesh in First Appeal No. 245 of 2010, reported in ILR (2022) MP 125

Relevant extracts from the judgment:

Considering the submissions made by the learned counsel for the parties and after perusal of the record, I am also of the opinion that the trial Court on the one hand has observed the status of the property as self-acquired property of Shankar Singh but on the other hand relied upon decision in the case of ***Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum and ors., (1978) 3 SCC 383*** and computed the share as if the property in question is a co-parcenary property. Determination of the share by the trial Court as per Section 6 of the Act, 1956 is not proper, whereas the same ought to have been computed as per Section 8 of the Act, 1956. In self-acquired property since the grandson and granddaughter are excluded from heir in Class-1, therefore, the share in the property ought to have been determined among Class-1 heir.

The Supreme Court in the case of ***Radha Bai v. Ram Narayan and ors, Civil Appeal No. 5889/2009, dated 22.11.2019*** has very categorically laid down that in self-acquired property, Class-1 heir has only interest in the property but none-else. In the said case, the question was "the heirs mentioned in Class-1 of the Schedule are son, daughters etc. including the son of a predeceased son but does not include specifically the grandson, being, a son of a son living.

In the case of ***Commissioner of Wealth-tax, Kanpur v. Chander Sen, AIR 1986 SC 1753***, the Supreme Court has observed as under:-

> "Under the Hindu Law the son would inherit the property of his father as karta of his own family. But the Hindu Succession Act has modified the rule of succession. The Act lays down the general rules of succession in the case

> of males. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and Class 1 of the Schedule provides that if there is a male heir of Class 1 then upon the heirs mentioned in Class 1 of the Schedule. In interpreting provisions of Act it is necessary to bear in mind the Preamble to the Hindu Succession Act. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus. In view of the Preamble to the Act i.e., that to modify where necessary and to codify the law, it is not possible when Schedule indicates heirs in Class 1 and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by S.8 he takes it as karta of his own undivided family. If a contrary view is taken it would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under S.8 to inherit, the latter would by applying the old Hindu Law get a right by birth of the said property contrary to the scheme outlined in S.8. Furthermore the Act makes it clear by S.4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today that the property which devolved on a Hindu under S.8 of the Hindu Succession Act would be HUF in his hand vis-a-vis and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class 1 of Schedule under S.8 of the Hindu Succession Act cannot be ignored and must prevail. The preamble of the Act reiterates that the Act is, inter alia, to 'amend' the law. With that background the express language which excludes son's son but included son of a predeceased son cannot be ignored."

The view taken by the Supreme Court is very clear that the son would inherit the property of his father as karta of his own family and that becomes his individual property and if male Hindu dying intestate, it shall devolve according to the provision of Chapter II and Class 1 of the Schedule, according to which, if there is a male heir of Class 1, then upon the heirs mentioned in Class 1 of the Schedule. Class 1 of the Schedule reads as under:-

> "Son; daughter; widow; mother; son of a pre-deceased son; daughter of a predeceased son; son of a pre-deceased daughter, daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-

deceased son; widow of a pre-deceased son of a pre-deceased son."

It has been observed by the Supreme Court that if a property is self-acquired property, share in the said property would be of heirs of Class 1 equally.

Further in the case of ***Yudhishter v. Ashok Kumar, AIR 1987 SC 558***, the Supreme Court has observed that whenever the father gets a property from whatever source from the grandfather or from any other sources and also observed when son inherited the property in the situation contemplated by Section 8, he does take it as a karta of his own undivided family but takes it in its individual capacity.

In the case of ***Commissioner of Income Tax v. P.L. Karuppan Chettiar 1993 Supp.(1) SCC 580***, the Supreme Court has observed that the properties inherited by the son has to be treated as his individual property and Section 8 of Hindu Succession Act would apply for determining the share over the said property.

In the case of ***Additional Commissioner of Income Tax v. M. Karthikeyan 1994 Supp.(2) SCC 112,*** the Supreme Court has observed that partition among father and sons followed by father's death, in such circumstance, the share inherited by a son out of the father's separate property becomes separate property of the son and not the property of joint family of the son and son's son as per Section 8 of the Hindu Succession Act.

In the case of ***M. Yogendra and others v. Leelamma N. and others (2009) 15 SCC 184*** the Supreme Court has dealt with the applicability of Sections 6 and 8 of Hindu Succession Act and has observed that the share inherited by son even as a co-parcener, that shall be treated to be his separate property and in the said property, daughters and sons will take equal share being Class 1 heirs.

However, the trial Court misread the judgment rendered by the Supreme Court in the case of ***Gurupad Khandappa Magdum*** (supra) and applied the same in the case at hand treating the property in dispute as co-parcenary property. The case of ***Gurupad Khandappa Magdum*** (supra) deals with the co-parcenary property and application of Section 6 of Hindu Succession Act, whereas in the present case, it was a finding given by the trial Court that the property in question was self-acquired property and therefore Section 6 has no application but share in the said property would devolve according to Section 8 of Hindu Succession Act that too among the heirs of Class 1 equally. The case of ***Vineeta Sharma v. Rakesh Sharma and ors., 2021 (1) MPLJ 209***, on which counsel for the respondent has placed reliance, has no application in the case at hand for the reason that the Supreme Court in the said case has dealt with the scope of amendment of Section 6 of the Act, 1956, which deals with the co-parcenary property and share of the daughter in the co-parcenary property, whereas, the facts of this case are altogether different as has been discussed hereinabove.

In view of the above discussion, it is clear that the share of the parties in the suit property have been miscalculated by the trial Court wrongly applying the provisions of Hindu Law and Hindu Succession Act, 1956. Since it was a self-acquired property of Shankar Singh and after his death, the property was inherited by Rudra Singh alone, who was its sole owner. After the death of Rudra Singh, the suit property was inherited by his wife and children in equal share. Upon the death of his wife Tarabai, the property devolved upon her children. Thus, at best, the plaintiff can claim to get 1/6th share in the suit property and not 7/18th share as held by the trial Court. Since wife of Rudra Singh got the share in the property after the death of Rudra Singh and wife also died in the year 1991, therefore, her share would also devolve in her children. Accordingly, 1/6th share of each child of Rudra Singh has to be worked out. The judgment and decree passed by the trial Court is therefore defective, not computing the proper share of the plaintiff and as such the said decree is modified to the extent that instead 7/18th share, the plaintiff would be entitled to get 1/6th share in the suit property.

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126. HINDU MARRIAGE ACT, 1955 – Sections 5 and 11

(i) Void marriage – If either party has a spouse living at the time of the marriage and if such marriage is solemnized after the commencement of the Act of 1955, the same is void *ipso-jure* – The fact that the other party had the knowledge of the existing spouse living at the time of marriage, is immaterial.

(ii) Child marriage – Child marriage is neither void nor voidable – The only consequence of contravention of section 5(iii) is prescribed u/s 18 where the contravention of such condition is made punishable.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 5 एवं 11

(i) शून्य विवाह – यदि विवाह के समय दोनों पक्षकारों में से किसी का कोई जीवित पति/पत्नी है और ऐसा विवाह अधिनियम 1955 के प्रारम्भ के पश्चात् सम्पन्न हुआ है तो वह वैधानिक रूप से शून्य है – यह तथ्य कि विवाह के समय दूसरे पक्ष को जीवित पति/पत्नी के होने की जानकारी थी, महत्वहीन है।

(ii) बाल विवाह – बाल विवाह न तो शून्य है और न ही शून्य करणीय – धारा 5(iii) के उल्लंघन का एकमात्र परिणाम धारा 18 में उल्लेखित है, जहाँ ऐसी शर्त के उल्लंघन को दण्डनीय बनाया गया है।

Nirmala Devi v. Anil Kumar Tiwari

Judgment dated 30.11.2021 passed by the High Court of Madhya Pradesh in First Appeal No.1197 of 2018, reported in AIR 2022 MP 27 (DB)

Relevant extracts from the judgment:

The question-wise discussion follows as under:-

Discussion with respect to question No.(a) whether on the date of marriage i.e. on 18.05.2014 between the parties their exists a living spouse of the appellant?

(i) It is seen from the evidence of the parties that the fact of earlier marriage of the appellant with Amarjeet Pandey in the year 1984 is not disputed. The decree of divorce under Section 13 (B) dated 15.07.2018 (Ex-D-7) clearly proves that the appellant had a living spouse namely; Amarjeet Pandey, as on 18.05.2014. The marriage was dissolved only on 15.07.2015 and, therefore, on the basis of material available on record, it is concluded that as on 18.05.2014, the appellant had a living spouse.

(ii) A careful reading of Section 5 (i) and Section 11 of the Act of 1955 makes it clear that if either party has a spouse living at the time of the marriage and if such marriage is solemnized after commencement of the Act of 1955, the same is void ipso-jure. The fact that the other party had the knowledge of existing spouse living at the time of marriage, is immaterial. The Supreme Court in the case of ***Lily Thomas and others v. Union of India and others, (2000) 6 SCC 224*** has held that Section 5 (i) read with Section 11 indicates that any marriage with a person whose previous marriage was subsisting on the date of marriage, would be void ab initio. The Supreme Court further held in the case of ***Krishnaveni Rai v. Pankaj Rai and another, (2020) 11 SCC 253*** that a marriage which is null and void is no marriage in the eyes of law.

(iii) Although as per the law laid down by the this Court in the matter of ***Mst. Rajula Bai v. Suka Dukal, AIR 1972 MP 57*** existence of spouse living at the time of performance of the second marriage need not be established by direct evidence and that fact may be inferred from other facts, however, in view of the aforesaid discussion and on the basis of material available on record, it is concluded that their exists a living spouse of the appellant-wife on 18.05.2014 i.e. on the date of her marriage with the respondent-husband.

Discussion with respect to question No.(b), whether the marriage of the appellant solemnized in the year 1984 with Amarjeet Pandey, can be said to be null and void in view of Section 5 (iii) of the Act of 1955 ?

(i) Section 11 of the Act of 1955 only prescribes marriages which are solemnized after commencement of the Act as null and void if such marriages contravene any of the conditions specified in Clauses (i), (iv) and (v) of Section 5. Clause (i) of Section 5 talks about a living spouse at the time of marriage, Clause (iv) of Section 5 talks about the parties within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two and Clause (v) talks about the parties should not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between two. It is, therefore, seen that the Scheme of Section 11 of the Act of 1955 does not envisage that the contravention of Section

5 (iii) of the Act of 1955 will entail in marriage to be void, neither Section 12 of the Act of 1955 envisages such marriage as voidable.

(ii) It is, therefore, clear that the marriage of appellant in the year 1984 with Amarjeet Pandey, is neither void nor voidable. The only consequences of contravention of Section 5 (iii) of the Act of 1955 is prescribed under Section 18 of the Act of 1955 where the contravention of such condition is made punishable which may extend to two years or with fine which may extend to one lakh rupees or both and there is no other consequences provided under the Act of 1955.

(iii) In the instant case, it is true that in the year 1984, the appellant was not of the marriageable age, as per Section 5 (iii) of the Act of 1955 but when the law does not provide for any consequences except the one as prescribed under Section 18 of the Act of 1955, it cannot be presumed that such marriage is a nullity. If the legislature intended otherwise, the Act certainly would have made a specific provision in that regard in the like manner, as it has been done in the case of contravention of Clauses (i), (iv) and (v) of Section 5 of the Act of ***Gindan v. Barelal, AIR 1976 MP 83, 1955***. Thus, the marriage of the appellant which was solemnized in the year 1984 with Amarjeet Pandey would remain valid, enforceable and recognized.

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127. HINDU MARRIAGE ACT, 1955 – Section 13 (1) (i-a) (i-b)

Divorce – Irretrievable breakdown – A decree for divorce may be passed by the Court on the basis of irretrievable breakdown of marriage but even after that the husband must be held liable and responsible to maintain his minor son unless he becomes major – A child should not be left to suffer because of any dispute between the parents.

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

विवाह विच्छेद – अपूर्णीय विघटन – न्यायालय द्वारा विवाह के अपूर्णीय विघटन के आधार पर विवाह विच्छेद की आज्ञप्ति पारित की जा सकती है परन्तु ऐसा होने के पश्चात भी पति को उसके अवयस्क पुत्र के भरण पोषण के लिये तब तक उत्तरदायी एवं जिम्मेदार ठहराया जाना चाहिए जब तक कि ऐसा पुत्र वयस्क नहीं हो जाता है – माता–पिता के मध्य के किसी विवाद के कारण बालक को परेशान होने के लिये नहीं छोड़ना चाहिए।

Neha Tyagi v. Lieutenant Colonel Deepak Tyagi

Judgment dated 01.12.2021passed by the Supreme Court in Civil Appeal No. 6374 of 2021, reported in (2022) 3 SCC 86

Relevant extracts from the judgment:

However, considering the fact that both, the appellant-wife and the respondent-husband are not staying together since May, 2011 and therefore it can be said that there is irretrievable breakdown of marriage between them.

The decree passed by the learned Family Court, confirmed by the High Court, dissolving the marriage between the appellant-wife and the respondent-husband is not required to be interfered with on account of irretrievable breakdown of marriage.

However, at the same time, the respondent-husband cannot be absolved from his liability and responsibility to maintain his son Pranav till he attains the age of majority. Whatever be the dispute between the husband and the wife, a child should not be made to suffer. The liability and responsibility of the father to maintain the child continues till the child/son attains the age of majority.

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128. HINDU MARRIAGE ACT, 1955 – Sections 25(1) and 25(3)
Permanent alimony and maintenance – Conduct of wife is relevant only while verifying, modifying or rescinding an order and not at the time of passing of initial order.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 25(1) एवं 25(3)
स्थाई गुजारा भत्ता तथा भरण पोषण – पत्नी का आचरण केवल किसी आदेश को परिवर्तित करने, बदलने या रद्द करने के दौरान विचार में लिया जा सकता है न कि आरंभिक आदेश करते समय।

Usha Hukumsingh v. Hukumsingh Arjunsingh Shekhawat
Judgment dated 27.10.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in First Appeal No. 337 of 2017, reported in AIR 2022 MP 12 (DB)

Relevant extracts from the judgment:

As per sub section (1) of section 25 order regarding grant of maintenance has to be passed by taking into consideration the conduct of the parties and other circumstances of the case. As per sub section (3) an order passed under sub section (1) can be varied upon proof of eventualities enumerated therein. Thus, it is evident that at the time of passing of the initial order under sub section (1) of Section 35 it is the conduct of the parties and other circumstances of the case which have to be considered and such an order can be varied under sub section (3) subsequently. The unchastity of the wife can be taken into consideration only while varying, modifying or rescinding an order passed under sub section (1). The same cannot be taken into consideration at the time of passing of initial order under sub section (1).

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129. INDIAN PENAL CODE, 1860 – Sections 53 and 394
EVIDENCE ACT, 1872 – Sections 3 and 27

(i) Appreciation of evidence – Robbery – Voluntarily causing hurt by assaulting and looted cash as well as mobile – Identification by complainant in Test Identification Parade and Court – Recovery of mobile, identified by complainant – Conviction proper.

(ii) Constructive/vicarious liability – In furtherance of common intention – Co-accused named in FIR – No specific role attributed – Recovery of small amount of cash remained unidentified – Complainant refused to identify accused in Court – Named in FIR on the basis of disclosure statement of hostile witness – Conviction not proper.

