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MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

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EDITORIAL...

Esteemed Readers,

Greetings from Editor's desk!

The issue in your hands, displays the change in the motto of the Academy. ***'Pursuit of Excellence'***, which this Academy has always been actively seeking, has been incorporated in the motto as an insignia. It is said that excellence is not a skill, it is an attitude. It is also said that we are what we repeatedly do. Excellence, therefore, is not an act, but a habit. The will to win, the desire to succeed, the urge to reach your full potential, are the keys that will unlock the door to personal excellence. Therefore, we must inculcate the habit of excellence within us as a way of life. We must also remember that excellence is a skill that takes practice, it cannot be gifted. For the judges, a perfect balance among all attributes, is excellence and we stand committed towards that.

The nation is celebrating a grand *Azadi ka Amrit Mahotsava* to commemorate 75 years of independence this month with complete zeal and enthusiasm. We salute the spirit of patriotism and devotion that all Indians have in their heart for the nation. The celebration acted as an elixir of energy and source of plenty inspirations, new ideas and *aatmanirbharta*.

In view of the exigencies of time and requirements of the progressing society, the Academy has changed many of its programmes. New features have been added to some of the existing programmes and some new programmes have been incorporated in the training schedule. The training scheme for newly recruited Civil Judges of 2022 batch has also been changed to a 2 years' course to improve their judicial skills.

For any organisation to flourish, its legacy is paramount. It must be kept inviolable by all the generations. The legacy of the Academy is very rich and it is imperative that the next generation is prepared, which will carry the baton further. Therefore, an idea of conducting a programme on 'Training of Trainers' has been conceived by the Academy.

Similarly, in this era of growing commercial disputes, recognising a requirement for special training on Commercial Laws, the Academy is organising a two days' workshop on commercial laws also in the month of September.

In the months of July and August, the Academy has organised two colloquia; one for the Principal District Judges and the other for the Chief Judicial Magistrates. Both the programmes have proved to be fruitful and the objective of organising this event was achieved.

The Academy also conducted Workshops on – Juvenile Justice, Labour Laws and Family Laws, Specialized Educational Programmes at State Forensic Science Laboratory; Sagar and State Medico Legal Institute; Bhopal. In addition, under the e-Committee Special Drive Training and Outreach Programmes, the Academy conducted Master Trainers Programme for New Master Trainers, Training Programme on Digitization at High Court level for the High Court Digitization officials/staff, Advocate/Advocate Clerk e-Courts Programme at Taluka/Village and Programme for Technical staff of High Court Hardware & Software maintenance. The Academy has also organised Regional Workshop for Advocates from 17 districts.

Before I close, I wish to mention the movie; 'Life is Beautiful'. The story revolves around a father and son which teaches us a lot of lessons in life. It teaches us that life is as beautiful as we want it to be. Any challenge or suffering that life presents us with, is only as intense as our perception allows it to be. It teaches us that there is always an opportunity to seek moments of sheer pleasure even under the most distressed circumstances. Everyone feels low in their life but destiny, regardless of all our mistakes, gives us many opportunities and it is up to us to identify these opportunities and act with prompt attentiveness.

Join us in our '***Pursuit of Excellence***'.

PADMESH SHAH
Additional Director

GLIMPSES OF THE 76TH INDEPENDENCE DAY CELEBRATION AT MADHYA PRADESH STATE JUDICIAL ACADEMY

Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh hoisting the National Flag

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Colloquium for Principal District & Sessions Judges
(09.07.2022 & 10.07.2022)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Colloquium for Chief Judicial Magistrates
(06.08.2022 & 07.08.2022)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Master Trainer Programme for New Master Trainers
(29.07.2022 & 30.07.2022)

Workshop on - Labour Laws
(26.08.2022 & 27.08.2022)

PART - I

M.P. AMENDMENT IN ORDER XVIII OF THE C.P.C. – AN OVERVIEW

Mamta Jain
Principal Judge, Family Court,
Jabalpur (M.P.)

The Code of Civil Procedure, 1908 (in brief "the Code") governs the entire spectrum of civil fraternity suits. Law is dynamic and subjected to changes to meet the demanding needs of the society at large. It is based on the Latin maxim *"salus populi suprema lex esto"* which means "the good of the people shall be the supreme law".

