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MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

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EDITORIAL

Esteemed Readers,

Once while commenting on the British Justice system, Lord Devlin said, "If our business methods were as antiquated as our legal system, we would have become a bankrupt nation long back". Sociology of law is acquiring new and added significance in the development of the society, thus, it is incontrovertible that judges and other stakeholders of the justice delivery system must keep themselves up to date about contemporary demands from the justice system as well as new methods of resolving disputes which need advancement of knowledge that can only be acquired by facilities for education and training.

Since we live in a constant state of flux under the impact of technological advances, we are bound to face various challenges. However, the need to impart technical training has not received its due recognition till the recent past. The pandemic introduced us to a new avenue called Information and Communication Technology (ICT). We have emerged victorious after traversing the challenging times and identifying alternative modes of imparting training.

The e-Committee of the Supreme Court of India has started a drive to increase the outreach and awareness programme on ICT initiative of the e-Courts Project through the State Judicial Academies in order to help in bridging the digital divide among judges and other stakeholders and making e-services accessible. Our Academy has planned to conduct sixteen such outreach programmes as per the ICT initiatives of the e-Court Project this year i.e., 2022. We hope, this exercise will prove its worth and help in accelerating the technological capacity of the modern Indian Judiciary.

Coming to the activities, the Academy in the months of March & April conducted Refresher Course for the Civil Judges, Junior Division of 2019 batch on completion of one year of Induction Training Course and Refresher Course for District Judges on completion of five years of Advance Training Course. That apart, a Symposium on – Key Issues relating to Forest & Wildlife Laws and an online Interactive Session on – Key issues relating to cases of dishonour of cheque under the Negotiable Instruments Act, 1881 were also conducted. Specialized Educational Programmes for the District and Additional Sessions Judges were organized at State Forensic Science Laboratory, Sagar and State Medico Legal Institute, Bhopal, respectively. We conducted an online Regional Workshop for the Advocates of cluster districts. The Academy in collaboration with NIMHANS organized online deliberations which focussed on Implementing the Protection of Children from Sexual Offences Act, 2012 as well as Child Witness Testimony.

An Awareness Programme on “Attributes of a Judge: An Interaction” for the Civil Judges, Junior Division of cluster districts namely; Ashoknagar, Bhind, Datia, Guna, Gwalior, Morena, Sheopur, Shivpuri and Vidisha on 30th April, 2022 was conducted by the Academy in the Regional Centre of MPSJA at Gwalior. This was the maiden programme conducted by the Academy after the Regional Centre, Gwalior became functional. We reached another milestone after it became fully structural.

The Madhya Pradesh State Judicial Academy completed 25 years since its establishment in 1994 and for commemorating this journey, a Silver Jubilee Memoir has been published which was released by Hon’ble Shri Justice Ravi Malimath, Chief Justice on 5th March 2022 in the presence of Hon’ble Judges of the High Court and other dignitaries. From its humble beginnings in a Court Room of the High Court of Madhya Pradesh in 1994 to where it has now become a separate state of the art entity today training judges by the hundreds, the State Judicial Academy has come light-years from its inception. It depicts the growing importance of the Madhya Pradesh State Judicial Academy. The memoir is a compilation of all the activities of the past and our vision for the future. It abounds with articles of legal luminaries. The pictorial glimpses included in the memoir will take us down memory lane. It is being made available on the official website of the Academy.

The constant feedback we receive from our esteemed readers is instrumental in the refinements we employ to this piece of judicial literature to reach ambitious standards. We appreciate and encourage feedback that helps us maintain the high standards set by our previous publishes. We look forward to your kind comments and proffers for improving our future issues of this Journal.

“Sobriety, cool, calm and poise should be reflected in every action and expression of a Judge.” Before I put my pen down, I would like to express my deepest condolence on the passing away of the author of these words and a great legal luminary; Hon’ble Mr. Justice R.C. Lahoti, Former Chief Justice of India. Certainly, a value-laden judicial life and a set of resolute principles followed by His Lordship have left an indelible mark on everyone called upon to perform their duties in the field of justice dispensation.

Ramkumar Choubey
Director

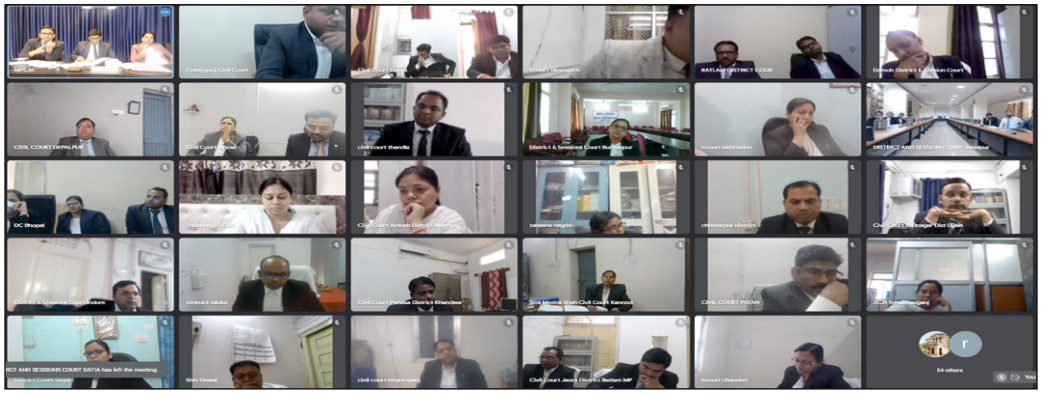
RELEASE OF SILVER JUBILEE MEMOIR ON 5TH MARCH, 2022
GLIMPSES OF RELEASE CEREMONY

Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh releasing the book Silver Jubilee Memoir along with
Hon'ble Shri Justice S.A. Dharmadhikari and Hon'ble Shri Justice Vivek Agarwal

Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh addressing the august gathering

GLIMPSES OF EDUCATIONAL PROGRAMMES

Online Deliberation on Implementation of the POCSO Act (05.03.2022)



Online Interactive Session on cases of dishonour of Cheque under NI Act (23.04.2022)

Symposium on Forest and Wild Life Laws (11.03.2022 & 12.03.2022)

GLIMPSES OF EDUCATIONAL PROGRAMMES

Refresher Course for Civil Judges (Jr. Division) on completion of one year
2019 Batch (Group-I) (21.03.2022 to 25.03.2022)

Refresher Course for Civil Judges (Jr. Division) on completion of one year
2019 Batch (Group-II) (28.03.2022 to 01.04.2022)

GLIMPSES OF EDUCATIONAL PROGRAMMES

Refresher Course for District Judges on completion of five year (Group-I)
(18.04.2022 to 23.04.2022)

Refresher Course for District Judges on completion of five year (Group-II)
(25.04.2022 to 30.04.2022)

GLIMPSES OF EDUCATIONAL PROGRAMMES

SPECIALIZED EDUCATIONAL PROGRAMME

State Forensic Science Laboratory, Sagar
(16.04.2022 to 18.04.2022)

State Medico Legal Institute, Bhopal
(25.04.2022 to 27.04.2022)

PROGRAMME AT REGIONAL CENTRE OF MPSJA, GWALIOR

Awareness Programme on - "Attributes of a Judge: An Interaction"
(30.04.2022)

OBITUARY

HON'BLE SHRI JUSTICE RAMESH CHANDRA LAHOTI

Hon'ble Shri Justice Ramesh Chandra Lahoti, the former Chief Justice of India was born on 1st November, 1940 at Guna in Madhya Pradesh in the reputed family of lawyers. His Lordship's father Shri Ratan Lal Lahoti was an eminent lawyer. After having primary education at Guna, completed B.Com. (Hons.) from R.A.C. Poddar College of Commerce & Economics, Bombay and LL.B. in 1960 from Holkar College, Indore and stood first in merit in LL.B. and was awarded Gold Medal. His Lordship was enrolled as Pleader in 1960 and then as an Advocate in 1961 and practiced in Civil, Criminal and Revenue side at Guna from 1960 to 1977. On being selected to Madhya Pradesh Higher Judicial Services, was appointed as District Judge in April, 1977 and worked as District & Sessions Judge at Gwalior and Ambikapur (Sarguja), now in Chattisgarh. After resigning from this post in May, 1978, His Lordship started practice at Gwalior Bench of the High Court of Madhya Pradesh and worked as Panel Lawyer for the State, various Banks, Insurance Companies and Financial Institutions and was also standing counsel in High Court for Income Tax Department at Gwalior. His Lordship was Founder Chief Editor of Madhya Pradesh Judicial Reporter, a Journal published from Gwalior. His Lordship was elevated as Additional Judge of High Court of Madhya Pradesh on 3rd May, 1988 and as Permanent Judge on 4th August, 1989. His Lordship was transferred to Delhi High Court in the same capacity in 1994 and thereafter was elevated to the Supreme Court on 9th December, 1998. On being appointed as the 35th Chief Justice of India, His Lordship took oath of this highest office of Indian Judiciary on 1st June, 2004 and continued in that capacity upto 31st October, 2005. During His Lordship's tenure, rendered invaluable services to the Indian Judiciary.

His Lordship left for his heavenly abode on 23rd March, 2022 at NOIDA, where he was residing post-retirement.

We on behalf of JOTI Journal, express our sincere condolences to the bereaved family and pray that the departed soul may rest in peace and tranquility.

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PART - I

PERMANENT DISABILITY: PRINCIPLES FOR ASSESSMENT

Dhirendra Singh,
Principal Judge, Family Court
Dhar

The Motor Vehicles Act, 1988 (in short "the Act") is a beneficial piece of legislation enacted to give solace to the victims of the motor accident who suffer bodily injury or die untimely. The Act is designed in a manner, which relieves the victims from ensuring strict compliance provided in law, which are otherwise applicable to the suits and other proceedings while prosecuting the petition filed under the Act for claiming compensation for loss sustained by them in the accident.

In ***Anant Dukre v. Pratap Lamzane and another, (2018) 9 SCC 450***, the Supreme Court held:

> "In cases of motor accidents leading to injuries and disablement, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life, and enjoy those things and amenities which he would have enjoyed, but for the injuries. The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.

In the case of ***Arvind Kumar Mishra v. New India Assurance Co. Ltd. & anr., (2010) 10 SCC 254***, it was held by the Apex Court as under:

> "Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered. In some cases for personal injury, the claim could be in respect of life time's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum. The conventional basis of assessing compensation in personal injury cases - and that is now recognized mode as to the proper measure of compensation - is taking an appropriate multiplier of an appropriate multiplicand."

Damages: Pecuniary and Non-pecuniary

In the case of ***Rajkumar v. Ajay Kumar and anr., (2011) 1 SCC 343***, principles for assessment of disabilities have been elaborated in detail by the Apex Court. The heads under which compensation is awarded in personal injury cases are the following:

a. Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

b. Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv).

It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii) (a) do not pose much difficulty as they involve reimbursement of actual and are easily ascertainable from the evidence. Award under the head of future medical expenses – item (iii) – depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages – items (iv), (v) and (vi) – involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability – item (ii) (a).

Disability: Connotation of

Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the

maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation.

Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accident injuries, are of a much wider range.

Percentage of Permanent Disability

The percentage of permanent disability is expressed by the doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (i.e. 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total there of expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%. [See also: ***Sandeep Khanuja v. Autl Dande, (2017) 3 SCC 351***]

Therefore, the Tribunal has to first decide whether there is any permanent disability and if so, the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

Ascertainment of the effect on Actual Earning Capacity

Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of percentage of income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). In some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of permanent disability, is approximately the same as the percentage of permanent disability in which case, the Tribunal will adopt the said percentage for determination of compensation.

Ascertainment of the effect of permanent disability on actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on inspite of permanent disability and what he could not do as a result of permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life).

The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age.

The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether inspite of permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive nor to do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand

may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. [See also: ***The New India Assurance Company Ltd. v. Satish Chandra Sharma and anr., Civil Appeal No. 1579/2022 dated 23.02.2022 (SC)*** in which the above principle is reiterated] In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation.

Doctor's Evidence: Duty of the Tribunal

The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, particularly the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to hold an enquiry into the claim for determining 'just compensation'. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess 'just compensation'. While dealing with personal injury cases, the Tribunal should preferably equip itself with a Medical Dictionary and a Handbook for evaluation of permanent physical impairment (for example the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by American Academy of Orthopedic Surgeons or its Indian equivalent or other authorized texts) for understanding the medical evidence and assessing the physical and functional disability.

The Tribunal may also keep in view the first schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen. If a Doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage

of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and if so the percentage.

Recently in the case of ***Bajaj Allianz General Insurance Company Private Ltd. v. Union of India & ors., Live Law 2021 SC 662***, it is held by the Apex Court that:

> "As far as the aspect of the issuance of certificate on disability of victims is concerned, it is reiterated that the guidelines laid down by this Court in ***Raj Kumar v. Ajay Kumar and anr., (2011) 1 SCCC 343*** mandatorily must be followed by the MACTs, in respect of loss of income due to injury/ disablement. The District Medical Board is also directed to follow the guidelines issued by the Ministry of Social Justice and Empowerment, Government of India vide Gazette Notification S. No. 61, dated 05.01.2018, for issuance of disability certificate in order to bring Pan India uniformity. The consequence is that the MACT would ascertain that permanent disability certificate issued by the District Medical Board or body authorized by it is in accordance with the Gazette Notification alone. Once the certificate is issued in this manner, the same can be marked for purposes of being taken into consideration as evidence without the necessity of summoning the concerned witness to give formal proof of the documents unless there is some reason for suspicion on the document."

Some times due to poverty, some claimants find it very difficult to produce the Doctor in evidence who issued permanent Disability Certificate. In such cases it is the duty of the Presiding Officer of the Tribunal to ensure presence of the Doctor who treated the injured and/or the Doctor who has issued Disability Certificate and employer/personal issuing salary certificate by invoking the power under Section 169 (2) (3) of the Motor Vehicles Act, Order 16 Rule 14 of CPC and Section 165 of the Evidence Act. Where the party is unable to pay the expenses of expert witnesses then the Tribunal should direct the concerned Legal Services Authority to bear the expenses for procuring the presence of such witnesses as has been held by the Hon'ble High Court in the case of ***Iqbal Ahmed v. Vice Chairman Patel intrigrated Logistics Ltd. and ors., 2019 ACJ 445 (DB)***.

In the case of ***D. Sampath v. United India Insurance Company Ltd. and anr., AIR 2012 SC 544***, it has been held that under all circumstances, it is not necessary that the Tribunal has to blindly accept disability Certificate produced by the injured. It has discretion to either accept totally or partially or reject it but that can be done only after assigning cogent and acceptable reasons.

Assessment of Loss of Future Earnings: Illustrations

The assessment of loss of future earnings is explained below with reference to the following illustrations:

Illustration-A: The injured, a workman, aged 30 years was earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows:

a)	Annual income before the accident	:	Rs.36,000/-.
b)	Loss of future earning per annum (15% of the prior annual income)	:	Rs. 5400/-.
c)	Multiplier applicable with reference to age	:	17
d)	Loss of future earnings : (5400 x 17)	:	Rs. 91,800/-

Illustration-B: The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment were bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows:

a)	Annual income prior to the accident	:	Rs.36,000/-.
b)	Loss of future earning per annum (75% of the prior annual income)	:	Rs.27000/-.
c)	Multiplier applicable with reference to age	:	17
d)	Loss of future earnings : (27000 x 17)	:	Rs. 4,59,000/-

Illustration-C: The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and he requires the assistance of a servant throughout his life, the loss of future earning capacity is assessed as 70%. The calculation of compensation will be as follows:

a)	Minimum annual income he would have got if had been employed as an Engineer	:	Rs.60,000/-
b)	Loss of future earning per annum (70% of the expected annual income)	:	Rs.42000/-
c)	Multiplier applicable (25 years)	:	18
d)	Loss of future earnings : (42000 x 18)	:	Rs. 7,56,000/-

[**Note** : The figures adopted in illustrations (A) and (B) are hypothetical. The figures in Illustration (C) however are based on actual taken from the decision in ***Arvind Kumar Mishra*** (supra). In the case of ***Jagdish v. Mohan and ors. (2018) 4 SCC 571***, loss of future prospect was also added in the compensation amount by a Three-Judge Bench].

A Three Judge Bench of the Supreme Court in ***N. Manjae Gowda v. Manager United India Insurance Company Ltd. and anr. 2014 ACJ 617 (SC)***, has held that functional disability of an accident victim requires determination on the basis of nature of disability in the light of the Career or profession which he or she was pursuing in life.

In ***Jagdish*** (supra) it has been also held that benefit of future prospect is also available to self employed individuals. The measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity.

In the case of ***Munusainy and ors. v. Managing Director, Tamil Nadu State Transport Corporation Ltd., (2018) 2 SCC 765*** it has been held that future prospects to be added even on notional or estimated income as per the ruling of five-Judge Bench in case of ***National Insurance Company Ltd. v. Pranay Sethi, (2017) 16 SCC 680***.

As far as permanent disability of children is concerned it has been held in ***Master Mallikarjun v. Divisional Manager National Insurance Company Ltd. and anr., AIR 2014 SC 736*** that:-

> "Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up to 30% to the whole body, Rs. 3 lakhs; upto 60%, Rs.4 lakhs; up to 90%, Rs. 5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick".

It is now a settled principle, which has been reiterated by the Apex Court time and again that in awarding compensation, the multiplier method is logically

sound and legally well established. This method, known as 'principle of multiplier', has been evolved to quantify the loss of income as a result of death or permanent disability suffered in an accident. In injury cases, the description of the nature of injury and the permanent disablement are the relevant factors and it has to be seen as to what would be the impact of such injury/disablement on the earning capacity of the injured. The multiplier system is, thus, based on the doctrine of equity, equality and necessity. A departure therefrom is to be done only in rare and exceptional cases.

Again in ***Pappu Deo Yadav v. Naresh Kumar, 2020 SCJ 2695 (SC)***, the three-Judge Bench of the Supreme Court opined:

> "This court has emphasized time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives."

Conclusion:

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

(v) Loss of future prospect should also be added in appropriate cases of permanent disabilities.

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COMPLAINT BY COURT U/S. 340 CRPC – VARIOUS ASPECTS

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OBJECT

The object of the legislature underlying enactment of the provision is that the evil of perjury and fabrication of evidence has to be eradicated and can be better achieved. In Chapter XXVI captioned "Provisions as to Offences Affecting the Administration of Justice" of the Code of Criminal Procedure, 1973 (in short-Cr.P.C.), section 340 confers the powers on a court to make a complaint in respect of an offence committed in or in relation to a proceeding in that court, or as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, if that court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in clause (b) of sub-section (1) of section 195 Cr.P.C. and authorises such court to hold preliminary enquiry as it thinks necessary and then make a complaint thereof in writing under sub-section (1) of section 340.

Section 340 Cr.P.C. reads as under:

> **340. Procedure in cases mentioned in section 195 –** (1) When, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary:
>
> (a) record a finding to that effect;
>
> (b) make a complaint thereof in writing;
>
> (c) send it to a Magistrate of the first class having jurisdiction;
>
> (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such Magistrate; and
>
> (e) bind over any person to appear and give evidence before such Magistrate.

Section 195 Cr.P.C. deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to; (1) contempt of lawful authority of public servants; (2) offences against public justice;

and (3) offences relating to documents given in evidence. Section 195(3) clarifies that the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central or State Act, if declared by that Act to be a court for the purposes of the said section.

Provisions of section 172 to 182 Indian Penal Code, 1860 (IPC) are outside the ambit of section 340 Cr.P.C., while provision of sections 193 to 196 IPC (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 IPC comes under the ambit of section 340 Cr.P.C. which may be described as follows:

- Punishment for false evidence (section 193 of IPC)
- Giving or fabricating false evidence with intent to procure conviction of offence punishiable with capital punishment (section 194 of IPC)
- Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment (section 195 of IPC)
- Threatening any person to give false evidence (section 195A of IPC)
- Using evidence known to be false (section 196 of IPC)
- False statement made in declaration which is by law receivable as evidence (section 199 of IPC)
- Using as true such declaration knowing it to be false (section 200 of IPC)
- False personation for purpose of act or proceeding in suit or prosecution (section 205 of IPC)
- Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution (section 206 of IPC)
- Fraudulent claim to property to prevent its seizure as forfeited or in execution (section 207 of IPC)
- Fraudulently suffering decree for sum not due (section 208 of IPC)
- Dishonesty making false claim in Court (section 209 of IPC)
- Fraudulently obtaining decree for sum not due (section 210 of IPC)
- False charge of offence made with intent to injure (section 211 of IPC)
- Intentional insult or interruption to public servant sitting in judicial proceeding (section 228 of IPC)

OFFENCES DISTINCT FROM THOSE CONTAINED IN SECTION 195

In ***State of U.P. v. Suresh Chandra Shrivastava, (1984) 3 SCC 92***, it has been held that where an accused commits some offences which are separate and distinct from those contained in section 195 Cr.P.C., section 195 will affect only the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences would also fall within the ambit of section 195.

WHETHER PRELIMINARY INQUIRY MANDATORY BEFORE FILING COMPLAINT?

While dealing with the issue regarding preliminary inquiry, a three-Judge Bench of the Supreme Court in ***Pritish v. State of Maharashtra, (2002) 1 SCC 253,*** observed thus:

> "Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. .... But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion."

However, in the subsequent decision, while dealing with a similar question, a three-Judge Bench of Supreme Court in ***Sharad Pawar v. Jagmohan Dalmiya, (2010) 15 SCC 290,*** observed that before giving a direction to file complaint, a preliminary enquiry as contemplated u/s 340 Cr.P.C. shall be conducted. Later, the judgment in ***Pritish*** (supra) was relied upon by a two-Judge Bench of the Supreme Court in ***Amarsang Nathaji v. Hardik Harshadbhai Patel, (2017) 1 SCC 113*** and it has been observed that it is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion that it appears to the court that an offence as referred u/s 340 Cr.P.C. has been committed, the court may dispense with the preliminary inquiry.

WHETHER HEARING OF WOULD BE ACCUSED IS REQUIRED BEFORE A COMPLAINT IS MADE?

In ***Pritish*** (supra), it has been guided that the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The scheme would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. The mere fact that right of appeal is provided in section

341 Cr.P.C. to any person aggrieved by the order, is indicative of his right to participate in such preliminary inquiry. It is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. It has been held that before filing of the complaint, opportunity to the would-be accused is not required.

REFERENCE TO A LARGER BENCH

Recently in ***State of Punjab v. Jasbir Singh, (2020) 12 SCC 96,*** after referring all these judgements it has been observed that the decision of the three-Judge Bench in ***Sharad Pawar*** (supra) did not refer and assign any reason as to why it was departing from the opinion expressed by a co-ordinate Bench in ***Pritish*** (supra) regarding the necessity of a preliminary inquiry under section 340 Cr.P.C., as also the observations made by the Constitution Bench in ***Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370*** and referred the matter on the question that "Whether section 340 Cr.P.C. mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under section 195 Cr.P.C. by a court?''

PRESENT LEGAL POSITION

In the case of Central ***Board of Dawoodi Bohra Community and anr. v. State of Maharashtra and anr., AIR 2005 SC 752*** regarding law of precedent, the Apex Court opined:

> "the law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength..."

Similarly, the High Court of Madhya Pradesh in ***Jabalpur Bus Operators Association and ors. v. State, AIR 2003 MP 81,*** has held that in case of conflict between two decisions of the Apex Court, Benches comprising of equal number of Judges, decision of the earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the later decision is binding. In the case of ***Oriental Insurance Company Limited v. Sanju Bai & ors., 2016 ACJ 1000,*** a full bench of the High Court of Madhya Pradesh held that the fact that the issue has been referred to larger Bench of the Supreme Court, cannot be the basis to ignore the decision of the Supreme Court cited on the subject, which is still holding the field and will be, therefore, binding precedent until overturned by a larger Bench of the Supreme Court.

Looking to the above guiding principles, ratio laid down in ***Pritish*** (supra) will prevail until the reference is answered, meaning thereby, if the court finds it necessary to conduct a preliminary inquiry before filing a complaint, it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. Even without such preliminary inquiry, the court can form such an opinion when it appears to the court that an offence has been committed in relation to a

proceeding in that court. Similarly, an opportunity of hearing to the would-be accused before filing of the complaint is not required.

WHETHER RECORDING OF FINDING IS NECESSARY?

Section 340 Cr.P.C. is similar to section 479-A of the Code of 1898. In section 479-A, it was mandatory to record a finding after preliminary inquiry regarding the commission of offence; whereas in Cr.P.C., the expression "shall" has been substituted by "may". In ***Prem Sagar Manocha v. State (NCT of Delhi), (2016) 4 SCC 571,*** it has been clarified that under the Cr.P.C., it is not mandatory that the court should record a finding. What is now required is only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court, and that too, opinion on an offence "which appears to have been committed", as to whether the same should be duly inquired into. In ***M.S. Sheriff v. State of Madras, AIR 1954 SC 397,*** a Constitution Bench cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order u/s 340 Cr.P.C. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into.

WHO CAN FILE A COMPLAINT?

It is well settled that in criminal law, a complaint can be lodged by anyone who is aware of a crime having been committed and thereby set the law into motion. In respect of offences adverted to in section 195 Cr.P.C., there is a restriction that the same cannot be entertained unless a complaint is made by a court because the offence is stated to have been committed in relation to the proceedings in that court. Section 195(1)(b) of Cr.P.C., mentioned in the three sub-clauses (i), (ii) and (iii) except on a complaint in writing of the court when the offence(s) is/are alleged to have been committed in or in relation to any proceeding before it or in respect of a document produced or given in evidence in such a proceeding or by such officer of that court as it may authorise in writing or by some other court to which the court [in the proceedings before which the offence(s) has been committed] is subordinate. Section 340 Cr.P.C. is invoked to get over the bar imposed u/s 195 Cr.P.C.

The provisions of section 195 Cr.P.C. are mandatory so much so that non-compliance thereof would vitiate the prosecution and all consequential orders, as has been ruled by the Supreme Court in ***C. Muniappan v. State of T.N., (2010) 9 SCC 567.***

SOME OTHER COURT TO WHICH THE COURT IS SUBORDINATE

In terms of sub-section (4), of 195 Cr.P.C. for the purposes of sub-section (1)(b), a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from the appealable decrees or sentences of such former court, or in the case of a civil court from whose decrees no appeal ordinarily lies to the

principal court having ordinary original civil jurisdiction within whose local jurisdiction, such civil court is situated. The proviso to sub-section (4) explains that where appeals lie to more than one court, the appellate court of the inferior jurisdiction shall be the court to which such court (in the proceedings before which the offence has been committed) shall be deemed to be subordinate and where appeals lie to a civil and also to a revenue court, the subordination would be determined by the nature of the case or the proceeding, in connection with which the offence is alleged to have been committed. In ***Kuldip Singh v. State of Punjab, AIR 1956 SC 391,*** the Constitution Bench guided that once the genus of the proceeding is determined, namely, civil, criminal or revenue, the hierarchy of the superior courts would be determined first by the rules that apply in their special cases, if any, and next by the rule in section 195(3) Cr.P.C.

INVESTIGATION BY POLICE

In ***State of Punjab v. Raj Singh, (1998) 2 SCC 391,*** it has been clarified that the statutory power of the police to investigate under Cr.P.C. is not in any way controlled or circumscribed by section 195 Cr.P.C. It is of course true that upon the charge-sheet (Final Report), if any, filed on completion of investigation into such an offence, the court would not be competent to take cognizance thereof in view of the embargo of section 195(1)(b), but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr.P.C.

PROCEDURE

Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence, the said court has to make a complaint in writing to the Magistrate of the First Class concerned. Section 343 Cr.P.C. specifies that the Magistrate to whom the complaint is made u/s 340 Cr.P.C. shall proceed to deal with the case as if it were instituted on a “Police Report’’. That being the position, the Magistrate on receiving the complaint shall proceed under sections 238 to 243 Cr.P.C. Section 238 of the Cr.P.C. says that the Magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins duty on the Magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the Magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless, he has to discharge the accused at that stage by recording the reasons thereof. Section 240 Cr.P.C. says that if the Magistrate in the aforesaid inquiry is of the opinion that there is a ground for presuming that the accused has committed the offence, he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and

he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty, then the Magistrate has to proceed to conduct the trial. Until then the inquiry continues before the Magistrate.

FORGERY COMMITTED WHEN DOCUMENT IS IN THE CUSTODY OF COURT

While dealing with the provision contained in section 195 of the Cr.P.C., Supreme Court in ***Sachida Nand Singh v. State of Bihar, (1998) 2 SCC 493,*** has held that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. If forgery was committed with a document which has not been produced in a court, then the prosecution would lie at the instance of any person. Similar issue again came up for consideration before the Constitution Bench of Supreme Court in yet another case ***Iqbal Singh Marwah*** (supra) wherein the Court held as under:

> "The expression 'when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court' occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of section 195 of the Code. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court."

The law on the point is too well settled in the light of the various judgments of the Supreme Court that section 195(1)(b)(ii) Cr.P.C. contemplates a situation where offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.

COURT IS NOT BOUND TO MAKE COMPLAINT IN A ROUTINE MANNER

The law u/s 340 Cr.P.C. on initiating proceedings has been laid down in several judgments of Supreme Court. In ***Chajoo Ram v. Radhey Shyam (1971) 1 SCC 774,*** it has been expressed that no doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material, defeats its very purpose. Similarly, in ***Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466,*** the Supreme Court stated that day in and day out, in courts averments made by one set of witnesses are accepted and the counter-averments are rejected. If in all such

cases, complaints u/s 199 IPC are to be filed, not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the court. In ***Pritish*** (supra) it has been observed that even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course.

Finally in ***Iqbal Singh Marwah*** (supra), Constitution Bench of the Apex Court made observations as follows:

> "In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint."