भारतीय दण्ड संहिता, 1860 – धाराएं 53 एवं 394

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 27

(i) साक्ष्य की विवेचना – लूट – नगद राशि एवं मोबाईल की लूट करते समय हमला कर स्वेच्छा उपहति कारित की – फरियादी ने अभियुक्त को न्यायालय में एवं पहचान परेड में पहचाना – अभियुक्त के कब्जे से बरामद मोबाईल को भी फरियादी द्वारा पहचाना गया – दोषसिद्धी उचित है।

(ii) आन्वयियक दायित्व /प्रतिनिधिक दायित्व – सामान्य आशय के अग्रसरण में – सहअभियुक्त के नाम का प्रथम सूचना रिपोर्ट में उल्लेख – विशिष्ट कृत्य स्पष्ट नहीं – अल्प मात्रा में बरामद नगद राशि की पहचान नहीं हुई – फरियादी ने भी न्यायालय में अभियुक्त को नहीं पहचाना – प्रथम सूचना रिपोर्ट में नाम पक्षविरोधी साक्षीगण के प्रकटन कथनों के आधार पर लिखा गया – दोषसिद्धी उचित नहीं।

Shankar alias Shiva alias Bitniya v. State of M.P.

Judgment dated 01.04.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Regular Appeal No. 1376 of 2021, reported in 2022 CriLJ 147

Relevant extracts from the judgment:

Assaulted and looted cash as well as mobile from the complainant Ganesh. He was duly identified by the complainant Ganesh (P.W.9) in the TIP as well as in the Court and there was the recovery of mobile from him which had duly been identified by the complainant. Therefore, the conviction of appellant - Shanker is proper and no interference is called for by this Court.

So far as the conviction and sentence of the appellant – Vikram Singh is concerned, he has been convicted with the aid of Section 34. Although he was named FIR against him, there is no role attributed to him. There is the only recovery of Rs.700/- from him which is unidentifiable. He did not assault the complainant. Nothing has been said in the deposition in the Court against him. In the cross-examination, the complainant has refused to identify him and deposed to the extent that he was not present on the date of the incident. He has been named in the FIR on the basis of disclosure made by Mahendra and Nitesh who have been declared hostile by the Court. He is also a first offender. Therefore, in view of the testimony of the complainant (P.W.9), the conviction and sentence of the appellant - Vikram Singh is quashed.

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130. INDIAN PENAL CODE, 1860 – Sections 96, 97, 149 and 302
CRIMINAL PROCEDURE CODE, 1973 – Sections 156 and 157
EVIDENCE ACT, 1872 – Section 3

(i) Investigation – Doctrine of fairness – An Investigation Officer being a public servant is expected to conduct the investigation fairly – Pliable change is required in the mind of Investigation Officer – Being an Officer of the Court, he should not take sides, either of the victim or the accused – Should be guided by law and be an epitome of fairness in his investigation.

(ii) Right of private defence – Onus to prove – Initial burden to discharge is on accused, the extent of evidence is that of preponderance of probabilities and thereafter onus shifts to State – Two questions alone to be answered, whether defence coming under preview of Sections 96 to 102 IPC or whether the right of self defence has exceeded?

(iii) Common object – Deeming fiction – Offence committed by one member of unlawful assembly to the others having common object – Mere presence in an assembly would not constitute an offence – Courts to be more circumspect and cautious while dealing with a case u/s 149 IPC – Higher degree of onus is on the prosecution to prove the case u/s 149.

(iv) Inseparable discrepancies – Material discrepancies shaking the very credibility, leading to a conclusion in the mind of the Court that it is neither possible to separate it nor to rely upon – It is for the said Court to either accept or reject it.

भारतीय दण्ड संहिता, 1860 – धाराएं 96, 97, 149 एवं 302
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 156 एवं 157
भारतीय साक्ष्य अधिनियम, 1872 – धारा 3

(i) अन्वेषण – निष्पक्षता का सिद्धांत – अन्वेषण अधिकारी एक शासकीय कर्मचारी है जिससे निष्पक्ष अन्वेषण की अपेक्षा की जाती है – मानसिकता लचीली होनी चाहिए – न्यायालय के अधिकारी होने के कारण किसी एक पक्ष का साथ नहीं देना चाहिए – विधि अनुरूप निष्पक्ष जांच करनी चाहिए।

(ii) प्राइवेट प्रतिरक्षा का अधिकार – प्रारंभिक प्रमाण भार आरोपी पर होता है जो संभावनाओं की प्रबलता की सीमा तक उन्मोचित करना होता है जिसके बाद प्रमाण भार राज्य पर आ जाता है – केवल दो प्रश्नों का उत्तर आवश्यक है, क्या प्राइवेट प्रतिरक्षा धारा 96 से धारा 102 भा.दं.सं. के अंतर्गत आती है और क्या प्राइवेट प्रतिरक्षा के अधिकार का अतिक्रमण किया गया।

(iii) सामान्य उद्देश्य – उचित कल्पना – विधि विरूद्ध जमाव के सदस्य द्वारा सामान्य उद्देश्य के अग्रसरण में किया गया कार्य – केवल घटना स्थल पर उपस्थित होना अपराध गठित करने के लिये पर्याप्त नहीं – न्यायालय को धारा

149 भा.दं.सं. के मामले में सतर्क एवं चौकन्ना रहकर कार्य करना चाहिए – धारा 149 भा.दं.सं. को प्रमाणित करने के लिए अभियोजन पर उच्च श्रेणी का प्रमाण भार रहता है।

(iv) अपृथकक्करणीय विसंगतियाँ – तात्विक विरोधाभास जो साक्षी के कथनों को संदेहास्पद बनाते हो एवं जिन्हें अलग नहीं किया जा सकता, न्यायालय को स्वविवेक से तय करना है कि उन्हें स्वीकार या अस्वीकार करे।

Arvind Kumar alias Nemichand and ors. v. State of Rajasthan

Judgment dated 22.11.2021 passed by the Supreme Court in Criminal Appeal No. 753 of 2017, reported in 2022 CriLJ 374

Relevant extracts from the judgment:

There is a subtle difference between a defective investigation, and one brought forth by a calculated and deliberate action or inaction. A defective investigation per se would not enure to the benefit of the Accused, unless it goes into the root of the very case of the prosecution being fundamental in nature. While dealing with a defective investigation, a court of law is expected to sift the evidence available and find out the truth on the principle that every case involves a journey towards truth. There shall not be any pedantic approach either by the prosecution or by the court as a case involves an element of law rather than morality.

A fair investigation would become a colourable one when there involves a suppression. Suppressing the motive, injuries and other existing factors which will have the effect of modifying or altering the charge would amount to a perfunctory investigation and, therefore, become a false narrative. If the courts find that the foundation of the prosecution case is false and would not conform to the doctrine of fairness as against a conscious suppression, then the very case of the prosecution falls to the ground unless there are unimpeachable evidence to come to a conclusion for awarding a punishment on a different charge.

Though the initial onus is on the Accused to satisfy the court, the extent of evidence is that of preponderance of probabilities. Thereafter, the onus shifts. Once a private defence is accepted, there are two questions alone to the answered by the court, namely, the defence coming within the purview of Section 96 to Section 102 Indian Penal Code and the other acting in excess. The concept of acting in excess has to be seen from the point of view of continued existence of the apprehension of danger.

The concept of constructive or vicarious liability is brought into this provision by making the offense committed by one member of the unlawful assembly to the others having the common object. It is the sharing of the common object which attracts the offense committed by one to the other members. Therefore, the mere presence in an assembly per se would not constitute an offense, it does become one when the assembly is unlawful. It is the common object to commit an offense which results in the said offense being committed. Therefore,

though it is committed by one, a deeming fiction is created by making it applicable to the others as well due to the commonality in their objective to commit an offense.

Motive might lose its significance when adequate evidence in the form of eyewitnesses are available to the acceptance of the court.

This Court considered the effect of suppression of injuries suffered by the Accused. Accordingly, it was held that if the injuries on the Accused are substantial and to the knowledge of prosecution, a failure to conduct the investigation while denying the same would be fatal especially when a doctor who examined the deceased and the injured Accused deposes otherwise.

When the discrepancies are very material shaking the very credibility of the witness leading to a conclusion in the mind of the court that it is neither possible to separate it nor to rely upon, it is for the said court to either accept or reject.

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131. INDIAN PENAL CODE, 1860 – Sections 148 and 302/149
CRIMINAL PRACTICE:

(i) Testimony of related witness – Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person – The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully.

(ii) Evidence in case of unlawful assembly – Where a crowd of several assailants who are members of unlawful assembly proceed to commit an offence of murder in furtherance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailant or to remember each and every blow delivered to victim – Therefore, some omissions and contradictions are normal considering the lapse of time, their state of trauma and shock.

भारतीय दण्ड संहिता, 1860 – धाराएं 148 एवं 302/149
दाण्डिक पद्धतिः

(i) हितबद्ध साक्षी की विश्वसनीयता – सामान्यतः निकट संबंधी अंतिम ही होगा जो वास्तविक अभियुक्त को बचाये और निर्दोष व्यक्ति को मिथ्या अलिप्त करे। रिश्तेदारी अथवा साक्ष्य की हितबद्ध प्रकृति न्यायालय पर साक्ष्य की जांच और अधिक सतर्कता से करने का उत्तरदायित्व रखती है।

(ii) विधि विरुद्ध जमाव के संबंध में साक्ष्य – जहां कई आक्रामकों की भीड़ जो कि विधि विरुद्ध जमाव के सदस्य हैं, विधि विरुद्ध जमाव के सामान्य उद्देश्य के अग्रसरण में हत्या का अपराध करने के लिए अग्रसर होते हैं, तब बहुधा साक्षियों के लिए यह संभव नहीं होता है कि वे प्रत्येक आक्रामक द्वारा निभाई

गई भूमिका का सटीक वर्णन करें अथवा पीड़ित को कारित प्रत्येक प्रहार को याद रखे। इस प्रकार समय के व्यतीत होने और आघात तथा सदमे को विचार में ले तो कुछ लोप और विरोधाभास सामान्य है।

Narbad Ahirwar and anr. v. State of M.P.

Judgment dated 25.10.2021 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 763 of 2006, reported in ILR (2021) MP 2339 (DB)

Relevant extracts from the judgment:

Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully. Interestedness of the witness has to be considered and not just that he is interested.

Learned counsel for the appellants have further argued that the statements of Janki Bai (PW-1), Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) are not reliable as there are contradictions and omissions regarding the part played by each one of the appellant. Aforesaid argument again is not wellfounded. Where a crowd of several assailants who are members of unlawful assembly proceed to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailant or to remember each and every blow delivered to victim. Eye witness namely Janki Bai (PW-1), Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) are rustic villagers; therefore, some omissions and contradictions are normal considering the lapse of time, their state of trauma and shock while watching their brother/husband and parents being killed. The above witnesses were natural and most probable and their presence at the place of occurrence is expected being close relatives.

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132. INDIAN PENAL CODE, 1860 – Section 149

Common object – Innocent bystanders should not be implicated for constructive liability – Only if it is proved by the prosecution that common object of the unlawful assembly was shared by any bystander or onlooker then only such bystander or onlooker should be convicted under the principle of constructive liability.

भारतीय दण्ड संहिता, 1860 – धारा 149

सामान्य उद्देश्य – निर्दोष तमाशाई को आन्वयिक दायित्व के लिये अपराध में संलिप्त नहीं मानना चाहिए – यदि अभियोजन द्वारा यह प्रमाणित किया जाता है कि किसी तमाशाई या दर्शक द्वारा भी विधि विरूद्ध जमाव के सामान्य उद्देश्य को साझा किया गया था तब ही ऐसे तमाशाई या दर्शक को आन्वयिक दायित्व के आधार दोषसिद्ध किया जा सकता है।

Taijuddin v. State of Assam and ors.

Judgment dated 01.12.2021 passed by the Supreme Court in Criminal Appeal No. 1526 of 2021, reported in (2022) 1 SCC 395

Relevant extracts from the judgment:

Constructive liability cannot be stretched to lead to the false implication of innocent bystanders. This Court considered the possibility of often people gathering at the scene of offence out of curiosity but that did not make them share the common object of the assembly. The Court must guard against the possibility of convicting mere passive onlookers who did not share the common object of the unlawful assembly. There must be reasonable direct or indirect circumstances which lend assurance to the prosecution case that they shared common object of the unlawful assembly. Not only should the members be part of the unlawful assembly but should share the common object at all stages. This has to be based on the conduct of the members and the behaviour at or near the scene of the offence, the motive for the crime, the arms carried by them and such other relevant considerations.

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133. INDIAN PENAL CODE, 1860 – Sections 279 and 304-A

Punishment – A little liberal view may be taken by the Court while awarding punishment in the case of Section 304-A of IPC, if it is proved that at the time of accident driver of the offending vehicle was neither under influence of alcohol nor any other substance which was able to reduce his driving skill and the accident was resulted by simple rash and negligent driving but if it is proved that at the time of accident driver was drunk or affected by any other substance because of which he was unable to drive carefully then the punishment must be strict and harsh.

भारतीय दण्ड संहिता, 1860 – धाराएं 279 एवं 304–क

दण्ड – यदि धारा 304–क भा.दं.सं. के प्रकरण में यह साबित होता है कि दुर्घटना के समय दुर्घटना कारित करने वाले वाहन का चालक न तो मदिरा के प्रभाव में था और न ही किसी ऐसे पदार्थ के प्रभाव में था जो उसकी वाहन चालन दक्षता को कम कर सकता था और दुर्घटना सामान्य उपेक्षा और असावधानी का परिणाम थी तब दण्डादेश पारित करते समय न्यायालय द्वारा कुछ उदार दृष्टिकोण लिया जा सकता है किंतु यदि यह साबित होता है कि दुर्घटना के समय दुर्घटना कारित करने वाले वाहन का चालक मदिरा के प्रभाव में था या किसी ऐसे पदार्थ के प्रभाव में था जिसके कारण वह सावधानीपूर्वक वाहन चलाने में सक्षम नहीं था तब दण्डादेश निश्चित रूप से सख्त होना चाहिए।

Sagar Lolienkar v. State of Goa and anr.

Judgment dated 18.11.2021 passed by the Supreme Court in Criminal Appeal No. 1415 of 2021, reported in (2022) 1 SCC 161

Relevant extracts from the judgment:

In the instant case, the appellant has been found to be guilty of offences punishable under Section 279 and 304-A IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of the precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simpliciter and not a case of driving in an inebriate condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment.

Having regard to all these factors and bearing in mind the fact that the widow of the victim has not come forward despite notice being served and the compensation of Rs. 3 lakhs has been deposited by the appellant, we are of the view that a lenient view can be taken in the matter and the sentence of imprisonment can be reduced.

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***134. INDIAN PENAL CODE, 1860 – Sections 300 and 302**

Murder – Once the prosecution establishes the existence of necessary ingredients forming a part of "thirdly" in Section 300, intention or knowledge on the part of accused to cause death is irrelevant.

भारतीय दण्ड संहिता, 1860 – धाराएं 300 एवं 302

हत्या – एक बार जब अभियोजन धारा 300 के ''तीसरा'' भाग के गठन के लिए आवश्यक संघटक स्थापित कर देता है, मृत्यु कारित करने का अभियुक्त का आशय या ज्ञान असंगत है।

Vinod Kumar v. Amritpal alias Chhotu and ors.