For the purpose of speedy and expeditious trial of suits, the Code has been amended several times from the date of its enforcement. Recently, the Code of Civil Procedure (M.P. Amendment) Act, 2020 was enacted by the Madhya Pradesh Legislature and published in the M.P. Gazette (Extra-ordinary) on 4th May 2022, vide which some amendments in Order XVIII were made. After Order XX-A, a new Order XX-B has been introduced which is regarding recognition of electronically signed Orders, Judgments and Decrees.

Amendment in Order XVIII

By the aforesaid amendment, in Rule 4 of Order XVIII, the existing marginal heading has been replaced by the marginal heading "Recording of evidence in Commercial Court" and in sub-rule (1), for the words." In every case", the words, bracket and figures "In any suit in respect of a commercial dispute of a specified value triable in the Commercial Court constituted under sub-section (1) of Section 3 of the Commercial Court Act, 2015 (No.4 of 2016)" have been substituted.

Rule 4 (1) of Order XVIII as it stands post amendment reads as under:

> **4."Recording of evidence in Commercial Court –** (1) In any suit in respect of a commercial dispute of a specified value triable in the Commercial Court constituted under sub-section (1) of Section 3 of the Commercial Court Act, 2015 (No.4 of 2016), the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:
>
> *Provided that* where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the order of the Court."

Following new rule 4-A has also been inserted in Order XVIII of the C.P.C. by the M.P. Amendment Act, 2020:

> "**4-A**. Except as provided in Rule 4, the evidence of the witness in attendance shall be taken orally in open court in the presence and under the personal direction and superintendence of the Judge."

In the light of the aforesaid amendment, the evidence of witnesses in all civil suits except suits in respect of a commercial dispute triable in Commercial Court constituted under the Commercial Courts Act, 2015, shall be taken orally in open court in the presence and under the personal direction and superintendence of the Judge.

Effect: Whether retrospective? If yes, up to what extent?

On the basis of nature, laws are classified into two groups; substantive laws and procedural laws. Substantive laws are the laws which define the principles related to the rights and liabilities (for example, Indian Penal Code, 1860 which lays down the offences which are punishable in nature). On the other hand, procedural laws provide a mechanism or procedure for regulation and enforcement of those rights and liabilities (for example, Code of Civil Procedure, 1908). The general rule for applicability of procedural law is that it would be applicable retrospectively whereas substantive laws are applicable prospectively, unless otherwise provided. There is no controversy on the general principle that a person may have a vested right but he does not have any such right to be governed by a particular procedure or by a particular forum. Therefore, any statutory provisions pertaining to procedural law becomes operative immediately when it is enacted even in respect of pending matters.

In addition to the aforesaid principle, a five Judge Bench of the Hon'ble Supreme Court in the matter of ***Memon Abdul Karim Haji Tayab v. Deputy Custodian-General, New Delhi & ors., (1964) 6 SCR 837*** has cleared the legal position wherein it has opined:

> "It is well settled that procedural amendments to a law apply in absence of anything contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the action may have begun earlier or the claim on which the action may be based may be of an anterior date."

This principle of law follows from the legal maxim *"Nova constitution futuris formam imponere debet non praeteritis"*, i.e. a new law ought to regulate what is to follow, not the past.

In ***Garikapatti Veeraya v. N. Subbiah Choudhury, AIR 1957 SC 540, New India Insurance Company Limited v. Shanti Mishra, (1975) 2 SCC 840, Maharaja Chintamani Saran Nath Sahdeo v. State of Bihar, (1999) 8 SCC 16*** and ***Shyam Sundar v. Ram Kumar, (2001) 8 SCC 24*** as also in a series of pronouncements, the scope

and ambit of an amending legislation and its retrospectivity has been elaborately discussed. It has been held that every litigant has a vested right in substantive law but no such right exists in procedural law and as a general rule, the amended law relating to procedure operates retrospectively.

The law on the subject has been elaborately dealt with by Hon'ble the Supreme Court in ***Hitendra Vishnu Thakur v. State of Maharashtra, AIR 1994 SC 2623,*** wherein it has been held that -

> "From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:
>
> (i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.
>
> (ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.
>
> (iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.
>
> (iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.
>
> (v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

Relying upon the case of ***Hitendra Vishnu Thakur*** (supra), the same legal position has been reiterated in the cases of ***Videocon International Ltd v. Securities and Exchange Board of India, AIR 2015 SC 1042*** and ***Securities and Exchange Board of India v. Classic Credit Ltd., 2017 Latest Case Law 594 SC***. Thus, it can be deduced from the aforesaid judgments that procedural amendments in law are applicable retrospectively to acts or actions that may have begun earlier or on the claims on which the actions may be accrued on an anterior date.