Thus, from the above, it is evident that before initiation of the inquiry proceedings by the court, there must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

INTEREST OF JUSTICE – FEW ILLUSTRATIONS

- The handwritten modification made by the petitioner in balance sheet used in the original document finds that a *prima facie* case is made out that the petitioner has fabricated evidence for the purpose of the SLP proceedings before the Supreme Court. A complaint under sections 193 and 199 IPC against the petitioner Company before a Magistrate of competent

jurisdiction is directed. [***New Era Fabrics Ltd. v. Bhanumati Keshrichand Jhaveri, (2020) 4 SCC 41***].

- A victim of prolonged illegal incarceration due to machination of police personnel, the Supreme Court opined that it is expedient in the interest of justice that an enquiry against the police personnel should be made in accordance with sub-section (1) of section 340 Cr.P.C. into commission of offences under sections 193, 195 and 211 IPC. [***Mohd. Zahid v. Govt. of NCT of Delhi, (1998) 5 SCC 419***].
- There is no valid ground to initiate proceedings against the respondents by filing complaint merely because some of the statements made in the written statement were, as per the petitioner's version, false. [***Abdul Gani Bhat v. Islamia College Governing Board, (2011) 12 SCC 640***].
- If the Public Prosecutor had been supporting at one stage of the proceedings of the charge-sheet, later on he realises that evidence is not available at that stage of the case, seeks that for the time being, these charges need not be proceeded with, and if further investigation discloses such offences as having been committed, supplementary charge-sheet would be filed before the court later, such shift in the stand would not attract offences enumerated u/s 195 Cr.P.C. [***N. Natarajan v. B.K. Subba Rao, (2003) 2 SCC 76***].
- The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury u/s 193 IPC but it must be established that the deponent has intentionally given a false statement in any stage of the 'judicial proceeding' or fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. Further, such a prosecution for perjury should be taken only if it is expedient in the interest of justice. [***KTMS Mohammad v. Union of India, (1992) 3 SCC 178***].
- Merely because an expert has tendered an opinion while also furnishing the basis of the opinion and that too without being conclusive and definite, it cannot be said that he has committed perjury so as to help somebody. And, mere rejection of the expert evidence by itself may not also warrant initiation of proceedings u/s 340 Cr.P.C. [***Prem Sagar Manocha v. State (NCT of Delhi), (2016) 4 SCC 571***].
- An investigating officer had filed a report and recorded a finding that the allegations made in the anticipatory bail application were false. The High Court found that a case for filing a complaint u/s 340 read with section 195(1)(b) Cr.P.C. is made out. The statement made in the anticipatory bail application cannot be tested against unimpeachable evidence as evidence has not yet been led. [***Aarish Asgar Qureshi v. Fareed Ahmed Qureshi, (2019) 18 SCC 172***].

APPEAL

Section 341 Cr.P.C. confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. A bare reading of the provisions makes it clear that an appeal u/s 341 can be filed by any person on whose application the court other than the High Court refused to make a complaint under sub-section (1) or sub-section (2) of section 340. The other person who can file an appeal is one against whom such a complaint has been made by such court.

WHETHER REVISION IS MAINTAINABLE AGAINST THE ORDER UNDER SECTION 340 OF THE CODE?

Sub-section (2) of section 341 Cr.P.C. states that an order u/s 341 and subject to any such order, shall be final and shall not be subject to revision. In other words, a legal embargo is created on filing a revision in respect of an order u/s 340 Cr.P.C. which cannot be the subject-matter of challenge.

SECTION 344 – SUMMARY PROCEDURE FOR TRIAL FOR GIVING FALSE EVIDENCE

The purpose of enacting Section 344 Cr.P.C. corresponding to section 479-A of the Code of Criminal Procedure, 1898, appears to be to further arm the court with a weapon to deal with more flagrant cases and not to take away the weapon already in its possession. Now, as it is open to courts to take recourse to section 340(1) (corresponding to section 476 of the old Code) in cases in which they have failed to take action u/s 344 Cr.P.C. in a summary way. There is no doubt that section 344 is a complete code in itself. It provides for taking cognizance of the offence. It provides for a reasonable opportunity to be given to show cause. It further provides for the procedure to be followed, viz., the procedure prescribed for summary trial. It also provides for stay of proceedings and for sentencing the accused to a term of imprisonment. section 351(1) provides for appeal against conviction and sentence passed u/s 344.

For exercising the powers under the section, the court at the time of delivery of judgment or final order must at the first instance express an opinion to the effect that the witness before it has either intentionally given false evidence or fabricated such evidence. The second condition is that the court must come to the conclusion that in the interest of justice the witness concerned should be punished summarily by it for the offence which appears to have been committed by the witness. And the third condition is that before commencing the summary trial for punishment, the witness must be given reasonable opportunity of showing cause as to why he should not be so punished. In ***Narayanswami v. State of Maharashtra, (1971) 2 SCC 182,*** it has been held that all these conditions are mandatory.

DIFFERENCE BETWEEN SECTIONS 340 AND 344

The points of distinction between section 340 and section 344 are thus:

S.No.	Section 340	Section 344
1.	Under section 340, action can be taken by a court upon an application made to it in that behalf or otherwise, i.e., court can be moved to take action or court may take action *suo motu*.	Section 344 does not contemplate any application to be made to it in that behalf.
2.	Section 340 covers a very wide field. Under that section any court, viz., civil revenue or criminal, can file a complaint.	Under section 344 only the Court of Session or Magistrate of the First Class can initiate action.
3.	Section 340 contemplates a preliminary inquiry in regard to the offence committed or in relation to a proceeding.	Section 344 requires giving the offender a reasonable opportunity of showing cause as to why he should not be punished for such offence.
4.	Section 340 may apply at any stage of judicial proceeding provided that the offence is committed in or in relation to a judicial proceeding.	Section 344 comes into play only after delivery of judgment or final order disposing of any judicial proceeding.
5.	Section 340 Cr.P.C. is general provisions which deals with the procedure to be followed in respect of variety of offence affecting the administration of justice which are specified in clause (b) of section 195(1) of IPC and covers all offences mentioned in section 195(1)(b) Cr.P.C.	Section 344 Cr.P.C. is restricted in scope of offence falling under sections 193 to 195 of IPC (knowingly or wilfully giving false evidence or intentionally fabricating false evidence).
6.	Section 340 Cr.P.C. has wide scope in that it applies to the proceedings other than judicial also. The only qualification being that proceeding must be in relation to the court.	Section 344 Cr.P.C. applies only to the judicial proceedings.

DOUBLE JEOPARDY

Section 344 Cr.P.C. does not contain any words expressly barring action u/s 340 Cr.P.C. The words used in sub-section (3) of section 344 merely states that if the court does not choose to proceed u/s 344, then the power of the court to proceed u/s 340 for the offence of perjury is not taken away. It does not proceed further to state that if the court chooses to proceed u/s 344, then it cannot take action u/s 340. In initiating action u/s 344 and then dropping it and

initiating u/s 340, is the accused put in double jeopardy? There are no such words in section 344 and, therefore, if action is merely initiated, u/s 344, it would not preclude the Magistrate to file a complaint u/s 340 Cr.P.C.

CONTENTS OF NOTICE

In ***Dr. S.P. Kohli v. The High Court of Punjab and Haryana, (1979) 1 SCC 212*** the Supreme Court has held as follows:

> "It is highly desirable and indeed very necessary that the portions of the witness's statement in regard to which the accused has, in the opinion of the Court, perjured himself, should be specifically set out in or form annexure to the notice issued to the accused so that he is in a position to furnish an adequate and proper reply in regard thereto and be able to meet the charge".

CONCLUSION

- Looking to the guiding principle of precedence, the ratio laid down in ***Pritish*** (supra) will prevail until the reference is not answered meaning thereby, if the court finds it necessary to conduct a preliminary inquiry before filing a complaint, it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion; even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court.
- That no expression on the guilt or innocence of the persons should be made by the court while passing an order u/s 340 Cr.P.C. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into.
- The scheme would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings.
- As the offences involved are all falling within the purview of "warrant case" of the Code, the Magistrate concerned has to follow the procedure prescribed in Chapter XIX Cr.P.C.
- If action is merely initiated, u/s 344 Cr.P.C. it would not preclude the Magistrate to file a complaint u/s 340 of Cr.P.C.
- If forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. If forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person.

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मोटर दुर्घटना दावों पर मोटर यान (संशोधन) अधिनियम, 2019 का प्रभाव

जयंत शर्मा
संकाय सदस्य (कनिष्ठ–1)
मध्यप्रदेश राज्य न्यायिक अकादमी

मोटर यान (संशोधन) अधिनियम, 2019 (संक्षेप में – ''संशोधन अधिनियम'') के द्वारा मोटर यान अधिनियम, 1988 (संक्षेप में – ''मूल अधिनियम'') में व्यापक संशोधन किये गये है। संशोधन अधिनियम भारत सरकार के राजपत्र में 9 अगस्त, 2019 को प्रकाशित किया गया था। केन्द्र सरकार द्वारा समय–समय पर अधिसूचनाओं के माध्यम से चरणों में संशोधन अधिनियम के प्रावधान लागू किये गये हैं जो इस प्रकार हैं –

क्र.	अधिसूचना क्रमांक एवं दिनांक	प्रावधान एवं लागू होने की दिनांक
1	का. आ. 3110(अ) दिनांक 28.08.2019	धाराएं 2, 3, 4 (खण्ड i से iv), 5 (खण्ड i से iii), 6, 7 (खण्ड i) , 9, 10, 14, 16, 17 (खण्ड ii), 20, 21 (खण्ड ii), 22, 24, 27, 28 (खण्ड i), 29 से 35, 37, 38, 41, 42, 43, 46, 48, 49, 58 से 73, 75, 77 (खण्ड ख का उपखण्ड i), 78 से 87, 89, 91 (खण्ड i का उपखण्ड क व खण्ड ii) एवं 92 दिनांक 01.09.2019 से लागू
2	का. आ. 3147(अ) दिनांक 30.08.2019	धारा 1 दिनांक 01.09.2019 से लागू
3	का. आ. 3311(अ) दिनांक 25.09.2020	धाराएं 45, 74, 88, 90 एवं 91 (खण्ड i का उपखण्ड ख) दिनांक 01.10.2020 से लागू
4	का. आ. 4251(अ) दिनांक 26.11.2020	धारा 36 दिनांक 27.11.2020 से लागू
5	का. आ. 1231 (अ) दिनांक 11.03.2021	धारा 39 एवं 40 दिनांक 01.04.2021 से लागू
6	का. आ. 1433 (अ) दिनांक 31.03.2021	धाराएं 4 (खण्ड v व vi), 5 (खण्ड iv), 7 (खण्ड ii), 11, 12, 13, 15, 17 (खण्ड i, iii, iv, v, vi), 18, 19, 21 (खण्ड i, iii, iv), 23, 25, 26, 28 (खण्ड ii), 76 एवं 77 (खण्ड क व खण्ड ख का उपखण्ड ii) दिनांक 01.04.2021 से लागू
7	का. आ. 859 (अ) दिनांक 25.02.2022	धाराएं 50, 51, 52, 53, 54, 55, 56, 57 एवं 93 दिनांक 01.04.2022 से लागू

संशोधन अधिनियम की धारा 9 (मूल अधिनियम की धारा 14 के उपखण्ड (iii) का विलोपन), धारा 50 (मूल अधिनियम के अध्याय 10 अर्थात धारा 140 से 144 का विलोपन) तथा धारा 51

(अध्याय 11 अर्थात् धारा 145 से 164 डी में संशोधन), धारा 52 (धारा 165 में संशोधन), धारा 53 (धारा 166 में संशोधन) एवं धारा 93 (द्वितीय अनुसूची का विलोपन) मोटर दुर्घटना दावा अधिकरण की प्रक्रिया से सम्बंधित है। ये प्रावधान 1 अप्रैल, 2022 से लागू किए गए हैं। इस आलेख में मोटर दुर्घटना दावों और ऐसे दावों के लिए अधिकरण द्वारा अपनाई जाने वाली प्रक्रिया पर संशोधित प्रावधानों का प्रभाव समझने का प्रयास किया गया है।

1. परिभाषाएँ

मूल अधिनियम की परिभाषा खण्ड के खण्ड 1 में ''रूपांतरित यान'' की परिभाषा जोड़ी गई है। जिसके अनुसार ऐसा वाहन जो उसके मूल स्वरूप में परिवर्तन करके बनाया गया है, जैसे दिव्यांग व्यक्तियों के लिए अलग से डिजाईन किये गये दोपहिया वाहन या चार पहिया वाहन ऐसे व्यक्ति द्वारा या उसके लिए एकमात्र रूप से उपयोग किया जाता है। संशोधन के द्वारा ऐसे वाहनों को ''रूपांतरित यान'' के रूप में शामिल किया गया है। परिभाषा खण्ड के खण्ड 18 को विलोपित कर दिया गया है जिसमें ''अशक्त यात्री गाड़ी'' को परिभाषित किया गया था। परिभाषा खण्ड के खण्ड 24 में भी ''मध्यम यात्री मोटर यान'' के अंर्तगत सम्मिलित यानों में ''अशक्त यात्री गाड़ी'' के स्थान पर ''रूपांतरित यान'' प्रतिस्थापित किया गया है तथा खण्ड 26 में ''मोटर कार'' की परिभाषा में ''अशक्त यात्री गाड़ी'' के स्थान पर ''रूपांतरित यान'' प्रतिस्थापित किया गया।

परिभाषा खण्ड में उपरोक्त संशोधन का सकल प्रभाव यह है कि ''अशक्त यात्री गाड़ी'' का स्थान ''रूपांतरित यान'' ने लिया है तथा इस हेतु धारा 3 में ''चालन अनुज्ञप्ति'' दिए जाने का भी प्रावधान किया गया है। धारा 10 के खण्ड (ग) में ''रूपांतरित यान'' को ''मोटर यान'' के वर्ग के रूप में सम्मिलित किया गया है। यहां यह विशेष रूप से ध्यान रखने योग्य है कि रूपांतरित यान के अन्तर्गत ''जुगाड़'' सम्मिलित नहीं है। जुगाड़ के सम्बंध में सर्वोच्च न्यायालय का न्यायदृष्टांत ***राजस्थान राज्य सड़क परिवहन निगम विरूद्ध संतोष, (2013) 7 एससीसी 94*** अवलोकनीय है।

अध्याय 11 की धारा 145 के परिभाषा खण्ड में खण्ड (ग) ''घोर उपहति'' को जोड़ा गया है और यह स्पष्ट किया गया है कि ''घोर उपहति'' का अर्थ वही है जो भारतीय दण्ड संहिता की धारा 320 में है। इसके अतिरिक्त खण्ड (छ) में सम्पत्ति परिभाषित है जिसके अंतर्गत मोटरयान में वहन किए जाने वाले यात्रियों का सामान तथा माल को भी सम्मिलित किया गया है। इसके अलावा सबसे महत्वपूर्ण संशोधन खण्ड (झ) में ''पर पक्षकार'' अर्थात तृतीय पक्ष की परिभाषा में किया गया है। जिसमें परिवहन यान के चालक और उसके अन्य सहकर्मी को भी तृतीय पक्ष में शामिल किया गया है। इसका प्रभाव यह है कि वाहन का चालक तथा सहकर्मी भी अपनी स्वयं की बीमा कम्पनी के विरूद्ध अध्याय 11 की धारा 164 (पूर्व की धारा 163–क) के अन्तर्गत आवेदन प्रस्तुत कर सकता है।

2. चालन अनुज्ञप्ति समाप्त होना

संशोधन अधिनियम की धारा 9 (iii) के द्वारा मूल अधिनियम की धारा 14 की उपधारा (2) के खण्ड (ख) के परंतुक को विलोपित कर दिया गया है। संशोधन पूर्व उपधारा (2) में चालन अनुज्ञप्ति

के समाप्त होने पर भी 30 दिन तक प्रभावशील रहने का प्रावधान था। इसका प्रभाव यह था कि यदि चालन अनुज्ञप्ति समाप्त होने की दिनांक से 30 दिन के अंदर कोई दुर्घटना होती थी तब यदि वाहन बीमित हो तो उस अनुज्ञप्ति को प्रभावशील मानते हुये बीमा कंपनी को दायित्वधीन माना जाता था। संशोधन का प्रभाव यह है कि चालन अनुज्ञप्ति समाप्त होने के तुरंत बाद से ही ऐसा प्रभाव होगा जैसे कि चालक चालन अनुज्ञप्ति धारक नहीं था और दुर्घटना की दशा में उसे बीमा पॉलिसी का आधारभूत उल्लंघन माना जायेगा तथा ''भुगतान करो और वसूलो'' का सिद्धांत लागू हो सकेगा।

3. त्रुटिरहित दायित्व

संशोधन अधिनियम की धारा 50 के द्वारा मूल अधिनियम के अध्याय 10 की धाराएं 140 से 144 तक विलोपित कर दी गई हैं। मूल अधिनियम की धाराओं 140 से 144 तक के प्रावधान त्रुटिरहित दायित्व पर आधारित थे जिनके अंतर्गत मोटर दुर्घटना से मृत्यु की दशा में 50,000 रूपये तथा स्थाई निर्योग्यता की दशा में 25,000 रूपये प्रतिकर दिए जाने का प्रावधान था। इस हेतु दावाकर्ता से त्रुटिकारी वाहन के चालक की उपेक्षा प्रमाणित करने की आवश्यकता नहीं होती थी और न ही दुर्घटनाग्रस्त व्यक्ति की उपेक्षा का कोई प्रभाव ऐसे प्रतिकर निर्धारण पर होता था। ऐसा प्रतिकर ''योगदायी उपेक्षा'' के सिद्धान्त द्वारा भी प्रभावित नहीं था। धारा 140 के अधीन निर्धारित प्रतिकर को ''अंतरिम प्रतिकर'' कहा जाता था क्योंकि अंतिम निर्धारित प्रतिकर की राशि में से धारा 140 के अधीन दिलाया गया प्रतिकर समायोजित किया जाता था। धारा 163(ख) के अनुसार धारा 140 के अन्तर्गत प्रतिकर हेतु आवेदन धारा 163(क) के अन्तर्गत प्रस्तुत आवेदन के साथ प्रस्तुत नहीं किया जा सकता था। यह स्वतंत्र रूप से अथवा धारा 166 के आवेदन के साथ ही प्रस्तुत किया जा सकता था।

संशोधन के द्वारा इस प्रावधान को विलोपित कर दिया गया है। इसका प्रभाव यह है कि 1 अप्रैल, 2022 के बाद से धारा 140 में प्रतिकर नहीं दिलाया जा सकता है क्योंकि अब यह प्रावधान अस्तित्व में नहीं है। 1 अप्रैल, 2022 के पूर्व से संस्थित मामलों में भी 1 अप्रैल 2022 के पश्चात् प्रस्तुत आवेदन पर धारा 140 के अधीन प्रतिकर नहीं दिलाया जा सकता है लेकिन यदि 1 अप्रैल 2022 के पूर्व से धारा 140 के अन्तर्गत आवेदन लम्बित है तब ऐसे आवेदन पर संशोधन का कोई प्रभाव नहीं होगा क्योंकि आवेदन प्रस्तुति दिनांक को आवेदक के पक्ष में उस प्रावधान के अन्तर्गत प्रतिकर प्राप्त करने का अधिकार उत्पन्न हो चुका था। इस सम्बंध में सर्वोच्च न्यायालय के न्यायदृष्टांत ***विनोद गुरूदास विरूद्ध नेशनल इंश्योरेंस कम्पनी, 1991 एआईआर 2156*** में प्रतिपादित विधि अवलोकनीय है।

4. दुर्घटना सूचना रिपोर्ट

मूल अधिनियम की धारा 158(6) में मृत्यु अथवा शारीरिक क्षति कारित करने वाली दुर्घटना सम्बंधी सूचना को पुलिस अधिकारी द्वारा लेखबद्ध करने तथा 30 दिन के अंदर उसकी एक प्रति या इस धारा के अंतर्गत रिपोर्ट पूरी होने पर क्षेत्राधिकार रखने वाले अधिकरण को, एक प्रति सम्बंधित बीमा कम्पनी को एवं एक प्रति वाहन स्वामी को उपलब्ध कराने का प्रावधान था।

संशोधन अधिनियम की धारा 51 के द्वारा मूल अधिनियम की धारा 158 की उपधारा (6) विलोपित कर दी गई है तथा नवीन धारा 159 प्रतिस्थापित की गई है जिसमें पुलिस अधिकारी के लिये यह आज्ञापक बनाया गया है कि वह 3 माह के अन्दर ''दुर्घटना सूचना रिपोर्ट'' तैयार करेगा तथा सम्बंधित अधिकरण को भेजेगा। धारा 166 की उपधारा (4) में भी यह प्रावधान किया गया कि संशोधित नवीन धारा 159 {पूर्व की धारा 158 (6)} के अधीन प्राप्त रिपोर्ट को अधिकरण प्रतिकर के आवेदन के रूप में ही मानेगा। नवीन धारा 159 की रिपोर्ट को प्रतिकर आवेदन के रूप में मानने के सम्बंध में और इसकी प्रक्रिया को स्पष्ट करने हेतु सर्वोच्च न्याायालय द्वारा समय–समय पर दिशा निर्देश जारी किए गए है। इस हेतु न्यायदृष्टांत ***जयप्रकाश विरूद्ध नेशनल इंश्योरेंस कम्पनी लिमिटेड, (2010) 2 एससीसी 607, राजेश त्यागी विरूद्ध जयबीर सिंह, 2019 एसीजे 1245*** एवं ***एम.आर. कृष्णमूर्ति विरूद्ध न्यू इंण्डिया इंश्योरेंस कम्पनी लिमिटेड, 2019 एसीजे 1291*** तथा केन्द्रीय मोटर यान नियम, 2022 का नियम 150ए भी महत्वपूर्ण तथा अवलोकनीय है।

5. संरचना सूत्र

संशोधन पूर्व मूल अधिनियम की धाराएं 163(क) एवं 163(ख) संरचना सूत्र के आधार पर प्रतिकर के संदाय के लिए विशेष उपबंध करती थीं जिसके अन्तर्गत पहले मोटर यान के उपयोग से तृतीय पक्ष की दुर्घटना के मामले में उपेक्षा प्रमाणित किए बिना मृत्यु अथवा स्थाई निर्योग्यता की दशा में विधिक उत्तराधिकारी/पीड़ित द्वितीय अनुसूची के अनुसार प्रतिकर प्राप्त कर सकते थे। द्वितीय अनुसूची में दिनांक 22.05.2018 को संशोधन किया गया था जो न्यायदृष्टांत ***नेशनल इंश्योरेंस कम्पनी लिमिटेड विरूद्ध विजयभुयन, 2019 एसीजे 2285*** में दिए गए मार्गदर्शन अनुसार लंबित मामलों पर भी लागू था। उक्त संशोधन से मृत्यु की दशा में नियत 5,00,000 रूपये तथा स्थाई निर्योग्यता की दशा में न्यूनतम 50,000 रूपये के अध्यधीन रहते हुए 5,00,000 रूपये x स्थाई निर्योग्यता का प्रतिशत प्रतिकर दिए जाने एवं साधारण क्षति की दशा में नियत 25,000 रूपये प्रतिकर दिये जाने का प्रावधान था।

संशोधन अधिनियम, 2019 की धारा 51 के द्वारा मूल अधिनियम की धाराएं 163(क) एवं 163(ख) को विलोपित कर दिया गया है तथा इनके स्थान पर नवीन धारा 164 प्रतिस्थापित की गई है। संशोधन अधिनियम, 2019 द्वारा द्वितीय अनुसूची को भी विलोपित कर दिया गया है। संशोधित नवीन धारा 164 में ही मृत्यु की दशा में नियत 5,00,000 रूपये तथा घोर उपहति की दशा में नियत 2,50,000 रूपये प्रतिकर का प्रावधान किया गया है। यहां यह बात ध्यान रखने योग्य है कि पूर्व में ''स्थाई निर्योग्यता'' शब्द का प्रयोग किया गया था लेकिन संशोधन उपरांत इसे ''घोर उपहति'' कर दिया गया है जिसका धारा 145(ग) में परिभाषा खण्ड के अनुसार वही अर्थ है जो भारतीय दण्ड संहिता की धारा 320 में है अर्थात धारा 319 में वर्णित प्रकार की क्षति ''घोर उपहति'' होगी। इसके अतिरिक्त न्यूनतम 50,000 रूपये प्रतिकर तथा सूक्ष्म क्षति के लिए प्रतिकर का प्रावधान भी विलोपित कर दिया गया है। इस संशोधन का प्रभाव यह है कि अब आवेदक को ''स्थाई निर्योग्यता'' का तथ्य निर्योग्यता

प्रमाण पत्र प्रस्तुत कर प्रमाणित करने की आवश्यकता नहीं है अब केवल भारतीय दण्ड संहिता की धारा 319 में परिभाषित ''घोर उपहति'' में से किसी वर्ग की क्षति के लिए नियत 2,50,000 रूपये प्रतिकर दिया जाएगा। यहां यह भी स्पष्ट किया जाना आवश्यक है कि नियत प्रतिकर का तात्पर्य उतने से है जितना इस धारा में नियत है और न्यायदृष्टांत ***नेशनल इंश्योरेंस कम्पनी लिमिटेड विरूद्ध विजयभुयन*** (पूर्वोक्त) के अनुसार इसके अतिरिक्त अन्य किसी मद में कोई राशि यहां तक कि चिकित्सा व्यय भी नहीं दिलवाए जा सकते हैं। आवेदक केवल उतना ही प्रतिकर प्राप्त कर सकता है जितना धारा 164 नियत करती है।

मूल अधिनियम की धारा 166 में संशोधन के माध्यम से द्वितीय परन्तुक जोड़ा गया है जिसके अनुसार यदि किसी आवेदक ने नवीन धारा 164 के अन्तर्गत प्रतिकर प्राप्त कर लिया है तब उसका इस धारा अर्थात धारा 166 के अन्तर्गत आवेदन व्यपगत हो जाएगा। इसका प्रभाव यह है कि आवेदक नवीन धारा 164 तथा धारा 166 में समानान्तर आवेदन प्रस्तुत करके प्रतिकर प्राप्त नहीं कर सकता है। यद्यपि यह प्रावधान संशोधन पूर्व धारा 163(ख) के अधीन भी विद्यमान था।

6. दुर्घटना दावे के लिए परिसीमा

संशोधन अधिनियम की धारा 53 के द्वारा मूल अधिनियम की धारा 166 में संशोधन किए गए हैं। धारा 166 में उपधारा (3) के रूप में जोड़ी गई है। संशोधित धारा 166 की उपधारा (3) परिसीमा अवधि के सम्बंध उपबंध करती है। जिसके अनुसार दुर्घटना दिनांक के छह माह के भीतर ही दावा आवेदन प्रस्तुत करना होगा। परिसीमा विषयक इस संशोधन का प्रभाव यह है कि दिनांक 01 अप्रैल, 2022 के बाद हुई मोटर यान दुर्घटना से उद्भूत प्रतिकर आवेदन प्रस्तुत करने की परिसीमा अवधि दुर्घटना दिनांक से छह माह होगी। यद्यपि वर्ष 1994 के संशोधन के पूर्व भी यह अवधि छह माह तथा अधिकतम बारह माह थी लेकिन वर्ष 1994 के संशोधन द्वारा परिसीमा अवधि का प्रावधान विलोपित कर दिया गया था अब इसे पुनः जोड़ा गया है।

प्रश्न यह उत्पन्न होता है कि जो दुर्घटनायें दिनांक 01 अप्रैल, 2022 के पहले हुई हैं उनके संबंध में प्रतिकर आवेदन प्रस्तुत करने की समयावधि क्या होगी? साधारण खण्ड अधिनियम, 1897 की धारा 6 (ग) तथा धारा 6–क के आलोक में यह कहा जा सकता है कि यदि दुर्घटना दिनांक 01 अप्रैल, 2022 के पूर्व हुई है तब परिसीमा संबंधी संशोधन लागू नहीं होगा किन्तु इसका यह अर्थ नहीं है कि दावाकर्ता को दिनांक 01 अप्रैल, 2022 के पूर्व हुई दुर्घटना के सम्बंध में आवेदन प्रस्तुत करने के लिए असीमित समय प्राप्त है। न्यायदृष्टांत ***पुरोहित एण्ड कम्पनी विरूद्ध खातून बी, एआईआर 2017 एससी 1612*** के अनुसार आवेदन युक्तियुक्त समय में प्रस्तुत किया जाना चाहिए और युक्तियुक्त समय क्या होगा यह प्रत्येक मामले के तथ्य और परिस्थिति पर निर्भर करेगा। दिनांक 01 अप्रैल, 2022 के पूर्व हुई दुर्घटना के सम्बंध में दिनांक 01 अप्रैल, 2022 से छह माह की अवधि को ऐसा युक्तियुक्त समय माना जा सकता है।

यदि दिनांक 01 अप्रैल, 2022 के पश्चात् हुई दुर्घटना के सम्बंध में विहित छह माह की परिसीमा अवधि के अवसान के उपरांत आवेदन प्रस्तुत किया जाता है तो क्या अधिकरण आवेदन प्रस्तुत करने में हुये विलम्ब को क्षमा कर सकता है? मोटर यान अधिनियम, 1988 एक कल्याणकारी विधान है। अतः विनिर्दिष्ट प्रतिषेध के अभाव में विलम्ब क्षमा करने के सम्बंध में परिसीमा अधिनियम, 1963 की धारा 5 प्रयोज्य होगी। इस सम्बंध में सर्वोच्च न्यायालय के न्यायदृष्टांत ***धन्नालाल विरूद्ध डी.पी. विजयवर्गीय, एआईआर 1996 एससी 2155*** अवलोकनीय है जिसमें वर्ष 1994 के संशोधन के पूर्व हुये दुर्घटना के मामले में अधिकरण को तत्समय के परिसीमाकाल के अवसान के उपरांत विलम्ब क्षमा करने की अधिकारिता होना अवधारित किया गया है।

7. दावाकर्ता के विधिक प्रतिनिधि का अधिकार

संशोधित धारा 166 की उपधारा (5) के अनुसार यदि किसी व्यक्ति को क्षति के कारण प्रतिकर आवेदन प्रस्तुत करने का अधिकार उत्पन्न हुआ है और उसकी मृत्यु हो गई है तो मृत्यु का उसकी क्षति से कोई सम्बंध हो या ना हो, उसके विधिक प्रतिनिधि प्रतिकर हेतु आवेदन प्रस्तुत कर सकते है। मध्य प्रदेश उच्च न्यायालय की पूर्ण पीठ द्वारा न्यायदृष्टांत ***भगवती बाई विरूद्ध बबलू, 2006 (4) एमपीएलजे 579*** में दिए अभिमत के अनुसार संशोधन पूर्व की विधि यह रही है कि क्षति के मामलों में आवेदक की मृत्यु के उपरांत मृतक के उत्तराधिकारी केवल सम्पदा की हानि के मद में राशि प्राप्त कर सकते थे। संशोधन का प्रभाव यह है कि अब क्षति के प्रकरण में भी आवेदक की मृत्यु होने पर उसके विधिक प्रतिनिधि उसी प्रकार प्रतिकर प्राप्त कर सकते है जिस प्रकार यदि आवेदक जीवित होता तो प्राप्त करता।

8. अधिनिर्णय का निष्पादन

मूल अधिनियम की धारा 169 में संशोधन के द्वारा उपधारा (4) जोड़ी गई है जिसके अनुसार अधिनियम के प्रवर्तन के प्रयोजन के लिए दावा अधिकरण को डिक्री के निष्पादन में सिविल न्यायालय की भी सभी शक्तियां प्राप्त होगी। इसका प्रभाव यह है कि अधिनिर्णय के अनुसार यदि दायित्वाधीन पक्षकार राशि जमा नहीं करता है तो अधिकरण के समक्ष निष्पादन प्रकरण प्रस्तुत किया जाएगा और ऐसे निष्पादन प्रकरण का निराकरण उसी प्रकार किया जाएगा जैसे धन के संदाय की डिक्री का निष्पादन किया जाता है। यद्यपि मध्यप्रदेश मोटर यान अधिनियम, 1994 का नियम 240 पूर्व से यह प्रावधान करता है कि सिविल प्रक्रिया संहिता के आदेश 21 के प्रावधान अधिकरण के समक्ष की कार्यवाही पर लागू होंगे। माननीय सर्वोच्च न्यायालय द्वारा न्यायदृष्टांत ***राजस्थान राज्य सड़क परिवहन निगम विरूद्ध पूनम पाहवा, 1997 एसीजे 1049 (एससी)*** के मामले में अभिमत दिया गया है कि दुर्घटना दावा अधिकरण के अवार्ड का निष्पादन धन की डिक्री के निष्पादन की तरह किया जा सकता है।

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SECTIONS 207 AND 208 CRPC : RIGHTS OF ACCUSED

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Dewas

Introduction

Disclosure of information to one affects privacy of others. A nine-judge bench of the Supreme Court of India in ***K.S. Puttaswamy and anr. v. Union of India, 2017 (10) SCC 1*** ruled that right to privacy is a fundamental right and is 'intrinsic to life and liberty' which is protected under various fundamental rights enshrined under Part III of the Constitution of India. In this elaborate and detailed judgment expanding to 547 pages, Hon'ble Judges discussed the ambit of right to privacy at length, overruling the decision in ***M.P. Sharma and ors. v. Satish Chandra, District Magistrate, Delhi and ors., AIR 1954 SC 300*** and ***Kharak Singh v. State of U.P., AIR 1963 SC 1295***. As explained in the judgment, informational privacy reflects an interest in preventing information about the self from being disseminated and controlling the extent of access to information. The Court thus recognized information privacy as a facet of the right to privacy and recommended that the Government of India should examine and put in place a robust mechanism for data protection.