Judgment dated 30.11.2021 passed by the Supreme Court in Criminal Appeal No.1519 of 2021, reported in AIR 2022 SC 244

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135. INDIAN PENAL CODE, 1860 – Section 302

EVIDENCE ACT, 1872 – Section 32

(i) Murder – Dying declaration – Before death, deceased lodged FIR – Will be treated as dying declaration, if the prosecution establishes that deceased was conscious and in a fit state of mind.

(ii) First Investigation Report – Not an encyclopedia – Precise and concise information is normal.

(iii) Dying declaration – Evidence of person who recorded it – No need to depose verbatim of the maker.

भारतीय दण्ड संहिता, 1860 – धाराएं 302

साक्ष्य अधिनियम, 1872 – धारा 32

(i) हत्या – मृत्युकालिक कथन – मृत्यु के पूर्व मृतक ने प्रथम सूचना रिपोर्ट दर्ज करवाई – यदि अभियोजन यह साबित कर दे कि मृतक जागृत तथा उपयुक्त मानसिक अवस्था में था तो प्रथम सूचना रिपोर्ट मृत्युकालिक कथन की तरह मानी जाएगी।

(ii) प्रथम जाँच रिपोर्ट – विश्वकोष नहीं है – सटीक एवं संक्षिप्त जानकारी सामान्य है।

(iii) मृत्युकालिक कथन – अभिलिखित करने वाले की साक्ष्य – कथनकर्ता के अक्षरशः शब्दों के बयान की आवश्यकता नहीं होती।

Chhuna @ Chhatra Pal Singh & anr. v. State of M.P.

Judgment dated 25.08.2021 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Appeal No 474 of 2003, reported in ILR (2022) MP 168 (DB)

Relevant extracts from the judgment:

In the present case, the deceased Daghich Singh was in an injured condition and he lodged the F.I.R., Ex. P.28. As the deceased died on account of injuries sustained by him, accordingly, it is held that the F.I.R., Ex. P.28 lodged by deceased will be a dying declaration, provided the prosecution succeeds in establishing that the deceased was in a fit state of mind and was conscious. Whether F.I.R., Ex. P.28 lodged by deceased Daghich Singh was lodged by him?

It is well established principle of law that F.I.R., Ex. P.28 is not an encyclopaedia. Even otherwise, when the informant was in an injured condition having sustained gun shot injuries, then it is not expected that he would give each and every minute details of the offence. On the contrary, the precise and concise information appears to be natural. Even otherwise, the incident cannot be appreciated in a mechanical manner. The deceased might have noticed the appellant Chandramohan and therefore, if the prosecution witnesses have stated that the deceased sustained gun shot fired by Chandramohan as he stood up on the tractor, then it cannot be said to be an improvement. The Supreme Court in the case of ***Gurcharan Singh v. State of Punjab, 1994 Supp (1) SCC 515*** has held as under :

> It can thus be seen that the evidence adduced by DWs 1 to 8 does not in any manner render the evidence of the eyewitnesses unacceptable. Now, we shall consider some of the general submissions. Learned counsel placed considerable reliance on the evidence of

the doctors who conducted the post-mortem. PW 1 Dr Ved Bhushan conducted the post-mortem on the dead body of Mander Singh, D-1 and he found five gunshot injuries. In the cross-examination he stated that the injury Nos. 4 and 5 could have been caused if the assailant was standing at a higher level compared to the victim and that if the victim had been sitting on the tractor and the assailant was standing on the ground, the injuries could not have been caused by the shots fired by the assailants. This is only an opinion evidence and it cannot be imagined that the victims could have been just sitting and could not have stood up or moved this way or the other.....

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136. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Section 3

(i) Testimony of eye witness – Where the ocular evidence of the eye witness is cogent, reliable and trustworthy, medical opinion pointing to alternative possibilities should not be accepted.

(ii) Discrepancies in evidence – The evidence of witness should be read as a whole – On the basis of minor discrepancies, the evidence of witness cannot be rejected.

भारतीय दण्ड संहिता, 1860 – धारा 302
साक्ष्य अधिनियम, 1872 – धारा 3

(i) चक्षुदर्शी साक्षी की साक्ष्य – जहां चक्षुदर्शी साक्षी की मौखिक साक्ष्य अकाट्य, भरोसेमंद तथा विश्वसनीय हो वैकल्पिक संभावनाओं को इंगित करने वाला चिकित्सीय अभिमत स्वीकार नहीं किया जाना चाहिए।

(ii) साक्ष्य में विसंगतियां – साक्षी की साक्ष्य को सम्पूर्ण रूप में पढ़ा जाना चाहिए – सूक्ष्म विसंगतियों के आधार पर साक्षी की साक्ष्य को नामंजूर नहीं किया जा सकता है।

Bhagchandra v. State of Madhya Pradesh
Judgment dated 09.12.2021 passed by the Supreme Court in Criminal Appeal No.255 of 2018, reported in AIR 2022 SC 410 (Three-Judge Bench)

Relevant extracts from the judgment:

It could be seen that what is required to be considered is whether the evidence of the witness read as a whole appears to have a ring of truth. It has been held that minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, would not ordinarily permit rejection of the evidence as a whole. It has been held that the prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming

from which no criminal case is free. What is important is to see as to whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. It has been held that there are always normal discrepancies due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence. It is the duty of the court to separate falsehood from the truth in every case.

Applying these principles, we are of the view that the minor discrepancies in the evidence of the prosecution witnesses are not of such a nature which would persuade this Court to disbelieve their testimonies. It is further to be noted that the witnesses are rustic villagers and some inconsistencies in their depositions are bound to be there.

It can thus be seen that this Court has held that in case of rustic witnesses, some inconsistencies and discrepancies are bound to be found. It has been held that the inconsistencies in the evidence of the witnesses should not be blown out of proportion. To do so is to ignore hard realities of village life and give undeserved benefit to the accused. It has been held that the evidence of such witnesses has to be appreciated as a whole. A rustic witness is not expected to remember every small detail of the incident and the manner in which the incident had happened. Further, a witness is bound to face shock of the untimely death of his near relatives. Upon perusal of the evidence of the witnesses as a whole, we are of the considered view that their evidence is cogent, reliable and trustworthy.

Having held that the ocular testimony of the witnesses establishes the guilt of the accused beyond reasonable doubt, we come to the other contentions of the appellant. Insofar as the contention of the appellant that the medical evidence does not support the prosecution case, it will be appropriate to rely on the judgment of this Court in the case of ***Krishnan and anr. v. State represented by Inspector of Police, AIR 2003 SC 2978***:

> "The evidence of Dr. Muthuswami (PW 7) and Dr. Abbas Ali (PW 8) do not in any way run contrary to the ocular evidence. In any event, the ocular evidence being cogent, credible and trustworthy, minor variance, if any, with the medical evidence is not of any consequence.
>
> Coming to the plea that the medical evidence is at variance with ocular evidence, it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant".

It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive.

Witnesses, as Bentham said, are the eyes and ears of justice. Hence the importance and primacy of the quality of the trial process. Eyewitnesses' account would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit worthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."

As already discussed here in above, the ocular evidence of the eye witnesses is cogent, reliable and trustworthy. Apart from that, the oral version in the testimonies of PWs 1, 2 and 3 is duly corroborated by the injuries as shown in the Post¬Mortem Report of the deceased persons. Therefore, the contention in this regard is liable to be rejected.

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137. INDIAN PENAL CODE, 1860 – Sections 302 and 34
ARMS ACT, 1959 – Sections 4 and 25

(i) Ballistic report – Bullet recovered not matching with fire arm – Effect of – Not possible to reject credible and reliable deposition of eye-witness – Recovery of the weapon used in commission of offence not a *sine qua non*.

(ii) Expert opinion – Expert is not a witness of incident – A sentence here or there to the question asked by the defence in the cross-examination cannot be considered stand alone, which at the most is his opinion – If presence and participation established by credible and reliable testimony of eye-witness, one is required to consider the entire evidence as a whole with other evidence on record – Conviction proper.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 34

आयुध अधिनियम, 1959 – धाराएं 4 एवं 25

(i) प्राक्षेपिकी रिपोर्ट – जब्तशुदा कारतूस आग्येयास्त्र से मेल नहीं खाता – प्रभाव – चक्षुदर्शी साक्षीगण की साक्ष्य विश्वसनीय एवं भरोसेमंद, जिससे

इंकार नहीं किया जा सकता – अपराध को प्रमाणित करने के लिये हथियार की बरामदगी *अनिवार्य शर्त* नहीं है।

(ii) विशेषज्ञ साक्षी की राय – विशेषज्ञ घटना का चक्षुदर्शी साक्षी नहीं – प्रतिपरीक्षण में पूछे गये एक प्रश्न के आधार पर निर्धारण नहीं किया जायेगा, बल्कि संपूर्ण कथन देखा जाना चाहिये – चिकित्सक द्वारा दिया गया कथन मात्र उसकी राय है – संपूर्ण साक्ष्य को अभिलेख पर उपलब्ध अन्य साक्ष्य के साथ पढ़ा जायेगा – दोषसिद्धी उचित है।

Rakesh and anr. v. State of U.P. and anr.

Judgment dated 06.07.2021 passed by the Supreme Court in Criminal Appeal No. 556 of 2021, reported in 2022 CriLJ 590

Relevant extracts from the judgment:

The gun recovered by the police from the Accused may not have been used for killing and therefore the recovery of the actual weapon used for killing can be ignored and it is to be treated as if there is no recovery at all. For convicting an Accused recovery of the weapon used in commission of offence is not a *sine qua non*. It is not possible to reject the credible ocular evidence of PW1 & PW2-eye witnesses who witnessed the shooting. It has no bearing on credibility of deposition of PW1 & PW2 that A1 shot deceased with a gun, particularly as it is corroborated by bullet in the body and also stands corroborated by the testimony of PW2 & PW5. Therefore, merely because the ballistic report shows that the bullet recovered does not match with the gun recovered, it is not possible to reject the credible and reliable deposition of PW1 & PW2.

One is required to consider the entire evidence as a whole with the other evidence on record. Mere one sentence here or there and that too to the question asked by the defence in the cross-examination cannot be considered stand alone. Even otherwise it is to be noted that what is stated by the Doctor/Medical officer can at the most be said to be his opinion.

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

Dowry death – In-laws should not be convicted on the basis of generalized statement unless their specific roles are proved by the prosecution on the fact of cruelty.

भारतीय दण्ड संहिता, 1860 – धारा 304–ख

दहेज मृत्यु – सास ससुर को सामान्य कथनों के आधार पर दोषसिद्ध नहीं करना चाहिए जब तक अभियोजन द्वारा क्रूरता के तथ्य पर उनकी विशिष्ट भूमिका प्रमाणित नहीं की जाती।

Kuljit Singh and anr. v. State of Punjab

Judgment dated 08.12.2021 passed by the Supreme Court in Criminal Appeal No. 572 of 2012, reported in (2022) 1 SCC 385 (Three-Judge Bench)

●

139. INDIAN PENAL CODE, 1860 – Section 306

Abetment of suicide – There must be *mens rea* in offence of Section 306 IPC because its presence is necessary ancillary for the abetment and there should be continuous irritation by the accused through words or act.

भारतीय दण्ड संहिता, 1860 – धारा 306

आत्महत्या का दुष्प्रेरण – धारा 306 भा.दं.सं. के अपराध में दोषपूर्ण आशय का होना आवश्यक है क्योंकि इसकी उपस्थिति दुष्प्रेरण के लिये आवश्यक सहवर्ती है और अभियुक्त के शब्दों या कृत्यों द्वारा निरंतर संताप होना चाहिए।

Mahendra K. C. v. State of Karnataka and anr.

Judgment dated 29.10.2021 passed by the Supreme Court in Criminal Appeal No. 1238 of 2021, reported in (2022) 2 SCC 129

Relevant extracts from the judgment:

The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission.

In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or willful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

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140. INDIAN PENAL CODE, 1860 – Section 376

Sole testimony – No further corroboration is necessary to convict the accused if evidence rendered by the prosecutrix is totally reliable and trustworthy – In such case, conviction based on sole testimony of prosecutrix should not be interfered.

भारतीय दण्ड संहिता, 1860 – धारा 376

एकमात्र परिसाक्ष्य – यदि पीड़िता द्वारा प्रस्तुत साक्ष्य पूर्णतः दृढ़ एवं विश्वसनीय है तो अभियुक्त की दोषसिद्धि के लिये अन्य किसी संपोषक साक्ष्य की आवश्यकता

नहीं होती है। ऐसे प्रकरण में पीड़ता की एकमात्र परिसाक्ष्य पर आधारित दोषसिद्धि में हस्तक्षेप नहीं किया जाना चाहिए।

Phool Singh v. State of Madhya Pradesh

Judgment dated 01.12.2021 passed by the Supreme Court in Criminal Appeal No. 1520 of 2021, reported in (2022) 2 SCC 74

Relevant extracts from the judgment:

To hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

In our considered opinion, the "sterling witness" should be of a very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution *qua* the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material.

To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

At the outset, it is required to be noted that in the present case, the prosecutrix has fully supported the case of the prosecution. She has been consistent right from the very beginning. Nothing has been specifically pointed out why the sole testimony of the prosecutrix should not be believed. Even after thorough cross-examination, she has stood by what she has stated and has fully supported the case of the prosecution.

We see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. The submission on behalf of the accused that no other independent witnesses have been examined and/or supported the case of the prosecution

and the conviction on the basis of the sole testimony of the prosecutrix cannot be sustained is concerned, the aforesaid has no substance.

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141. INDIAN PENAL CODE, 1860 – Section 376(2)(g)
EVIDENCE ACT, 1872 – Sections 3 and 114-A
APPRECIATION OF EVIDENCE:

(i) Gang rape – Testimony of prosecutrix – Reliability of – Evidence of prosecutrix was repleted with contradictions and omissions – Version not supported by other witnesses – Not found to be 'sterling witness'.

(ii) Presumption – The provision would not apply until and unless it is proved that the sexual intercourse was committed by the accused.

भारतीय दण्ड संहिता, 1860 – धारा 376(2)(छ)
भारतीय साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 114–क
साक्ष्य का मूल्यांकन :

(i) सामूहिक बलात्संग – अभियोक्त्री की साक्ष्य की विश्वसनीयता – अभियोक्त्री के कथनों में तात्विक बिन्दुओं पर विरोधाभास – साक्ष्य की पुष्टि अन्य साक्षीगण से नहीं हुई – ''वास्तविक साक्षी'' की श्रेणी में नहीं आती है।

(ii) उपधारणा – तब तक नहीं की जा सकती जब तक आरोपी द्वारा मैथुन किया जाना प्रमाणित नही हो जाता।

Munnalal alias Bicholi and Jagdish v. State of M.P.
Judgment dated 04.08.2021 passed by the High Court of M.P. (Indore Bench) in Criminal Appeal No. 32 of 2011, reported in 2022 CriLJ 697 (DB)

Relevant extracts from the judgment:

Although the evidence of prosecutrix is the most vital piece of evidence against the accused, however the Apex Court has also held that such evidence must inspire confidence and the witness should be of sterling quality.