Now, the question arises as to what will be the procedure in cases where affidavits under Order XVIII Rule 4 of the C.P.C. have already been filed before 04.05.2022 and the witnesses concerned have either been cross-examined or not?

Before discussing the above issue, it would be appropriate to consider the object of the Code of Civil Procedure and the amending Act. The word "Code" signifies *"a systematic collection of statutes, a body of laws so arranged as to avoid inconsistency and overlapping."* The main aim of the C.P.C. is to facilitate justice and seek an end to the litigation rather than provide any form of punishment and penalties. The object of amendment is to keep procedural law in tune with the changing needs of society and even technological advancement.

Hon'ble the Supreme Court in the case of ***Nani Gopal Mitra v. State of Bihar, AIR 1970 SC 1636*** declared that amendments relating to procedure operate retrospectively subject to the exception that whatever be the procedure which was correctly adopted under the old law, the same cannot be reopened for the purpose of applying the new procedure. It was held in this case as:

> "It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz. that a statute should not be, so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force".

After taking into account the principle embodied in S.6 of the General Clauses Act, it was further held that

> "The effect of the application of this principle is that pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure."

The case of ***Nani Gopal Mitra*** (supra) has further been relied upon in the case of ***Ramesh Kumar Soni v. State of M.P., AIR 2013 SC 1896*** and in other cases wherein same legal position has been reiterated in those case laws. In ***Sangram Singh v. Election Tribunal, AIR 1955 SC 425,*** the Hon'ble Supreme Court held that the function of adjective law is to facilitate justice and to further its ends. In ***Ganesh Trading Co. v. Moji Ram, AIR 1978 SC 484,*** it was held that a "hyper-technical view" should not be adopted by the court in interpreting procedural law. In ***Ghanshyam Dass v. Dominion of India, AIR 1984 SC 1004,*** the Hon'ble Supreme Court observed that our laws of procedure are based on principle that, as far as possible, no proceeding in the court of law should be allowed to be defeated on mere technicalities. The provisions of the Civil

Procedure Code, therefore, must be interpreted in a manner so as to sub-serve and advance the cause of justice rather than to defeat it.

It is pertinent to note here that any procedure is only the handmaid of justice and the purpose of procedural law is to facilitate and not to obstruct the course of substantive justice. In the matter of ***State of Gujarat v. Ramprakash P. Puri, 1970 (2) SCR 875,*** the Hon'ble Supreme Court has observed:

> "Procedure has been described to be a hand-maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it."

In ***Shreenath and anr. v. Rajesh and ors., AIR 1998 SC 1827,*** it has been held:

> "A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed".

In view of the laws laid down in ***Hitendra Vishnu Thakur*** (supra) and ***Nani Gopal Mitra*** (supra), it is clear that the procedure adopted prior to the State amendment cannot be said to be erroneous merely because the law is amended subsequently. The reason is that the amended law was not in existence and was not deemed to exist when the procedure as per previous law was adopted. Thus, it is clear that once a correct procedure has been adopted as per law prevalent at that time, it would not be reasonable to reopen that procedure for the purpose of applying the new amending provisions.

Conclusion:

In the light of the above, it can be concluded that as a general rule, the amended law relating to procedure operates retrospectively with the exception that whatever be the procedure which was correctly adopted under the old law, the same cannot be reopened for the purpose of applying the new procedure and amended provisions would apply to the proceedings pending at the time of its having come into force. If by a statutory change, the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is different stipulation. In view of such legal situation, if affidavits of the witnesses under Order XVIII Rule 4 of the C.P.C. have been filed prior to 04.05.2022, irrespective of the fact whether those witnesses have been cross examined or not, the Court shall further proceed with the matter and there shall be no requirement to reopen the earlier procedure adopted correctly under the pre-amended provisions. However, in cases, where the affidavits of the witnesses under Order XVIII Rule 4 of the C.P.C. have been filed or have not been filed on or after 04.05.2022, the evidence (including examination-in-chief) of the witnesses shall be taken orally in open court in the presence and under the personal direction and superintendence of the Judge.