Further, in case of ***Nipun Saxena v. Union of India, (2019) 2 SCC 703***, in the context of victims of sexual offences, Hon'ble the Apex Court expounded that the police officials should keep all the documents in which the name of the victim (of sexual offences) is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty-bound to keep the name and identity of the victim secret and not to disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

In ***Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1*** it was observed that furnishing of documents to the accused u/s 207 of CrPC is a facet of right of the accused to a fair trial enshrined in Article 21 of the Constitution. In ***P. Gopalkrishnan v. State of Kerala, (2020) 9 SCC 161*** Hon'ble Supreme Court while discussing this right of victim and right of accused to a fair trial has held that considering that this is a peculiar case of intra-conflict of fundamental rights flowing from Article 21, that is, right to a fair trial of the accused and right to privacy of the victim, it is imperative to adopt an approach which would balance both the rights.

In this era of technological advancement, the production of electronic evidence is becoming common practice to secure the justice. How and up to what extent copy of electronic record can be provided to the accused. This is equally a challenge for trial Courts. Extent and ambit of this right of accused recognised u/s 207 and 208 of the CrPC has been discussed in this article with an attempt to give pragmatic solutions.

Relevant Provisions

Section 173 CrPC provides for submission of the report on completion of investigation by the officer in charge of the police station. According to section 173(2)(i) as soon as investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating particulars such as the names of the parties, the nature of the information etc. Further section 173 (5) mandates that when such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation and the statements recorded u/s 161 of all the persons whom the prosecution proposes to examine as its witnesses. Section 173(8) empowers police to undertake further investigation. However if the officer in charge of the police station obtains further evidence, oral or documentary, he has to forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) applies in that case as well.

It is also pertinent to note that section 173 (6) empowers police officer from excluding any part of any such statement from the copies to be granted to the accused and provides that if the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

Further, sections 207 and 208 CrPC provides for supply of the copies of documents to accused in case of proceedings instituted on a police report and otherwise than on a police report respectively. The same reads as under:

> "**207. Supply to the accused of copy of police report and other documents** – In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following –
>
> (i) the police report;
>
> (ii) the first information report recorded u/s 154;
>
> (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded u/s 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court."

"**208. Supply of copies of statements and documents to accused in other cases triable by Court of Session** – Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following –

(i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 161 or section 164;

(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court."

Duty of Court

Taking note of the duty of the Court at the stage of sections 207 and 208 CrPC, in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92*** it has been held by Constitutional Bench of the Apex Court that stage of sections 207/208 CrPC, committal, etc. which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense and it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of

administrative work rather than judicial such as ensuring compliance with sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court.

However, it is also pertinent to have sight of the observation made in the case of ***Jahid Shaikh and ors. v. State of Gujarat and anr., (2011) 7 SCC 762*** that it is the duty of the criminal Court to supply copies of the chargesheet and all the relevant documents relied upon by the prosecution. Sections 207 and 208 CrPC are not an empty formality and have to be complied with strictly so the accused is not prejudiced in his defence even at the stage of framing of charge.

Accordingly, the right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. Therefore, at this stage Court is bound to ensure full and effective compliance of these provisions.

Purport of Sections 207 and 208 CrPC

In ***Tarun Tyagi v. CBI, (2017) 4 SCC 490*** Hon'ble Supreme Court considered the purport of section 207 of CrPC and observed that section 207 puts an obligation on the prosecution to furnish to the accused, free of cost, copies of the documents mentioned therein, without any delay. It includes, documents or the relevant extracts thereof which are forwarded by the police to the Magistrate with its report u/s 173(5) of CrPC. Such a compliance has to be made on the first date when the accused appears or is brought before the Magistrate at the commencement of the trial inasmuch as section 238 of CrPC warrants the Magistrate to satisfy himself that provisions of section 207 have been complied with.

Right of accused when accrues

Next very pertinent question which arises for consideration is at which stage this right of accused accrues? This question has not been considered in so many words but while dealing with application u/s 438 of the CrPC, the Apex Court in ***Naresh Kumar Yadav v. Ravindra Kumar, (2008) 1 SCC 632*** considered this point and held that it is baffling to note that the accused and the informant referred to particular portions of the case diary. At the stage the bail applications were heard by the High Court, legally they could not have been in a position to have access to the same. The papers which are to be supplied to the accused have been statutorily prescribed. The courts should take serious note when the accused or the informant refers to the case diary to buttress a stand.

Further, section 207 and 208 itself suggests that section 207 and 208 comes into play when proceedings are instituted on police report or otherwise than on police report, i.e., after completion of investigation and filing of charge sheet and in case instituted upon complaint, after the issuance of process u/s 204 CrPC.

Common questions

Whether any document or any part thereof can be withhold u/s 173(6) of CrPC on the note of investigation officer requesting the Magistrate to exclude the same?

This aspect was also considered in the case of ***P. Gopalkrishnan*** (supra) wherein it was propounded that as regards the "documents" on which the prosecution proposes to rely, the investigating officer has no option but to forward "all documents" to the Magistrate along with the police report. There is no provision (unlike in the case of "statements") enabling the investigating officer to append a note requesting the Magistrate, to exclude any part thereof ("document") from the copies to be granted to the accused. Sub-section (7), however, gives limited discretion to the investigating officer to forward copies of all or some of the documents, which he finds it convenient to be given to the accused. That does not permit him to withhold the remaining documents, on which the prosecution proposes to rely against the accused, from being submitted to the Magistrate along with the police report. On the other hand, the expression used in section 173(5)(a) of the 1973 Code makes it amply clear that the investigating officer is obliged to forward "all" documents or relevant extracts on which the prosecution proposes to rely against the accused concerned along with the police report to the Magistrate.

The first proviso to section 207 of CrPC enables the Magistrate to withhold any part thereof referred to in clause (iii), from the accused on being satisfied with the note and the reasons specified by the investigating officer as predicated in sub-section (6) of section 173. A fortiori, it necessarily follows that even if the investigating officer appends his note in respect of any particular document, that will be of no avail as his power is limited to do so only in respect of "statements" referred to in sub-section (6) of section 173 of the 1973 Code." As per the second proviso to section 207 and proviso to section 208, the Magistrate can withhold only such document which in his opinion, is "voluminous". In such a situation, the accused can be permitted to take inspection of the document concerned either personally or through his pleader in Court. In other words, the law does not empower the Magistrate to withhold any "document" except when it is voluminous or it is necessary to protect right to privacy of the victim.

Whether any condition can be imposed while supplying copy of the statement or document to the accused?

In ***Nipun Saxena*** (supra), the Apex Court has directed that the police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.

Further, in Guidelines for Recording Evidence of Vulnerable Witnesses in Criminal Matters – 2022, which has been circulated to all judges of District Judiciary vide Memo No. C-979/III-2-09/40 Pt. No. 1 F.No. 7 (VWDC) Jabalpur, dated 10.03.2022 it has been prescribed that –

"**28. Confidentiality of records – ...**

(3) To effectuate the rights of the accused to a fair trial and also the right to privacy of the victim, the Court may issue suitable directions to balance the, interests of both sides, such as –

(a) If any document is produced by prosecution or investigating officer or any other person, which may reveal the identity of the witness, the Court may direct to supply a true copy thereof to the opposite party concealing the identity of the victim/witness;

(b) ...

(c) Certified copy of any record including electronic record, which may reveal the identity of the witness, shall be provided after concealing the identity of the witness; and

(d) A protective order may be issued in appropriate situations, which may include the conditions of not inspecting, reading, accessing or copying the document by any person, or disclosing to any person, except as provided in the protective order. Such order may also include the condition that no additional copy thereof or any of its portion shall be made, given or shown to any person without prior permission of the Court and in case of violation, the defaulter will be subject to penalties prescribed by the law."

Accordingly, when the contents of document can reveal the identity of the victim then Court should direct that from the copies to be supplied to the accused, name and other particulars as to identity revealed in those documents shall be concealed. However, accused or his advocate shall have right to inspect those documents which reveal identity of the victim for preparation of his defence.

Whether it is necessary to furnish cloned copy of contents of a memory card/pen drive to the accused?

Hon'ble Supreme Court in ***P. Gopalkrishnan*** (supra) while referring to the definition of "data" "electronic record" "communication device" "document", "evidence" "information" as predicated in section 2(1)(o), 2(1)(t), 2(1)(ha) of Information Technology Act, 2000, section 3 of the Indian Evidence Act, 1872, section 29 of the Indian Penal Code, 1860 and section 2(1)(v) and 3(18) of the General Clauses Act,1897, has observed that the contents of the memory card/ pen-drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/ witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective

defence during the trial. The Court may issue suitable directions to balance the interests of both sides.

Further in ***Tarun Tyagi*** (supra) it was observed that it is well known that a cloned copy is not a photocopy, but is a mirror image of the original, and the accused has the right to have the same to present his defence effectively. In the alternative, it is submitted, that the Court could have imposed appropriate conditions while issuing directions to the prosecution to furnish a cloned copy of the contents of memory card to the appellant-accused.

Whether it is open to the Court to decline the request of accused to furnish a cloned copy of the content of the memory card/ pen drive?

As discussed above, it is clear that provisions of section 173(6) of CrPC is limited to the statements and does not empowers Investigating Officer or Magistrate to refuse copy of document to the accused except when it is voluminous. Contents of electronic record are also document, therefore, in general, it is not open for the Investigation Officer or Magistrate to withhold the copy of such electronic record being provided to accused.

However, as observed in ***Tarun Tyagi*** (supra), in cases involving issues such as of privacy of the complainant/witness or his/her identity the Court may impose suitable conditions while supplying copy of such electronic record. Further, as expounded in ***P. Gopalkrishnan*** (supra), in such cases the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. Further, the Court may issue suitable directions to balance the interests of both sides. Such inspection of electronic record by accused or/and his counsel shall be in the Court, in the presence of prosecution officer and while doing so they shall not be permitted to have any recording device including mobile phones with them and shall be further under protective order of the Court being refrained from further sharing details which may reveal the identity of the complainant/witness.

Whether Court can refuse to provide copy of electronic record on the ground of its being voluminous?

This fact was also dealt in ***P. Gopalkrishnan*** (supra) wherein it was observed that we are conscious of the fact that section 207 of the 1973 Code permits withholding of document(s) by the Magistrate only if it is voluminous and for no other reason. If it is an “electronic record”, certainly the ground predicated in the second proviso in section 207, of being voluminous, ordinarily, cannot be invoked and will be unavailable.

Accordingly, copy of electronic record cannot be denied u/s 207 or 208 of CrPC on the ground of its being voluminous. However, for protection of right to privacy of the victim same can be withheld by Magistrate.

Whether accused can claim copy of electronic record for its forensic examination?

As in ***P. Gopalkrishnan*** (supra) Apex Court gave an authority to the Court to refuse copy of electronic record to the accused in order to protect right to privacy

and dignity of victim. But at the same time to ensure right of effective defence to the accused, it has been observed that instead of allowing the prayer sought by the appellant in toto, it may be desirable to mould the relief by permitting the appellant to seek second expert opinion from an independent agency such as the Central Forensic Science Laboratory ("CFSL"), on all matters which the appellant may be advised. In that, the appellant can formulate queries with the help of an expert of his choice, for being posed to the stated agency. That shall be confidential and not allowed to be accessed by any other agency or person not associated with CFSL. Similarly, the forensic report prepared by CFSL, after analysing the cloned copy of the subject memory card/pen-drive, shall be kept confidential and shall not be allowed to be accessed by any other agency or person except the accused or his authorised representative concerned until the conclusion of the trial.

Therefore, accused has the right of inspection not only by himself but also being accompanied with the lawyer and/or expert and also the right of getting that record forensically examined by any other agency.

Whether copy of document not relied upon by the Prosecution has to be supplied to the accused?

Judgment of Madhya Pradesh High Court in ***Ram Khelawan Patel v. State of M.P. Reported in 2006 (2) MPLJ 544*** provides an insight in this matter. In this case it was concluded that it is not incumbent on the Court to supply the copies of the statements of all the persons recorded during the investigation whom the prosecution does not propose to examine. In the case of ***K.K. Mishra v. State of M.P., 2016 (IV) MPJR 145***, this law has been further fortified.

When statement of the witness on whom prosecution relies has been recorded more than once, then is it obligatory for prosecution to supply copy of all such statements to the accused?

In ***Naresh Dhakad v. State of M.P., 1997 (1) MPWN 81***, it was held that if the investigating agency had recorded the statements of witnesses more than once, there may be material contradictions in the same and the accused may like to utilize the same for his benefit, therefore, the copies of the statement of such witnesses should be provided to him because due to non-supply of the copies, the purpose for enacting the provision of section 207, CrPC shall be frustrated. It is settled position that the statements of all the persons on whom the prosecution proposes to rely, if recorded by the investigating agency more than once, the copies of the same should be supplied to the accused.

Accordingly, when statement of a witness on whom prosecution relies has been recorded more than once then in such cases copy of all such statements should be supplied to the accused.

Whether accused has right to get copy of supervision note recoded in Case Diary during investigation?

This question is answered in ***Sunita Devi v. State of Bihar, (2005) 1 SCC 608*** in the following words -

> "The supervision notes can in no count be called. They are not a part of the papers which are supplied to the accused. Moreover, the informant is not entitled to the copy of the supervision notes. The supervision notes are recorded by the supervising officer. The documents in terms of sections 207 and 208 are supplied to make the accused aware of the materials which are sought to be utilised against him. The supervision notes cannot be utilised by the prosecution as a piece of material or evidence against the accused. At the same time the accused cannot make any reference to them for any purpose."

Hon'ble Apex Court has directed the Chief Secretary of each State and Union Territory and the Director Generals of Police concerned to ensure that the supervision notes are not made available to any person and to ensure that confidentiality of the supervision notes is protected.

Hence, it is not obligatory to provide copy of supervision note to the accused. Further, supervision notes are not intended to be made available to any person and to ensure that confidentiality of the supervision notes is to be protected.

Whether accused has right to get copy of gist of statements or documents recoded in Case Diary during investigation?

While discussing this aspect in ***State of NCT of Delhi v. Ravi Kant Sharma, (2007) 2 SCC 764***, it was held that u/s 161 CrPC the police officer may reduce into writing any statement made to him in the course of examination under that provision and if he does so he shall make separate and true record of the statement of each such person whose statement he records. The provision in other words authorizes the police officer to reduce into writing any statement made by a witness. In a given case the investigating officer may record circumstances ascertained during investigation in the case diary in terms of section 172 CrPC. It is only when the investigating officer decides to record the statement of witnesses u/s 161 CrPC that he becomes obliged to make a true record of the statement which obviously will not include the interpretation of the investigating officer of the statements or the gists of statement.

Whether in the case of certain witnesses being declared as protected witnesses in the exercise of powers u/s 173(6) of CrPC by the trial court, can the defence seek recourse to the remedy u/s 207 and section 161 of CrPC for obtaining copies of redacted statements of these protected witnesses?

This point was considered by Hon'ble Supreme Court in ***Waheed-ur-Rehman Parra v. Union Territory of Jammu & Kashmir, 2022 SCC OnLine SC 237*** and it was

observed that on the court being satisfied that the disclosure of the address and name of the witness could endanger the family and the witness, Court may refuse to supply redacted statements of these protected witnesses. Such an order will be both fair and reasonable for the prosecution and defence while protecting the witnesses and not depriving the defence of a fair trial with the disclosure of the redacted portion of the testimony u/s 207 of the CrPC.

Effect of non-compliance of sections 207 and 208 CrPC

Effect of non compliance of these provisions was discussed at length in case of ***Noor Khan v. State of Rajasthan, AIR 1964 SC 286*** and it was held that failure to furnish statements of witnesses recorded in the course of investigation may not vitiate the trial. It does not effect the jurisdiction of the Court to try a case, nor is the failure by itself a ground which affects the power of the Court to record a conviction, if the evidence warrants such a course. The provision relating to the making of copies of statements recorded in the course of investigation is undoubtedly of great importance, but the breach thereof must be considered in the light of the prejudice caused to the accused by reason of its breach, for section 537 of CrPC of 1898 (now section 465) provides, amongst other things that subject to the provisions contained in the Code no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice. By the explanation to section 537 of CrPC (now section 465) it is provided that in determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceeding.

Therefore, although it is important for the Court to ensure effective compliance of the sections 207 and 208 of the CrPC but any failure in itself cannot not be said to affect the power of the Court. This failure in itself does not vitiate trial unless Court finds that it has adversely affected the rights of the accused.

Conclusion

The summary of the whole conundrum can be concluded as -

- Right of accused to get copy of the documents and statements is very foundation of a fair investigation and trial. Therefore, at this stage Court is bound to ensure full and effective compliance of this provision.
- Sections 207 and 208 CrPC does not empower the Magistrate to withhold any “document” submitted by the investigating officer or complainant along with the police report or filed in complaint case except when it is voluminous or it is necessary to protect right to privacy of the victim.

- In cases relating to sexual offenses, when the contents of document can reveal the identity of the victim then Court should direct that from the copies to be supplied to the accused, name and other particulars as to identity of victim/vulnerable witness revealed in those documents shall be concealed. However, accused or his advocate shall have right to inspect those documents for preparation of his/her defence.
- The Court may also issue suitable directions to balance the interests of both sides.
- In general, it not open for the Investigation Officer or Magistrate to withhold the copy of any electronic record being provided to accused.
- In cases relating to sexual offenses, Court shall refrain from supplying that video or photograph or any other electronic record to the accused and in that case he shall have right of inspection thereof to the accused and his/her lawyer or expert for presenting effective defence during the trial. Further, Court should issue suitable directions to balance the interests of both sides.
- Such inspection of electronic record by accused or/and his counsel shall be in the Court, in the presence of prosecution officer and while doing so they shall not be permitted to have any recording device including mobile phones with them and shall be further under protective order of the Court being refrained from further sharing details which may reveal the identity of the complainant/witness.
- Copy of electronic record cannot be denied on the ground of its being voluminous.
- Accused has right to inspect those documents/contents and this right is not limited to inspection by him but extends to inspection by his lawyer and/or expert. Further he has right to get such documents forensically examined by any other agency.
- When statement of a witness on whom prosecution relies upon has been recorded more than once then in such cases copy of all such statements should be supplied to the accused.
- Accused is not entitled to get copy of supervision note or gist of statements or documents recorded in the case diary.

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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. क्या शासन के विरूद्ध पारित धन सम्बंधी डिक्री के निष्पादन के अपालन की दशा में शासकीय अधिकारियों के विरूद्ध न्यायालय अवमान अधिनियम, 1971 के अंतर्गत कार्यवाही की जा सकती है?

न्यायालय अवमान अधिनियम, 1971 की धारा 2(ख) के अनुसार ''सिविल अवमान'' से किसी न्यायालय के किसी निर्णय, डिक्री, निदेश, आदेश, रिट या अन्य आदेशिका की जानबूझकर अवज्ञा करना अथवा न्यायालय से किये गये किसी वचनबंध को जानबूझकर भंग करना अभिप्रेत है। न्यायदृष्टांत ***रमा नारंग वि. रमेश नारंग एवं अन्य, अवमान याचिका (सिविल) क्रमांक 92/2008 निर्णय दिनांक 19.01.2021*** में माननीय सर्वोच्च न्यायालय द्वारा यह निर्धारित किया गया है कि सिविल अवमान की परिधि के अंतर्गत कोई कार्यवाही लाये जाने हेतु किसी न्यायालय के किसी निर्णय, डिक्री, निदेश, आदेश, रिट या अन्य आदेशिका की जानबूझकर अवज्ञा अथवा न्यायालय से किये गये किसी वचनबंध का जानबूझकर भंग होना चाहिए।

न्यायदृष्टांत ***आर.एन. डे. एवं अन्य वि. भाग्यबती प्रमाणिक एवं अन्य, (2000) 4 एससीसी 400*** में माननीय सर्वोच्च न्यायालय द्वारा यह निर्धारित किया गया है कि अवमान के हथियार का उपयोग प्रचुरता में नहीं किया जाना चाहिए और न ही इस हथियार का दुरूपयोग किया जाना चाहिए। सामान्यतः इसका उपयोग किसी ऐसी डिक्री के निष्पादन हेतु या ऐसे किसी आदेश के कार्यान्वयन हेतु नहीं किया जा सकता जिसके निष्पादन या कार्यान्वयन के लिये विधि द्वारा वैकल्पिक उपचार उपलब्ध कराये गये हैं। न्यायालय के इस विशेषाधिकार का उपयोग न्यायालय की गरिमा और विधि के गौरव के संरक्षण हेतु किया जाना चाहिए। इसके अतिरिक्त किसी व्यथित पक्षकार को यह हठ करने का अधिकार नहीं है कि न्यायालय द्वारा अवमान सम्बंधी क्षेत्राधिकार का प्रयोग किया जाना चाहिए क्योंकि अवमानना, न्यायालय एवं अवमानकर्ता के मध्य की कार्यवाही है। इसी प्रकरण में यह भी अवधारित किया गया है कि सामान्यतः ऐसा डिक्रीधारी, जो विधि द्वारा प्रतिपादित प्रक्रिया के अनुसार डिक्री के निष्पादन हेतु कार्यवाही नहीं करता है, को धन सम्बंधी डिक्री के अपालन के सम्बंध में न्यायालय के अवमान संबंधी क्षेत्राधिकार को आमंत्रित करने हेतु प्रोत्साहित नहीं करना चाहिए तथा जहां तक संभव हो धन सम्बंधी डिक्री के अपालन की दशा में न्यायालय को शासकीय अधिकारियों को अवमान हेतु आहूत करने में त्वरित नहीं होना चाहिए।

उपरोक्त विधि सिद्धांत के आधार पर न्यायदृष्टांत ***होरीलाल विरूद्ध भजनलाल, आईएलआर (2009) एमपी 3061*** में भी माननीय मध्यप्रदेश उच्च न्यायालय द्वारा यह निर्धारित किया गया

है कि जहां सिविल प्रक्रिया संहिता डिक्री के निष्पादन हेतु प्रक्रिया प्रतिपादित करती है वहां अवमान याचिका प्रचलन योग्य नहीं होती है।

अतः स्पष्ट है कि सामान्य तौर पर शासन के विरूद्ध पारित धन सम्बंधी डिक्री के निष्पादन के अपालन की दशा में सम्बंधित शासकीय अधिकारी के विरूद्ध तब तक अवमान सम्बंधी कार्यवाही प्रारम्भ नहीं करना चाहिए जब तक कि न्यायालय का यह समाधान नहीं हो जाता है कि ऐसा अपालन या डिक्री की अवज्ञा सम्बंधित अधिकारी द्वारा जानबूझकर की जा रही है।

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2. क्या स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 के अधीन अपराध के लिए दोषसिद्धि की दशा में धारा 389 दं.प्र.सं. के अन्तर्गत दण्डादेश के निष्पादन का निलम्बन किया जा सकता है?

वर्ष 1989 में स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम, 1985 में संशोधन करते हुये धारा 32–क जोड़ी गई जिसके अनुसार धारा 27 (किसी स्वापक औषधि या मनः प्रभावी पदार्थ के उपयोग के लिए दण्ड) से भिन्न किसी अपराध हेतु दिए गए दण्डादेश का निलम्बन नहीं किया जा सकता है। इसका तात्पर्य यह है कि धारा 27 को छोड़कर शेष अपराध के सम्बंध में धारा 389 दं.प्र.सं. के अन्तर्गत दण्डादेश का निलम्बन नहीं किया जा सकता है। लेकिन माननीय सर्वोच्च न्यायालय द्वारा न्यायदृष्टांत ***दादू उर्फ तुलसीदास विरूद्ध महाराष्ट्र राज्य, एआईआर 2000 एससी 3203*** (तीन जज पीठ) के मामले में धारा 32–क को अपील न्यायालय की दण्डादेश की निलम्बन की शक्ति पर प्रभाव नहीं डालने वाला माना है। माननीय सर्वोच्च न्यायालय ने अभिमत दिया है कि धारा 32–क के अनुसार विचारण न्यायालय दण्डादेश का निलम्बन नहीं कर सकता है लेकिन अपील न्यायालय के दण्डादेश के निलम्बन के अधिकार को कम करने के सम्बंध में उस सीमा तक धारा 32–क असंवैधानिक है। लेकिन साथ यह भी कहा गया कि ऐसा निलंबन धारा 37 में उल्लेखित निम्नलिखित शर्तों की पूर्ति के उपरांत ही किया जा सकता हैः–

(i) लोक अभियोजक को ऐसी निर्मुक्ति के लिये किये गये आवेदन का विरोध करने का अवसर दे दिया गया है, और

(ii) जहां लोक अभियोजक आवेदन का विरोध करता है वहां न्यायालय का यह समाधान हो गया है कि यह विश्वास करने के युक्तियुक्त आधार है कि वह ऐसे अपराध का दोषी नहीं है और जमानत पर होने के दौरान उसके द्वारा कोई अपराध किए जाने की संभावना नहीं है।

अतः स्पष्ट है कि विचारण न्यायालय धारा 32–क के अनुसार धारा 27 को छोड़कर धारा 389 दं.प्र.सं. के अन्तर्गत दण्डादेश का निलम्बन नहीं कर सकता है लेकिन अपील न्यायालय धारा 37 के अधीन रहते हुये ऐसा दण्डादेश निलंबित कर सकता है।

इस संबंध में न्यायदृष्टांत ***रतन कुमार विश्वास वि. उत्तर प्रदेश राज्य, (2009) 1 एससीसी 482*** भी अवलोकनीय है जिसमें विचारण न्यायालय द्वारा दोषसिद्ध किये गए अभियुक्त द्वारा दण्डादेश निलंबन हेतु प्रस्तुत आवेदन को माननीय उच्च न्यायालय द्वारा धारा 37 की शर्तों के आलोक में अस्वीकार कर दिया गया था और माननीय सर्वोच्च न्यायालय द्वारा न्यायदृष्टांत ***दादू*** (पूर्वोक्त) को विचार में लेते हुए अपीलार्थी/अभियुक्त को विचारण न्यायालय द्वारा दोषसिद्ध किये जाने के फलस्वरूप अपील न्यायालय द्वारा दण्डादेश निलंबित नहीं किये जाने के आदेश को उचित पाते हुए यथावत रखा गया था। यहां यह ध्यान में रखे जाने योग्य है कि धारा 37 अल्प मात्रा के प्रकरणों पर लागू नहीं होती है।

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3. क्या किसी अभियुक्त को जो फरार है या जिसके विरूद्ध स्थाई गैर जमानतीय गिरफ्तारी वारंट जारी किया गया है, अग्रिम जमानत का लाभ दिया जा सकता है?