In the case of ***Krishna Kumar Malik v. State of Haryana*** **[*MANU/SC/0718/2011 : (2011) 7 SCC 130*]** it has been laid down as under:-

> "No doubt, it is true that to hold an accused guilty for commission of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires the confidence and appears to be trustworthy, unblemished and should be of sterling quality."

It would be appropriate to see the impact of Section 114-A of Evidence Act as the provision stood prior to the amendment on 2013 i.e. the provision which existed when the incident had taken place.

The trial court failed to see that as per Section 114A of Evidence Act it is not merely to be seen that sexual intercourse with prosecutrix needs to be proved but sexual intercourse by the accused needs to be proved before this provision may be attracted. Hence, it was imperative to prove that accused persons had committed sexual intercourse with the prosecutrix and only then the aforesaid provision would apply.

Further, there is discrepancy in the prosecution story regarding the age of the prosecutrix as well. She has been shown to be below 16 years of age by the prosecution, however Dr. Vivek Yonati (PW-16) has stated that he had conducted the x-ray examination of joints of the prosecutrix on 14.8.2009 and had opined that she was aged between 17 to 19 years. The x-ray report is Ex. P/16. In cross-examination he admits that there can be variance of 3 years between actual age and the age determined through medical examination.

The report against him is an act of retribution against forcible eviction of Varsha from her tenanted premises. If Varsha and Mukesh had been evicted before the end of July, then it would not be possible for Radha (PW-12) to go to the rented premises and fetch the prosecutrix from there.

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***142. INDIAN PENAL CODE, 1860 – Sections 392 and 397**
DAKAITI AUR VYAPHARAN PRABHAVIT KSHETRA ADHINIYAM, 1981 – (M.P.) – Sections 11 and 13
Use of firearm – Only one of the three accused had used the firearm and it was seized from his possession – No charge of having used firearm proved against other co-accused – Charge u/s 397 IPC can be fastened on the 'offender' who actually used the firearm – Accused who did not use firearm acquitted from charge of section 397 IPC and Sections 11 and 13 M.P.D.V.P.K. Act and convicted u/s 392 IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 392 एवं 397
डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, 1981 (म.प्र.) – धाराएं 11 एवं 13

आग्नेयास्त्र का प्रयोग – तीन अभियुक्तगण में से केवल एक के द्वारा आग्नेयास्त्र का प्रयोग किया गया और वह उसके अधिपत्य से अभिग्रहित किया गया – अन्य अभियुक्तगण के विरूद्ध आग्नेयास्त्र का प्रयोग करने का आरोप प्रमाणित नहीं हुआ – धारा 397 भा.दं.स. का आरोप उस अपराधी के विरूद्ध आरोपित किया जा सकता है जिसने वास्तविक रूप से आग्नेयास्त्र का प्रयोग किया है – जिन अभियुक्तगण ने आग्नेयास्त्र का प्रयोग नहीं किया था उन्हें धारा 397 भा.दं.स. तथा धारा 11 एवं 13 एम.पी.डी.पी.व्ही.के. अधिनियम के आरोप से दोषमुक्त किया गया तथा धारा 392 भा.दं.स. के अन्तर्गत दोषसिद्ध किया गया।

Ram Ratan v. State of Madhya Pradesh

Judgment dated 17.12.2021 passed by the Supreme Court in Criminal Appeal No.1333 of 2018, reported in AIR 2022 SC 518 (Three-Judge Bench)

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143. INDIAN PENAL CODE, 1860 – Sections 406, 419 and 420
CRIMINAL PROCEDURE CODE, 1973 – Section 482

(i) Criminal breach of trust and cheating – Sale of excess flats, even if made, amounts to mere breach of contract – Complaint disclosing criminal offence or not, depends on the nature of allegations – Whether essential ingredients of criminal offence are present or not has to be judged?

(ii) Allegations of civil nature – Difference between mere breach of contract and an offence of cheating – Key ingredient dishonest or fraudulent intention not made out.

(iii) Abuse of law – Attempt to convert a case of civil nature into a criminal prosecution, merely to take advantage of a relative quick relief granted in criminal case – Not correct.

भारतीय दण्ड संहिता, 1860 – धाराएं 406, 419 एवं 420

दण्ड प्रक्रिया संहिता, 1973 – धारा 482

(i) आपराधिक न्यास भंग एवं छल – अतिरिक्त फ्लेट की बिक्री प्रमाणित, तब भी केवल संविदा का भंग माना गया – परिवाद में उल्लेखित अभिकथनों के आधार पर आपराधिक अपराध गठित हुआ या नहीं देखा जायेगा – यह निर्धारित किया जाना चाहिये कि अपराध के आवश्यक घटक मौजूद है या नहीं।

(ii) सिविल प्रकृति का आक्षेप है – आपराधिक न्यास भंग एवं छल के बीच का अंतर – आवश्यक घटक धोखाधड़ी और कपटपूर्ण आशय प्रमाणित नहीं।

(iii) आपराधिक प्रकरण में सापेक्ष रूप से शीघ्र उपचार का लाभ प्राप्त करने के लिए सिविल प्रकृति के प्रकरण को आपराधिक अभियोजन में परिवर्तित करना उचित नहीं है।

Mitesh Kumar J. Sha v. State of Karnataka and ors.

Judgment dated 26.10.2021 passed by the Supreme Court in Criminal Appeal No. 1285 of 2021, reported in 2022 CriLJ 231

Relevant extracts from the judgment:

Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are *prima facie* made out?

Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?

Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even prima facie made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.

The dispute between the parties, could at best be termed as one involving a mere breach of contract. Now, whether and what, is the difference between a mere breach of contract and an offence of cheating has been discussed in the ensuing paragraphs.

Imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

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144. INDIAN PENAL CODE, 1860 – Sections 409, 420 and 477-A

(i) Offence of criminal breach of trust, cheating and falsification of accounts – Necessary ingredients of – Enumerated.

(ii) Criminal breach of trust – Proof – Accused neither gaining pecuniary profit nor the institution had any losses – Offence not proved.

भारतीय दण्ड संहिता, 1860 – धाराएं 409ए 420 एवं 477–क

(i) आपराधिक न्यासभंग, छल और लेखों के मिथ्याकरण का अपराध – आवश्यक तत्व – प्रगणित किये गये।

(ii) आपराधिक न्यास भंग – सबूत – अभियुक्त को कोई आर्थिक लाभ नहीं, न ही संस्था को कोई हानि कारित हुई – अपराध साबित नहीं।

N. Raghavender v. State of Andhra Pradesh, CBI

Judgment dated 13.12.2021 passed by the Supreme Court in Criminal Appeal No. 5 of 2010, reported in AIR 2022 SC 826 (Three-Judge Bench)

Relevant extracts from the judgment:

No sooner are the two fundamental ingredients of 'criminal breach of trust' within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that:

(i) The accused must be a public servant or a banker, merchant or agent;

(ii) He/She must have been entrusted, in such capacity, with property; and

(iii) He/She must have committed breach of trust in respect of such property.

It is paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mensrea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

In an accusation under Section 477A IPC, the prosecution must, therefore, prove – (a) that the accused destroyed, altered, mutilated or falsified the books, electronic records, papers, writing, valuable security or account in question; (b) the accused did so in his capacity as a clerk, officer or servant of the employer; (c) the books, papers, etc. belong to or are in possession of his employer or had been received by him for or on behalf of his employer; (d) the accused did it wilfully and with intent to defraud.

To sum-up the above-stated discussion, the following incontrovertible factors have emerged in the present appeal:

- First, no financial loss was caused to the Bank.
- Second, the record before us does not indicate that any pecuniary loss was caused to B. Satyajit Reddy or to any other customer of the Bank.
- Third, the material before us does not disclose any conspiracy between the accused persons. In the absence of any reliable evidence that could unfold a prior meeting of minds, the High Court erred in holding that Appellant and other accused orchestrated the transactions in question to extend an undue benefit to Accused No.3.
- Fourth, the Appellant committed gross misconduct by misusing his position as the Branch Manager. Notwithstanding the final outcome, the Appellant's abuse of powers clearly put the Bank at the risk of financial loss.
- Fifth, despite dereliction of his duties, none of the acts proved against the Appellant constitute 'criminal misconduct' or fall under the ambit of Sections 409, 420 and 477-A IPC.

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145. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 7A, 9, 49 and 94

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

EVIDENCE ACT, 1872 – Section 35

(i) Claim of juvenility – Stage – Such claim may be raised at any stage of a criminal proceeding, even after final disposal of the case.

(ii) Documentary evidence – Public documents should be given preference over private documents.

(iii) Ossification test – It is only guiding factor not conclusive evidence, which should be considered in the absence of documents mentioned u/s 94(2).

(iv) Divergent views – If two views are possible, the benefit should be given to the accused.

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 – धाराएं 7क, 9, 49, एवं 94

किशोर न्याय (बालकों की देखरेख और संरक्षण) नियम, 2007 – नियम 12

साक्ष्य अधिनियम, 1872 – धारा 35

(i) किशोरवयता का दावा – प्रक्रम – ऐसा दावा आपराधिक कार्यवाही के किसी भी प्रक्रम पर, यहां तक कि प्रकरण के अंतिम निराकरण के उपरांत भी किया जा सकता है।

(ii) दस्तावेजी साक्ष्य – लोक दस्तावेज को प्राइवेट दस्तावेज पर वरीयता दी जानी चाहिए।

(iii) अस्थि जांच परीक्षण – यह निश्चायक साक्ष्य नहीं है केवल मार्गदर्शक कारक है जिसको धारा 94(2) में उल्लेखित दस्तावेजों के अभाव में विचार में लेना चाहिए।

(ii) एकाधिक विचार – यदि दो विचार संभव है तब इसका लाभ अभियुक्त को दिया जाना चाहिए।

Rishipal Singh Solanki v. State of Uttar Pradesh and ors.

Judgment dated 18.11.2021 passed by the Supreme Court in Criminal Appeal No.1240 of 2021, reported in AIR 2022 SC 630

Relevant extracts from the judgment:

The difference in the procedure under the Juvenile Justice (Care and Protection of Children) Act, 2000 & Juvenile Justice (Care and Protection of Children) Act, 2015 enactments could be discerned as under:

(i) As per JJ Act, 2015 in the absence of requisite documents as mentioned in Sub-section (2) of Section 94(a) and (b), there is provision for determination of the age by an ossification test or any other medical age related test to be conducted on the orders of the Committee or the JJ Board as per Section 94 of the said Act; whereas, under Rule 12 of the JJ Rules, 2007, in the absence of relevant documents, a medical opinion had to be sought from a duly constituted Medical Board which would declare the age of the juvenile or child.

(ii) With regard to the documents to be provided as evidence, what was provided under Rule 12 of the JJ Rules, 2007 has been provided under subsection 2 of section 94 of the JJ Act, 2015 as a substantive provision.

(iii) Under Section 49 of the JJ Act, 2000, where it appeared to a competent authority that a person brought before it was a juvenile or a child, then such authority could, after making an inquiry and taking such evidence as was necessary, record a finding as to the juvenility of such person and state the age of such person as nearly as may be. Sub-section (2) of Section 49 stated that no order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order had been made is not a juvenile and the age recorded by the competent authority to be the age of person so brought before it, for the purpose of the Act, be deemed to be the true age of that person.

What emerges on a cumulative consideration of various judgments as follows:

(i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(iia) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(iib) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so 43 as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(iic) When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii) and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(v) That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

(vi) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(vii) This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

(viii) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015is not misused by persons to escape punishment after having committed serious offences.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(x) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

(xi) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.

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***146. LAND ACQUISITION ACT, 1894 – Sections 18 and 23**

Determination of market value – Fixation of market value in a reference u/s 18 of the Act necessarily involves some guess work which is required to be made by adopting one of the well recognized methods, such as comparison or capitalization.

भूमि अधिग्रहण अधिनियम, 1894 – धाराएं 18 एवं 23

बाजार मूल्य का निर्धारण – अधिनियम की धारा 18 के संदर्भ में बाजार मूल्य नियत करने में आवश्यक रूप से कुछ अनुमान आधारित कार्य सम्मिलित है जिसको

पूर्णतः तुलनात्मक या पूंजीकरण जैसी मान्यता प्राप्त पद्धति को अंगीकार कर किए जाने की आवश्यकता होती है।

Soman v. Inland Waterways Authority of India and anr.
Judgment dated 10.12.2021 passed by the Supreme Court in Civil Appeal No. 2825 of 2011, reported in AIR 2022 SC 104

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147. LAND ACQUISITION ACT, 1894 – Section 23

Determination of market value – To determine market value of land acquired, if a sale deed is being used by the Reference Court which was executed before the notification of the acquisition, then year to year increase should be granted and in case of more than 9 years old sale deed, the increase must not be more than 10 percent annually.

भूमि अधिग्रहण अधिनियम, 1894 – धारा 23

बाजार मूल्य का निर्धारण – जब अधिग्रहीत भूमि के बाजार मूल्य के निर्धारण के लिये रेफरेंस न्यायालय के द्वारा ऐसे विक्रय पत्र का उपयोग किया जा रहा है जिसका निष्पादन अधिग्रहण की अधिसूचना के पूर्व किया गया था तब वार्षिक वृद्धि प्रदान की जानी चाहिए और 9 वर्ष पुराने विक्रय पत्र के उपयोग की दशा में ऐसी वार्षिक वृद्धि 10 प्रतिशत से अधिक नहीं होना चाहिए।

Ramesh Kumar v. Bhatinda Integrated Cooperative Cotton Spinning Mill and ors.
Judgment dated 13.09.2021 passed by the Supreme Court in Civil Appeal No. 3875 of 2009, reported in (2022) 1 SCC 284

Relevant extracts from the judgment:

In the present case both, the Reference Court as well as the High Court, have determined the value of the land considering the Sale Deed dated 24.05.1979 which is more than 9 years before the notification of the acquisition. Therefore, considering the observations made by this Court in para 15 in the case of ***ONGC Ltd. v. Rameshbhai Jivanbhai Patel & anr., (2008) 14 SCC 745*** reproduced hereinabove and considering the fact that time gap between the sale deed relied upon and the date of notification of acquisition is more than 9 years, the courts below ought to have been very cautious in relying upon the Sale Deed dated 24.05.1979. Be that it may and assuming that the Sale Deed dated 24.05.1979 was the best evidence available to determine the value of land acquired in that case also taking annual increase at the rate of 12% is not justified. We are of the opinion that, in the facts and circumstances of the case the annual increase/escalation ought to have been at the rate of 10% maximum.

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148. LAND REVENUE CODE, 1959 (M.P.) – Sections 111 and 116
CIVIL PROCEDURE CODE, 1908 – Section 9
Question of title – Jurisdiction – Proof – Whether Tehsildar has jurisdiction to consider a disputed Will and pass an order of mutation – No – Revenue Court does not have any jurisdiction to dwell upon the question of title of a party – Civil rights of the party are to be determined by the Civil Court and not by the Revenue Court.

भू–राजस्व संहिता, 1959 (म.प्र.) – धाराएं 111 एवं 116
सिविल प्रक्रिया संहिता, 1908 – धारा 9
स्वत्व का प्रश्न – क्षेत्राधिकार – प्रमाण – क्या तहसीलदार के पास ऐसा कोई क्षेत्राधिकार है जो विवादित वसीयत पर विचार कर नामांतरण का आदेश पारित करे – नहीं – राजस्व न्यायालय पक्षकारों के स्वत्व को अभिनिर्धारित करने के संबंध में कोई क्षेत्राधिकार नहीं रखता है – पक्षकारों के सिविल अधिकार सिविल न्यायालय द्वारा ही अभिनिर्धारित किए जाते है न कि राजस्व न्यायालय द्वारा।

Tarasiya and ors. v. Ramlakhan and ors.
Order dated 09.09.2021 passed by the High Court of Madhya Pradesh in Writ Petition No. 3653 of 2019, reported in 2022 (1) MPLJ 23

Relevant extracts from the order:

Revenue Court does not have any jurisdiction to dwell upon the question of title of a party. Civil rights of the party are to be determined by Civil Court and not by Revenue Courts.

Additional Commissioner, Rewa Division, Rewa committed an error of law in quashing the order passed by S.D.O. Hence, order passed by Additional Commissioner, Rewa Division, Rewa is quashed and writ petition filed by petitioner is allowed.

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149. MINERALS (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, 2006 (M.P.) – Rule 18(6) Proviso
Interim custody – Jurisdiction – Authorised officer granted interim custody of the seized property before intimation about the offence is made to the Judicial Magistrate – On receipt of intimation by Judicial Magistrate, the power of grant or refusal of interim custody vests exclusively with the Judicial Magistrate.

खनिज (अवैध खनन, परिवहन एवं भंडारण का निवारण) नियम, 2006 (म.प्र.) – नियम 18(6) परन्तुक
अंतरिम अभिरक्षा – क्षेत्राधिकार – प्राधिकृत अधिकारी, न्यायिक मजिस्ट्रेट को अपराध के संबंध में सूचना दिए जाने से पूर्व जप्तशुदा संपत्ति की अंतरिम अभिरक्षा

प्रदत्त कर सकता है – न्यायिक मजिस्ट्रेट को सूचना प्राप्त होने के बाद अंतरिम अभिरक्षा प्रदान करना अथवा इंकार करने की शक्ति आत्यांतिक रूप से न्यायिक मजिस्ट्रेट में अंतर्निहित होती है।

State of M.P. and anr. v. Ravi Mohan Trivedi

Order dated 29.09.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 6560 of 2015, reported in 2022 (1) MPLJ 207 (DB)

Relevant extracts from the order:

In the case at hand no compounding took place and thus, this case would be governed by clause (2), (3) and (4) of Rule 18. These clauses empower the authorised officer to grant interim custody of the seized property before intimation about the offence is made to the Judicial Magistrate. On receipt of intimation by Judicial Magistrate this power of grant or refusal of interim custody vests exclusively with the Judicial Magistrate.

After having minutely gone through the contents of Rule 18, its textual and contextual connotation and the object behind the same, this Court is of the considered view that the State is labouring under a misconception that the present case belongs to the class of cases where compounding has taken place. Clause (6) of Rule 18 stipulates the property seized to be confiscated by the order of Judicial Magistrate only if amount of fine (pursuant to compounding) as contemplated by clause (5) is not deposited within a month. Further, proviso to clause (6) prescribes that even if payment of fine is made within one month of the order under clause (5), all properties so seized except the mineral shall be released while the seized mineral under clause (2) shall be confiscated to become property of the State. This proviso to clause (6) circumscribes/qualifies clause (6) but does not whittle down the substantive condition of clause (6) where the Judicial Magistrate trying the offence is vested with the exclusive power to order of confiscation. Thus, if clause (6) and its proviso are read in conjunction, the provisions contained in the proviso of seized mineral being confiscated is subject to passing of an order by the Judicial Magistrate in that respect. In other words, unless the Judicial Magistrate passes an express order of confiscation, the seized mineral cannot become the property of the State Government.

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***150. MOTOR VEHICLES ACT, 1988 – Section 147 r/w/s 2(34)**

Public place – Factory premises – Accident took place inside the factory premises, which fall under the definition of Section 2(34) of the Act as public place – Insurance company is liable.

मोटर यान अधिनियम, 1988 – धारा 147 सपठित धारा 2(34)

लोक स्थान – दुर्घटना कारखाना परिसर के अंदर हुई – जो अधिनियम की धारा 2(34) के अन्तर्गत लोक स्थान की परिभाषा में आता है – बीमा कम्पनी दायित्वधीन है।

Branch Manager, Universal Sompo General Ins. Co. Ltd. v. Devkaran and ors.

Judgment dated 02.03.2020 passed by the High Court of Madhya Pradesh (Bench Indore) in Miscellaneous Appeal No.1566 of 2013, reported in 2022 ACJ 702

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***151. MOTOR VEHICLES ACT, 1988 – Section 166**

Assessment of income – Engineering student – Deceased was second year Engineering student at the time of accident – Tribunal awarded a sum of ₹ 7,58,000/- which was enhanced by High Court to ₹ 10,04,937/- – Apex Court further awarded a sum of ₹ 5,00,000/- after considering the facts of education and job probability of the deceased.

मोटर यान अधिनियम, 1988 – धारा 166

आय का निर्धारण – अभियांत्रिकी का छात्र – मृतक अभियांत्रिकी का द्वितीय वर्ष का छात्र था – अधिकरण ने ₹ 7,58,000/– का अवार्ड पारित किया जिसको उच्च न्यायालय ने बढ़ाकर ₹ 10,04,937/– कर दिया – सर्वोच्च न्यायालय ने मृतक की शिक्षा तथा नौकरी की संभावना के तथ्य को विचार में लेते हुए अवार्ड में अतिरिक्त ₹ 5,00,000/– की वृद्धि की।

Bhom Singh and anr. v. Reliance General Ins. Co. Ltd. and anr.

Judgment dated 09.09.2021 passed by the Supreme Court in Civil Appeal No. 5638 of 2021, reported in 2022 ACJ 716 (Three-Judge Bench)

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***152. MOTOR VEHICLES ACT, 1988 – Section 166**

Motor accident – Injury – Claimant suffered serious and grievous injuries including five fractures – No permanent disability was proved – Claimant was not found entitled for compensation for loss of future earnings.

मोटर यान अधिनियम, 1988 – धारा 166

मोटर दुर्घटना – क्षति – आवेदक को गंभीर क्षति कारित हुई थी जिसमें पांच अस्थिभंग भी थे – स्थाई निर्योग्यता को प्रमाणित नहीं किया गया – आवेदक भविष्य की हानि के मद में प्रतिकर प्राप्त करने का अधिकारी नहीं पाया गया।

Sanjay Kumar v. Sunil and ors.

Judgment dated 20.09.2021 passed by the Supreme Court in Civil Appeal No. 5802 of 2021, reported in 2022 ACJ 718

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***153. MOTOR VEHICLES ACT, 1988 – Section 166**

Assessment of compensation – Injured suffered 100 percent permanent disablement – Would require an attendant for the rest of his life – Tribunal awarded ₹ 4,81,000/- – High Court enhanced the compensation to ₹ 13,08,000/- – Apex Court further allowed enhancement and specially ₹ 6,00,000/- for attendant, transportation and special diet.

मोटर यान अधिनियम, 1988 – धारा 166

प्रतिकर का निर्धारण – आहत को 100 प्रतिशत स्थाई निर्योग्यता कारित हुई, उसको अपने शेष जीवन के लिए एक सहायक की आवश्यकता होगी – अधिकरण द्वारा ₹ 4,81,000/– अधिनिर्णित किए गए – उच्च न्यायालय द्वारा प्रतिकर को बढ़ाकर ₹ 13,08,000/– किया गया – उच्चतम न्यायालय द्वारा प्रतिकर में और वृद्धि की और विशेष रूप से सहायक, परिवहन तथा पोषण आहार के मद में ₹ 6,00,000/– दिए।

Gurwinder Singh v. Pirthi Singh and ors.

Judgment dated 23.09.2021 passed by the Supreme Court in Civil Appeal No. 5936 of 2021, reported in 2022 ACJ 747 (SC)

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***154. MOTOR VEHICLES ACT, 1988 – Section 166**

Assessment of income – Deceased was a bachelor of engineering – Tribunal assessed the income at ₹ 20,000/- per month and awarded ₹ 30,54,000/- – High Court reduced the amount of compensation to ₹ 15,82,000/- – Considering the qualification of the deceased, Apex Court restored the Tribunal's award.

मोटर यान अधिनियम, 1988 – धारा 166

आय का निर्धारण – मृतक अभियांत्रिकी में स्नातक था – अधिकरण ने ₹ 20,000/– प्रति माह आय का निर्धारण करते हुए ₹ 30,54,000/– अधिनिर्णित किये – उच्च न्यायालय द्वारा प्रतिकर की राशि को घटाकर ₹ 15,82,000/– कर दिया गया – उच्चतम न्यायालय द्वारा मृतक की योग्यता को विचार में लेते हुए अधिकरण के अधिनिर्णय को पुर्नस्थापित किया।

Basanti Devi and anr. v. Divisional Manager, New India Assurance Co. Ltd. and ors.

Judgment dated 06.12.2021 passed by the Supreme Court in Civil Appeal No.7435 of 2021, reported in 2022 ACJ 823 (SC)

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***155. MOTOR VEHICLES ACT, 1988 – Section 166**

Contributory negligence – Lorry was parked on National Highway without indicators or signals – Car dashed from behind – Tribunal and High Court held that driver of car was also guilty of contributory negligence – There was nothing on record to indicate that the car driver was not driving at moderate speed nor did he follow traffic rules – To establish contributory negligence, some act or omission which materially contributed to the accident or damage, should be attributed to the person against whom it is alleged – Apex Court held that lorry driver was solely responsible for the accident.

मोटर यान अधिनियम, 1988 – धारा 166

योगदायी उपेक्षा – लॉरी राष्ट्रीय राजमार्ग पर बिना संकेतक दिए खड़ी की गई थी – कार ने पीछे से टक्कर मारी – अधिकरण तथा उच्च न्यायालय द्वारा अभिनिर्धारित किया गया कि कार का चालक भी योगदायी उपेक्षा का दोषी था – अभिलेख पर यह दर्शित करने के लिए कुछ नहीं था कि कार का चालक संयमित गति से कार नहीं चला रहा था या उसने यातायात के नियमों का पालन नहीं किया – योगदायी उपेक्षा प्रमाणित करने के लिए उस व्यक्ति का जिसके विरूद्ध योगदायी उपेक्षा का आक्षेप है दुर्घटना कारित होने में सारभूत योगदान होना चाहिए – उच्चतम न्यायालय द्वारा लॉरी के चालक को दुर्घटना के लिए अकेले ही जिम्मेदार ठहराया गया।

K. Anusha and ors. v. Regional Manager, Shriram General Ins. Co. Ltd.

Judgment dated 06.10.2021 passed by the Supreme Court in Civil Appeal No. 6237 of 2021, reported in 2022 ACJ 721 (SC)

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156. MOTOR VEHICLES ACT, 1988 – Section 168 (1)

(i) Determination of income – The labourers/skilled labourers were getting ₹ 5,000/- per month under the Minimum Wages Act, in the year 2012 – As at the time of accident the deceased was studying in the 3rd/4th semester of civil engineering, he cannot be considered worse than the labourers/skilled labourers.

(ii) Future prospects – In case of a deceased who was not serving at the time of death and, income determined on guesswork, their legal heirs shall also be entitled to future prospects.

मोटरयान अधिनियम, 1988 – धारा 168 (1)

(i) आय का निर्धारण – श्रमिक एवं कुशल श्रमिक न्यूनतम मजदूरी अधिनियम, 2012 के अंतर्गत ₹ 5,000/– प्रतिमाह प्राप्त कर रहे थे – जैसा कि मृतक सिविल अभियांत्रिकी के तीसरे/चौथे सेमेस्टर में अध्ययन कर रहा था,

उसकी आय को श्रमिक अथवा कुशल श्रमिक से और खराब स्थिति में नहीं माना जा सकता।

(ii) भविष्यवर्ती लाभ – उस परिस्थिति में जहां मृत्यु के समय मृतक कार्य नहीं कर रहा था और आय अनुमान के आधार पर निर्धारित की गई है, उसके विधिक वारिस भी भविष्यवर्ती लाभ के अधिकारी होने चाहिए।

Meena Pawaia and ors. v. Ashraf Ali and ors.

Judgment dated 18.11.2021 passed by the Supreme Court in Civil Appeal No. 6724 of 2021, reported in 2022 ACJ 528 (SC)

Relevant extracts from the judgment:

At the outset, it is required to be noted that deceased at the time of accident was aged 21-22 years and that he was a 3rd year student in civil engineering. Therefore, it can be said that looking to his educational qualification he was having a bright future. Learned Tribunal assessed the income of deceased at Rs.15,000 per month for the purpose of awarding compensation under the head of future economic loss. However, by the impugned judgment and order, the High Court has reduced the compensation and determined the income of the deceased at Rs.5,000 per month. Awarding the future economic loss to the claimants considering the income of the deceased as Rs.5,000 is not sustainable at all. Even the labourers/skilled labourers were getting Rs.5,000 per month under the Minimum Wages Act in the year 2012. As the deceased was studying in the 3rd/4th semester of civil engineering, he cannot be considered worse than the labourers/skilled labourers. Even the counsel appearing on behalf of the Union of India has fairly conceded that assessing the income of deceased at Rs.5,000 per month for the purpose of awarding the compensation under the head of future economic loss can be said to be at lower side and as such is not justifiable. While awarding the future economical loss, when the deceased died at the young age 21-22 years and was not earning at the time of death/accident, as per catena of decisions of this court, the income for the purpose of determining the future economic loss is always done on the basis of guesswork considering many circumstances namely the educational qualification and background of the family, etc. Therefore looking to the educational qualification and the family background and as observed herein above, the deceased was having a bright future studying in the 3rd year of civil engineering, we are of the opinion that the income of the deceased at least ought to have been considered at least Rs.10,000 per month, more particularly considering the fact that the labourers/ skilled labourers were getting Rs.5,000- per month even under the Minimum Wages Act in the year 2012.

As observed by this court in the case of ***National Insurance Company Limited v. Pranay Sethi and ors., (2017) 16 SCC 680***, the determination of income while computing compensation has to include future prospects so that the method will

come within the ambit and sweep of just compensation as postulated under Section 168 of the Motor Vehicles Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment and/or in case of a deceased who was on a fixed salary and/or self employed would only get the benefit of future prospects and the legal representatives of the deceased who was not serving at the relevant time as he died at a young age and was studying, could not be entitled to the benefit of the future prospects for the purpose of computation of compensation would be inapposite. Because the price rise does affect them also and there is always an incessant effort to enhance one's income for sustenance. It is not expected that the deceased who was not serving at all, his income is likely to remain static and his income would remain stagnant. As observed in ***Pranay Sethi*** (supra) to have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Therefore we are of the opinion that even in case of a deceased who was not serving at the time of death and had no income at the time of death, their legal heirs shall also be entitled to future prospects by adding future rise in income as held by this court in the case of ***Pranay Sethi*** (supra) i.e. addition of 40% of the income determined on guesswork considering the educational qualification, family background etc., where the deceased was below the age of 40 years.