यदि न्यायालय द्वारा प्रतिभूति पर मुक्त अभियुक्त प्रतिभूति की शर्तों का उल्लंघन करने की दशा में या जमानत निरस्त होने की दशा में उसके विरूद्ध जारी गिरफ्तारी वारंट या स्थाई गिरफ्तारी वारंट के विरूद्ध अग्रिम जमानत आवेदन प्रस्तुत करता है तब, चूंकि अभियुक्त अभिरक्षा में नहीं होते हुए भी विधि की अन्वयिक अभिरक्षा में माना जाता है, यदि न्यायालय उसे पुनः अभिरक्षा में लिए जाने की अपेक्षा करती है, ऐसे अभियुक्त का अग्रिम जमानत के लिए आवेदन प्रचलनशील नहीं होता है। इस सम्बंध में न्यायदृष्टांत ***मनीष जैन विरूद्ध हरियाणा पाल्यूशन कंट्रोल बोर्ड, 2020 एससीसी ऑनलाइन 1101*** अवलोकनीय है।

यदि स्थाई वारंट उस स्थिति में जारी किया गया है जब अभियुक्त को अन्वेषण के किसी भी स्तर पर गिरफ्तार नहीं किया जा सका है तब अग्रिम जमानत का आवेदन प्रचलनशील है इस सम्बंध में माननीय मध्यप्रदेश उच्च न्यायालय का न्यायदृष्टांत ***रजनी पुरूस्वामी विरूद्ध म.प्र. राज्य, एआईआर 2020 एमपी 1477*** अवलोकनीय है। मध्यप्रदेश उच्च न्यायालय द्वारा न्यायदृष्टांत ***सोबरण विरूद्ध मध्य प्रदेश राज्य, 2018 (11) एमपीजेआर 252*** के मामले में अभिमत दिया कि जब अन्वेषण लंबित हो और अभियुक्त अन्वेषण से भाग रहा है तब वह अग्रिम जमानत का आवेदन प्रस्तुत कर सकता है लेकन यदि धारा 299 दप्रस के अन्तर्गत अभियोगपत्र प्रस्तुत कर दिया जाता है और मजिस्ट्रेट अभियुक्त के विरूद्ध वारंट जारी कर देता है उस स्थिति में अग्रिम जमानत का आवेदन प्रचलनशील नहीं है। इस न्यायदृष्टांत में माननीय सर्वोच्च न्यायालय के न्यायदृष्टांत ***मध्यप्रदेश राज्य विरूद्ध प्रदीप शर्मा, (2014) 2 एससीसी 171*** का अवलम्बन लिया गया है।

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4. क्या आदेश 23 नियम 1 सिविल प्रक्रिया संहिता के अन्तर्गत वाद के प्रत्याहरण हेतु प्रस्तुत आवेदन पत्र का प्रत्याहरण किया जा सकता है?

न्यायालय को इस सिद्धांत पर कार्य नहीं करना चाहिए कि हर वो प्रक्रिया जिसका उल्लेख संहिता में नहीं है, प्रतिषिद्ध है। बल्कि यह कि जब तक विनिर्दिष्ट रूप से प्रतिषिद्ध न हो ऐसी प्रक्रिया को अनुमत माना जाना चाहिए। आगे यह भी कहा गया है कि 'प्रतिषेध' को सामान्य नियम के रूप में नहीं लिया जाना चाहिए।

माननीय सर्वोच्च न्यायालय द्वारा न्यायदृष्टांत ***राजेन्द्र प्रसाद विरूद्ध प्रकाश चन्द्र, एआईआर 2011 एससी 1137*** में अभिमत दिया गया कि प्रक्रिया न्याय की दासी है। धारा 151 सिविल प्रक्रिया संहिता न्यायालय को अंतर्निहित शक्तियां प्रदान करता है। इस प्रावधान को इस तरह लिया जाना चाहिए कि हर वो प्रक्रिया जो विनिर्दिष्ट रूप से प्रतिषिद्ध नहीं है न्याय करने हेतु अनुमत है। आगे यह भी कहा गया कि वाद के प्रत्याहरण हेतु प्रस्तुत आवेदन पत्र को उस पर आदेश करने के पूर्व वापस लिये जाने पर कोई विनिर्दिष्ट प्रतिषेध नहीं है।

उपरोक्त विवेचना से स्पष्ट है कि वाद के प्रत्याहरण हेतु प्रस्तुत आवेदन पत्र का प्रत्याहरण ऐसे आवेदन पर आदेश किये जाने के पूर्व किया जा सकता है।

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5. क्या आदेश 7 नियम 11 (घ) सिविल प्रक्रिया संहिता के अन्तर्गत ''विधि द्वारा वर्जित'' शब्दावली में ''विधि'' के अन्तर्गत सर्वोच्च न्यायालय के निर्णय भी आते है?

भारत के संविधान का अनुच्छेद 141 विनिर्दिष्ट रूप से यह उल्लेख करता है कि सर्वोच्च न्यायालय द्वारा प्रतिपादित विधि भारत के भीतर के न्यायालयों पर बंधनकारी है। यहां तक कि सिविल प्रक्रिया संहिता में भी ''विधि द्वारा वर्जित'' शब्दावली का अर्थ केवल संहिताबद्ध विधि होना उल्लेखित नहीं है। न्यायदृष्टांत ***मीरा सिन्हा विरूद्ध झारखण्ड राज्य, एआईआर 2016 झारखण्ड 92*** में माननीय झारखण्ड उच्च न्यायालय द्वारा अभिमत दिया गया कि समय–समय पर माननीय सर्वोच्च न्यायालय द्वारा दिए गए निर्णयों की पृष्ठभूमि से यह स्पष्ट है कि आदेश 7 नियम 11(घ) सिविल प्रक्रिया संहिता के अन्तर्गत वादपत्र निरस्त किया जा सकता है जब कि ऐसा वाद ''विधि द्वारा वर्जित'' है। शब्दावली ''विधि द्वारा वर्जित'' में विधि के अन्तर्गत परिसीमा विधि तथा सर्वोच्च न्यायालय द्वारा प्रतिपादित विधि सम्मिलित है। इसी मत को माननीय सर्वोच्च न्यायालय द्वारा न्यायदृष्टांत ***भार्गवी कन्स्ट्रक्शन्स विरूद्ध कोथाकपू रेड्डी, एआईआर 2017 एससी 4428*** में प्रतिपादित किया गया है।

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PART - II

NOTES ON IMPORTANT JUDGMENTS

56. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 28 (3) and 34 Arbitral award – Ground of patent illegality is attracted when matter is not decided as per the terms of the contract which governs the parties as such patent illegality affects the very root of the matter and Tribunal should interfere in such matter.

माध्यस्थम् और सुलह अधिनियम, 1996 – धाराएं 28(3) एवं 34

माध्यस्थम् पंचाट – प्रकट अवैधता का आधार तब आकर्षित होता है जब पक्षकारों को शासित करने वाली संविदा की शर्तों के अनुसार मुद्दे का निराकरण नहीं किया जाता है क्योंकि ऐसी प्रकट अवैधता मुद्दे के मूल तत्व को प्रभावित करती है और ऐसे प्रकरणों में अधिकरण को हस्तक्षेप करना चाहिए।

State of Chhattisgarh and anr. v. Sal Udyog Private Limited
Judgment dated 08.11.2021 passed by the Supreme Court in Civil Appeal No. 4353 of 2010, reported in AIR 2021 SC 5503 (Three Judge Bench)

Relevant extracts from the judgment:

We are of the view that failure on the part of the learned Sole Arbitrator to decide in accordance with the terms of the contract governing the parties, would certainly attract the "patent illegality ground", as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an Award. The said 'patent illegality' is not only apparent on the face of the Award, it goes to the very root of the matter and deserves interference.

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***57. ARBITRATION AND CONCILIATION ACT, 1996 – Section 34 Arbitral award – Court cannot use its appellate power while dealing with any petition filed u/s 34 of the Arbitration and Conciliation Act, 1996.**

माध्यस्थम् और सुलह अधिनियम, 1996 – धारा 34

माध्यस्थम् पंचाट – माध्यस्थम् और सुलह अधिनियम, 1996 की धारा 34 के अतंर्गत प्रस्तुत की गयी याचिका पर विचार करते समय न्यायालय द्वारा अपनी अपीलीय शक्तियों का प्रयोग नहीं किया जा सकता है।

Punjab State Civil Supplies Corporation Ltd. and anr. v. Ramesh Kumar and Company and ors.
Judgment dated 13.11.2021 passed by the Supreme Court in Civil Appeal No. 6832 of 2021, reported in AIR 2021 SC 5758

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***58. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34 and 36**
CIVIL PROCEDURE CODE, 1908 – Section 47
Whether jurisdiction of an Arbitrator to pass the award can still be challenged in the execution proceeding of the award in the civil court under the provisions of section 47 of the Code, as according to section 36 of the Arbitration Act, an arbitral award is to be executed by the civil court in the same manner as if it were a decree of the court – Held, no.

माध्यस्थम् एवं सुलह अधिनियम, 1966 – धाराएं 34 एवं 36
सिविल प्रक्रिया संहिता, 1908 – धारा 47
क्या एक मध्यस्थ के पंचाट पारित करने के क्षेत्राधिकार को सिविल प्रक्रिया संहिता की धारा 47 के प्रावधान के अन्तर्गत पंचाट के निष्पादन की कार्यवाही में चुनौती दी सकती है क्योंकि माध्यस्थम् अधिनियम की धारा 36 के अनुसार माध्यस्थम अधिनिर्णय सिविल न्यायालय द्वारा उसी प्रकार निष्पादित किया जा सकता है जैसे वह न्यायालय की डिक्री हो – अभिनिर्धारित नहीं।

Canara Bank v. Bank of India and ors.
Order dated 06.01.2022 passed by the High Court of Madhya Pradesh (Bench Indore) in Writ Petition No.5260 of 2021, reported in 2022 (1) MPLJ 466

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59. CIVIL PROCEDURE CODE, 1908 – Sections 9 and 21
INDUSTRIAL DISPUTES ACT, 1947 – Sections 25B and 25F
Jurisdiction – When any claim in the suit is founded by an employee on the provisions of Industrial Disputes Act, such suit cannot be entertained by the Civil Court.

सिविल प्रक्रिया संहिता, 1908 – धाराएं 9 एवं 21
औद्योगिक विवाद अधिनियम, 1947 – धाराएं 25ख एवं 25च
क्षेत्राधिकारिता – जहां किसी कर्मचारी द्वारा वाद में औद्योगिक विवाद अधिनियम के प्रावधानों के आधार पर कोई दावा किया जाता है वहां ऐसा वाद व्यवहार न्यायालय द्वारा ग्रहण नहीं किया जा सकता।

Milkhi Ram v. Himachal Pradesh State Electricity Board
Judgment dated 08.10.2021 passed by the Supreme Court in Civil Appeal No. 1346 of 2010, reported in AIR 2021 SC 5025

Relevant extracts from the judgment:

In the present matter, the appellant has clearly founded his claim in the suit, on the provisions of the ID Act and the employer therefore is entitled to raise a jurisdictional objection to the proceedings before the civil court. The courts below including the executing court negated the jurisdictional objection.

The High Court in revision, however has overturned the lower court's order and declared that the decree in favour of the plaintiff is hit by the principle of *coram non judice* and therefore, the same is a nullity.

As can be seen from the material on record, the challenge to the termination was founded on the provisions of the ID Act. Although jurisdictional objection was raised and a specific issue was framed at the instance of the employer, the issue was answered against the defendant. This Court is unable to accept the view propounded by the courts below and is of the considered opinion that the civil court lacks jurisdiction to entertain a suit structured on the provisions of the ID Act. The decree favouring the plaintiff is a legal nullity and the finding of the High Court to this extent is upheld.

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60. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11

Rejection of plaint – Normally long possession of any caretaker or servant on the property of real owner never converts into adverse possession and it must be handed over to real owner when demanded – Suit for declaration and permanent injunction based on such possession is liable to be rejected under Order 7 Rule 11 of the CPC because such suits lack cause of action.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

वाद का नामंजूर किया जाना – सामान्यतः किसी अभिरक्षक (रखवाल) या नौकर का वास्तविक स्वामी की संपत्ति पर दीर्घ आधिपत्य कभी भी विरोधी आधिपत्य में परिवर्तित नहीं होता है और वास्तविक स्वामी द्वारा आधिपत्य की मांग किये जाने पर ऐसा आधिपत्य उसे सौंप देना चाहिए। ऐसे आधिपत्य के आधार पर घोषणा एवं शाश्वत व्यादेश के लिये प्रस्तुत वाद सि.प्र.सं. के आदेश 7 नियम 11 के अंतर्गत नामंजूर किये जाने योग्य होता है क्योंकि ऐसे दावों में वाद हेतुक का अभाव होता है।

Himalaya Vintrade Pvt. Ltd. v. Md. Zahid and anr.

Judgment dated 16.09.2021 passed by the Supreme Court in Civil Appeal No. 5779 of 2021, reported in AIR 2021 SC 5749

Relevant extracts from the judgment:

The Trial Court has committed a manifest error in appreciating the pleadings on record from the plaint filed at the instance of respondent no.1-plaintiff who as a caretaker/servant can never acquire interest in the property irrespective of his long possession and the caretaker/servant has to give possession forthwith on demand and so far as the plea of adverse possession is concerned as it lacks material particulars and the plaint does not discloses the cause of action for institution of the suit.

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61. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11(d)

Rejection of plaint – Generally the plaint should not be rejected on the ground of limitation under Order 7 Rule 11(d) of the code because answer to such ground depends on evidence.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11(घ)

वाद का नामंजूर किया जाना – सामान्यतः वाद को परिसीमा के आधार पर सि.प्र.सं. के आदेश 7 नियम 11 (घ) के अंतर्गत नामंजूर नहीं किया जाना चाहिए क्योंकि ऐसे आधार का उत्तर साक्ष्य पर निर्भर करता है।

Salim D. Agboatwala and ors. v. Shamalji Oddhavji Thakkar and ors.

Judgment dated 17.09.2021 passed by the Supreme Court in Civil Appeal No. 5641 of 2021, reported in AIR 2021 SC 5212

Relevant extracts from the judgment:

We are not dealing here with a case where notices were ordered to be issued, but were not or could not, be served on necessary and proper parties. We are dealing with a case where the plaintiffs assert in no uncertain terms that notices were never ordered to them nor served on them. Therefore, the answer to the issue regarding limitation, will depend upon the evidence with regard to the issuance and service of notice and the knowledge of the plaintiffs. Hence, the Trial Court as well as the High Court were not right in rejecting the plaint on the ground of limitation.

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62. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 14

Production of documents – At the last stage of defendant's evidence production of documents by the plaintiff should not be allowed specially where negligence of plaintiff is clear.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 14

दस्तावेजों की प्रस्तुति – प्रतिवादी साक्ष्य के अंतिम स्तर पर वादी द्वारा दस्तावेज प्रस्तुत करने की अनुमति नहीं देना चाहिए विशेषतः जहां वादी की उपेक्षा स्पष्ट है।

Satyanarayan Paliwal v. Mukesh Patel and ors.

Order dated 08.10.2021 passed by the High Court of Madhya Pradesh Bench (Indore Bench) in Miscellaneous Petition No. 633 of 2021, reported in AIR 2021 MP 205

Relevant extracts from the order:

It is settled principle of law that the documents, which are not part of the pleadings and the documents which are not on record and exhibited cannot be taken into consideration while deciding the civil suit.

In the present case, evidence of plaintiff is already over and defendant's evidence is at last stage and permitting such documents to be taken on record will amount to opening of the case from initial stage of evidence of the plaintiffs and reopening of such case that too for the negligence or omission on the part of plaintiffs cannot be allowed.

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63. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 16 Explanation r/w/s 47 and 146

Execution by transferee – Explanation of Order 21 Rule 16 avoids separate suit proceedings by transferee of decree and Order 21 Rule 16 of CPC does not affect the provisions of Section 146 – Execution application may be filed by the transferee also and for this purpose, separate assignment of decree is not necessary.

सिविल प्रक्रिया संहिता, 1908 – आदेश 21 नियम 16 स्पष्टीकरण सहपठित धाराएं 47 एवं 146

अंतरिती द्वारा निष्पादन – आदेश 21 नियम 16 का स्पष्टीकरण डिक्री के अंतरिती द्वारा पृथक वाद कार्यवाही को परिवर्जित करता है और सि.प्र.सं. का आदेश 21 नियम 16 धारा 146 के प्रावधानों को प्रभावित नहीं करता है – अंतरिती द्वारा भी निष्पादन आवेदन प्रस्तुत किया जा सकता है और इसके लिये डिक्री का पृथक से समनुदेशन आवश्यक नहीं है।

Vaishno Devi Construction Rep. through Sole Proprietor (D) through LRs. and anr. v. Union of India and ors.

Judgment dated 21.10.2021 passed by the Supreme Court in Civil Appeal No. 18278 of 2017, reported in AIR 2021 SC 5309

Relevant extracts from the judgment:

The Law Commission recommended amending Order XXI Rule 16 to clarify that it does not affect the provisions of Section 146 and that a transferee of rights in the subject matter of the suit can obtain execution of a decree without separate assignment of the decree. The objective appears to be to not have multifarious proceedings to determine the issue of assignment, but to determine the issue of assignment in the execution proceedings itself.

In the conspectus of the aforesaid we are of the view that the objective of amending Order XXI Rule 16 of the CPC by adding the Explanation was to deal with the scenario as exists in the present case, to avoid separate suit proceedings being filed therefrom and to that extent removing the distinction between an assignment pre the decree and an assignment post the decree.

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64. CIVIL PROCEDURE CODE, 1908 – Order 47 Rule 1

(i) Review – Power of review may be exercised when some mistake or error apparent on the face of the record is found – Law reiterated.

(ii) Judgment obtained by fraud – When a judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law – But it need to be established that the judgment or order has been obtained by practicing fraud.

सिविल प्रक्रिया संहिता, 1908 – आदेश 47 नियम 1

(i) पुनर्विलोकन – जब अभिलेख को देखने से ही कोई भूल अथवा गलती प्रकट होती है तब पुनर्विलोकन की शक्ति का प्रयोग किया जा सकता है – विधि पुनरूद्धरित।

(ii) कपट द्वारा निर्णय की प्राप्ति – जब एक निर्णय अथवा आदेश कपट द्वारा प्राप्त किया जाता है उसे विधि की दृष्टि में निर्णय अथवा आदेश नहीं कहा जा सकता – परन्तु यह स्थापित करना आवश्यक है कि ऐसा निर्णय अथवा आदेश कपट कारित करके प्राप्त किया गया है।

M.P. Power Management Company Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd. and ors.

Order dated 28.12.2020 passed by the High Court of Madhya Pradesh in Review Petition No. 682 of 2020, reported in 2022 (1) MPLJ 68 (DB)

Relevant extracts from the judgment:

Trite it is that an application for Review lies when : (i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. (ii) Power of review may be exercised when some mistake or error apparent on the fact of record is found. But error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on the points where there may conceivably be two opinions. (iii) Power of review may not be exercised on the ground that the decision was erroneous on merits. (iv) Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate. (v) An application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.

In the case at hand, the respondent-petitioner on the basis of the report by CEIG sought the commission of the project. The said report is a part of writ petition annexed as Annexure P/11. The report extensively covers 10 blocks and switchyard stipulating therein that subject to the compliance of stipulations in Electricity Act, 2003, Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, Regulation 43 and 32, the respondent/

petitioner has granted permission for a period of one month. The record reveals that the report and approval was presented to present petitioner; evidently, no doubt was raised by the petitioner as to the report and permission as would suggest fraud being played by the CEIG. It appears that having been subjected to an inquiry by the Economic Offence Wing, the petitioner and its functionaries are trying to create defence by finding faults with the report submitted by the CEIG. Fraud as observed in ***S.P.Chengalvaraya Naidu v. Jagannath, AIR 1994 SC 853*** is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is cheating intended to get an advantage. Learned counsel for the petitioner though laboured hard to bring home the theory of fraud allegedly committed in either getting the report from CEIG or in its presentation by present respondent; however, utterly fails to establish it as would attract the exercise of review jurisdiction.

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65. CONSTITUTION OF INDIA – Article 20(3)
CRIMINAL PRACTICE:

(i) Order of taking voice sample – Whether amounts to compelling the witness against himself? Held, No – Voice sample is taken only for comparison – It cannot be said that when an accused is asked to give voice sample, he is compelled to be a witness against himself – Fundamental right under Article 20(3) of the Constitution is not violated in such a case.

(ii) Opportunity of hearing – Magistrate has the power to order a person to give his voice sample for the purpose of investigation of a crime, the matter is at the investigating stage where the prosecution is only collecting the evidence, hence no error has been committed by the trial court in passing the impugned order without giving opportunity of hearing to the petitioner – Thus, no case for interference is made out.

भारत का संविधान – अनुच्छेद 20(3)

आपराधिक प्रथा :

(i) आवाज का नमूना लेने का आदेश – क्या स्वयं के विरुद्ध साक्षी होने को बाध्य करने जैसा है? अभिनिर्धारित, नहीं – आवाज का नमूना केवल तुलना करने के लिए लिया जाता है – यह नहीं कहा जा सकता कि जब अभियुक्त को आवाज का नमूना देने के लिए कहा जाता है तो उसे स्वयं के विरुद्ध साक्षी होने के लिए बाध्य किया जाता है – ऐसी स्थिति में संविधान के अनुच्छेद 20(3) के अंतर्गत मौलिक अधिकार का उल्लंघन नहीं होता है।

(ii) सुनवाई का अवसर – मजिस्ट्रेट को यह शक्ति है कि वह अपराध के अन्वेषण के उद्देश्य के लिए किसी व्यक्ति को आवाज का नमूना देने के लिए आदेशित

करे, मामला अन्वेषण के स्तर पर है जहां अभियोजन केवल साक्ष्य एकत्र कर रहा है, अतः याचिकाकर्ता को सुनवाई का अवसर दिए बिना आलोच्य आदेश पारित करने में विचारण न्यायालय द्वारा कोई त्रुटि कारित नहीं की गई है – अतः हस्तक्षेप करने का कोई मामला नहीं बनता।

R.K. Akhande v. Special Police Establishment Lokayukt, Bhopal and anr.

Order dated 30.06.2021 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 45036 of 2020, reported in ILR (2021) MP 1613 (DB)

Relevant extracts from the order:

Article 20 of the Constitution of India extends certain protection to a person in respect of the conviction for offence and sub-clause (3) thereof provides that no person accused of any offence shall be compelled to be a witness against himself. Article 20(3) reads as under:

> "20(3) No person accused of any offence shall be compelled to be a witness against himself."

The protection extended by Article 20(3) is only to the extent of being witness against himself. Thus, clause (3) of Article 20 extends protection against self incrimination to an accused person. Self incrimination is held to mean conveying information based upon the personal knowledge of the person giving the information and it does not mean to include merely the mechanical process of producing document in the Court which may throw a light on any points of controversy but which does not contain any statement of accused based upon his present knowledge. Requiring an accused to give voice sample does not mean that he is asked to testify against himself. Voice sample is taken only for comparison. Hence, it cannot be said that when an accused is asked to give voice sample, he is compelled to be a witness against himself. Therefore, fundamental right under Article 20(3) of the Constitution is not violated in such a case.

The issue relating to the power of the Magistrate to direct giving of voice sample came up before the Hon'ble Supreme Court in the matter of ***Ritesh Sinha vs. State of Uttar Pradesh and another reported in 2019 (8) SCC 1*** wherein the three Judge Bench of the Hon'ble Supreme Court has held that the Magistrates are conceded with such power. In this regard, it is held that –

> "27. In the light of the above discussions, we unhesitatingly take the view that until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime. Such power has to be conferred on a Magistrate

by a process of judicial interpretation and in exercise of jurisdiction vested in this Court under Article 142 of the Constitution of India. We order accordingly and consequently dispose the appeals in terms of the above."

Thus, now it is settled that the Magistrate has the power to order a person to give his voice sample for the purpose of investigation of a crime.

In the present case also, the matter is at the investigating stage where the prosecution is only collecting the evidence, hence no error has been committed by the trial court in passing the impugned order without giving opportunity of hearing to the petitioner. Thus, no case for interference is made out.

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***66. CONSUMER PROTECTION ACT, 1986 – Section 12**

Motor Insurance – Theft of vehicle – Delay in informing insurance company about theft of vehicle – Not ground to reject owner's claim.

उपभोक्ता संरक्षण अधिनियम, 1986 – धारा 12

मोटर बीमा – वाहन की चोरी – बीमा कम्पनी को वाहन की चोरी के सम्बंध में देरी से सूचना देना वाहन के स्वामी के दावे को नामंजूर करने का आधार नहीं है।

Dharamender v. United India Insurance Co. Ltd. and ors.

Judgment dated 13.09.2021 passed by the Supreme Court in Civil Appeal No. 5705 of 2021, reported in 2022 ACJ 158 (SC)

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67. CRIMINAL PROCEDURE CODE, 1973 – Section 145

Multiplicity of litigation – When a civil litigation is pending between the parties, then parallel proceedings u/s 145 cannot be continued – The proceedings taken u/s 145 of Cr.P.C. are quashed.

दण्ड प्रक्रिया संहिता, 1973 – धारा 145

मुकदमों की बाहुल्यता – जबकि पक्षकारों के मध्य दीवानी मुकदमेबाजी लंबित है तब धारा 145 के अंतर्गत समानांतर कार्यवाही जारी नहीं रखी जा सकती – धारा 145 दं.प्र.सं. के अंतर्गत की गई कार्यवाही अपास्त की गई।

Rajabeti Sakhwar and ors. v. Darshanlal Sakhwar and ors.

Order dated 07.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Criminal Case No. 18242 of 2021, reported in 2021 CriLJ 4183

Relevant extracts from the order:

The moot question for consideration is that when a civil litigation is pending between the parties, then whether it is conducive to multiply the litigation by initiating a separate proceedings under Section 145 of CrPC or not? The question is no more *res integra*.

Once second appeal filed by the respondents No. 1 to 5 is pending before this Court and the proceeding initiated on the earlier occasion was dropped only on the ground that the civil appeal filed by the respondents No. 1 to 5 has already been dismissed and in the light of the judgments passed by the Supreme Court in the case of ***Ram Sumer Puri Mahant v. State of U.P. and ors., (1985) 1 SCC 427, Mahar Jahan and ors.v. State of Delhi and ors., (2004) 13 SCC 421, Mahant Ram Saran Dass v. Harish Mohan and anr., (2001) 10 SCC 758*** and ***Amresh Tiwari v. Lalta Prasad Dubey and anr., (2000) 4 SCC 440***, this Court is of the considered opinion that the seizure of 26 bags of mustard crop by the police and the letter written by the SDM, Mehgaon District Bhind on 23.03.2021 and 24.03.2021 is sheer misuse of power. Accordingly, the seizure memo prepared by the police on 18.03.2021 and the proceedings either taken under Section 145 of CrPC in Case No.121/145x21 or on the administrative side by the SDM, Mehgaon District Bhind are hereby quashed. The Police Gormi District Bhind as well as SDM, Mehgaon District Bhind are directed to ensure that all the seized mustard crop or the crop which was given to the receiver is hereby returned back to the applicants. It shall be the duty of SDM, Mehgaon District Bhind to personally ensure that the entire mustard crop seized either by the police or handed over to the receiver is returned back in a proper condition within a period of five days from today. If it is found that the crop has suffered any loss in quality or if it is found that the total quantity of crop seized from the possession of the applicants or handed over to the receiver is not available, then the SDM, Mehgaon District Bhind shall be personally liable to pay the cost of the said missing mustard crop to the applicants.

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***68. CRIMINAL PROCEDURE CODE, 1973 – Sections 273 and 317**

(i) Dispensation from personal attendance – If personal attendance of an accused has been dispensed with, then the evidence in the presence of his pleader can be taken on any condition which may be imposed by the Court.

(ii) Examination of witness in absence of accused – Accused has given an under taking that their counsel would cross-examine the witness in their absence which was also mentioned in application that he had no objection with regard to his identification – Under these circumstances, examination of witness in the absence of accused cannot be said to be violative of section 273 Cr.P.C.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 273 एवं 317

(i) वैयक्तिक हाजिरी से अभिमुक्ति – यदि अभियुक्त को वैयक्तिक हाजिरी से अभिमुक्ति प्रदान की गई है, तब उसके प्लीडर की उपस्थिति में न्यायालय द्वारा अधिरोपित की जा सकने वाली शर्त के अधीन, साक्ष्य अभिलिखित की जा सकती है।

(ii) अभियुक्त की अनुपस्थिति में साक्षी का परीक्षण – अभियुक्त द्वारा अपने आवेदन में यह परिवचन दिया गया कि उसकी अनुपस्थिति में उसके अभिभाषक साक्षी का प्रतिपरीक्षण करेंगे और यह भी उल्लेख किया कि उसे अपनी पहचान के सम्बंध में कोई आपत्ति नहीं है – इस परिस्थिति में साक्षी का अभियुक्त की अनुपस्थिति में परीक्षण धारा 273 द.प्र.सं. का उल्लंघन नहीं कहा जा सकता।

Rajesh v. State of M.P.
Judgment dated 19.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 678 of 2011, reported in ILR (2021) MP 1910

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69. CRIMINAL PROCEDURE CODE, 1973 – Section 389(1)
CONSTITUTION OF INDIA – Article 50

(i) Revocation of suspension of sentence – The accused has been convicted of an offence punishable u/s 302 IPC – By an order, the High Court directed that the sentence shall, during the pendency of the appeal, remain suspended under the provisions of Section 389(1) Cr.P.C. – Order was sought to be cancelled on the ground that the accused was implicated in an offence u/s 302 IPC, during the period when his sentence was suspended – Looking to the facts and circumstances of the case, High court dismissed the application for revocation of suspension of sentence and grant of bail – The bail granted to the accused has been cancelled by the Supreme Court.