Now so far as the submission on behalf of the Union of India that as in the execution proceedings the claimants accepted the amount due and payable under the impugned judgment and order and accepted the same as full and final settlement, thereafter the claimants ought not to have preferred appeal for enhancement of the compensation is concerned, the aforesaid cannot be accepted. The claimants are entitled to just compensation. Merely because in the execution proceedings they might have accepted the amount as awarded by the High Court, may be as full and final settlement, it shall not take away the right of the claimants to claim just compensation and shall not preclude them from claiming the enhanced amount of compensation which they as such are held to be entitled to. As such, the Motor Vehicles Act is a benevolent Act and as observed hereinabove the claimants are entitled to just compensation. As such, the Union of India ought not to have taken such a plea/defence.

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157. N.D.P.S. Act, 1985 – Sections 43 and 50

(i) Public place – Chance recovery – Where the search and seizure was made from the vehicle used, by way of chance recovery from public road, provisions of section 43 would apply.

(ii) Personal search – In the search of motor cycle at public place, compliance of section 50 does not attract.

(iii) Ownership – The seizure of vehicle from possession of the accused is proved beyond reasonable doubt, therefore, the question of ownership of vehicle is not relevant.

(iv) Independent witness – Merely because independent witnesses were not examined, the conclusion cannot be drawn that accused was falsely implicated.

स्वापक औषधि और मनःप्रभावी अधिनियम, 1985 – धाराएं 43 एवं 50

(i) लोक स्थान – संयोगवश बरामदगी – जहां लोकमार्ग पर संयोगवश बरामदगी के रूप में वाहन से तलाशी तथा अभिग्रहण की कार्यवाही की गई है वहां धारा 43 के प्रावधान लागू होगें।

(ii) व्यक्तिगत तलाशी – लोक स्थान पर मोटर साइकिल की तलाशी धारा 50 के पालन को आकर्षित नहीं करती है।

(iii) स्वामित्व – अभियुक्त के अधिपत्य से वाहन के अभिग्रहण को युक्ति युक्त संदेह से परे प्रमाणित किया गया, अतः वाहन के स्वामित्व का प्रश्न सुसंगत नहीं है।

(iv) स्वतंत्र साक्षी – केवल इस कारण कि स्वतंत्र साक्षीगण परीक्षित नहीं कराए गए हैं यह निष्कर्ष नहीं निकाला जा सकता कि अभियुक्त को झूठा फंसाया गया था।

Kallu Khan v. State of Rajasthan

Judgment dated 11.12.2021 passed by the Supreme Court in Criminal Appeal No. 1605 of 2021, reported in AIR 2022 SC 50

Relevant extracts from the judgment:

On apprehending the accused, while making search of the motor cycle, 900 gm of smack was seized to which seizure and sample memos were prepared, as proved by the departmental witnesses. In the facts of the case at hand, where the search and seizure was made from the vehicle used, by way of chance recovery from public road, the provisions of Section 43 of the NDPS Act would apply. In this regard, the guidance may be taken from the judgments of this Court in ***S.K. Raju v. State of West Bengal, (2018) 9 SCC 708*** and ***S.K. Sakkar v. State of West Bengal, (2021) 4 SCC 483***. However, the recovery made by Pranveer Singh (PW6) cannot be doubted in the facts of this case.

Now reverting to the contention that the motor cycle seized in commission of offence does not belong to accused, however seizure of the contraband from the motor cycle cannot be connected to prove the guilt of accused. The Trial Court on appraisal of the testimony of witnesses, Constable Preetam Singh (PW1), Constable Sardar Singh (PW2), S.I. Pranveer Singh (PW6) and Constable Rajendra Prasad (PW8), who were members of the patrolling team and the witnesses of the seizure, proved beyond reasonable doubt, when they were on patrolling, the appellant came driving the seized vehicle from opposite side. On

seeing the police vehicle, he had taken back the motor cycle which he was riding. However, the police team apprehended and intercepted the accused and made the search of vehicle, in which the seized contraband smack was found beneath the seat of the vehicle. However, while making search at public place, the contraband was seized from the motor cycle driven by the accused. Thus, recovery of the contraband from the motor cycle of the appellant was a chance recovery on a public road. As per Section 43 of NDPS Act, any officer of any of the departments, specified in Section 42, is having power of seizure and arrest of the accused from a public place, or in transit of any narcotic drug or psychotropic substance or controlled substance. The said officer may detain in search any person whom he has reason to believe that he has committed an offence punishable under the provisions of the NDPS Act, in case the possession of the narcotic drug or psychotropic substance appears to be unlawful. Learned senior counsel representing the appellant is unable to show any deficiency in following the procedure or perversity to the findings recorded by the Trial Court, affirmed by the High Court. The seizure of the motor cycle from him is proved beyond reasonable doubt, therefore, the question of ownership of vehicle is not relevant. In the similar set of facts, in the case of ***Rizwan Khan v. State of Chhattisgarh, (2020) 9 SCC 627***, this Court observed the ownership of the vehicle is immaterial. Therefore, the argument as advanced by learned senior counsel is of no substance and merit less.

At this state, the argument advanced by the appellant regarding non-production of contraband in the court due to which benefit of doubt ought to be given to accused, is required to be adverted to. In the case of State of ***Rajasthan v. Sahi Ram, (2019) 10 SCC 649***, this Court held that when the seizure of material is proved on record and is not even disputed, the entire contraband material need not be placed on record. It is not a case in which the appellant has proved beyond reasonable doubt that while sending the samples for forensic tests, seals were not intact or the procedure has been materially not followed by protecting the seized substance or was not stored properly, as specified in the case of ***Union of India v. Mohanlal and anr., (2016) 3 SCC 379*** in which case the directions were given to be followed on administrative side. However, in the facts of the case, the said judgment is not of any help to appellant.

Similarly, in the case of ***Than Kumar v. State of Haryana, (2020) 5 SCC 260***, this Court observed that if seizure is otherwise proved and the samples taken from and out of contraband material were kept intact; the report of forensic expert shows potency, nature and quality of contraband material, essential ingredients constituting offence are made out and the non¬production of contraband in the Court is not fatal. As discussed above, the appellant has failed to show that findings recorded by two Courts suffer from any perversity or illegality on the said issue and warrant interference.

Simultaneously, the arguments advanced by the appellant regarding non-compliance of Section 50 of NDPS Act is bereft of any merit because no recovery of contraband from the person of the accused has been made to which compliance of the provision of Section 50 NDPS Act has to follow mandatorily. In the present case, in the search of motor cycle at public place, the seizure of contraband was made, as revealed. Therefore, compliance of Section 50 does not attract in the present case. It is settled in the case of ***Vijaysinh Chandubha Jadeja v. State of Gujarat, (2011) 1 SCC 609*** that in the case of personal search only, the provisions of Section 50 of the Act is required to be complied with but not in the case of vehicle as in the present case, following the judgments of ***Surinder Kumar v. State of Punjab, (2020) 2 SCC 563*** and ***State of Punjab v. Baljinder Singh, (2019) 10 SCC 473***. Considering the facts of this Court, the argument of non-compliance of Section 50 of NDPS Act advanced by the counsel is hereby repelled.

The issue raised regarding conviction solely relying upon the testimony of police witnesses, without procuring any independent witness, recorded by the two courts, has also been dealt with by this Court in the case of ***Surinder Kumar*** (supra) holding that merely because independent witnesses were not examined, the conclusion could not be drawn that accused was falsely implicated. Therefore, the said issue is also well-settled and in particular, looking to the facts of the present case, when the conduct of the accused was found suspicious and a chance recovery from the vehicle used by him is made from public place and proved beyond reasonable doubt, the appellant cannot avail any benefit on this issue. In our view, the concurrent findings of the courts do not call for interference.

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***158. NEGOTIABLE INSTRUMENT ACT, 1881 – Section 138**

(i) Dishonour of cheque – Presumption – Initial burden is placed on the complainant to discharge that cheque is drawn towards consideration of legally recoverable amount – Such presumption would remain until the contrary is proved.

(ii) Dishonour of cheque – Rebuttal of presumption – The onus is on the accused to raise a probable defence on preponderance of probabilities.

(iii) Negotiable instrument – Principles of presumption and its rebuttal – Enumerated.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

(i) चेक का अनादरण – उपधारणा – यह साबित करने का प्रारंभिक सबूत का भार परिवादी पर है कि चेक विधिक रूप से वसूली योग्य राशि की अदायगी हेतु दिया गया है – जब तक प्रतिकूल साबित न कर दिया जाए ऐसी उपधारणा अस्तित्व में रहेगी।

(ii) चेक का अनादरण – उपधारणा का खण्डन – संभावनाओं की प्रबलता के आधार पर अधिसंभाव्य बचाव प्रस्तुत करने का प्रमाण भार अभियुक्त पर है।

(iii) परक्राम्य लिखत – उपधारणा के सिद्धांत और उसका खण्डन – पुनर्विस्तारित किए गए।

K. S. Ranganatha v. Vittal Shetty

Judgment dated 08.12.2021 passed by the Supreme Court in Criminal Appeal No. 1860 of 2011, reported in 2022 (1) Crimes 454 (SC) (Three-Judge Bench)

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159. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 141

(i) Debt or liability – Advance payment – If there is a breach in the condition of advance payment, it would not incur criminal liability u/s 138 since there was no legally enforceable debt or liability at the time when the cheque was drawn.

(ii) Gift – A cheque given as a gift and not for the satisfaction of a debt or liability would not attract the provision of Section 138.

(iii) Post-dated cheque – The term 'debt' also includes a sum of money promised to be paid on a future date by reason of a present obligation – A post-dated cheque issued after debt has been incurred would be covered by the definition of debt.

(iv) Offence by company – Incharge Officer – Whether the individual was incharge or responsible for the affairs of the company during the commission of the offence is the test to determine the liability of Director or Managing Director.

(v) Security cheque – Cheque furnished as security is covered under provision of section 138.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 141

(i) ऋण या दायित्व – अग्रिम भुगतान – यदि अग्रिम भुगतान की शर्त का भंग हुआ है तब यह धारा 138 के अन्तर्गत आपराधिक दायित्व उत्पन्न नहीं करता है क्योंकि जब चेक जारी किया गया था तब कोई ऋण या दायित्व नहीं था।

(ii) उपहार – चेक का उपहार स्वरूप न कि किसी ऋण या दायित्व की संतुष्टि हेतु दिया जाना, धारा 138 के प्रावधानों को आकर्षित नहीं करता है।

(iii) उत्तर दिनांकित चेक – शब्द 'ऋण' के अन्तर्गत ऐसी राशि भी सम्मिलित है जिसको वर्तमान दायित्व के कारण भविष्य के किसी दिनांक को भुगतान करने का वचन दिया गया हो – दायित्व उत्पन्न होने के उपरांत जारी किया गया उत्तर दिनांकित चेक ऋण की परिभाषा द्वारा आच्छादित है।

(iv) कम्पनी द्वारा अपराध – भारसाधक अधिकारी – निदेशक या प्रबंध निदेशक के दायित्व का निर्धारण करने के लिए परीक्षा यह है कि क्या वह व्यक्ति

अपराध के घटित किए जाते समय कम्पनी के संव्यवहार का भारसाधक एवं जिम्मेदार रहा है।

(v) सुरक्षा चेक – सुरक्षा बतौर जारी किया गया चेक धारा 138 के प्रावधान द्वारा आच्छादित है।

Sunil Todi and ors. v. State of Gujarat and anr.

Judgment dated 03.12.2021 passed by the Supreme Court in Criminal Appeal No. 1446 of 2021, reported in AIR 2022 SC 147

Relevant extracts from the judgment:

Drawing the distinction between civil and criminal liability, it was observed that if there is a breach in the condition of advance payment, it would not incur criminal liability under Section 138 of the NI Act since there is no legally enforceable debt or liability at the time when the cheque was drawn. The Court held that if at the time when a contract is entered into, the purchaser has to pay an advance and there was a breach of that condition, the purchaser may have to make good the loss to the seller, but this would not occasion a criminal liability under Section 138. The issuance of a cheque towards advance payment at the time of the execution of the contract would not - in the view which has adopted in Indus Airways - be considered as a subsisting liability so as to attract an offence under Section 138 upon the dishonor of the cheque.

The explanation to Section 138 of the NI Act provides that 'debt or any other liability' means a legally enforceable debt or other liability. The proviso to Section 138 stipulates that the cheque must be presented to the bank within a period of six months from the date on which it is drawn or within its period of validity. Therefore, a cheque given as a gift and not for the satisfaction of a debt or other liability, would not attract the penal consequences of the provision in the event of its being returned for insufficiency of funds. Aiyar's Judicial Dictionary defines debt as follows: "Debt is a pecuniary liability. A sum payable or recoverable by action in respect of money demand." Lindey L.J in ***Webb v. Strention, 1888 QBD 518*** defined debt as "… a sum of money which is now payable or will become payable in the future by reason of a present obligation, debitum in praesenti, solvendum in futuro." The definition was adopted by this Court in ***Keshoram Industries v. CWT, AIR 1966 SC 1370***. Justice Mookerjee writing for a Full Bench of the Calcutta High Court in ***Banchharam Majumdar v. Adyanath Bhattacharjee, (1909) ILR 36 Cal 936*** adopted the definition provided by the Supreme Court of California in ***People v. Arguello, 1869 37 Calif 524***:

> "Standing alone, the word 'debt' is as applicable to a sum of money which has been promised at a future day as to a sum now due and payable. If we wish to distinguish between the two, we say of the former that it is a debt owing, and of the latter that it is a debt due. In other words, debts are of two kinds: *solvendum in praesenti and solvendum* in future … A

> sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt or does not become a debt until the contingency has happened."

Thus, the term debt also includes a sum of money promised to be paid on a future day by reason of a present obligation. A post-dated cheque issued after the debt has been incurred would be covered by the definition of 'debt'. However, if the sum payable depends on a contingent event, then it takes the color of a debt only after the contingency has occurred. Therefore, in the present case, a debt was incurred after the second respondent began supply of power for which payment was not made because of the non-acceptance of the LCs'. The issue to be determined is whether Section 138 only covers a situation where there is an outstanding debt at the time of the drawing of the cheque or includes drawing of a cheque for a debt that is incurred before the cheque is encashed.

According to the complainant, the LCs' were not in a format agreed to by their bankers. The cheques which were initially towards security could not have been presented before the payments under the PSA fell due. Moreover, if the company were to discharge its liability to pay the outstanding dues under the power supply agreement through the agreed modality of an LC to the satisfaction of the second respondent's bankers, there would be no occasion to present the cheque thereafter. In other words, once payments for electricity supply became due in terms of the PSA, and the company failed to discharge its dues, the second respondent was entitled in law to present the cheque for payment. Merely labelling the cheque as a security would not obviate its character as an instrument designed to meet a legally enforceable debt or liability, once the supply of power had been provided for which there were monies due and payable. There is no inflexible rule which precludes the drawee of a cheque issued as security from presenting it for payment in terms of the contract. It all depends on whether a legally enforceable debt or liability has arisen.