(ii) Judicial Independence – Judicial independence of the district judiciary is cardinal to the integrity of the entire system – District Judiciary operate under the supervision of the High court which must secure and enhance its independence from external influence and control – While passing the order Additional Sessions Judge expressed his apprehensions that in future any unpleasant incident could happen with him – The apprehension expressed by the presiding officer should be duly enquired into by the High Court of in its administrative side. So that if they are found to be to true necessary action should be taken in order to secure the fair administration of justice.

दण्ड प्रक्रिया संहिता, 1973 – धारा 389(1)
भारत का संविधान – अनुच्छेद 50

(i) दण्डादेश के स्थगन का प्रतिसंहरण – अभियुक्त भा.दं.सं. की धारा 302 के अतंर्गत दण्डनीय अपराध में दोषसिद्ध किया गया, उच्च न्यायालय के आदेश द्वारा यह निर्देशित किया गया कि अपील के लंबित रहने के दौरान दं.प्र.सं. की

धारा 389 (1) के उपबंधों के अधीन दण्डादेश स्थगित रहेगा – आदेश को निरस्त कराने हेतु इस आधार पर प्रार्थना की गई कि अभियुक्त दण्डादेश के निलंबन की अवधि के दौरान भा.दं.सं. की धारा 302 के अंतर्गत अपराध में आलिप्त किया गया – प्रकरण के तथ्य एवं परिस्थितियों को दृष्टिगत रखते हुए उच्च न्यायालय द्वारा दण्डादेश के स्थगन का प्रतिसंहरण एवं प्रदत्त जमानत को खारिज करने का आवेदन निरस्त किया गया – अभियुक्त को प्रदान की गई जमानत उच्चतम न्यायालय द्वारा निरस्त की गई।

(ii) न्यायिक स्वतंत्रता – जिला न्यायपालिका की न्यायिक स्वतंत्रता समग्र व्यवस्था की अखंडता के लिए महत्वपूर्ण है – जिला न्यायपालिका उच्च न्यायलय के पर्यवेक्षण के अधीन कार्य करती है जिसे उसकी स्वतंत्रता को बाहरी प्रभाव एवं नियंत्रण से सुरक्षित एवं अभिवृद्ध करना चाहिए – आदेश पारित करते हुए अतिरिक्त सत्र न्यायाधीश ने भविष्य में उसके साथ अप्रिय घटना घटित होने की आशंका अभिव्यक्त की – पीठासीन अधिकारी द्वारा अभिव्यक्त आशंका की उच्च न्यायालय द्वारा प्रशासनिक स्तर पर सम्यक् जांच की जानी चाहिए जिससे यदि वह सही पाई जाए तो न्याय के बेहतर प्रशासन को सुनिश्चित करने के लिए आवश्यक कार्यवाही की जानी चाहिए।

Somesh Chaurasia v. State of M.P. and anr.

Judgment dated 22.07.2021 passed by the Supreme Court in Criminal Appeal No. 590 of 2021, reported in ILR (2021) MP 1463 (SC)

Relevant extracts from the judgment:

The second respondent has been convicted of an offence punishable under Section 302 of the Indian Penal Code, 1860 ("IPC") and sentenced to suffer imprisonment for life. By an order dated 3 February 2016, the High Court directed that the sentence shall, during the pendency of the appeal, remain suspended under the provisions of Section 389(1) of the Code of Criminal Procedure 1973 ("CrPC").

The present case falls in the last of the above genres where bail was sought to be cancelled on the ground that the second respondent was implicated in an offence under section 302 during the period when his sentence was suspended.

The present case was a fit case for the cancellation of bail by the High Court. The narration in the earlier part of the judgment highlights the following facets:

(i) The registration of FIR 143 of 2019 implicating the second respondent in the murder of the appellant's father during the period when the sentence of the second respondent was suspended after his conviction of a prior offence under Section 302.

(ii) The criminal antecedents of the second respondent;

(iii) The strong likelihood of the second respondent using his political clout to prevent a fair investigation of FIR 143 of 2019;

(iv) The truth in the apprehensions of the appellant having become evident by the abject failure of the police to properly investigate the FIR lodged against the second respondent on the allegation that he had committed the murder of the appellant's father on 15 March 2019 after his sentence was suspended by the High Court;

(v) The submission of a closure report by the police against the second respondent absolving him;

(vi) The order of the ASJ dated 8 January 2021 summoning the second respondent under Section 319 of the CrPC;

(vii) The second respondent having evaded arrest despite the issuance of a warrant of arrest and a proclamation;

(viii) The failure of the law enforcement authorities to effectuate the arrest of the second respondent in spite of the order of this Court dated 12 March 2021;

(ix) The peremptory directions issued by this Court on 26 March 2021 requiring the DGP to take necessary steps for compliance with the previous order failing which the Court would be constrained to take coercive steps in accordance with law;

(x) The eventual arrest of the second respondent on 28 March 2021 ostensibly from a bus stand;

(xi) The apprehension expressed by the ASJ in his order dated 8 February 2021 that he was being targeted at the behest of a politically influential accused; and

(xii) The provision of security to the second respondent by the State government at the behest of his spouse who is an MLA despite a prior conviction under Section 302 of the IPC.

During the course of this proceeding, an enquiry was directed to be made into the apprehensions expressed by the ASJ in his order dated 8 February 2021. An independent and impartial judiciary is the cornerstone of democracy. Judicial independence of the district judiciary is cardinal to the integrity of the entire system. The courts comprised in the district judiciary are the first point of interface with citizens. If the faith of the citizen in the administration of justice has to be preserved, it is to the district judiciary that attention must be focused as well as the 'higher' judiciary. Trial judges work amidst appalling conditions - a lack of infrastructure, inadequate protection, examples of judges being made targets when they stand up for what is right and sadly, a subservience to the administration of the High Court for transfers and postings which renders them vulnerable. The colonial mindset which pervades the treatment meted out to the district judiciary must change. It is only then that civil liberties for every

stakeholder - be it the accused, the victims or civil society - will be meaningfully preserved in our trial courts which are the first line of defense for those who have been wronged.

The apprehensions expressed by the ASJ should be duly enquired into by the High Court of Madhya Pradesh on its administrative side so that if they are found to be true, necessary action should be taken in order to secure the fair administration of justice. We have already taken note of the fact that the SDOP Hata had submitted a complaint to the Registrar General. The complaint by the SDOP as well the the order of the ASJ dated 8 February 2021 shall be placed before the Chief justice of the Madhya Pradesh High Court on the administrative side by the Registrar General within two weeks. The Chief Justice of the High Court of Madhya Pradesh is requested to cause an enquiry to be made on the administrative side so that an appropriate decision in that regard is taken. Having regard to this direction we are not expressing any views on the report which has been submitted by the ADGP and STF, Bhopal. The enquiry as directed above should be concluded expeditiously and preferably within a period of one month from the date of the receipt of a certified copy of this judgment. A copy of this order shall be communicated by the Registrar (Judicial) of this court to the Registrar General of the High Court for compliance. The appeals shall stand disposed of in the above terms.

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***70. CRIMINAL PROCEDURE CODE, 1973 – Section 457**
EXCISE ACT, 1915 (M.P.) – Sections 47-A and 47-D
Interim custody of vehicle – Information of confiscation – Application for interim custody of vehicle was made on 27.01.2021 and on 28.01.2021, the Superintendent of Police intimated the Collector for confiscation of the vehicle – Collector communicated the Trial Court on 04.02.2021 – There was no communication of intimation by the confiscating authority to the Court on 27.01.2021 which cannot be considered as compliance of section 47-A(3)(a) of the Act and bar u/s 47-D would not be attracted.

दण्ड प्रक्रिया संहिता, 1973 – धारा 457

आबकारी अधिनियम, 1915 (म.प्र.) – धाराएं 47–क एवं 47–घ

वाहन की अंतरिम सुपुर्दगी – अधिहरण की सूचना – वाहन की अंतरिम सुपुर्दगी के लिए आवेदन दिनांक 27.01.2021 को किया गया और पुलिस अधीक्षक ने दिनांक 28.01.2021 को वाहन के अधिहरण के सम्बंध में कलेक्टर को सूचित किया – कलेक्टर ने विचारण न्यायालय को दिनांक 04.02.2021 को संसूचित किया – दिनांक 27.01.2021 को विचारण न्यायालय को अधिहरण प्राधिकारी द्वारा दी गई सूचना की कोई संसूचना नहीं थी जिसे धारा 47–क(3)(क) की पालना नहीं समझा जा सकता है और धारा 47–घ का वर्जन लागू नहीं होता है।

Ajay Khateek v. State of M.P.
Order dated 08.09.2021 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal case No. 28341 of 2021, reported in ILR (2021) MP 1986

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71. EVIDENCE ACT, 1872 – Sections 3 and 9
APPRECIATION OF EVIDENCE:
Identification of accused – When eye witnesses narrate the event without material discrepancies and attribute a specific role to the accused then in such cases, non-conduction of test identification parade becomes immaterial in light of positive identification of accused by the eye witnesses.

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 9

साक्ष्य का मूल्यांकन :

अभियुक्त की पहचान – जब चक्षुदर्शी साक्षी किसी सारभूत विसंगति के बिना घटना का वर्णन करते हैं और अभियुक्त को किसी विशिष्ट भूमिका के लिये उत्तरदायी बताते हैं, तब ऐसे प्रकरण में अभियुक्त की चक्षुदर्शी साक्षी द्वारा की गई सकारात्मक पहचान के प्रकाश में पहचान परेड नहीं कराया जाना सारहीन हो जाता है।

Lala alias Anurag prakash Aasre v. State of Maharashtra
Judgment dated 24.08.2021 passed by the Supreme Court in Criminal Appeal No. 540 of 2018, reported in AIR 2021 SC 5199

Relevant extracts from the judgment:

While it is true that the FIR is silent on the name of the appellant, we cannot entirely throw out the prosecutorial case on such a basis as other reliable evidence are available in the case. The FIR is certainly the starting point of the investigation, but it is well within the rights of the prosecution to produce witness statements as they progress further into the investigation and unearth the specific roles of accused persons. The FIR as is known, only sets the investigative machinery, into motion.

In the present matter, two courts have concurrently concluded that appellant's name not being specifically mentioned in the FIR, would not justify his acquittal as he was specifically identified by PW2, PW4, & PW6. In view of his positive identification by the eye witnesses, the TIP not being conducted, was held to be immaterial. The eye witnesses here have ascribed the same specific role to the appellant and narrated the events in same chronology, without material discrepancies. We also cannot lose sight of the fact that this case involves multiple persons attacking in a group with deadly weapons and it is not reasonable to expect recollection of every minute details by the eyewitnesses.

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72. EVIDENCE ACT, 1872 – Sections 91 and 92

Presumption – A conclusive presumption arises on the basis of written agreement between parties and their privies that their final intentions have been finalized through agreement and now there is no place for future controversy, bad faith and treacherous memory – any contradiction, variation, addition or subtraction from its terms is excluded by provision of Section 92 after the production of written agreement u/s 91.

साक्ष्य अधिनियम, 1872 – धाराएं 91 एवं 92

उपधारणा – पक्षकारों एवम् उनके विश्वसनीय निजी लोगों के मध्य लिखित अनुबंध से यह निश्चयात्मक उपधारणा उत्पन्न होती है कि उनके अंतिम आशयों को अनुबंध के द्वारा अंतिम रूप दिया जा चुका है और अब भविष्यवर्ती विवाद, असद्भाव तथा अस्थिर स्मृति के लिये कोई स्थान नहीं है – धारा 91 के अंतर्गत लिखित अनुबंध प्रस्तुत करने के पश्चात् धारा 92 के प्रावधान किसी भी विरोधाभास, रूपांतर, परिवर्धन या घटाव को अपवर्जित करते हैं।

V. Anantha Raju and anr. v. T.M. Narasimhan and ors.

Judgment dated 26.10.2021 passed by the Supreme Court in Civil Appeal No. 6469 of 2021, reported in AIR 2021 SC 5342 (Three Judge Bench)

Relevant extracts from the judgment:

This Court has held that Sections 91 and 92 of the Evidence Act would apply only when the document on the face of it contains or appears to contain all the terms of the contract. It has been held that after the document has been produced to prove its terms under Section 91, the provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. It has been held that it would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slipper memory. It has been held that when parties deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory.

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***73. EVIDENCE ACT, 1872 – Sections 101 to 103 and 114(g)**

(i) Direction for DNA test – Where other evidence is available to prove or dispute the relationship, the Court should ordinarily refrain from ordering DNA test.

(ii) Adverse inference – If despite an order passed by the Court, a person refuses to submit himself to such medical examination,

it is a strong case for drawing an adverse inference. [*Sharda v. Dharmpal, (2003) 4 SCC 493* reiterated]

(iii) Burden of proof – In any case it is the burden on a litigating party to prove his case adducing evidence in support of his plea and the Court should not compel the party to prove his case in the manner, suggested by the contesting party.

(iv) Personal liberty – When the plaintiff is unwilling to subject himself to the DNA test, forcing him to undergo one would impinge on his personal liberty and his right to privacy.

साक्ष्य अधिनियम, 1872 – धाराएं 101 से 103 एवं 114(छ)

(i) डीएनए परीक्षण के लिए निर्देश – जहां सम्बंध को साबित करने या विवादित करने के लिए अन्य साक्ष्य उपलब्ध है, वहाँ न्यायालय को सामान्यतः डीएनए परीक्षण का आदेश देने से बचना चाहिए।

(ii) प्रतिकूल निष्कर्ष – यदि न्यायालय द्वारा आदेश करने के बावजूद, कोई व्यक्ति खुद को ऐसे चिकित्सकीय परीक्षण के लिए प्रस्तुत करने से इंकार करता है, तो यह प्रतिकूल निष्कर्ष निकालने के लिए एक मजबूत मामला है। (*शारदा विरूद्ध धर्मपाल, (2003) 4 एससीसी 793,* दोहराया गया)

(iii) सबूत का भार – किसी भी मामले में मुकदमा करने वाले पक्ष पर यह भार होता है कि वह अपने मामले को साबित करने के लिए अपने अभिवचन के समर्थन में साक्ष्य पेश करे और न्यायालय को उस पक्षकार को अपने मामले को उस तरीके से साबित करने के लिए बाध्य नहीं करना चाहिए, जैसा कि विरोधी पक्ष द्वारा सुझाया गया है।

(iv) व्यक्तिगत स्वतंत्रता – जब वादी खुद को डीएनए परीक्षण के अधीन करने के लिए तैयार नहीं होता है, तो उस पर ऐसा करने के लिए दबाव डालना उसकी व्यक्तिगत स्वतंत्रता और उसके निजता के अधिकार का उल्लंघन होगा।

Ashok Kumar v. Raj Gupta and ors.

Judgment dated 01.10.2021 passed by the Supreme Court in Civil Appeal No. 6153 of 2021, reported in (2022) 1 SCC 20

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***74. HINDU MARRIAGE ACT, 1955 – Section 9**

Restitution of conjugal rights – Wife was living with her parents – Filed three cases against her husband and his family – Did not want to live with the husband as she was not comfortable in joint family – High Court considered that husband had satisfactorily proved the reasonable excuse to withdraw from the company of the wife.

हिन्दू विवाह अधिनियम, 1955 – धारा 9

दाम्पत्य अधिकारों का प्रत्यास्थापन – पत्नी उसके माता पिता के साथ रह रही थी उसने अपने पति तथा उसके परिवार के विरूद्ध तीन मामले प्रस्तुत किए थे – वह पति के साथ नहीं रहना चाहती थी क्योंकि उसे संयुक्त परिवार में सुखद महसूस नहीं होता था – उच्च न्यायालय ने यह माना कि पति ने पत्नी द्वारा साहचर्य से खुद को प्रत्याहृत करने का युक्तियुक्त प्रतिहेतु संतोषप्रद रूप से प्रमाणित किया है।

Pushpa Sen v. Manoj Sen

Judgment dated 21.12.2021 passed by the High Court of Madhya Pradesh in First Appeal No.1085 of 2019, reported in 2022 (1) MPLJ 418 (DB)

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***75. HINDU MARRIAGE ACT, 1955 – Section 13-B(2)**

Divorce by mutual consent – Waiving of cooling period – Provisions are directory and not mandatory – If Court is satisfied that a case is made out to waive the statutory period, it can do so after considering period of separation after all efforts to rewrite the parties have failed and parties have genuinely settled their differences. [*Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746*, relied on]

हिन्दू विवाह अधिनियम, 1955 – धारा 13–ख(2)

परस्पर सहमति से विवाह–विच्छेद – उपशमन अवधि का अधित्याग – प्रावधान निदेशात्मक है न कि आज्ञापक – यदि न्यायालय इस बात से संतुष्ट है कि विधिक अवधि के अधित्याग का मामला बनता है तब वह पृथक्करण की अवधि, पक्षकारों के पुनर्मिलन के प्रयासों की विफलता तथा पक्षकारों द्वारा वास्तविक रूप से मतभेदों को सुलझा लेने को विचार में लेते हुए ऐसा कर सकता है। {*अमरदीप सिंह विरूद्ध हरवीन कौर, (2017) 8 एससीसी 746,* अनुसरित}

Swarit Verma v. Kanchan Verma

Order dated 24.09.2021 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 2440 of 2021, reported in 2022 (1) MPLJ 371

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76. INDIAN PENAL CODE, 1860 – Sections 34, 302 and 307
ARMS ACT, 1959 – Sections 25 and 27
CRIMINAL PRACTICE:

(i) Proof beyond reasonable doubt – First Information Report was lodged on the date of incident within half an hour from the time of incident – Eye witness remained unshaken during his cross-examination – Medical report of injured and post mortem report of deceased also support his statement – No reason to

disbelieve his statement – It is proved beyond reasonable doubt that the accused has committed the murder and attempt to murder.

(ii) Common intention – As per prosecution story, at the time of incident, accused was carrying an axe in his hand but this is not the case of prosecution that this accused has participated in any manner to cause injuries to deceased or injured – Participation of accused in the crime with co-accused with common intention and prearranged plan not proved.

भारतीय दण्ड संहिता, 1860 – धाराएं 34, 302 एवं 307

आयुध अधिनियम, 1959 – धाराएं 25 एवं 27

आपराधिक प्रथाः

(i) युक्तियुक्त संदेह से परे साबित किया जाना – घटना दिनांक को घटना घटित होने से आधे घंटे के अंदर प्रथम सूचना रिपोर्ट दर्ज करा दी गई – प्रत्यक्षदर्शी साक्षी प्रतिपरीक्षण के दौरान स्थिर बने रहे, आहत व्यक्ति का चिकित्सा प्रतिवेदन एवं मृतक की शव परीक्षण रिपोर्ट भी उसके कथनों का समर्थन करती है – ऐसा कोई कारण नहीं है कि उसके कथनों को अविश्वसनीय माना जाए – यह युक्तियुक्त संदेह से परे साबित होता है कि अभियुक्त ने हत्या एवं हत्या का प्रयास किया।

(ii) सामान्य आशय – अभियोजन कहानी के अनुसार घटना के समय अभियुक्त अपने हाथ में कुल्हाड़ी रखे हुए था परन्तु अभियोजन का मामला ऐसा नहीं है कि इस अभियुक्त ने किसी भी तरीके से मृतक को अथवा आहत को उपहति कारित करने में भागीदारी की – अपराध में अभियुक्त का सह–अभियुक्त के साथ सामान्य आशय एवं पूर्व निर्धारित योजना के आधार पर भागीदारी प्रमाणित नहीं।

Indu @ Indrapal Singh and anr. v. State of M.P.

Judgment dated 28.07.2021 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 146 of 2009, reported in ILR (2021) MP 1602 (DB)

Relevant extracts from the judgment:

From a perusal of First Information Report Exhibit P-2, it transpires that the same was lodged on the date of incident within half an hour from the time of incident by injured Shankar (PW-12). Complainant Shankar (PW-12) was examined by Dr. B.S. Chourasiya (PW-9) on 18.09.2006. Dr. Chourasiya had found a gun shot injury on the left hand of Shankar which corroborates the prosecution case and the statement of Santosh (PW-6). The time gap between the incident and the report was too short to concoct a false story against the accused persons.

PW-6 Santosh who is the eye witness remained unshaken during his cross-examination. Nothing emerged in his cross-examination to disbelieve his statement. Medical report of injured Shankar and P.M. report of Khuman also support his statement. Therefore, there is no reason to disbelieve his statement. Hence, it is proved beyond any reasonable doubt that the accused Indu @ Indrapal has committed the murder of Khuman and attempted to murder Shankar.

In the present case, as per prosecution story, at the time of incident, accused Devendra @ Pappu Raja was carrying an axe in his hand but this is not the case of prosecution that this accused has participated in any manner to cause injuries to deceased Khuman or Shankar with co-accused Indu @ Indrapal. It is apparent that the eye witness PW-6 Santosh has also not attributed any act to this accused to commit the crime by using the said axe. The prosecution has not even got the independent witnesses examined to prove the seizure of the said axe. As per the court evidence of PW-6 Santosh at para -1 accused Indrapal and Devendra arrived in the field where they were working and accused Indrapal had fired at Khuman on his chest. This witness does not say that after the instigation of accused Devendra @ Pappu, co-accused Indrapal had fired at Khuman. Therefore, the participation of accused Devendra @ Pappu Raja in the crime with co-accused Indu@Indrapal with common intention and prearranged plan has not been proved. Prosecution has not put forth any fact about the previous enmity of this accused with deceased Khuman or Shankar. Consequently, the offence under Section 302/34 and Section 307/34 of the Indian Penal Code is not proved beyond reasonable doubt against him.

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77. INDIAN PENAL CODE, 1860 – Section 302
ARMS ACT, 1959 – Sections 25 and 27
Appreciation of evidence – Distinction between "Possible and Probable" and "Impossible and Improbable" explained.

भारतीय दंड संहिता, 1860 – धारा 302

आयुध अधिनियम, 1959 – धाराएं 25 एवं 27

साक्ष्य का विवेचन – ''संभव व संभाव्य'' तथा ''असंभव व असंभाव्य'' का विभेद स्पष्ट किया गया।

Lalu Sindhi @ Dayaldas v. State of Madhya Pradesh
Judgment dated 09.09.2021 passed by the High Court of Madhya Pradesh in Criminal Appeal No.1716 of 2002, reported in ILR (2021) MP 1932 (DB)

Relevant extract from the Judgment :

The distinction between "Impossible" and "Improbable" though subtle, is real. The word "Impossible" means the inability of a circumstance to exit or an event happening, with absolute certainty. Thus, with everything remaining constant in nature and without any external or artificial impetus, it is "impossible"

for a stone that is dropped, to rise higher into the air rather than fall to the ground. "Improbable" on the other hand considers the *unlikelihood* of a circumstance to exit, or an event happening, taking the sum totality of attendant circumstances into consideration. Thus, the ability of a stone to attain stable flight in air with external or artificial impetus, though not impossible, is "improbable", as it lacks an aerodynamic structure which is necessary to sustain stable flight.

Similar, is the distinction between "Possible" and "Probable". "Possible" is an assumption of the existence of a circumstance or the happening of an event, but without certainty. "Probable" on the other hand involves a greater degree of *likelihood* of the existence of a circumstance or the happening of an event. Thus, it is possible that life may exist on Jupiter but in the absence of any evidence to that effect as on date, it does not appear probable. The appreciation of evidence in a criminal trial is a deductive process by which the Court eliminates the "possibilities" in a given case to arrive at the most "probable" inference, in the sum totality of the evidence on record, and therein lies the truth, beyond reasonable doubt.

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78. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Section 32
CRIMINAL PRACTICE :

(i) Dying declaration – Evidentiary value – Conviction can be recorded solely on the basis of a dying declaration or even on the basis of an oral dying declaration – Such dying declaration should be free from any doubt and must pass scrutiny of reliability.

(ii) Multiple oral dying declarations – Reliability – In the first dying declaration, nobody's name was taken and number of persons, who were involved in commission of crime was mentioned to be two, whereas in the second dying declaration, the name of appellant was taken with three more unknown persons who accompanied the present appellant – This shows serious inconsistency and contradiction in the dying declaration which makes the second dying declaration doubtful.

(iii) Last seen theory – As per deposition of wife of deceased and another witness, appellant took the deceased with him on 26.04.2011 and was found injured in a well on 28.04.2011 – There is no iota of evidence to show what happened during these two days – Last seen evidence in the present case is a weak piece of evidence and on the basis of this theory alone, conviction cannot be affirmed.

भारतीय दण्ड संहिता, 1860 – धारा 302

साक्ष्य अधिनियम, 1872 – धारा 32

आपराधिक प्रथा :

(i) मृत्युकालिक कथन – साक्ष्यिक मूल्य – केवल मृत्युकालिक कथन अथवा यहां तक कि मौखिक मृत्युकालिक कथन के आधार पर भी दोषसिद्धि अभिलिखित की जा सकती है – यद्यपि, ऐसा मृत्युकालिक कथन किसी भी संदेह से मुक्त होना चाहिए और विश्वसनीयता के सूक्ष्म परीक्षण में अवश्य ही सफल होना चाहिए।

(ii) कई मौखिक मृत्युकालिक कथन – विश्वसनीयता – प्रथम मृत्युकालिक कथन में किसी भी व्यक्ति का नाम नहीं लिया गया और व्यक्ति जो अपराध कारित करने में सम्मिलित थे उनकी संख्या दो बताई गई, जबकि दूसरे मृत्युकालिक कथन में अपीलार्थी का नाम अन्य तीन अज्ञात व्यक्तियों के साथ लिया गया जो वर्तमान अपीलार्थी के साथ सम्मिलित थे – यह मृत्युकालिक कथन में गंभीर असंगतता एवं विरोधाभास दर्शित करता है जो दूसरे मृत्युकालिक कथन को संदेहास्पद बना देते हैं।

(iii) अंतिम बार साथ देखे जाने का सिद्धांत – मृतक की पत्नी और एक अन्य साक्षी की साक्ष्य के अनुसार अपीलार्थी मृतक को दिनांक 26.04.2011 को अपने साथ ले गया था और वह दिनांक 28.04.2011 को कुएँ में चोटिल पाया गया – यह दर्शित करने के लिए कि इन दो दिनों में क्या घटित हुआ लेशमात्र भी साक्ष्य नहीं है – वर्तमान प्रकरण में अंतिम बार साथ देखे जाने का साक्ष्य दुर्बल प्रकृति का साक्ष्य है और केवल इस सिद्धांत के आधार पर दण्डादेश की संपुष्टि नहीं की जा सकती है।

Pappu @ Dayaram v. State of M.P.

Judgment dated 03.06.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 949 of 2012, reported in ILR (2021) MP 1571 (DB)

Relevant extracts from the judgment:

The impugned judgment of conviction is based on the oral dying declaration of Bhupendra given to Keshri (PW.2) and last seen evidence based on deposition of wife of deceased Pragbai (PW.3) and Devchand (PW.10). This is trite that conviction can be recorded solely on the basis of a dying declaration or even on the basis of an oral dying declaration. However, such dying declaration should be free from any doubt and must pass scrutiny of reliability. [See: Heikrujam Chaoba Singh v. State of Manipur, 2016 Cr.L.J. 2939]. It is equally settled that it is qualitative worth of a declaration and not plurality of declaration which matters. [See: ***State of Maharashtra v. Sanjay D. Rajhans, (2004) 13 SCC 314***]

If both the dying declarations are examined in juxtaposition, it will be clear that there are glaring inconsistencies and contradictions. In the first dying declaration, nobody's name was taken and number of persons, who were involved in commission of crime were stated to be two, whereas in the second dying declaration, the name of appellant was taken with three more unknown persons who were accompanying the present appellant. This, in our view shows serious inconsistency and contradiction in the dying declaration which makes the second dying declaration as doubtful. In the case of ***Kamla v. State of Punjab, 1992 SC 223*** and ***Heikrujam Chaoba Singh*** (supra), the Apex Court interfered with the impugned judgment because of inconsistencies in the dying declarations. Same is the view taken by Division Bench of this Court in the case of ***Guddi Bai v. State of MP, 2014 SCC OnLine MP 8652***. Another Division Bench in ***Jugal @ Shabbir Khan, 2011 (1) MPHT 50*** opined that if there are more dying declarations than one and on the material points they are contradictory to each other, certainly, the benefit will go to the accused and authenticity could not be attributed to the said dying declarations. It was further held that no reliance can be placed upon such dying declarations to hold the appellant as guilty.

Another reason for convicting the appellant is based on "last seen theory". As noticed above, as per deposition of wife of deceased Pragbai (PW.3) and Devchand (PW.10), appellant took the deceased with him on 26/4/2011 and he was found injured in a well on 28/4/2011. There is no iota of material/evidence to show what happened during these two days.

In view of the principles laid down by Supreme Court in the aforesaid judgments, there is no cavil of doubt that last seen evidence in the present case is a weak piece of evidence and on the basis of this theory alone conviction cannot be affirmed. More so when the second dying declaration given to Kesri (PW.2) does not inspire confidence and there exists serious inconsistencies in two dying declarations.