The submission which has been urged on behalf of the appellants, however, is that the fact that the cheques in the present case have been issued as a security is not in dispute since it stands admitted from the pleading of the second respondent in the suit instituted before the High Court of Madras. The legal requirement which Section 138 embodies is that a cheque must be drawn by a person for the payment of money to another "for the discharge, in whole or in part, of any debt or other liability'. A cheque may be issued to facilitate a commercial transaction between the parties. Where, acting upon the underlying purpose, a commercial arrangement between the parties has fructified, as in the present case by the supply of electricity under a PSA, the presentation of the cheque upon the failure of the buyer to pay is a consequence which would be within the contemplation of the drawer. The cheque, in other words, would in

such an instance mature for presentation and, in substance and in effect, is towards a legally enforceable debt or liability. This precisely is the situation in the present case which would negate the submissions of the appellants.

The test to determine if the Managing Director or a Director must be charged for the offence committed by the Company is to determine if the conditions in Section 141 of the NI Act have been fulfilled i.e., whether the individual was in-charge of and responsible for the affairs of the company during the commission of the offence. However, the determination of whether the conditions stipulated in Section 141 of the MMDR Act have been fulfilled is a matter of trial. There are sufficient averments in the complaint to raise a *prima facie* case against them. It is only at the trial that they could take recourse to the proviso to Section 141 and not at the stage of issuance of process.

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160. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 2 (s) and 19 (1) (f)

Alternate accommodation – Alternate equivalent accommodation as per Section 19 (1) (f) of D.V. Act, does not mean that the alternate accommodation must be totally identical to previously shared house hold although, there should be similar luxury and comfort in the alternate accommodation also.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धाराएं 2 (घ) एवं 19 (1) (च)

वैकल्पिक आवास – घरेलू हिंसा अधिनियम की धारा 19 (1) (च) में उल्लिखित समान स्तर के वैकल्पिक आवास का अर्थ यह नहीं है कि वैकल्पिक आवास पूर्व की साझी गृहस्थी वाले आवास से पूर्णतः समरूप होना चाहिए हालांकि वैकल्पिक आवास में भी विलासिता एवं आराम समान होना चाहिए।

Jaidev Rajnikant Shroff v. Poonam Jaidev Shroff

Judgment dated 03.12.2021 passed by the Supreme Court in Civil Appeal No. 2634 of 2017, reported in (2022) 1 SC 683

Relevant extracts from the judgment:

In our view, to stretch the word 'similar' as used in the order dated 6th March 2020, to be totally identical to the said house, would be unrealistic. It will be difficult to find out a house identical to the said house having the same area, the same facilities and the same luxuries. The word 'similar' has to be construed as providing the same degree of luxury and comfort as is available in the said house.

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***161. SPECIFIC RELIEF ACT, 1963 – Sections 16 and 20**

Suit for specific performance of contract – Agreement to sell was executed between plaintiff and defendant for the suit property – Bharat Petroleum Corporation was having lease over the property and constructed petrol pump over that – Bharat petroleum had objected and claimed first right to purchase – Execution of agreement to sell and readiness and willingness were proved by the plaintiff – Trial Court dismissed the suit after considering the objection of the Corporation – High Court held that plaintiff is the master of the suit – Not bound to sue against every possible adverse claim in the suit – Suit was decreed.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 16 एवं 20

संविदा के विनिर्दिष्ट पालन के लिए वाद – वादी तथा प्रतिवादी के मध्य दावाकृत सम्पत्ति के विक्रय का करार निष्पादित किया गया। भारत पेट्रोलियम कार्पोरेशन के पास उक्त सम्पत्ति का पट्टा था और उस पर पेट्रोल पम्प का निर्माण किया गया था भारत पेट्रोलियम ने आपत्ति प्रस्तुत की तथा अग्रक्रयाधिकार का दावा किया – विक्रय के करार का निष्पादन तथा तैयारी एवं रजामंदी वादी के द्वारा प्रमाणित की गई – विचारण न्यायालय द्वारा कार्पोरेशन की आपत्ति को विचार में लेते हुए वाद खारिज किया गया – उच्च न्यायालय द्वारा अभिनिर्धारित किया गया कि वादी अपने वाद का स्वामी है – वाद में प्रत्येक संभावित विरोधी दावे के सम्बंध में वाद करने के लिए बाध्य नहीं है – वाद डिक्री किया गया।

Bhagwan Sharan and anr. v. Krishnakant Bhargava and anr.
Judgment dated 11.08.2021 passed by the High Court of Madhya Pradesh (Bench Gwalior) in First Appeal No. 292 of 2009, reported in AIR 2022 MP 8

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162. SPECIFIC RELIEF ACT, 1963 – Section 20
CIVIL PROCEDURE CODE, 1908 – Order 14

(i) Agreement to sell joint Hindu family property – Right of *karta* to execute agreement to sell or sale deed of a joint Hindu family property is settled and is beyond cavil.

(ii) Framing of issue – Omission to frame an issue does not vitiate the trial where the parties go to trial fully knowing the rival case and lead evidence in support of their respective contentions.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

सिविल प्रक्रिया संहिता, 1908 – आदेश 14

(i) संयुक्त हिन्दू परिवार की सम्पत्ति के विक्रय का करार – संयुक्त हिन्दू परिवार की सम्पत्ति को विक्रय करने का करार निष्पादित करने या विक्रय करने का कर्ता का अधिकार स्थापित है और छिद्रान्वेषण से परे है।

(ii) वाद प्रश्न की विरचना – जहां पक्षकार दूसरे पक्ष के प्रकरण को पूरी तरह से जानते हुए विचारण के लिए जाते है और अपने–अपने दावे के समर्थन में साक्ष्य प्रस्तुत करते है, किसी वाद प्रश्न को विरचित करने में चूक विचारण को दूषित नहीं करती है।

Beereddy Dasaratharami Reddy v. V. Manjunath and anr.
Judgment dated 13.12.2021 passed by the Supreme Court in Civil Appeal No.7037 of 2021, reported in AIR 2022 SC 65

Relevant extracts from the judgment:

Right of the Karta to execute agreement to sell or sale deed of a joint Hindu family property is settled and is beyond cavil vide several judgments of this Court including ***Sri Narayan Bal and ors. v. Sridhar Sutar and ors., (1996) 8 SCC 54*** wherein it has been held that a joint Hindu family is capable of acting through its Karta or adult member of the family in management of the joint Hindu family property. A coparcener who has right to claim a share in the joint Hindu family estate cannot seek injunction against the Karta restraining him from dealing with or entering into a transaction from sale of the joint Hindu family property, albeit post alienation has a right to challenge the alienation if the same is not for legal necessity or for betterment of the estate. Where a Karta has alienated a joint Hindu family property for value either for legal necessity or benefit of the estate it would bind the interest of all undivided members of the family even when they are minors or widows. There are no specific grounds that establish the existence of legal necessity and the existence of legal necessity depends upon facts of each case. The Karta enjoys wide discretion in his decision over existence of legal necessity and as to in what way such necessity can be fulfilled. The exercise of powers given the rights of the Karta on fulfilling the requirement of legal necessity or betterment of the estate is valid and binding on other coparceners.

The aforesaid being the legal position, it has to be held that signatures of V. Manjunath, son of Karta – K. Veluswamy, on the agreement to sell were not required. K. Veluswamy being the Karta was entitled to execute the agreement to sell and even alienate the suit property. Absence of signatures of V. Manjunath would not matter and is inconsequential. As noted above, it is an accepted case of the respondents that K. Veluswamy did receive Rs.4 lakhs as advance from Beeredy Dasartharami Reddy, as recorded in the agreement to sell.

On the question of satisfaction of the condition of legal necessity, the stand of the respondents is contradictory, for they have pleaded in the written statement and even before us that the joint Hindu family was in need of funds, which shows legal necessity. In fact, as recorded above, the need for funds is duly reflected and so stated in the agreement to sell dated 8th December 2006 which states that the executants were in need of funds to meet domestic necessities and, therefore, had agreed to sell the suit property. It is also an undisputed position

that the suit property was encumbered in favour of the State Bank of Mysore, Adivala Branch, and the executants had informed that the dues of the bank would be cleared to release the mortgage before the date of registration. In ***Kehar Singh (D) through Legal Representatives and ors. v. Nachittar Kaur and ors., (2018) 14 SCC 445***, on the question what is legal necessity, reference was made to Article 241 from Mulla's Hindu Law which states that maintenance of coparceners, family members, marriage expenses, performance of necessary funerals or family ceremonies, costs of necessary litigation for recovering or preserving estate, etc. fall and have been held to be family's necessities. Further, the instances are not the only indices for concluding whether the alienation was in need for legal necessity as enumeration on what would be legal necessity is unpredictable and would depend upon facts of each case. Thus, we are of the opinion that the agreement to sell cannot be set aside on the ground of absence of legal necessity.

Omission to frame an issue as required under Order XIV Rule 1 of the Code of Civil Procedure, 1908 does not vitiate the trial where the parties go to trial fully knowing the rival case and lead evidence in support of their respective contentions and to refute contentions of the other side (See – ***Kannan (Dead) by LRs. and ors. v. V. S. Pandurangam (Dead) by LRs. and ors., (2007) 15 SCC 157*** and ***Nedunuri Kameswaramma v. Sampati Subba Rao, AIR 1963 SC 884***).

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***163. TRANSFER OF PROPERTY ACT, 1882 – Section 54**
SPECIFIC RELIEF ACT, 1963 – Section 34
Sale of immovable property – Payment of consideration – Sale of an immovable property has to be for a price which may be payable in future – It may be partly paid and the remaining part in future – Payment of price is an essential part of sale covered by section 54 of the TP Act – Sale deed in respect of an immovable property executed without payment of price and does not provide for payment of price at a future date – Is not a sale at all in the eyes of law and has no legal effect – Such a sale will be void and will not effect the transfer of immovable property.

संपत्ति अंतरण अधिनियम, 1882 – धारा 54
विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34
स्थावर सम्पत्ति का विक्रय – प्रतिफल का भुगतान – स्थावर सम्पत्ति का विक्रय उस कीमत पर होनी चाहिए जो कीमत भविष्य में भुगतान योग्य हो सकती है – यह आंशिक रूप से भुगतान की जा सकती है और अवशेष को भविष्य में भुगतान योग्य बनाया जा सकता है – कीमत का भुगतान धारा 54 सम्पत्ति अंतरण अधिनियम के अन्तर्गत विक्रय का अनिवार्य भाग है – स्थावर सम्पत्ति के सम्बंध में विक्रय पत्र कीमत का भुगतान किए बिना निष्पादित किया गया और भविष्यवर्ती

दिनांक पर कीमत के भुगतान का प्रावधान नहीं है – ऐसा विक्रय विधि की दृष्टि में कोई विक्रय नहीं है एवं इसका कोई विधिक प्रभाव नहीं है – ऐसा विक्रय स्थावर सम्पत्ति के अंतरण को प्रभावित नहीं करेगा।

Kewal Krishan v. Rajesh Kumar and ors.

Judgment dated 22.11.2021 passed by the Supreme Court in Civil Appeal No. 6989 of 2021, reported in 2022 (1) MPLJ 494 (SC)

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164. URBAN LAND (CEILING AND REGULATION) ACT, 1976 – Section 10
SPECIFIC RELIEF ACT, 1963 – Section 34
CIVIL PROCEDURE CODE, 1908 – Section 9
Declaration of surplus land – Jurisdiction of Civil Court – After conducting inquiry, competent authority passed final order declaring land as surplus land – Possession of land was taken over and the same was allotted to development authority to construct houses for needy slum dwellers – Civil Court cannot declare the order passed by the competent authority as illegal or *non est*.

शहरी भूमि (सीमा और विनियम) अधिनियम, 1976 – धारा 10
विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34
सिविल प्रक्रिया संहिता, 1908 – धारा 9

अतिशेष भूमि की घोषणा – सिविल न्यायालय का क्षेत्राधिकार – सक्षम प्राधिकारी द्वारा जांच करने के उपरांत भूमि को अतिशेष भूमि घोषित करने का आदेश पारित किया गया – भूमि का आधिपत्य लेकर उसे विकास प्राधिकरण को जरूरत मंद झुग्गी वासियों के मकान बनाने के लिए आवंटित कर दिया गया – सिविल न्यायालय सक्षम प्राधिकारी द्वारा पारित आदेश को अवैधानिक या अस्तित्वहीन घोषित नहीं कर सकता है।

State of M.P. v. Ghisilal

Judgment dated 22.11.2021 passed by the Supreme Court in Civil Appeal No. 2153 of 2012, reported in AIR 2022 SC 275

Relevant extracts from the judgment:

It is not in dispute that the land in question is in the Urban Agglomeration and covered by the ULC Act, 1976. As such, original owner late Padam Singh has filed declaration under the provisions of the ULC Act and after conducting necessary inquiry, final orders were passed by the competent authority declaring 16000.32 square meters of land as surplus land. It is also clear from the material placed on record that consequent to final orders passed by the competent authority, notifications under Section 10(1) and 10(3) of the ULC Act were issued. Although, it is the case of the respondent-plaintiff that possession was taken without issuing notice, as such it cannot be considered as valid taking over of

possession, but it is evident from the copy of the panchnama, the respondent, who claims to be the legal heir of late Padam Singh, is also a signatory as a witness to the same. Though the respondent-plaintiff was a witness to the panchnama for taking over possession, a belated attempt was made by filing the present suit by the respondent without even questioning the orders passed by the competent authority under the Act, declaring the land in question as a surplus land. The trial court as well as appellate court fell in error in recording a finding that possession was not taken, inspite of taking possession by conducting panchnama for which respondent is a signatory. In the judgment relied on by the learned counsel for the appellant in the case of ***Indore Development Authority v. Manoharlal and ors., (2020) 8 SCC 129*** this Court while dealing with the provisions of the Land Acquisition Act has held that when the possession of the land is taken by drawing a panchnama, that amounts to taking physical possession of the land. It is further held that anybody claiming possession thereafter has to be treated as a trespasser and has no right to possess the land which vests with the State free from all encumbrances. In view of the stand of the appellant, of taking over possession of the land by conducting panchnama for which respondent is a signatory, it is difficult to believe the stand of the respondent that possession was not taken. In view of the stand of the respondent that possession is with the respondent, this Court called for a report from the District Judge. Pursuant to the same, report dated 14.04.2021 was sent by the learned Principal District and Sessions Judge, Bhopal, Madhya Pradesh to this Court. It is evident from such report that the appellant has taken possession of the land and the same was allotted to the Bhopal Development Authority and the same was utilised for construction of about 400 houses for needy slum dwellers by spending huge amount. Thus, it is clear that possession of the land was not only taken but same is utilised for a public purpose.

The Urban Land (Ceiling and Regulation) Act, 1976 is a self-contained Code. Various provisions of the Act make it clear that if any orders are passed by the competent authority, there is provision for appeal, revision before the designated appellate and revisional authorities. In view of such remedies available for aggrieved parties, the jurisdiction of the civil courts to try suit relating to land which is subject-matter of ceiling proceedings, stands excluded by implication. Civil court cannot declare, orders passed by the authorities under the ULC Act, as illegal or non est. More so, when such orders have become final, no declaration could have been granted by the civil court. In this regard reference may be made to the judgment of this Court in the case of ***Competent Authority, Calcutta, under the Urban Land (Ceiling and Regulation) Act, 1976 and anr. v. David Mantosh and ors., (2020) 12 SCC 542***. We are totally in agreement with the aforesaid view taken by this Court.