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79. INDIAN PENAL CODE, 1860 – Section 307

Evidence and proof – Generally the mind of any accused cannot be deciphered by the Court and to know about the intention of the accused, deadliness of the weapon, injured part of the body and nature of injuries are to be taken into consideration by the Court – Multiple grievous wounds on the vital parts of the body caused by deadly weapon are sufficient for conviction u/s 307 IPC.

भारतीय दण्ड संहिता, 1860 – धारा 307

साक्ष्य एवं प्रमाण – सामान्यतः न्यायालय द्वारा किसी अभियुक्त के मस्तिष्क की व्याख्या नहीं की जा सकती है और अभियुक्त का आशय जानने के लिये न्यायालय द्वारा आयुध की घातकता, शरीर के चोटिल भाग और उपहतियों की प्रकृति को विचार में लिया जाता है – घातक आयुध से शरीर के मार्मिक अंगों पर कारित एक से अधिक गंभीर चोटें धारा 307 भा.दं.सं. के अंतर्गत दोषसिद्धि के लिये पर्याप्त हैं।

Sadakat Kotwar and anr. v. State of Jharkhand

Judgment dated 12.11.2021 passed by the Supreme Court in Criminal Appeal No. 1316 of 2021, reported in AIR 2021 SC 5747

Relevant extracts from the judgment:

It is not the case of the accused that the offence occurred out of a sudden quarrel. It also does not appear that the blow was stuck in the heat of the moment. On the contrary, considering the depositions of PW7 and PW8 the accused persons pushed and took the husband of PW7 out of the house and thereafter the accused caused the injuries on PW7 and PW8 and stabbed dagger. Thus, deadly weapons have been used and the injuries are found to be grievous in nature. As the deadly weapon has been used causing the injury near the chest and stomach which can be said to be on vital part of the body, the appellants have been rightly convicted for the offence under Section 307 read with Section 34 of the IPC. As observed and held by this Court in catena of decisions nobody can enter into the mind of the accused and his intention has to be ascertained from the weapon used, part of the body chosen for assault and the nature of the injury caused. Considering the case on hand on the aforesaid principles, when the deadly weapon – dagger has been used, there was a stab injury on the stomach and near the chest which can be said to be on the vital part of the body and the nature of injuries caused, it is rightly held that the appellants have committed the offence under Section 307 IPC.

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80. INDIAN PENAL CODE, 1860 – Sections 346 and 364-A
DAKAITI AUR VYAPHARAN PRABHAVIT KSHETRA ADHINIYAM, 1981 (M.P.) – Section 13
CRIMINAL PRACTICE:
CONTITUTION OF INDIA – Article 21

(i) Identification of accused – Dock Identification is a substantive piece of evidence and even in absence of Test Identification Parade, it can be relied upon – However, where the accused persons were already shown to the witnesses in the police station, Dock Identification of the accused, cannot be relied upon.

(ii) Proof beyond reasonable doubt – Prosecution failed to prove that the accused had abducted complainant and any ransom was ever demanded – It is not the case of the prosecution that any ransom amount was paid – From the evidence of witness it is clear that he had a strong motive to falsely implicate accused on account of enmity – Held, the prosecution has failed to prove the guilt of the accused beyond reasonable doubt.

भारतीय दण्ड संहिता, 1860 – धाराएं 346 एवं 364–क
डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, 1981 (म.प्र.) – धारा 13
आपराधि प्रथाः
भारत का संविधान – अनुच्छेद 21

(i) अभियुक्त की पहचान – कटघरे में पहचान साक्ष्य का तात्विक अंश है और यहां तक कि पहचान परेड परीक्षण के अभाव में भी इस पर विश्वास किया जा सकता है – परन्तु, जहां आरक्षी केन्द्र में अभियुक्तगण पूर्व से ही साक्षियों को दिखा दिए गए थे तब अभियुक्तगण की कटघरे में पहचान पर विश्वास नहीं किया जा सकता।

(ii) संदेह से परे प्रमाण – अभियोजन यह प्रमाणित करने में असफल रहा कि परिवादी का अपहरण किया गया और अभियुक्त द्वारा कभी भी किसी फिरौती की मांग की गई – अभियोजन का यह प्रकरण नहीं है कि फिरौती की राशि भुगतान की गई – साक्षी के कथन से यह स्पष्ट है कि उसके पास अभियुक्त को रंजिश के कारण मिथ्या अलिप्त करने का प्रबल हेतुक था – अभिनिर्धारित, अभियोजन अभियुक्त की दोषिता संदेह से परे प्रमाणित करने में असफल रहा है।

Suresh v. State of M.P.

Judgment dated 17.08.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 463 of 2008, reported in ILR (2021) MP 2319 (DB)

Relevant extracts from the judgment:

It is clear that Dock Identification is the substantive piece of evidence, and even in absence of Test Identification Parade, it can be relied upon. However, the pivotal question is that in view of admission made by Ramprakash (P.W.1) that the appellants were shown to him in the police station, whether the Dock Identification can be relied upon or not?

It is held that since, the appellants/accused persons were already shown to the witnesses in the police station, therefore, it is held that the Dock Identification of the appellants, cannot be relied upon.

It is clear that the prosecution has failed to prove that any ransom was ever demanded by the appellants. The prosecution has failed to prove, that the appellants had abducted Ramprakash (P.W.1). In fact, the prosecution has failed to prove that Ramprakash (P.W.1) was ever abducted. There is no evidence to show that any ransom was demanded. It is not the case of the prosecution that any ransom amount was paid. From the evidence of Omprakash (P.W.3), it is clear that he had a strong motive to falsely implicate Rajesh. Further, the appellants had also taken a stand by suggesting to Ramprakash (P.W.1) and Manohar Singh (P.W.2) that Nandu and Rajesh have been falsely implicated on account of enmity.

Accordingly, it is held that the prosecution has miserably failed to prove the guilt of the appellants beyond reasonable doubt. On the contrary, there is ample material on record to suggest that the appellants were falsely implicated by the witnesses, with the help of Raghvendra Singh (P.W.5) with a sole intention to grind their axe. Therefore, all the Appellants are acquitted of charges under Section 364-A of IPC read with Section 13 of M.P.D.V.P.K. Act and under Section 346 of IPC.

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81. INDIAN PENAL CODE, 1860 – Section 376(1)
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Section 4
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Section 7A
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007 – Rule 12(3)

(i) Determination of age – When the school record of the prosecutrix is available, it is not necessary to look into the ossification test report of the prosecutrix – Furthermore, the ossification test is merely a medical opinion which is subject to margin of error of two years on either side.

(ii) Absence of DNA examination – Effect – Although the DNA was not conducted to find out as to whether human sperms found in the vaginal slide of the prosecutrix were that of the appellant or not, but considering the ocular evidence, coupled with medical evidence, it can be said that the presence of human semen and sperms in the vaginal slide, further corroborates the evidence of prosecutrix.

(iii) Reduction of sentence – On the date of conviction, the minimum sentence for offence under Section 4 of the POCSO Act was 7 years but it is equally true that the minimum sentence for offence u/s 376(1) of IPC was 10 years – The aforesaid anomaly was rectified by the Legislature by amending the POCSO Act in the year 2019 – Under these circumstances, when the minimum sentence for offence u/s 376(1) of IPC was 10 years, the sentence cannot be reduced to the period of sentence already undergone by the appellant.

भारतीय दण्ड संहिता, 1860 – धारा 376(1)
लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धारा 4
किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 – धारा 7 क
किशोर न्याय (बालकों की देखरेख और संरक्षण) नियम, 2007 – नियम 12(3)

(i) आयु का निर्धारण – जब अभियोक्त्री के स्कूल का अभिलेख उपलब्ध हो तब यह आवश्यक नहीं है कि अभियोक्त्री के अस्थि संयोजन परीक्षण प्रतिवेदन को विचार में लिया जाए – यह भी कि अस्थि संयोजन परीक्षण केवल एक चिकित्सकीय राय है जो कि किसी भी तरफ दो वर्ष तक के अंतर की संभावना के अधीन होती है।

(ii) डी.एन.ए. परीक्षण का अभाव – प्रभाव – यद्यपि यह पता लगाने के लिए कि अभियोक्त्री की वैजाइनल स्लाइड पर पाए गए मानव शुक्राणु अपीलार्थी के थे अथवा नहीं, डी.एन.ए. परीक्षण नहीं कराया गया परन्तु मौखिक साक्ष्य को चिकित्सकीय साक्ष्य के साथ संबद्ध कर विचार में लेते हुए यह कहा जा सकता है कि वैजाइनल स्लाइड में वीर्य और शुक्राणु की उपस्थिति अभियोक्त्री के साक्ष्य को और संपुष्ट करती है।

(iii) दण्डादेश का लघुकरण – दोषसिद्धि की दिनांक को पॉक्सो अधिनियम की धारा 4 के अंतर्गत अपराध के लिए न्यूनतम 7 वर्ष के कारावास का प्रावधान था परन्तु यह भी समान रूप से सही है कि भा.दं.सं. की धारा 376(1) के अंतर्गत अपराध के लिए न्यूनतम कारावास 10 वर्ष था – उक्त विसंगति को विधायिका द्वारा वर्ष 2019 में पॉक्सो अधिनियम में संशोधन कर परिशोधित कर दिया गया – इन परिस्थितियों में जबकि भा.दं.सं. की धारा 376(1) के अंतर्गत अपराध के लिए न्यूनतम कारावास 10 वर्ष है, कारावास को अभियुक्त द्वारा पूर्व में भुगताई गई अवधि तक सीमित नहीं किया जा सकता है।

Pinki v. State of M.P.

Judgment dated 28.06.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 764 of 2016, reported in ILR (2021) MP 1586

Relevant extracts from the judgment:

It is clear that when the school record of the prosecutrix is available, then it is not necessary to look into the ossification test report of the prosecutrix. Furthermore, the ossification test is merely a medical opinion which is subject to margin of error of two years on either side. According to the ossification test report Ex. D-1, the radio-logical age of the prosecutrix was in between 16 to 18 years with margin of error of two years. According to school record of prosecutrix, the age of prosecutrix was 14 years. Accordingly, if the margin of two years is considered on a lower side, then it is clear that even as per the ossification test report, radio-logical age of the prosecutrix can be taken as 14 years.

One thing is clear that the prosecutrix was aged about 14 years and although the DNA was not conducted to find out as to whether human sperms found in the vaginal slide of the prosecutrix were that of the appellant or not, but considering the ocular evidence of the parties, coupled with the medical evidence, it can be said that the presence of human semen and sperms in the vaginal slide, further corroborates the evidence of prosecutrix.

The Trial Court by impugned judgment dated 04.08.2016 has found that the appellant is guilty of committing offence under Section 376(1) of IPC and under Section 4 of POCSO Act and considering Section 42 of POCSO Act, held that since the appellant has been found guilty of offence under POCSO Act, therefore, sentenced the appellant for offence under Section 4 of POCSO Act. It is true that on the date of conviction, the minimum sentence for offence under Section 4 of the POCSO Act was 7 years but it is equally true that the minimum sentence for offence under Section 376(1) of IPC was 10 years. The aforesaid anomaly was rectified by the Legislature by amending POCSO Act in the year 2019. Under these circumstances, when the minimum sentence for offence under Section 376(1) of IPC was 10 years, this Court is of the considered opinion that the sentence cannot be reduced to the period of sentence already undergone by the appellant.

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82. INDIAN PENAL CODE, 1860 – Section 397

Constructive liability – Conviction cannot be based on constructive liability u/s 397 of IPC for the offence of robbery – Under this provision, such accused is liable to be punished who used deadly weapon or caused grievous hurt to any person or attempted to cause death or grievous hurt to any person at the time of robbery.

भारतीय दण्ड संहिता, 1860 – धारा 397

आन्वयिक दायित्व – भा.दं.सं. की धारा 397 के अंतर्गत लूट के अपराध के लिये आन्वयिक दायित्व के आधार पर दोषसिद्धि नहीं की जा सकती है – इस प्रावधान के अंतर्गत मात्र ऐसे अभियुक्त को दण्डादिष्ट किया जा सकता है जिसने लूट के समय किसी घातक आयुध का उपयोग किया था या किसी व्यक्ति को घोर उपहति कारित की थी या किसी व्यक्ति की मृत्यु कारित करने या उसे घोर उपहति कारित करने का प्रयत्न किया था।

Ganesan v. State Rep. by Station House Officer

Judgment dated 29.10.2021 passed by the Supreme Court in Criminal Appeal No. 903 of 2021, reported in AIR 2021 SC 5643

Relevant extracts from the judgment:

In a case where the offender uses any deadly weapon or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person the imprisonment with which such offender shall be punished shall not be less than seven years.

Section 392 and Section 390 IPC are couched in different words. In Sections 390, 394, 397 and 398 IPC the word used is 'offender'. Therefore, for the purpose of Sections 390, 391, 392, 393, 394, 395, 396, 397, 398 IPC only the offender/ person who committed robbery and/or voluntarily causes hurt or attempt to

commit such robbery and who uses any deadly weapon or causes grievous hurt to any person, or commits to cause death or grievous death any person at the time of committing robbery or dacoity can be punished for the offences under Sections 390, 392, 393, 394, 395 and 397 and 398 IPC. For the aforesaid the accused cannot be convicted on the basis of constructive liability and only the 'offender' who 'uses any deadly weapon….' can be punished.

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***83. LAND ACQUISITION ACT, 1894 – Sections 4, 18 and 23**
Determination of compensation – While determining the market value/ compensation, previous instances of acquisition in proximity for location and potential at land acquisition along with cumulative increase is relevant consideration.

भूमि अधिग्रहण अधिनियम, 1894 – धाराएं 4, 18 एवं 23

प्रतिकर का निर्धारण – बाजार मूल्य/प्रतिकर का निर्धारण करते समय, विगत अवसर पर उस स्थान की समीपता में हुए अधिग्रहण तथा संचयी वृद्धि के साथ भूमि अधिग्रहण की क्षमता सुसंगत कारक है।

Anil Kumar Soti and ors. v. State of Uttar Pradesh Through Collector, Bijnore (Uttar Pradesh)
Judgment dated 23.11.2021 passed by the Supreme Court in Civil Appeal No. 6919 of 2021, reported in (2022) 2 SCC 268

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84. LAND ACQUISITION ACT, 1894 – Sections 4 and 34
Interest – Land owner must be awarded 9% per annum interest on compensation amount for the period between possession and date of notification u/s 4 of the Act, when possession has been taken by the State without paying compensation.

भूमि अधिग्रहण अधिनियम, 1894 – धाराएं 4 एवं 34

ब्याज – जब राज्य द्वारा मुआवजा दिये बिना भूमि का आधिपत्य ले लिया गया हो तब भूमि स्वामी को मुआवजा राशि पर आधिपत्य दिनांक से धारा 4 की अधिसूचना दिनांक तक की अवधि के लिये 9 प्रतिशत प्रतिवर्ष की दर से ब्याज भी दिलाया जाना चाहिए।

Shankarrao Bhagwantrao Patil etc. v. State of Maharashtra
Judgment dated 20.09.2021 passed by the Supreme Court in Civil Appeal No. 5712 of 2021, reported in AIR 2021 SC 4962

Relevant extracts from the judgment:

There is no evidence that such land was being put to use by the landowners even prior to the taking of possession by the State. But the fact remains that the possession has been taken without payment of compensation depriving the landowners of the right to use land. Therefore, the land owners would be entitled to interest on the amount of compensation awarded at the rate of 9% per annum

from the date of possession which was taken in the year 1984/1992 till the date of notification under Section 4 of the Act on the amount awarded after acquisition.

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***85. LAND REVENUE CODE, 1959 (M.P.) – Sections 31, 250, 257**
RULES REGARDING RECORD OF RIGHTS – Rules 24 and 32

(i) Mutation proceedings – Rules 24 and 32 do not contemplate adjudication of title by Tahsildar – Summary proceedings as contemplated in Rule 32 are only for the purpose of recording of rights of parties, it nowhere gives authority to Tahsildar to go into the question of title and decide.

(ii) Power of Civil Court – Deciding the title arising out of Will is the domain of Civil Court only.

भू–राजस्व संहिता, 1959 (म.प्र.) – धाराएं 31, 250, 257
अधिकारों के अभिलेख सम्बंधी नियम – नियम 24 एवं 32

(i) नामांतरण कार्यवाही – नियम 24 एवं 32 तहसीलदार द्वारा स्वत्व के न्याय निर्णयन की अपेक्षा नहीं करता है – नियम 32 में अनुध्यात संक्षिप्त कार्यवाही केवल पक्षकारों के अधिकारों के अभिलेखन के उद्देश्य के लिए है, यह कहीं भी तहसीलदार को स्वत्व के प्रश्न में जाने तथा अवधारित करने का प्राधिकार नहीं देता है।

(ii) सिविल न्यायालय की शक्ति – वसीयत के आधार पर उत्पन्न स्वत्व का अवधारण केवल सिविल न्यायालय के कार्यक्षेत्र में है।

Hariprasad Bairagi v. Radheshyam and ors.
Judgment dated 31.08.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Appeal No. 535 of 2021, reported in 2022 (1) MPLJ 414 (DB)

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***86. LAND REVENUE CODE, 1959 (M.P.) – Section 178**
Partition suit – Jurisdiction of Revenue Authorities – Partition suit cannot be decided by Revenue Authorities – If any dispute exists between the parties regarding partition, jurisdiction vests with the Civil Court – If it is found that the title is involved in any manner directly or indirectly, the Revenue Authority shall immediately stop the proceeding as per provision of MPLRC and shall also direct the parties to approach before the Civil Court having jurisdiction in accordance with law.

भू राजस्व संहिता, 1959 (म.प्र.) – धारा 178

विभाजन का वाद – राजस्व प्राधिकारियों की अधिकारिता – राजस्व प्राधिकारियों द्वारा विभाजन के वाद का विनिश्चय नहीं किया जा सकता है – यदि पक्षकारों के मध्य विभाजन को लेकर विवाद है तब सम्पूर्ण अधिकारिता सिविल न्यायालय को है – यदि यह पाया जाता है कि किसी भी प्रकार से प्रत्यक्ष या अप्रत्यक्ष रूप से स्वत्व का बिन्दु

अर्न्तवलित है तब राजस्व प्राधिकारी म.प्र. भू राजस्व संहिता के प्रावधान के अनुसार तुरंत कार्यवाही को रोक देंगे तथा पक्षकारों को विधि अनुसार अधिकारिता वाले सिविल न्यायालय के समक्ष पहुंचने हेतु निर्देशित करेंगे।

Chetna Dholakhandi (Smt.) and ors. v. State of Madhya Pradesh and ors.

Order dated 26.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No.1671 of 2021, reported in ILR (2021) MP 1896

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87. MOTOR VEHICLES ACT, 1988 – Sections 39 and 192

Non-registration of vehicle – Fundamental breach of policy – If temporary registration of vehicle has expired and there is nothing on record to suggest that the party has applied for registration or that he was awaiting registration – In case of theft or accident of vehicle without valid registration, it is violation of Sections 39 and 192 of Motor Vehicles Act and fundamental breach of policy.

मोटरयान अधिनियम, 1988 – धाराएं 39 एवं 192

वाहन का पंजीयन न होना – पॉलिसी का आधारभूत उल्लंघन – यदि वाहन के अस्थाई पंजीयन की अवधि समाप्त हो चुकी है और अभिलेख पर ऐसा कुछ नहीं है जिससे यह दर्शित हो कि पक्षकार ने पंजीयन के लिए आवेदन किया है या यह कि वह पंजीयन का इंतजार कर रहा है – वाहन के चोरी होने अथवा दुर्घटना होने की दशा में वाहन के पंजीयन नहीं होने का प्रभाव धारा 39 तथा 192 मोटरयान अधिनियम का उल्लंघन है तथा पॉलिसी का आधारभूत उल्लंघन है।

United India Insurance Co. Ltd. v. Sunil Kumar Godara

Judgment dated 30.09.2021 passed by the Supreme Court in Civil Appeal No. 5887 of 2021, reported in 2021 ACJ 2673 (SC)

Extracts from the judgment:

The policy holder had purchased a new Bolero which had a temporary registration. That registration lapsed on 19.07.2011. The respondent/complainant never alleged or proved that he applied for a permanent registration, or sought extension of the temporary registration beyond 19.07.2011. He travelled outside his residence, to Jodhpur, in his car, and stayed overnight in a guest house. In the morning of 28.07.2011, he discovered that the car had been stolen, when parked outside the guest house premises in Jodhpur.

In ***Narinder Singh v. New India Assurance Co. Ltd, 2014 ACJ 2421 (SC)***, the claim was in the context of an accident, involving a vehicle, the temporary registration of which had expired. This Court held that the insurer was not liable, and observed that:

"12. A bare perusal of Section 39 shows that no person shall drive the motor vehicle in any public place without any valid registration granted by the registering authority in accordance with the provisions of the Act.

13. However, according to Section 43, the owner of the vehicle may apply to the registering authority for temporary registration and a temporary registration mark. If such temporary registration is granted by the authority, the same shall be valid only for a period not exceeding one month. The proviso to Section 43 clarified that the period of one month may be extended for such a further period by the registering authority only in a case where a temporary registration is granted in respect of chassis to which body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted with a body or unforeseen circumstances beyond the control of the owner.

14. Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11.01.2006 and the alleged accident took place on 02.02.2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11.01.2006, when the period of temporary registration expired, the appellant, owner of the vehicle either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract."

In ***Naveen Kumar v. National Insurance Co. Ltd., RP No. 250 of 2019*** decided on 26.11.2019, NCDRC decided a reference, to its bench, and held that:

"(9) For the reasons stated hereinabove, the reference is answered in following terms:

(i) If a vehicle without a valid registration is or has been used/driven on a public place or any other place that would constitute a fundamental breach of the terms and conditions of the contract of insurance even if the vehicle is not being driven at the time it is stolen or is damaged:

(ii) If a vehicle without a valid registration is used/driven on a public place or any other place, it would constitute a fundamental breach of terms and conditions of the policy

even if the owner of the vehicle has applied for the issuance of a registration in terms of S.41 of the Act before expiry of the temporary registration, but the regular registration has not been issued".

In the present case, the temporary registration of the respondent's vehicle had expired on 28.07.2011. Not only was the vehicle driven, but also taken to another city, where it was stationed overnight in a place other than the respondent's premises. There is nothing on record to suggest that the respondent had applied for registration or that he was awaiting registration. In these circumstances, the ratio of ***Narinder Singh*** (supra) applies, in the opinion of this court. That ***Narinder Singh*** (supra) was in the context of an accident, is immaterial. Despite this, the respondent plied his vehicle and took it to Jodhpur, where the theft took place. It is of no consequence that the car was not plying on the road, when it was stolen; the material fact is that concededly, it was driven to the place from where it was stolen, after the expiry of temporary registration. But for its theft, the respondent would have driven back the vehicle. What is important is this Court's opinion of the law, that when an insurable incident that potentially results in liability occurs, there should be no fundamental breach of the conditions contained in the contract of insurance. Therefore, on the date of theft, the vehicle had been driven/ used without a valid registration, amounting to a clear violation of Sections 39 and 192 of the Motor Vehicles Act, 1988. This results in a fundamental breach of the terms and conditions of the policy, as held by this Court in ***Narinder Singh*** (supra), entitling the insurer to repudiate the policy.

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***88. MOTOR VEHICLES ACT, 1988 – Section 147**

Motor accident – Personal accident cover – In case of death of husband of insured/ owner of car while driving the car – Premium was paid for owner/ driver – The policy was categorically indemnifying the personal accident claim of the owner and driver – There was no cap on the amount of compensation payable by the insurance company in the policy – Insurance company held liable.

मोटरयान अधिनियम, 1988 – धारा 147

मोटर दुर्घटना – व्यक्तिगत दुर्घटना सुरक्षा – बीमित/कार स्वामी के पति की कार चलाते समय हुई मृत्यु के मामले में स्वामी/चालक के लिए प्रीमियम अदा किया गया था – पॉलिसी विनिर्दिष्ट रूप से स्वामी और चालक के लिए व्यक्तिगत दुर्घटना दावा की क्षतिपूर्ति कर रही थी – बीमा कम्पनी द्वारा भुगतान योग्य प्रतिकर की राशि पर कोई सीमा नहीं थी – बीमा कम्पनी को दायित्वाधीन अभिनिर्धारित किया गया।

Vasuki and anr. v. Santhi and anr.

Judgment dated 07.10.2021 passed by the Supreme Court in Civil Appeal No. 6257 of 2021, reported in 2022 ACJ 244

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***89. MOTOR VEHICLES ACT, 1988 – Section 147**

Motor insurance – Tractor – If policy itself has a clause that one passenger is permissible to be carried on the tractor or additional premium is paid to carry passenger on the tractor, insurance company is liable.

मोटरयान अधिनियम, 1988 – धारा 147

मोटर का बीमा – ट्रेक्टर – यदि पॉलिसी में स्वयं एक खण्ड है कि ट्रेक्टर पर एक यात्री को ले जाने की अनुमति है या ट्रेक्टर पर यात्री को ले जाने के लिए अतिरिक्त प्रीमियम दिया गया है, तब बीमा कम्पनी दायित्वाधीन है।

Asha Devi and ors. v. Assistant Director, State Insurance and Provident Fund Department and ors.

Judgment dated 04.08.2021 passed by the Supreme Court in Civil Appeal No. 4601 of 2021, reported in 2021 ACJ 2679 (SC)

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***90. MOTOR VEHICLES ACT, 1988 – Section 149**

Driving licence – Pay and recover – Driver of vehicle was holding licence to drive light motor vehicle and heavy transport vehicle, but he was driving a motor cycle at the time of accident – It is held that driver was not holding valid licence, thus, violating the terms and conditions of policy – Insurance company absolved from liability but directed to satisfy the award and then recover the amount from the owner and driver of the vehicle.

मोटरयान अधिनियम, 1988 – धारा 149

चालन अनुज्ञप्ति – भुगतान करो और वसूलो – चालक के पास हल्का मोटरयान तथा भारी वाहन यान चलाने की अनुज्ञप्ति थी लेकिन वह दुर्घटना के समय मोटर सायकल चला रहा था – यह अभिनिर्धारित किया गया कि चालक के पास वैध चालन अनुज्ञप्ति नहीं थी, अतः उसके द्वारा पॉलिसी की शर्तों का उल्लंघन किया गया है – बीमा कम्पनी को दायित्व से मुक्त किया गया किन्तु अवार्ड को संतुष्ट करने तथा राशि को वाहन के स्वामी और चालक से वसूल करने के निर्देश दिए गए।

Oriental Insurance Co. Ltd. v. Munesh Adiwashi and ors.

Judgment dated 12.10.2020 passed by the Supreme Court in Miscellaneous Appeal No.1294 of 2012, reported in 2022 ACJ 264

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***91. MOTOR VEHICLES ACT, 1988 – Section 163-A**

Fatal accident – In case of death of 7 years old child studying in class II, by taking into account the inflation, devaluation of rupees and cost of living, Apex Court took notional income of deceased at Rs. 25000 per annum and applied multiplier of '15'.

मोटरयान अधिनियम, 1988 – धारा 163–क

घातक दुर्घटना – कक्षा 2 में पढ़ने वाले 7 वर्ष के बालक की मृत्यु के मामले में सर्वोच्च न्यायालय द्वारा महगांई, रूपये में गिरावट तथा जीवन यापन की लागत को विचार में लेते हुए मृतक की काल्पनिक आय 25000 रूपये प्रतिवर्ष मानी गई तथा 15 का गुणांक लागू किया गया।

Kurvan Ansari and anr. v. Shyam Kishore Murmu and anr.
Judgment dated 16.11.2021 passed by the Supreme Court in Civil Appeal No. 6902 of 2021, reported in 2022 ACJ 166

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92. MOTOR VEHICLES ACT, 1988 – Section 166

Legal representative – Mother-in-law who was dependent on the deceased for shelter and maintenance, is a legal representative u/s 166 of the Act and she can file a petition before the Tribunal for compensation.

मोटरयान अधिनियम, 1988 – धारा 166

विधिक प्रतिनिधि – स्वयं के आवास एवं भरण–पोषण के लिये मृतक पर आश्रित सास भी अधिनियम की धारा 166 के अंतर्गत विधिक प्रतिनिधि होती है और वह अधिकरण के समक्ष प्रतिकर हेतु याचिका प्रस्तुत कर सकती है।

N. Jayasree and ors. v. Cholamandalam Ms. General Insurance Company Ltd.
Judgment dated 25.10.2021 passed by the Supreme Court in Civil Appeal No. 6451 of 2021, reported in AIR 2021 SC 5218

Relevant extracts from the judgment:

The fourth appellant was the mother-in-law of the deceased. Materials on record clearly establish that she was residing with the deceased and his family members. She was dependent on him for her shelter and maintenance. It is not uncommon in Indian Society for the mother-in-law to live with her daughter and son-in-law during her old age and be dependent upon her son-in-law for her maintenance. Appellant no.4 herein may not be a legal heir of the deceased, but she certainly suffered on account of his death. Therefore, we have no hesitation to hold that she is a "legal representative" u/s 166 of the MV Act and is entitled to maintain a claim petition.

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

Permanent disability – In case of accident of a woman working as coolie, looking to the injuries and permanent partial disability assessed by regional Medical Board, Tribunal considered the functional disability at 90 percent – In appeal, High Court reduced the functional disability from 90 percent to 30 percent – Considering the fact that the claimant was working as coolie and injuries sustained by her, Apex Court fixed functional disability at 90 percent and restored Tribunal's award.