In this case, it is clear from the orders passed by the competent authorities, that the original declarant was holding excess land to the extent of 16000.32 square meters. When the orders passed by the competent authority and

consequential notifications issued under Section 10(1) and 10(3) of the ULC Act have become final, it was not open for the respondent to file a suit seeking declaration, as prayed for. As we are of the view that jurisdiction of the civil courts is barred by necessary implication, trial court fell in error in entertaining the suit, as filed by the respondent and even the first appellate court and second appellate court have not considered the various grounds raised by the appellant in proper perspective.

Although it is contended by the learned counsel appearing for the respondent to mould the relief, it is trite principle that where the suit is filed with particular pleadings and reliefs, it is to be considered with reference to pleadings on record and the reliefs claimed in the suit only. The judgments relied on by the learned counsel for the respondent would not render any assistance to support the case of the respondent. As we are in agreement with the view taken by this Court earlier in the case of ***Competent Authority, Calcutta, under the Urban Land (Ceiling and Regulation) Act, 1976*** (supra) this appeal is to be allowed by setting aside the judgment and decree passed by the trial court as confirmed by the appellate court on the ground that such suit itself was not maintainable.

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165. WAKF ACT, 1995 – Sections 83 and 85

(i) Wakf property – Bar of jurisdiction of Civil Court – Only Tribunal constituted under the Act has power to determine any dispute regarding wakf, wakf property, injunction, eviction of tenant and determination of right and obligation of the lessor and lessee of the property.

(ii) Wakf Act – Jurisdiction – Bar of Civil Court contained in sections 6(5) and 7(2) is confined to Chapter II but the bar of jurisdiction under section 85 is all pervasive.

(iii) Dispute regarding status of wakf property – Only wakf tribunal is proper forum to decide whether subject property is disputed to be wakf property or not.

वक्फ अधिनियम, 1995 – धाराएं 83 एवं 85

(i) वक्फ संपत्ति – सिविल न्यायालय की क्षेत्राधिकारिता का वर्जन– केवल अधिनियम के तहत गठित अधिकरण को वक्फ, वक्फ संपत्ति, निषेधाज्ञा, किरायेदार की बेदखली और संपत्ति के पट्टेदार और पट्टेदार के अधिकार और दायित्व के निर्धारण के बारे में किसी भी विवाद को निर्धारित करने की शक्ति है।

(ii) वक्फ अधिनियम – क्षेत्राधिकारिता – धारा 6(5) और 7(2) में निहित सिविल न्यायालय का वर्जन अध्याय 2 तक ही सीमित है लेकिन धारा 85 के तहत क्षेत्राधिकारिता सर्व व्यापक है।

(iii) वक्फ संपत्ति की स्थिति के सम्बन्ध में विवाद – केवल वक्फ अधिकरण यह तय करने के लिए उचित मंच है कि वाद संपत्ति वक्फ संपत्ति है या नहीं ।

Rashid Wali Beg v. Farid Pindari and ors.

Judgment dated 28.10.2021 passed by the Supreme Court in Civil Appeal No. 6336 of 2021 reported in (2022) 4 SCC 414

Relevant extracts from the judgment:

Interestingly, the basis of the decision in ***Ramesh Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726*** was removed through an amendment under Act 27 of 2013. As we have stated elsewhere, ***Ramesh Gobindram*** (supra) sought to address the question whether a Waqf Tribunal was competent to entertain and adjudicate upon disputes regarding eviction of persons in occupation of what are admittedly waqf properties. Since this Court answered the question in the negative, Section 83(1) was amended by Act 27 of 2013 to include the words,

> "eviction of tenant or determination of rights and obligations of the lessor and lessee of such property".

The approach of the High Court, in our considered view, is not in tune with the law. The question as to whether the suit for perpetual injunction is maintainable before the Waqf Tribunal or not, is already answered in Akkode Jumayath Palli Paripalana Committee. This Court, pointed out in the said decision that Ramesh Gobindram was distinguished in ***W. B. Wakf Board v. Anis Fatma Begum, (2010) 14 SCC 588*** and that therefore the Tribunal had jurisdiction to entertain a suit for perpetual injunction. But unfortunately, this decision rendered by this Court on 23.07.2013 does not appear to have been brought to the notice of the High Court.

It is true that in ***Punjab Waqf Board v. Sham Singh Harike (2019) 4 SCC 698*** a two member bench of this Court considered Ramesh Gobindram, Anis Fatma Begum as well as Akkode Jumayath Palli Paripalana Committee and doubted in paragraph 43 (of the SCC report) the correctness of the decision in Akkode Jumayath Palli Paripalana Committee on the ground that it was not in accord with the ratio of ***Ramesh Gobindram.*** (supra) But the said conclusion was on the basis of the observations in ***Ramesh Gobindram*** (supra) to the effect that unless there is any provision in the Waqf Act to entertain the dispute, the Tribunal cannot have jurisdiction.

We have already seen that it is not as though there was no provision in the Waqf Act conferring jurisdiction upon the Tribunal in respect of the waqf property. We can break the first part of Section 83 into two limbs, the first concerning the determination of any dispute, question or other matter relating to a waqf and the second, concerning the determination of any dispute, question or other matter relating to a waqf property. After Amendment Act 27 of 2013, even the

eviction of a tenant or determination of the rights and obligation of the lessor and lessee of such property, come within the purview of the Tribunal.

Though the proceedings out of which the present appeal arises, were instituted before the Amendment Act, the words "any dispute, question or other matter relating to a waqf or waqf property" are sufficient to cover any dispute, question or other matter relating to a waqf property. This is why Ramesh Gobindram was sought to be distinguished both in Anis Fatma Begum and Pritpal Singh and such distinction was taken note of in Akkode Jumayath Palli Paripalana Committee. Additionally, this Court in ***Kiran Devi v. Bihar State Sunni Wakf Board, (2021) 15 SCC 15*** refused to apply the ratio of ***Ramesh Gobindram*** (supra), on the ground that the suit was originally instituted before the Civil Court, but was later transferred to the Waqf Tribunal and that after allowing the order of transfer to attain finality, it was not open to them to resurrect the issue through Ramesh Gobindram.

We must also point out at this stage that all the 14 decisions which we have tabulated in paragraph 13 above, except the one at Sl.No.13, namely Kiran Devi are decisions of two member benches. Kiran Devi was a decision of a three member bench of this Court. In Kiran Devi, an objection to the maintainability of the proceeding before the Waqf Tribunal was raised on the basis of the decision in Ramesh Gobindram. But this court refused to accept it on the ground that once the order of transfer of the suit from the Civil Court to the Waqf Tribunal had attained finality, the question of jurisdiction cannot be raised. If Waqf tribunal had no jurisdiction at all, this court could not have held in Kiran Devi that the order of transfer already passed cannot be undone by accepting this plea. The decision of the three member bench in Kiran Devi is significant in the sense that it recognized the fact that Ramesh Gobindram cannot be used as a magic wand to toss the proceedings relating to a waqf property from one forum to another.

In the case on hand, the property is admitted to be a waqf property. Therefore, to allow the plaintiff to ignore the Waqf Tribunal and to seek a decree of permanent injunction and mandatory injunction from a civil court, would be ignore the mandate of section 83 and 85 which speak of any dispute, question or other matter relating to a waqf or a waqf property. There is also one more issue. In the written statement, the Defendant No.1 has admitted the existence of the waqf and also admitted that the father of the plaintiff by name Riyaz Ahmad is the mutawalli. But the claim of the plaintiff that he is the beneficiary of the waqf has been denied. Therefore, a question as to the nature of the waqf and whether the plaintiff is a beneficiary of the waqf, has also arisen in this case. This question has necessarily to be decided by the Tribunal and not the civil court.

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PART - III

CIRCULARS/NOTIFICATIONS

मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग की अधिसूचना दिनांक 05.02.2021 मध्यप्रदेश सिविल न्यायालय नियम, 1961 में संशोधन विषयक

फा. क्र. 496–2021–इक्कीस–ब(दो). – मध्यप्रदेश सिविल न्यायालय अधिनियम, 1958 (क्रमांक 19 सन् 1908) की धारा 23 तथा व्यवहार प्रक्रिया संहिता, 1908 (1908 का 5) की धारा 122 के साथ पठित संविधान के अनुच्छेद 227 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए तथा मध्यप्रदेश उच्च न्यायालय के परामर्श से, राज्य सरकार, एतद् द्वारा, मध्यप्रदेश सिविल न्यायालय नियम, 1961 में निम्नलिखित संशोधन करती है, अर्थातः –

संशोधन

अध्याय 1 (भाग –1) के नियम 10 के खण्ड (एक) के स्थान पर, निम्नलिखित खण्ड स्थापित किया जाएं, अर्थातः–

''(एक) A4 आकार के कागज के दोनों ओर, जिसका GSM 75 से कम न हो, यूनीकोड मंगल फॉन्ट, आकार 16 (देवनागरी लिपि हेतु) एवं टाईम्स न्यू रोमन फॉन्ट, आकार 14 (रोमन लिपि हेतु) में सफाई से अंकित अथवा मुद्रिका हो, जिसमें ऊपरी ओर पृष्ठ भाग पर 1.5'' बांयी ओर 1.75'' एवं दांयी ओर कम से कम 1'' का हाशिया छोड़ेंगे तथा 1.5'' लाईन स्पेसिंग रखेंगे.''

फा. क्र. 498–2021–इक्कीस–ब(दो). – भारत के संविधान के अनुच्छेद 227 द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य शासन, मध्यप्रदेश उच्च न्यायालय के परामर्श से, एतद् द्वारा, मध्यप्रदेश सिविल न्यायालय नियम, 1961 में निम्नलिखित और संशोधन करता है, अर्थात –

संशोधन

उक्त नियमों में,–

(1) नियम 484 में, विद्यमान पैराग्राफ को उप–नियम (1) के रूप में पुर्नक्रमांकित किया जाए और इस प्रकार पुर्नक्रमांकित उप–नियम (1) के पश्चात् निम्नलिखित उप–नियम अन्तः स्थापित किया जाए, अर्थात्:–

''(2) यदि प्रतिलिपि के लिए आवेदन किसी अभिलेख के संबंध में हो, जिसका डिजिटलीकरण नियमों के अनुसार डिजिटलीकरण किया गया है, तो प्रमाणित प्रति ऐसे डिजिटलीकृत अभिलेख के आधार पर जारी की जा सकती है, तथापि यदि आवेदन लंबित अभिलेख या उसके भाग के लिए है, तो पीठासीन न्यायाधीश की अनुमति अपेक्षित होगी.''

(2) नियम 489 में,–

(1) अनुक्रमांक (4) तथा (5) में, शब्द ''कक्ष'' के पश्चात् प्रतीक तथा शब्द ''/न्यायालय'' अन्तःस्थापित किए जाएं,

(2) अनुक्रमांक 11 के पश्चात्, निम्नलिखित अनुक्रमांक अन्तःस्थापित किया जाए, अर्थात्:–

''12 हार्ड कॉपी से तैयार प्रति अथवा

13. डिजिटलीकृत अभिलेख से तैयार प्रति.''.

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मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग की अधिसूचना दिनांक 18.01.2022 विशेष लोक अभियोजक नियुक्ति विषयक

क्रमांक 1/123/21–ब(दो)/2022, राज्य शासन एतद् द्वारा अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 (क्रं. 33 सन् 1989) के अधीन प्रदत्त शक्तियों को प्रयोग में लाते हुए, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम 2012 की धारा 32 की उप–धारा (1) के अधीन नियुक्त समस्त विशेष लोक अभियोजक अनन्य विशेष लोक अभियोजकों को अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण), 1989 (1989 की 33) की धारा 15 के तहत भी विशेष लोक अभियोजक नियुक्त करता है।

और यह भी कि राज्य शासन एतद् द्वारा प्रत्येक जिले में पदस्थ सभी उप संचालक अभियोजन, जिला लोक अभियोजन अधिकारी/अतिरिक्त जिला लोक अभियोजन अधिकारी एवं समस्त सहायक जिला लोक अभियोजन अधिकारी की सेवा अवधि 07 वर्ष होने पर उन्हें लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 की धारा 32 एवं अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण), 1989 की धारा 15 के तहत विशेष लोक अभियोजक नियुक्त करता है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार

(अरूण कुमार सिंह (सीनियर))
सचिव
मध्यप्रदेश शासन, विधि और विधायी कार्य विभाग

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PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (AMENDMENT) ACT, 2021

(No. 48 of 2021)

[29th December, 2021]

[*Received the assent of the President on the 29.12.2021 and Act published in the Gazette of India (Extraordinary) Part II Section 1 dated 30.12.2021 Pages 1-2 (S.No.66)*].

An Act further to amend the Narcotic Drugs and Psychtropic Substances Act, 1985.

Be it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:-

1. **Short title and commencement.** – (1) This Act may be called the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2021.

   (2) It shall be deemed to have come into force on the 1st day of May, 2014.

2. **Amendment of section 27A** – In section 27A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), for the words, brackets, letters and figure "clause (viiia) of section 2", the words, brackets, letters and figure "clause (viiib) of section 2" shall be substituted.

3. **Repeal and savings** – (1) The Narcotic Drugs and Psychotropic Substances (Amendment) Ordinance, 2021 (Ord. 8 of 2021) is hereby repealed.

   (2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

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THE CODE OF CIVIL PROCEDURE (MADHYA PRADESH AMENDMENT) ACT, 2020

(Madhya Pradesh Act No. 12 of 2022)

[*Received the assent of the President on the 25th April, 2022; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 4th May, 2022*].

An Act further to amend the Code of Civil Procedure, 1908 in its application to the State of Madhya Pradesh.

Be it enacted by the Madhya Pradesh Legislature in the seventy-second year of the Republic of India as follows :—

1. **Short title.** – This Act may be called the Code of Civil Procedure (Madhya Pradesh Amendment) Act, 2020.

2. **Amendment of Central Act (V of 1908) in its application to the State of Madhya Pradesh.** – The Code of Civil Procedure, 1908 (V of 1908) (hereinafter referred to as the principal Act) in its application to the State of Madhya Pradesh be amended in the manner hereinafter provided.

3. **Amendment of First Schedule.** – In the First Schedule to the principal Act,–

(1) in order XVIII,–

(i) in rule 4,

(a) for the existing marginal heading, the following marginal heading shall be substituted, namely;–

"Recording of evidence in Commercial Court";

(b) in sub-rule (1), for the words "In every case", the words, brackets and figures "In any suit in respect of a commercial dispute of a specified value triable in the Commercial Courts constituted under sub-section (1) of Section 3 of the Commercial Courts Act, 2015 (No.4 of 2016)" shall be substituted;

(ii) after rule 4, the following rule shall be inserted, namely:—

"4-A. Witnesses to be examined in open Court. – Except as provided in rule 4, the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.".

(2) Insertion of Order XX-B. – After Order XX-A, the following order shall be inserted, namely:—

"ORDER XX-B

RECOGNITION OF ELECTRONICALLY SIGNED ORDERS, JUDGMENTS AND DECREES

1. **Recognition of Electronically Signed Orders, Judgments and Decrees.** – Any order passed, judgment pronounced or decree prepared which is required to be signed by a Judge shall be deemed to have been signed by the Judge, if such order, judgment or decree has been authenticated by means of electronic signature affixed by the Judge in such manner as may be prescribed by the High Court.".

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मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर

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