मोटरयान अधिनियम, 1988 – धारा 166

स्थाई निर्योग्यता – महिला जो कुली का काम करती थी की दुर्घटना के मामले में, उसको आई चोंटे और संभागीय चिकित्सकीय बोर्ड द्वारा अवधारित स्थाई आंशिक निर्योग्यता को दृष्टिगत रखते हुये अधिकरण द्वारा उसकी कार्यकारी निर्योग्यता 90 प्रतिशत मानी गई – अपील में उच्च न्यायालय ने कार्यकारी निर्योग्यता को 90 प्रतिशत से 30 प्रतिशत घटाया – आवेदक के कुली का कार्य करने के तथ्य और उसको आई चोंटो को दृष्टिगत रखते हुये सर्वोच्च न्यायालय ने उसकी कार्यकारी निर्योग्यता 90 प्रतिशत निर्धारित करते हुये अधिकरण का अधिनिर्णय पुनर्स्थापित किया।

Poongavanam v. Reliance General Ins. Co. Ltd. and anr.

Judgment dated 30.11.2021 passed by the Supreme Court in Civil Appeal No. 7136 of 2021, reported in 2022 ACJ 205

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

Policy condition – The terms of insurance policy have to be strictly construed and it is not permissible to re-write the contract while interpreting the terms of policy – If policy conditions clearly stipulated that the policy has to be in force when the accident takes place then accident benefit can only be given if policy is in force.

मोटरयान अधिनियम, 1988 – धारा 166

पॉलिसी की शर्त – बीमा पॉलिसी की शर्तों का कठोर अर्थान्वयन अपेक्षित है और पॉलिसी की शर्तों की विवेचना करते समय अनुबंध को पुनः लिखने की अनुमति नहीं है – यदि पॉलिसी की शर्तों में स्पष्ट रूप से निर्धारित है कि दुर्घटना के समय पॉलिसी लागू होनी चाहिए तो पॉलिसी लागू होने पर ही दुर्घटना लाभ दिया जा सकता है।

L.I.C. of India and anr. v. Sunita

Judgment dated 29.10.2021 passed by the Supreme Court in Civil Appeal No.6537 of 2021, reported in 2021 ACJ 2731 (SC)

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95. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168

Just compensation – It is the duty of the Tribunal to assess the effect of permanent disability on the earning capacity of injured and after such assessment, loss of earning capacity should be quantified in terms of money to decide future loss of earning.

मोटरयान अधिनियम, 1988 – धाराएं 166 एवं 168

उचित प्रतिकर – आहत की अर्जन क्षमता पर स्थायी निःशक्तता के प्रभाव का आंकलन करना अधिकरण का कर्तव्य है और ऐसे आंकलन के पश्चात् भविष्यवर्ती अर्जन हानि के निर्धारण हेतु अर्जन क्षमता की हानि को धन के रूप में परिमाणित करना चाहिए।

Jithendran v. New India Assurance Co. Ltd. and anr.

Judgment dated 27.10.2021 passed by the Supreme Court in Civil Appeal No. 6494 of 2021, reported in AIR 2021 SC 5382

Relevant extracts from the judgment:

The Courts should strive to provide a realistic recompense having regard to the realities of life, both in terms of assessment of the extent of disabilities and its impact including the income generating capacity of the claimant.

The extent of economic loss arising from a disability may not be measured in proportions to the extent of permanent disability.

What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency).

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***96. NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 35 and 54**

Presumption – Reverse burden – Standard of proof – An initial burden exists upon the prosecution and when it stands satisfied then legal burden would shift over the accused to lead evidence or establish his case for innocence as per the standard of proof required, i.e. preponderance of probability.

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 35 एवं 54

उपधारणा – सबूत का विपरीत भार – सबूत का मानक – आरंभिक भार अभियोजन पर विद्यमान होता है और जब यह संतुष्ट हो जाता है तब अपेक्षित सबूत के मानक जो अधिसंभाव्यता की प्रबलता है, के अनुसार साक्ष्य प्रस्तुत करने या निर्दोषिता के लिए अपना प्रकरण स्थापित करने का भार अभियुक्त पर चला जाता है।

Gopal Krishna Gautam @ Pandit v. State of M.P. and anr.
Order dated 28.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in MCRC No. 31747 of 2021, reported in ILR (2021) MP 1975

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97. NATIONAL INVESTIGATION AGENCY ACT, 2008 – Sections 6 (4), (5), 10 and 22

Investigation of scheduled offences – Any scheduled offence defined in the NIA Act, 2008 can be investigated and prosecuted by the Officer In-charge of the Police Station of State Government unless any direction u/s 6 (4) and (5) is issued and NIA actually takes up the investigation of the case – The remand and committal power of Chief Judicial Magistrate remains intact unless a special Court is designated by the Government u/s 22 of the Act.

राष्ट्रीय अन्वेषण अभिकरण अधिनियम, 2008 – धाराएं 6 (4), (5), 10 एवं 22

अधिसूचित अपराधों का अन्वेषण – राष्ट्रीय अन्वेषण अभिकरण अधिनियम, 2008 में अधिसूचित किसी अपराध का अन्वेषण एवं अभियोजन राज्य शासन के किसी आरक्षी केन्द्र के प्रभारी अधिकारी द्वारा तब तक किया जा सकता है जब तक कि अधिनियम की धारा 6 (4) एवं (5) के अंतर्गत निर्देश जारी न कर दिया गया हो और राष्ट्रीय अन्वेषण अभिकरण द्वारा प्रकरण के अन्वेषण का कार्य न ले लिया गया हो – मुख्य न्यायिक मजिस्ट्रेट की रिमाण्ड एवं उपार्पण की शक्तियां तब तक सुरक्षित रहती हैं जब तक कि शासन द्वारा अधिनियम की धारा 22 के अंतर्गत कोई विशेष न्यायालय नामित नहीं कर दिया गया हो।

Naser Bin Abu Bakr Yafai v. State of Maharashtra and anr.
Judgment dated 20.10.2021 passed by the Supreme Court in Criminal Appeal No. 1165 of 2021, reported in AIR 2021 SC 5076 (Three Judge Bench)

Relevant extracts from the judgment:

Upon the issuance of a direction under sub-Sections (4) and (5) of Section 6, neither the State government nor a police officer of the State Agency investigating the offence can proceed with the investigation and must forthwith transmit the relevant documents and records to the NIA;

State government investigating the offence are not to proceed with the investigation and have to forthwith transmit the documents and records to the NIA [Section 6(6)] but equally, it is the duty of the officer in-charge of the police station to continue the investigation till the NIA actually takes up the investigation of the case [Section 6(7)]. In other words, the power of the officer in-charge of the police station to continue with the investigation is denuded upon the issuance

of a direction under sub- Sections (4) or (5) of Section 6 and the NIA actually taking up the investigation of the case. Thus, both the issuance of directions under sub-Sections (4) and (5) of Section 6 and the NIA actually taking up the investigation of the case would result in the power of the officer in-charge of the police station being denuded. Until then, the power of the State government to investigate and prosecute any scheduled offence, by virtue of the provisions of Section 10, is preserved.

We affirm the judgment and order of the High Court dated 5 July 2018. We hold that, in accordance with Section 6(7), the ATS Nanded was not barred from continuing with its investigation till the NIA Mumbai actually took up the investigation. Further, we hold that the CJM, Nanded could have committed the case to trial before the ASJ, Nanded upon the filing of charge-sheet by the ATS Nanded since they were the designated Courts for the ATS Nanded and no Special Court had been designated by the Government of Maharashtra under Section 22 of the NIA Act.

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***98. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 141**
Complaint against company – Complaint was filed only against corporate entity and none of the natural persons who were stated to be in charge of and responsible for affairs of corporate entity were arrayed as accused – In such facts and circumstances, corporate debtor cannot be proceeded against u/s 138.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 141
निगम के विरूद्ध परिवाद – परिवाद केवल निगमित संस्था के विरूद्ध प्रस्तुत किया गया था और निगमित संस्था के कार्यों के लिए जिम्मेदार प्राकृतिक व्यक्तियों को अभियुक्त के रूप में संयोजित नहीं किया गया था – ऐसे तथ्यों और परिस्थितियों में, निगमित देनदार के विरूद्ध धारा 138 के अन्तर्गत कार्यवाही नहीं की जा सकती है।

Nag Leathers Private Limited v. Dynamic Marketing Partnership Represented by its partners and anr.
Order dated 18.11.2021 passed by the Supreme Court in Criminal Appeal No. 1424 of 2021, reported in (2022) 2 SCC 271

●

***99. PREVENTION OF CORRUPTION ACT, 1988 – Section 19**
Sanction for prosecution – Proper stage of examining the validity of sanction is during trial thus, issue relating to non-application of mind by sanctioning authority should firstly be raised during trial.

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 19
अभियोजन की अुनमति – अनुमति की वैधता के परीक्षण का उपयुक्त स्तर विचारण के दौरान है अतः अनुमति देने के सम्बंध में प्राधिकारी द्वारा मस्तिष्क का प्रयोग नहीं करने सम्बंधी मुद्दा प्रथमतः विचारण के दौरान उठाया जाना चाहिए।

Sabit Khan v. State of Madhya Pradesh and ors.
Order dated 12.08.2021 passed by the High Court of Madhya Pradesh in Writ Petition No. 7818 of 2021, reported in ILR (2021) MP 1871 (DB)

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100. PREVENTION OF FOOD ADULTERATION ACT, 1954 – Section 13
Right to challenge the report – If a copy of the report of the Public Analyst is not delivered to the accused, his right under sub-section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated.

खाद्य अपमिश्रण निवारण अधिनियम, 1954 – धारा 13

रिपोर्ट को चुनौती देने का अधिकार – यदि लोक विश्लेषक की रिपोर्ट की प्रति अभियुक्त को नहीं दी जाती है तो धारा 13 की उप–धारा (2) के अन्तर्गत केन्द्रीय खाद्य प्रयोगशाला में नमूना भेजने के लिए प्रार्थना करने का उसका अधिकार निष्फल हो जाएगा।

Narayana Prasad Sahu v. State of Madhya Pradesh
Judgment dated 29.10.2021 passed by the Supreme Court in Criminal Appeal No. 1312 of 2021, reported in (2022) 1 SCC 87

Relevant extracts from the judgment:

Sub-sections (1) and (2) of Section 13 of the said Act of 1954 reads thus:-

> "***13. Report of public analyst.***— (1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.
>
> (2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory".

Under sub-section (2) of Section 13, it is mandatory for the Local (Health) Authority to forward a copy of the report of the Public Analyst to the person from whom the sample of the food has been taken in such a manner as may be prescribed. Further mandate of sub-section 5(2) of Section 13 is that a person to whom the report is forwarded should be informed that if it is so desired, he can make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample analysed by Central Food Laboratory. The report is required to be forwarded after institution of prosecution against the person from whom the sample of the article of food was taken. Apart from the right of the accused to contend that the report is not correct, he has right to exercise an option of sending the sample to Central Food Laboratory for analysis by making an application to the Court within ten days from the date of receipt of the report. If a copy of the report of the Public Analyst is not delivered to the accused, his right under sub-section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated. Consequently, his right to challenge the report will be defeated. His right to defend himself will be adversely affected. This Court in the case of ***Vijendra v. State of U.P., (2020) 15 SCC 763*** held that mere dispatch of the report to the accused is not a sufficient compliance with the requirement of subsection (2) of Section 13 and the report must be served on the accused.

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101. PUBLIC TRUSTS ACT, 1951 (M.P.) – Sections 8, 12, 26 and 27
CIVIL COURTS ACT, 1958 (M.P.) – Section 3
Difference between term 'Court' and 'a Civil Court' – Term "Court" used in sections 26 and 27 and term "a Civil Court" used in sections 8 and 12 of the Trusts Act has different meaning as per definition of 'Court' under Public Trusts Act – It is the Principal Civil Court of original jurisdiction and as per Section 3 of M.P. Civil Courts Act 'a Civil Court' means a Civil Court of competent jurisdiction which may be a Court of Civil Judge (Junior Division), Civil Judge (Senior Division) or Court of District Judge.

लोक न्यास अधिनियम, 1951 (म.प्र.) – धाराएं 8, 12, 26 एवं 27
सिविल न्यायालय अधिनियम, 1958 (म.प्र.) – धारा 3
शब्द 'न्यायालय' तथा ' सिविल न्यायालय' में अन्तर – न्यास अधिनियम की धारा 26 तथा 27 में शब्द ''न्यायालय'' का प्रयोग किया गया है एवं धारा 8 तथा 12 में शब्द ''सिविल न्यायालय'' का प्रयोग किया गया है जिनके अलग अर्थ हैं – लोक न्यास अधिनियम की परिभाषा के अनुसार ''न्यायालय'' आरंम्भिक सिविल अधिकारिता का प्रधान सिविल न्यायालय है और धारा 3 म.प्र. सिविल न्यायालय अधिनियम के अनुसार सिविल न्यायालय का तात्पर्य सक्षम अधिकारिता वाला सिविल न्यायालय है जो सिविल न्यायाधीश (कनिष्ठ खण्ड), सिविल न्यायाधीश (वरिष्ठ खण्ड) या जिला न्यायाधीश का न्यायालय हो सकता है।

Seth Trilokchand Kalyanmal Digambar Jain and anr. v. Sushil Kumar Kasliwal and anr.

Order dated 07.10.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 6301 of 2019, reported in 2022 (1) MPLJ 266

Relevant extracts from the order:

It is apposite to refer to certain provisions. The 'Court' is defined in the Trusts Act as under:-

> "***2. Definitions***. – In this Act, unless there is anything repugnant in the subject or context. –
>
> (1) "court" means the principal Civil Court of original jurisdiction in the District."
>
> Section 8 of the Trusts Act reads as under:-
>
> ***Civil suit against the finding of the Registrar***. – (1) Any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar under Section 6 may, within six months from the date of the publication of the notice under sub-section (1) of Section 7, institute a suit in a Civil Court to have such finding set aside or modified.
>
> (2) In every such suit, the Civil Court shall give notice to the State Government through the Registrar, and the State Government, if it so desires, shall be made a party to the suit.
>
> (3) On the final decision of the suit, the Registrar shall, if necessary, correct the entries made in the register in accordance with such decision.

Section 3 of the M.P. Civil Court Act, 1958 describes various Civil Court as follows:-

> "Classes of Civil Courts. – (1) In addition to the Courts established under any other law for the time being in force, there shall be the following classes of Courts, namely :-
>
> (1) The Court of the District Judge;
>
> (2) [x x x]
>
> (3) the Court of the [Civil Judge Class I]; and
>
> (4) the Court of the [Civil Judge Class II]
>
> (2) Every Court of the District Judge shall be presided over by a District Judge to be appointed by the High Court and the High Court may also appoint Additional District Judges from the cadre of Higher Judicial Service to exercise jurisdiction in the Court of the District Judge.]

(3) An Additional Judge to the Court of Civil Judge may be appointed from the cadre of Lower Judicial Service.

(4) The Court of District Judge shall include the Court of [Additional District Judge] and the Court of Civil Judge Class I or Class II shall include the Court of Additional Civil Judge to that Court."

This Court in the case of ***Badri Prasad v. Uma Shankar, 1961 MPLJ 394*** noted the difference between the word 'Court' used in Sections 24, 25, 26, 27 and 28 of the Trusts Act in contrast to the words 'a Civil Court' used in Section 8 of the Trusts Act. The question framed was *whether the phrase 'a Civil Court' has not been construed in the same manner as the phrase 'a Court' used in Sections 24 to 28 of the Trusts Act. In* ***Badri Prasad*** (supra), this Court opined that the words 'a Civil Court' have not been defined in the Trusts Act. This Court took assistance of Section 3 of the M.P. Civil Court Act, 1958. The Court opined that the definition of 'Civil Court' would be applicable to the phrase 'a Civil Court' occurring in Sections 8 and 12 of the Trusts Act. In no uncertain terms it was held as under:-

"It is true that in Chapter 5 of the M.P. Public Trusts Act, 1951, the phrase used as "the Court", which would necessarily imply to Court of District Judge as defined by section 2(1) of the Act. But, the same phrase not having been used in Chapter 2, which contains Sections 8 and 12 of the Act, it cannot be stated that the intention of the legislature was that a civil suit under Section 8(1) of the Act should be filed in the Court of the District Judge. Therefore, the ordinary grammatical meaning of the phrase would mean that the suit can be filed in a Civil Court of a competent jurisdiction, whether it be the Court of the Civil Judge Class II or the Court of Civil Judge Class I or the Court of Additional District Judge or the Court of District Judge. That will depetn upon the territorial jurisdiction, as also the pecuniary valuation of the suit." (emphasis supplied)

In view of this golden principle of interpretation, I am in respectful agreement with the view taken by this Court is ***Badri Prasad*** (supra).

This Court will be failing in its duty if the judgment cited by learned Senior Counsel for petitioners is not taken into account. In the said judgment of ***Shri Dev Mahadevji Mandir, Rehli v. Rajesh Kumar and anr., 2012 (4) MPLJ 675***, this Court considered the meaning of term 'Court' used in Sections 26 and 27 of the Trusts Act. As noticed above, the legislature in its wisdom has used the word, 'Court' in Sections 24, 25, 26, 27 and 28 of the Trusts Act whereas used the words, 'a Civil Court' in Sections 8 and 12 of the Trusts Act. Indisputably, in this case, this Court is concerned with an application /suit filed under Section 8 of the Trusts Act. Thus, the judgment cited by learned Senior Counsel for petitioners which is not related with Section 8 of the Trusts Act cannot be pressed into service.

In ***Badri Prasad*** (supra), this Court has dealt with the meaning and interpretation of the words 'a Civil Court' occurring in Section 8 of the Trusts Act whereas in ***Shri Dev Mahadevji Mandir, Rehli*** (supra), the Court considered word, 'Court' for the purpose of an application filed under Section 26 of the Trusts Act. Thus, interpretation given by previous Bench in ***Badri Prasad*** (supra) is mainly relating to Section 8 of the Trusts Act whereas subsequent judgment in ***Shri Dev Mahadevji Mandir, Rehli*** (supra) is relating to Sections 26 and 27 of the Trusts Act. Thus, both the judgments are based on different provisions of the Trusts Act and it cannot be said that there is any cleavage of opinion between the Benches. In this case, the judgment of ***Badri Prasad*** (supra) is applicable because indisputably, the civil suit / application is filed under Section 8 of the Trusts Act, and therefore, this Court is concerned with the meaning of words 'a Civil Court'.

This is trite that the judgment of a Court should be understood in the fact situation of case and on the basis of governing statutory provisions. A different fact or different applicable provision may make a lot of difference in precedential value of a judgment (see: (***Bhavnagar University v. Palitana Sugar Mill Private Limited & or., (2003) 2 SCC 111***).

In view of foregoing analysis, it can be safely held that since the words 'a Civil Court' are used in Section 8 of the Trusts Act, the learned District Judge was justified in transferring the suit before a Civil Court as per Section 3 of the M.P. Civil Courts Act, 1958. In absence of any violation of law, palpable procedural impropriety or perversity, interference is declined.

●

102. PUBLIC TRUSTS ACT, 1951 (M.P.) – Sections 22, 26 and 28
LAND REVENUE CODE, 1959 (M.P.) – Section 250

(i) Court – The powers of Court which are flowing from Civil Procedure Code are given to Registrar for limited purpose of holding an inquiry and not for the purpose of any kind of adjudication – Registrar under the Act is not a 'Court'.

(ii) Removal of encroachment – Tahsildar can take appropriate action to remove the encroachment – No such power is vested with Registrar, Public Trust – The relevant provision of Trusts Act which provide certain powers to Registrar do not give him any kind of power of adjudication or issuance of order to Tahsildar to remove encroachment.

लोक न्यास अधिनियम, 1951 (म.प्र.) – धाराएं 22, 26 एवं 28
भू–राजस्व संहिता, 1959 (म.प्र.) – धारा 250

(i) न्यायालय – सिविल प्रक्रिया संहिता से व्युत्पन्न न्यायालय की शक्तियां पंजीयक को जांच करने के सीमित उद्देश्य के लिए प्रदान की गई है ना कि किसी प्रकार के न्यायनिर्णयन के लिए – अधिनियम के अन्तर्गत पंजीयक एक न्यायालय नहीं है।

(ii) अतिक्रमण का हटाया जाना – तहसीलदार अतिक्रमण हटाने के लिए समुचित कार्यवाही कर सकता है – ऐसी कोई शक्ति पंजीयक, लोक न्यास में निहित नहीं है – न्यास अधिनियम के सुसंगत प्रावधान जो पंजीयक को कतिपय शक्तियां प्रदान करते है वे न्यायर्णियन की या अतिक्रमण हटाने के लिए तहसीलदार को आदेश जारी करने जैसे कोई शक्ति नहीं देते है।

Badri Prasad Tiwari v. State of M.P. and ors.

Order dated 29.09.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in Writ Appeal No. 1081 of 2020, reported in 2022 (1) MPLJ 420 (DB)

Extracts from the order:

A conjoint reading of Section 5 and Section 28 leads to an inevitable conclusion that the powers of Court which are flowing from CPC are given to Registrar for limited purpose of holding an inquiry and not for the purpose of any kind of adjudication.

Section 26 begins with the heading 'application to Court for directions'. Sections 2(1) and 26 read together cannot lead to a conclusion that legislature intended to empower the Registrar as a 'Court' for any purpose. Otherwise, Section 26 would have been worded in a different manner. A plain reading of Section 26 makes it clear that in 3 situations/eventualities mentioned in Clauses a, b & c, the Registrar can either direct the trustee to apply to Court for directions or he himself can undertake that exercise of preferring an application to the Court. By no stretch of imagination, it can be said that Registrar under the Trusts Act is a 'Court'. Interestingly, a Division Bench of this Court in the case reported in ***Umedi Bhai vs. The Collector, Sehore, 1969 MPLJ 680***, opined that proceedings before the Registrar are not judicial proceedings. The Registrar not being a Court, he cannot exercise inherent powers under Section 151 of Code of Civil Procedure or otherwise. Thus, it can be safely held that contention of learned counsel for the respondent in this regard is devoid of substance.

Section 250 of the Code empowers the Tehsildar to take appropriate action to remove the encroachment. No such power is vested with Registrar, Public Trust. If law prescribes a thing to be done in a particular manner, it has to be done in the same manner. No other authority may usurp that power in absence of any enabling provision. The relevant provisions of Trusts Act which provide certain powers to Registrar do not give him any kind of power of adjudication or issuance of order to Tehsildar to remove encroachment. Even in the capacity of SDO, he could not have usurped the power of a statutory authority namely, Tehsildar, who is duly empowered by Section 250 of the Code. We find force in our view from the judgment of Supreme Court in ***Manohar Lal v. Ugrasen, 2010 MPLJ Online (SC) 35 = (2010) 11 SCC 557***. The relevant portion reads as under:-

"No higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the original statutory authority nor can the superior authority mortgage its wisdom and direct the original statutory authority to act in a particular manner. If the appellate or revisional authority takes upon itself the task of the original statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act." (emphasis supplied)

●

103. REGISTRATION ACT, 1908 – Sections 17 and 49
STAMP ACT, 1899 – Section 35

(i) Unregistered document – Relinquishment deed is compulsorily registrable u/s 17 of Registration Act, therefore as per Section 49 of the Act the same cannot be admitted in evidence to establish the right, title and interest of the party over the suit property.

(ii) Collateral purpose – It must be "independent of" or "divisible from" the very object and purpose of such document for which it is executed – If in the garb of such collateral purpose, relinquishment deed is admitted in evidence, the very object of the provisions of Sections 17 and 45 of the Act would be redundant and frustrated.

(iii) Admissibility of unregistered document – Different propositions explained.

रजिस्ट्रीकरण अधिनियम, 1908 – धाराएं 17 एवं 49

स्टाम्प अधिनियम, 1899 – धारा 35

(i) अपंजीकृत दस्तावेज – हक त्याग विलेख धारा 17 रजिस्ट्रीकरण अधिनियम के अन्तर्गत अनिवार्यतः पंजीयन योग्य दस्तावेज है अतः धारा 49 के अनुसार उसे सम्पत्ति पर पक्षकार के अधिकार, स्वत्व तथा हित स्थापित करने के लिए साक्ष्य में ग्राह्य नहीं किया जा सकता है।

(ii) संपार्श्विक उद्देश्य – यह उस दस्तावेज के उद्देश्य से ''स्वतंत्र'' तथा ''विभाज्य'' होना चाहिए जिसके लिए इसे निष्पादित किया गया है यदि इस तरह के संपार्श्विक उद्देश्य की गिरफ्त में आकर हक त्याग विलेख साक्ष्य में ग्राह्य कर लिया जाता है तो अधिनियम की धारा 17 तथा 49 के प्रावधान का उद्देश्य निरर्थक तथा हताश हो जाएगा।

(iii) अपंजीकृत दस्तावेज की साक्ष्य में ग्राह्यता – विभिन्न प्रस्थापनाएं समझाई गई।

Gangashankar Dubey v. Sindhu Bai and ors.

Judgment dated 15.12.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 591 of 2021, reported in 2022 (1) MPLJ 315

Extracts from the judgment:

In order to deal with different propositions, it may be safely concluded in the light of the above legal position as under:

(i) The admissibility of a particular document in evidence is to be adjudged in light of the relevant provisions of the Act of 1908 as well as of the Indian Stamp Act 1899.

(ii) As per the provisions of Section 17 and 49 of the Act of 1908, an unregistered document which is compulsorily registerable cannot be admitted in evidence except in a suit for specific performance of contract or as evidence of any collateral transaction, not required to be effected by registered instrument.

(iii) The collateral purpose for which, unregistered document is intended to be tendered in evidence, must be 'independent of' or 'divisible from' the very object and purpose of such document for which, it is executed.

(iv) No unregistered document which is compulsorily registerable can be admitted in evidence in the name of collateral purpose which would essentially tend to affect the right, title and interest of the parties for which, such document is executed;

(v) An unstamped or insufficiently stamped document which is required to be stamped cannot be admitted in evidence for any purpose including collateral purpose. However, such document can be tendered in evidence after payment of deficit stamp duty and penalty as adjudicated by Collector (Stamps) under the provisions of The Indian Stamp Act, 1899 subject to its admissibility under the provisions of the Act of 1908;

(vi) If an unregistered document which is compulsorily registerable is found to be inadmissible in evidence under Section 49 of the Act of 1908, the same cannot be admitted in evidence even if, it is duly stamped as per the Indian Stamp Act, 1899.

In the present case, the suit has been filed for declaration of title over the suit property on the basis of the deed alleged to have been executed by the son of plaintiffs giving up his rights over the property in favour of his mother. Thus, the document in question is certainly a relinquish deed which is compulsorily registerable under Section 17 (B) of the Act of 1908, therefore, as per Section 49 of the Act of 1908, the same cannot be admitted in evidence to establish the right, title and interest of the plaintiffs over the suit property.

The plaintiffs intend to use this relinquish deed for the purpose to establish their possession over the property in the name of collateral purpose, but such purpose cannot be termed as 'independent of' or 'divisible from' the very purpose of this document in any manner. If in the garb of such collateral purpose, this relinquish deed is admitted in evidence, the very object of the provisions of

Section 17 and 49 of the Act of 1908 would be redundant and frustrated. Thus, the document in question cannot be admitted in evidence, for the said collateral purpose.

It cannot be disputed that an unstamped or insufficiently stamped document can be admitted in evidence on taking deficit stamp duty and penalty as adjudicated under the provisions of the Indian Stamp Act 1899, but the pre-condition is that such document should be admissible in evidence as per proviso to Section 49 of the Act of 1908.

As mentioned above, the relinquish deed in question is not admissible in evidence for the said collateral purpose even if it would have been duly stamped, therefore, no fruitful purpose would be served by impounding the same for levy of deficit stamp duty and penalty under the Indian Stamp Act.

●

104. SPECIFIC RELIEF ACT, 1963 – Sections 16 (c) and 20

Relief of specific performance – Discretion u/s 20 of the Act should be exercised in judicial manner on sound reason – After proving due execution of the agreement to sell and establishing his readiness and willingness to perform his part of the contract, the plaintiff should not be punished by refusal of relief of specific performance – Although, Section 10(a) is not retrospective but this provision is a guide on discretionary relief.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 16 (ग) एवं 20

विनिर्दिष्ट पालन का अनुतोष – अधिनियम की धारा 20 के विशेषाधिकार का उपयोग दृढ़ कारणों के आधार पर न्यायिक रूप से किया जाना चाहिए – विक्रय अनुबंध के विधिवत निष्पादन के प्रमाणन और संविदा के अपने भाग के अनुपालन की तैयारी और तत्परता स्थापित करने के पश्चात् विशिष्ट पालन का अनुतोष अस्वीकार कर वादी को दण्डित नहीं किया जाना चाहिए – हालांकि धारा 10 (क) का प्रावधान भूतलक्षी नहीं है किंतु यह विवेकाधीन अनुतोष प्रदान करने के लिये मार्गदर्शक है।

Sughar Singh v. Hari Singh (Dead) Through LRs. and ors.

Judgment dated 26.10.2021 passed by the Supreme Court in Civil Appeal No. 5110 of 2021, reported in AIR 2021 SC 5581

Relevant extracts from the judgment:

Even the discretion under Section 20 of the Act is required to be exercised judiciously, soundly and reasonably. The plaintiff cannot be punished by refusing the relief of specific performance despite the fact that the execution of the agreement to sell in his favour has been established and proved and that he is found to be always ready and willing to perform his part of the contract. Not to grant the decree of specific performance despite the execution of the agreement to sell is proved; part sale consideration is proved and the plaintiff is always ready and willing to perform his part of the contract would encourage the dishonesty.

For the aforesaid, even amendment to the Specific Relief Act, 1963 by which section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide.

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***105. SUCCESSION ACT, 1925 – Section 63**

Proof of Will – Requirement of section 63 of the Act cannot be said to have been fulfilled by mechanical compliance of the stipulations therein – Evidence of meeting the requirement of the said provision must be reliable.

उत्तराधिकार अधिनियम, 1925 – धारा 63

वसीयत का साबित किया जाना – अधिनियम की धारा 63 की आवश्यकताओं की शर्तों को यांत्रिकीय तरीके से पालन कर पूरा नहीं किया जा सकता है – उक्त प्रावधान की आवश्यकता को पूरा करने की साक्ष्य विश्वसनीय होना चाहिए।

State of Haryana v. Harnam Singh (Dead) Through Legal Representatives and ors.

Judgment dated 25.11.2021 passed by the Supreme Court in Civil Appeal No. 6825 of 2008, reported in (2022) 2 SCC 238

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106. TRANSFER OF PROPERTY ACT, 1882 – Sections 59A, 60 and 91
CIVIL PROCEDURE CODE, 1908 – Sections 11 Expln. 7 and 8, Order 34 Rule 1 and Order 21 Rules 101 and 103

(i) Right of redemption – Once the plaintiff has purchased property, the equity of redemption is part of the title and as an owner, he can seek redemption of the suit land.

(ii) Necessary Party – Plaintiff rightly claimed that he was required to be impleaded, as he was a necessary party in a suit for foreclosure filed by the mortgagee after the purchase of part of the mortgaged land.

(iii) *Res Judicata* – The declining of stay of execution will not operate as *res judicata* only because section 11 Explanation vii of the Code is applicable to execution as well.

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 59क, 60 एवं 91
सिविल प्रक्रिया संहिता, 1908 – धाराएं 11 स्पष्टीकरण 7 एवं 8, आदेश 34 नियम 1 एवं आदेश 21 नियम 101 एवं 103

(i) मोचन का अधिकार – जैसे ही वादी द्वारा संपत्ति क्रय की जाती है, मोचन की साम्या स्वत्व का भाग होने से और स्वामी होने के नाते वह वादग्रस्त भूमि के संबंध में मोचन की प्रार्थना कर सकता है।

(ii) आवश्यक पक्षकार – वादी द्वारा उचित रूप से दावा किया गया कि बंधकग्रहीता द्वारा बंधक संपत्ति के भाग को क्रय करने के पश्चात् पुरोबंध के लिए प्रस्तुत वाद में उसे आवश्यक पक्षकार के रूप में संयोजित किया जाना चाहिए था।

(iii) *पूर्व न्याय* – संहिता की धारा 11 का स्पष्टीकरण **vii** निष्पादन पर भी लागू होता है केवल इसीलिए निष्पादन को स्थगित किए जाने से इंकार *पूर्व न्याय* के रूप में क्रियाशील नहीं होगा।

Narayan Deorao Javle (Deceased) through LRs. v. Krishna and ors.

Judgment dated 17.08.2021 passed by the Supreme Court in Civil Appeal No. 4726 of 2021, reported in AIR 2021 SC 3920

Relevant extracts from the judgment:

The plaintiff has purchased property vide registered sale deed on 18.05.1964, much before the filing of the suit for foreclosure in the year 1965. The possession of the plaintiff was recorded in the revenue record after the purchase of the property, but still, the mortgagee chose not to implead the subsequent purchaser. The original mortgagor who has mortgaged the property had no subsisting title, interest or right in the property conveyed, therefore, the factum of compromise between the mortgagor and the mortgagee is ineffective and not enforceable against the purchaser i.e., the plaintiff. Once the plaintiff has purchased property, the equity of redemption is part of the title and as an owner, he could seek redemption of the suit land.

The plaintiff rightly claimed that he was required to be impleaded, as he was a necessary party in a suit for foreclosure filed by the mortgagee after the purchase of part of the mortgaged land. The appellant also placed reliance on a judgment of this Court reported as ***Dr. Govinddas and anr. v. Shrimati Shantibai and anr., (1973) 3 SCC 418*** to contend that the mortgagee, the original mortgagor and the appellant are residents of the same village. Therefore, the factum of sale is deemed to be in the notice of the mortgagee in addition to the delivery of possession by the mortgagors supported by the revenue record and also the fact that the possession was taken from the appellant. Therefore, non-impleadment of the appellant renders the decree for foreclosure as non-est and void. It is also argued that it was a case of a simple mortgage without delivery of possession. The possession was taken from the appellant consequent to the decree of foreclosure granted in favour of the mortgagee. The findings recorded by the Trial Court that the plaintiff has purchased the property and not equity of redemption is clearly without any basis. In view of the fact that the possession was delivered and the fact that the parties are residents of the same village, there is 'constructive notice' of purchase of land by the appellant.

The only effect of filing of an application for stay of the execution would be that the appellant can be said to be aware of the fact that there is a decree for foreclosure passed against him which has not been stayed by virtue of the order of the Court. There is no determination of the claim as is contemplated in terms of Order XXI Rule 97 or Rule 99 of the Code having force of decree. The declining of stay of execution will not operate as *res judicata* only because Section 11 Explanation VII of the Code is applicable to the execution as well.

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107. TRANSFER OF PROPERTY ACT, 1882 – Sections 106, 111, 112 and 113

(i) Lease; determination of – Breach of terms of lease – Clause 14 of lease deed stiputaled termination on sub-letting without previous permission in writing of lessor – In lease deed, lessee was referred by name i.e. K.K. Joseph – Breach alleged as leasehold property was further transferred to M/s Joseph and Company – Record indicated that earlier transfer in 1974 referred K.K. Joseph as Managing Partner of M/s Joseph and Company – Other documents on record also indicate that the lessor, for all intents and purposes had treated M/s Joseph and Company as lessee – Held, there is no breach of the terms of lease.

(ii) 'Default' and 'Breach' – Meaning explained – Clause 12 of lease deed provided that lease can be terminated after notice and hearing lessee – If default is reported by Chief Conservator of Forest and not remedied by lessee – It further provided that default must relate to obligations to maintain nature of property – Held, clause 14 is independent of clause 12 and no notice is required when breach is committed by sub-letting the leasehold property.

(iii) Lease; determination of – Breach of terms of lease – Lessee transferred part of his interest in lease land by registered sale deed of 1983 – Sale was for consideration, without permission of lessor, absolute right and possession was given and also indicated that henceforth, the purchaser will directly pay lease rent to the lessor – Held, this is clear breach of clause 14 of lease deed and thus, termination of lease is proper.

(iv) Lease; determination of – Whether entire lease can be terminated when breach is committed in respect of part of lease land? Held, yes – Section 111(g) of TP Act does not suggest that in respect of lease as a whole, the forfeiture should be limited only to the portion regarding which the breach is alleged.

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 106, 111, 112 एवं 113

(i) पट्टे का पर्यवसान – पट्टे की शर्तों का उल्लंघन – पट्टा विलेख का खंड 14 पट्टाकर्ता की लिखित में पूर्व अनुमति के बिना उप–किराएदारी पर पट्टे के

पर्यवसान का उपबंध करता था – पट्टा विलेख में पट्टेदार को उसके नाम अर्थात् के.के. जोसेफ से संदर्भित किया गया था – पट्टे पर प्रदत्त संपत्ति को मेसर्स जोसेफ एंड कंपनी को अंतरित करने का आक्षेप लगाते हुए पट्टे के उल्लंघन का अभिवाक् किया गया – अभिलेख से प्रकट होता था कि 1974 के पूर्ववर्ती हस्तांतरण में के.के. जोसेफ को मेसर्स जोसेफ एंड कंपनी के प्रबंध भागीदार के रूप में संदर्भित किया गया था – अभिलेख पर उपलब्ध अन्य दस्तावेजों से यह भी प्रकट होता था कि पट्टाकर्ता ने सभी प्रयोजनों एवं उद्देश्यों के लिए मेसर्स जोसेफ एंड कंपनी को पट्टेदार के रूप में माना था – अभिनिर्धारित, पट्टे की शर्तों का कोई उल्लंघन नहीं हुआ।

(ii) 'व्यतिक्रम' एवं 'उल्लंघन' – अर्थ समझाया गया – पट्टा विलेख के खंड 12 उपबंधित करता था कि पट्टेदार को सूचना व सुनवाई के उपरांत पट्टे का पर्यवसान किया जा सकता है – यदि मुख्य वन संरक्षक द्वारा व्यतिक्रम की सूचना दिए जाने पर भी पट्टेदार इसका समाधान नहीं करता है – यह भी उपबंधित करता है कि ऐसा व्यतिक्रम संपत्ति की प्रकृति को बनाए रखने के दायित्वों से संबंधित होना चाहिए – अवधारित, खंड 14 खंड 12 से स्वतंत्र है तथा पट्टाकृत संपत्ति को उप–किराए पर देने का उल्लंघन होने पर किसी भी सूचना की आवश्यकता नहीं होती है।

(iii) पट्टे का पर्यवसान – पट्टे की शर्तों का उल्लंघन – पट्टेदार ने 1983 के पंजीकृत विक्रय विलेख द्वारा पट्टे की भूमि में अपना हित हस्तांतरित किया – विक्रय प्रतिफल सहित था, पट्टाकर्ता की अनुमति नहीं ली गई थी, पूर्ण अधिकार व आधिपत्य दिया गया था और यह भी उपबंधित था कि अब से क्रेता पट्टाकर्ता को सीधे किराए का भुगतान करेगा – अवधारित, यह पट्टा विलेख के खंड 14 का स्पष्ट उल्लंघन है, अतः पट्टे का पर्यवसान उचित है।

(iv) पट्टे का पर्यवसान – क्या पट्टाकृत भूमि के अंशभाग के संबंध में उल्लंघन किए जाने पर संपूर्ण पट्टे का पर्यवसान किया जा सकता है? अवधारित, हाँ – संपत्ति अंतरण अधिनियम की धारा 111(छ) यह उपबंध नहीं करती है कि संपूर्ण पट्टे के संबंध में समपहरण मात्र उस अंश तक सीमित होना चाहिए जिसके संबंध में उल्लंघन किया गया हो।

State of Kerala and ors. v. M/s Joseph and Company

Judgment dated 03.09.2021 passed by the Supreme Court in Civil Appeal No. 5117 of 2021, reported in AIR 2021 SC 4486

Relevant extracts from the judgment:

On the first aspect relating to the breach alleged in view of the transfer of lease in favour of M/s. Joseph & Company by Mr. K.K. Joseph-the lessee, Mr. Jaideep Gupta, learned senior counsel has taken us through the documents to indicate the sequence that the property in fact was auctioned in favour of Mr. P.I. Joseph who had transferred the lease in favour of Mr. K.K. Joseph through

the sale deed dated 28.02.1974. Though the government has subsequently validated the said transaction by executing a lease deed in favour of Mr. K.K. Joseph, the subsequent transfer by Mr. K.K. Joseph to M/s. Joseph & Company, a new lessee without prior consent of the Government would constitute breach is his contention.

At the outset, a perusal of the lease deed dated 15.12.1979 would no doubt disclose that Mr. K.K. Joseph in his individual name is referred to as the lessee of the other part. The recital in the lease deed however depicts that the earlier transaction in favour of Mr. P.I. Joseph and the document executed by Mr. P.I. Joseph in favour of Mr. K.K. Joseph to assign the lease is referred in the document. In that backdrop, a reference to the sale deed dated 28.02.1974 by which the sale was made by Mr. P.I. Joseph to Mr. K.K. Joseph indicates that the purchaser Mr. K.K. Joseph has been described as the Managing Partner, M/s. Joseph & Company, a registered partnership firm. The said aspect would *ex-facie* indicate that the contention of the appellant that M/s. Joseph & Company had come into existence subsequently as a ploy to overcome and defeat the bar contained in Clause 14 to the lease deed cannot be accepted. Further, as already taken note, the learned Single Judge as also the learned Division Bench has referred to the various other documents more particularly at Exhibits P10, P11, P12, P13 and P16 to P20 in the writ proceeding records to indicate that the Government, for all intents and purposes had treated M/s. Joseph & Company as the lessee.

x x x

The next aspect which arises for consideration is as to whether the sale to an extent of 50 acres from out of the lease area would amount to breach of Clause 14 of the lease deed.

From a perusal of the relevant clauses in the lease deed it is seen that Clause 14 thereof provides that the lessee shall not be entitled to sublet or assign his interest in the said lease except with the previous permission in writing obtained from the lessor. In that backdrop, the breach alleged against the respondent is that the lessee has assigned the interest in the leased land to an extent of 50 acres in favour of Mr. Raghavan without the previous permission of the lessor. The fact that such sale has taken place cannot be in dispute nor is it in dispute. The said assignment has been made under the registered sale deed dated 16.12.1983. The question therefore is; whether the same would constitute breach of the terms in the lease deed so as to entail termination of the lease.

If in that context, Clause 12 is taken note, it indicates that the issue of notice is contemplated in the event of the lessee committing default and the liberty to terminate the lease is exercised. The concession provided is to rectify the default before the notice is issued. If there is failure of the lessee to remedy such default that may be reported to the lessor from time to time by the Chief Conservator of Forests. Before termination of the lease a notice is to be issued and be heard about the default if the default has not been remedied. The same

would clearly indicate that the default referred to, the issue of notice there for and the fact that the same is based on the report to the lessor (State of Kerala) from Chief Conservator of Forests is that the rectification permitted is in respect of the default relating to deviation from the obligations contained in the covenants relating to maintaining the nature of the property and default should be of rectifiable nature. The Dictionary meaning of 'default' is; failure to fulfil an obligation, while the meaning of 'breach' is an act of breaking a law, agreement or code of conduct. If the said distinction is kept in view, the breach if committed by subletting or assigning as provided in Clause 14, the same would lead to its consequences and the liberty to remedy the same is not mandatory. All that Clause 12 signifies is that if default is reported and if such default is not remedied then termination can be made after issue of notice and hearing. The cause for termination will be the default and permitting to remedy the same is only an indulgence to be shown.

A perusal of the extracted portion from the sale deed dated 16.12.1983 would indicate the outright nature of sale of a portion of the leased land. It is sold for a sale consideration despite knowing that the property belonging to the government is granted under lease. The recital in fact, categorically indicates that the absolute right and possession has been given and it has also been stated therein that henceforth the purchaser, Mr. Raghavan is to pay the lease rent directly to the government and all taxes to the government are also to be paid by him. Further, neither Mr. K.K. Joseph nor the partnership firm has retained any right over the property sold under that document. Therefore, the document itself would indicate the intention of the parties and also the fact that possession was parted without consent of the lessor which was a clear breach of Clause 14 in the lease deed.

The alternate contention urged by the learned Senior Counsel for the respondent-lessee is that even if the breach is held against the lessee, the entire lease cannot be forfeited in view of the provision in section 111(g) of T.P. Act. The learned Senior Counsel in order to persuade us on this aspect has referred to certain decisions which will be adverted to here below.

Having noted the contention, firstly, a perusal of Clause 14 no doubt does not state 'a part thereof' as contended by the learned Senior Counsel. However, that does not mean that a breach committed in respect of a part of the leased land cannot be construed as breach and would disentitle the lessor to exercise the right thereunder. Secondly, section 111(g) does not suggest that in respect of the lease as a whole, the forfeiture should be limited only to the portion regarding which the breach is alleged. The breach is of not adhering to the assurance given to lessor in respect of the property belonging to the lessor, be it the whole or a part of it.

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PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATES 25.02.2022 OF THE MINISTRY OF ROAD AND HIGHWAYS REGARDING DATE OF ENFORCEMENT OF CERTAIN PROVISIONS OF THE MOTOR VEHICLES (AMENDMENT) ACT, 2019

S.O. 859(E). – In exercise of the powers conferred by sub-section(2) of section 1 of the Motor Vehicles (Amendment) Act, 2019 (32 of 2019), the Central Government hereby appoints the 1st day of April, 2022 as the date on which the following provisions of the said Act shall come into force, namely:–

Sl.No.	Sections
1.	Section 50;
2.	Section 51;
3.	Section 52;
4.	Section 53;
5.	Section 54;
6.	Section 55;
7.	Section 56;
8.	Section 57; and
9.	Section 93.

[F.No. RT-11036/64/2019-MVL]
AMIT VARADAN,
Joint Secretary

NOTIFICATION DATES 25.02.2022 OF THE MINISTRY OF ROAD AND HIGHWAYS REGARDING DATE OF ENFORCEMENT OF CERTAIN PROVISIONS OF THE MOTOR VEHICLES (AMENDMENT) ACT, 2019

का. आ. 859 (अ). – केन्द्रीय सरकार, मोटर यान (संशोधन) अधिनियम, 2019 (2019 का 32) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, तारीख 1 अप्रैल, 2022 को उस तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के निम्नलिखित उपबंध प्रवृत्त होंगे, अर्थात् :–

क्र.सं.	धाराएं
1.	धारा 50;
2.	धारा 51;
3.	धारा 52;
4.	धारा 53;
5.	धारा 54;
6.	धारा 55;
7.	धारा 56;
8.	धारा 57; और
9.	धारा 93।

फा.सं. आरटी–11036/64/2019– एमवीएल
अमित वरदान,
संयुक्त सचिव

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE SUBORDINATE COURTS OF MADHYA PRADESH (RIGHT TO INFORMATION) RULES, 2020

No. D-2121.- In exercise of the powers conferred by sub-section (1) of Section 28 of the Right to Information Act, 2005, the Chief Justice of Madhya Pradesh High Court (Competent Authority), hereby makes the following rules:-

1. SHORT TITLE AND COMMENCEMENT:-

(1) These rules may be called the Subordinate Courts of Madhya Pradesh (Right to Information) Rules, 2020

(2) They shall come into force from the date of their publication in the Official Gazette.

2. DEFINITIONS:-

(1) In these rules, unless the context otherwise requires.-

(a) **'Act'** means the Right to Information Act, 2005 (No. 22 of 2005);

(b) **'Appellate Authority'** means designated as such by the Chief Justice of High Court of Madhya Pradesh for Subordinate Courts of Madhya Pradesh;

(c) **'Authorized Person'** means Public Information Officer and Assistant Public Information Officer designated as such by the High Court;

(d) **'Form'** means the form appended to these rules;

(e) **'Section'** means a Section of the Act.

(2) Words and expressions used but not defined in these rules shall have the same meaning as assigned to them in the Act.

3. APPLICATION FOR SEEKING INFORMATION:-

(1) Any person seeking information under the Act shall make an application in Form 'A' to the authorized person and deposit application fee as per Rule 7 with the authorized person. The authorized person shall duly acknowledge the application as provided in Form 'B'. Application can also be made online through the website of Madhya Pradesh High Court.

The acknowledgement of such online application shall be provided online and by SMS.

(2) Every application shall be made for one particular item of information only.

(3) The Public Authority shall maintain a register/online status, which shall contain the information shown in **Form 'C'**.

4. DISPOSAL OF APPLICATION BY THE AUTHORIZED PERSON:-

(1) If the information sought by an applicant is held by another public authority or the subject matter of which is more closely connected with the functions of another public authority, such application or such part of it shall be transferred to that public authority, and the applicant shall be informed about the transfer of his application to that Public Authority. Such transfer of application shall be made within five days from the date of receipt of the application. The application received online may be transferred to another Public Authority by Online/Offline mode as the case may be.

(2) If the requested information falls within the authorized person's jurisdiction and also in one or more of the categories of restrictions listed in Sections 8 and 9 of the Act. The authorized person, on being satisfied, will issue the Rejection Order in **Form 'E'** as soon as practicable, normally within fifteen days and in any case not later than thirty days from the date of the receipt of the application. The application fee deposited in such cases shall not be refunded.

Provided that in case of online application 'Rejection Order' may be issued online.

(3) If the requested information falls within the authorized person's jurisdiction, but not in one on more of the categories listed in Sections 8 and 9 of the Act. The authorized person, on being so satisfied, shall supply the information to the applicant in **Form 'F'** falling within its jurisdiction, in case the information sought is partly outside the jurisdiction of the authorized person or partly falls is categories listed in Section 8 and 9 of the Act. The authorized person shall supply only such information as is permissible under the Act and is within its own jurisdiction and reject the remaining part giving reasons thereof.

(4) The information shall be supplied as soon as practicable, normally within fifteen days and in any case not later than thirty days from the date of the receipt of the application on deposit of the balance amount, if any, to the authorized person. In case of online application, the information may be supplied online wherever possible.

5. APPEAL:-

(1) Any person -

(a) who fails to get a response in **Form 'D'** or **Form 'E'** from the authorized person within thirty days of submission of **Form 'A'** or

(b) is aggrieved by the response received within the prescribed period, may file an appeal in **Form 'G'** to the Appellate Authority and deposit fee for appeal as per Rule 7 with the Appellate Authority. An appeal before the Appellate Authority may be presented online if facility is available.

(2) On receipt of the appeal, the Appellate Authority shall acknowledge the receipt of the appeal and after giving the appellant, an opportunity of being heard, shall dispose of the appeal within 30 days of the receipt of the appeal or within such extended period not exceeding 45 days from the date of filing thereof, as the case may be and shall send a copy of the order to the appellant and the Authorized Person.

(3) In case the appeal is allowed, the information shall be supplied to the applicant by the authorized person within such period as ordered by the Appellate Authority. This period shall not exceed thirty days from the date of the receipt of the order.

(4) The Appellate Authority shall maintain a register/online status in his office, which shall contain the information shown in **Form 'H'**.

6. SUO MOTU PUBLICATION OF INFORMATION BY PUBLIC AUTHORITIES :-

(1) The public authority may publish information as per sub-section (1) of Section 4 of the Act by publishing booklets and/or folders and/or pamphlets and update these publications every year as required by sub-section (1) of Section 4 of the Act.

(2) Such information may also be made available to the public through information counters, medium of internet and display on notice board at conspicuous places in the office of the authorized person and office of the appellate authority.

7. CHARGING OF FEE:-

(1) The Authorized Person shall charge the fee in the form of non-judicial stamp or by Treasury Challan (including Cyber Treasury Challan) under Treasury Head "0070 Other Administrative Services or payment through Online portal (www.mphc.gov.in/e-rti)'' at the following rates, namely:-

(A) Application Fee –

(i) Information relating to tender Documents/bids/ quotation/business contract	Five hundred Rupees per application
(ii) Information other than (i) above	Fifty Rupees per application

(B) Other Fee –

Sr. No.	Description of Information	Price/Fee in Rupees
1.	Where the information is available in the form of a priced publication	Price of the publication so fixed
2.	For other than priced publication rupees.	Five Rupees per page in case of document and cost price in case of other medium
3.	For the inspection of record (other than Judicial Record).	Twenty Five Rupees per hour or a fraction thereof for every record inspected but shall not be less than twenty five repees in any case.

(2) The Appellate Authority Authority shall charge a fee of Ts 50/- per appeal to be paid in the form of non-judicial stamp or by Treasury Challan (including Cyber Treasury Challan) under Treasury Head "0070 Other Administrative Services or through Online portal (www.mphc.gov.in/e-rti)."

Provided that no such fee shall be charged from the persons who are of below poverty line as may be determined by the State Government.

8. (1) The State Public Information Officer shall not be liable to provide any information which can be obtained under the provisions of Chapter XXIII of Civil Court Rules, 1961 and Chapter XXVI of Rules and Orders (Criminal).

(2) The Appellant Authority shall not entertain any application from any person to inspect a record which can be inspected under the provisions of Chapter XVII of Civil Court Rules, 1961 and Chapter XXI of Rules and Orders (Criminal).

Form 'A'
Form of application for seeking Information
[See Rule 3(1)]

I.D.No.....
(for official use)

Self Attested Photograph

To

The Authorized Person
.....
.....

1 (a) Name of the Applicant :- .....
(b) Father's Name :- .....
(c) Age :- .....
(d) Occupation :- .....

2. Address :- .....

3. Particulars of information -
(a) Concerned Department :- .....
(b) Particulars of information required :- .....
(i) Details of information required :- .....
(ii) Period for which information asked for :- .....
(iii) Other details, if any :- .....
.....

4. I state that the information sought does not fall within the restrictions contained in Sections 8 & 9 of the Act and to the best of my knowledge it pertains to your office.

5. Application fee Rs..... has been enclosed herewith in the form of Non-Judicial Stamp/Treasury Challan No.....dated...../ paid online, receipt attached.

Place:-

Date:-

Signature of Applicant
E-mail address (if any)
Telephon No.(office).....
(Residence).....

Note:-

(i) Reasonable assistance can be provided by authorized person in filling up the Form "A".

(ii) Please ensure that the Form 'A' is complete in all respects and there is no ambiguity in providing the details of information required.

Form 'B'
Acknowledgement of Application in Form 'A'
[See Rule 3(1)]

I.D. No..... Dated.....

1. Received an application In Form 'A' from Shri/Smt/Ku ..... Resident of ..... under Section..... of the Right to Information Act, 2005
2. The information is proposed to be given normally within fifteen days and in any case within thirty days from the date of receipt of application. In case it is found that the information asked for cannot be supplied, the rejection letter shall be issued stating reason thereof.
3. The applicant shall have to deposit the balance fee, if any, with the authorized person before collection of information.

Place:-
Date:-

Signature and Stamp of the
Authorized person

Form'C'
Register of Public Authority
[See Rule 3(3)]

Registration number of application	Date of receipt of application	Name and address of the applicant	Date of appearance of the applicant	Description of required information
1	2	3	4	5

Source of information	Date of transmission of application to concerning office	Date of receipt of information	Date of disposal of application	Conclusion of public information officer on the application
6	7	8	9	10

Description of fees charged on the application	Signature of the applicant	Order of First Appeal	Order of Second Appeal	Remarks
11	12	13	14	15

Form 'D'
Outside the jurisdiction of the authorized person

[See Rule 5(1)(a)]

From,

Special Public Information Officer

To, ... (Public Authority /P.I.O)

Sub:- Application under R.T.I. Act, 2005

Sir/Madam,

.....

.....

A copy of application dt. ..... received by undersigned and registered as I.D. No..... dated ..... from ..... is transferred u/s 6(3) of the Right to Information Act, 2005 on point no ...../ or in to for appropriate action at your end and the information if admissible, may be provided directly to the to the applicant under intimation to the under-signed.

In case, it does not fall under your jurisdiction, the same be further transferred to the concerned Public Authority under intimation to the Applicant.

The applicant has deposited the requisite application fee in this Registry.

Encl - As above.

Authorized person

Copy to: .....with the request to contact the above Authority for further information in the matter.

Authorized person

Form 'E'
Rejection Order
[See Rule 5(1)(a)]

No..... Dated.....

To,

Sir/Madam,

.....

.....

.....

Please refer to your application I.D. No. ..... dated..... addressed to the undersigned regarding supply of information on.....

(1) The information asked for cannot be supplied due to following reasons:-

(i) .....

(ii) .....

(2) As per Section 19 of the Right to Information act, 2005, you may file an appeal to the Appellate Authority within thirty days of the issue of this order.

Yours faithfully,
Authorized Person

Form 'F'
Form of Supply of Information to the Applicant
[See Rule 4 (3)]

No...../ Dated.....

To,

Sir/Madam,

.....

.....

.....

Please refer to your application, I.D. No..... dated..... addressed to the undersigned regarding supply of information on .....

1. The information asked for is enclosed for reference*

Or

The following part information is being enclosed*

(i) .....

(ii) .....

The remaining information about the other aspects cannot be supplied due to following reasons:-*

(i) .....

(ii) .....

(iii) .....

2. The requested information does not fall within the jurisdiction of this authorized person.*
3. As per Section 19 of the Right to Information Act, 2005, you may file an appeal to the Appellate Authority within thirty days of the issue of this order.*

Yours faithfully,
Authorized Person

* Strike out if not applicable

Form 'G'
Appeal under Section 19 of the Right to Information Act, 2005
[See Rule 5 (1)(b)]

I.D.No.....
(For Official use)

To,

The Appellate Authority,
Address:-.....

1. (a) Name of the Applicant : .....
   (b) Father's Name : .....
   (c) Age : .....
   (d) Occupation : .....
2. Address : .....
3. Particulars of the Authorized Person
   (a) Name : .....
   (b) Address : .....
4. Date of Submission of application in Form 'A' : .....
5. Date on which 30 days from submission of Form 'A' is over : .....
6. Reasons for appeal.
   (a) No response received in Form-B or C within thirty days of submission of Form A [5(1)(a)] : .....
   (b) Aggrieved by the response received within prescribed period [5(1)(b)] (Copy of the reply receipt be attached). : .....
   (c) Grounds for appeal. : .....
7. Last date for filing the appeal (See Rule 5(3)] : .....

8. Particulars of Information

(i) Information requested : .....

.....

.....

.....

(ii) Subject : .....

(iii) Period : .....

9. A fee of Rs. 50/- for appeal has been enclosed herewith in the form of Non-Judicial Stamp/Treasury Challan No.....dated...../ paid online, receipt attached.

Place -
Date -

Signature of Appellant……..……..
E-mail Address, if any……..…….
Telephone No.(Office)……..……..
(Residence) No……..…….
Mobile No……....

ACKNOWLEDGMENT

I.D. No..... dated.....

Received an Appeal application from Shri/Ms. ..... resident of ..... under Section 19 of the Right to Information Act, 2005.

Signature of Receipt Clerk ….....
Appellate Authority ……..……..
Telephone No. ……..……..
E-mail Address/Web Site .....

Form 'H'
Format of Register for registration of Appeal
[See Rule 5 (4)]

Registration number of application	Name & Particulars of the Appellant/ applicant	Name & Particulars of the Respondent/ Non-Applicant	Particulars of the Order of the Public information Officer against which appeal filed	Date of Order	Findings	Remarks
1	2	3	4	5	6	7

RAJENDRA KUMAR VANI,
Registrar General

निश्चित्वा यः प्रक्रमते नान्तर्वसति कर्मणः।
अवन्ध्यकालो वश्यात्मा स वै पण्डित उच्यते।।

Whose endeavors are preceded by a firm commitment, who does not take long rests before the task is accomplished, who does not waste time and who has control over his/her mind is wise. (विदुर नीति)

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर

मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्यप्रदेश राज्य न्यायिक अकादमी, जबलपुर

ब्योहारबाग, जबलपुर (म.प्र.) - 482 007