●

DETAILED ACCIDENT REPORT: NEED OF THE HOUR

Padmesh Shah
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In December 1971, at midnight, two brothers were going home by their motorcycle. On the way home, a jeep, being driven rashly and negligently came and dashed against the motorcycle due to which both the brothers were grievously injured and later on, they succumbed to their injuries. A criminal case was registered against the driver of the jeep. The legal representatives of both the brothers filed claim petition for compensation. The Tribunal decided the case in 1976 i.e. after five years of the accident and awarded compensation of Rs. 80,000/- to one brother who was a doctor and Rs. 76,000/- to the other brother. The Insurance Company filed appeal against the award before the High Court and on its dismissal, they approached the Supreme Court where the case was finally decided in the year 1979 almost taking 8 years to completely adjudicate a road accident claim case.

Half a century later, in the year 2021, on the first day of May, a constable; Munshilal of Vasant Vihar Police Station, Delhi was on duty to check vehicles. At around 3.45 am, a Honda CRV car, being driven rashly and negligently came and dashed against the constable who died instantaneously. A criminal case was registered at the concerned police station and post mortem examination of the body was conducted. On the very day, the SHO of the police station filled some forms according to information provided by the legal representatives of deceased, driver and owner of the vehicle involved in the accident. After some verification, he sent the forms with copy of charge sheet to the Special Committee on 4th May. On going through the papers, it was found that the vehicle involved in the accident was insured to Bajaj Allianz Insurance Company. The Insurance Company which was summoned to remain present before the Committee, sent their nodal officer. The Committee handed over the copy of forms and documents related to the Insurance Company to the Nodal Officer. The next hearing was fixed for 6th May. The nodal officer of the Insurance Company, who was again present on the assigned date, accepted their liability before the Committee and offered an amount of Rs. 32 lakh as compensation. The legal representatives of the deceased after considering the offer, accepted the same on the next date i.e. on 8th May. The Committee sent the case to Lok Adalat and on 10th May, the Lok Adalat passed the award of compensation which was paid on the same day. Thus, within a span of 10 days of the accident, the claim of the legal representatives of the deceased was finally settled and the amount of compensation was also paid.

Both the cases mentioned herein above are not hypothetical and the authenticity of the facts can be verified, as the first case was a reported one and cited as ***Concord of India Insurance Co. Ltd. v. Nirmala Devi, (1979) 4 SCC 365***

while the FIR number of the second case is 78/21 and the car bore the registration number DL 4C 6927 and driver's name was Samit Yadav. The deceased constable was survived by his wife, a married son and two married daughters and the news was published on 2nd May, 2021 in the editing Times of India news paper. The very purpose of discussion of the above two cases is that the first case took 8 long years to finally decide a motor accident claim case of an accident which occurred in 1971. Unfortunctucly, this situation is still very much the same. The second case is a good example of using the provision of section 158(6) (now repealed and replaced by new section 159) of Motor Vehicles Act, 1988 which provides for filing of detailed accident report and in the light of which directions have been given by the Delhi High Court in the case of ***Rajesh Tyagi & ors. v. Jaibir Singh & ors.***, judgment dated 16.12.2009 passed in FAO No. 843 of 2003 and directed by the Apex Court in ***Jai Prakash v. National Insurance Company Limited and others, (2010) 2 SCC 607***, which helped in concluding the claim of legal representatives of the deceased within 10 days.

HISTORY AND BACKGROUND

Though at the time of enactment of the Motor Vehicles Act, 1988, the provision of Section 158(6) was not there which was later on inserted by the amendment Act 54 of 1994 on 14th November, 1994 wherein provision of reporting a motor accident within 3 months to the Tribunal to facilitate the settlement of the claim was incorporated. The object of Section 158(6) of the Motor Vehicles Act is to set the law relating to payment of compensation into motion upon the report of the police, as the poor and helpless victims of road accident are ignorant of their rights. In mid 2009, the Delhi High Court took the initiative in the case of ***Rajesh Tyagi*** (supra) and directed the Delhi police to set up a Committee and to ensure that the work should be done in accordance with the letter and spirit of section 158(6) of the Motor Vehicles Act, 1988. After a series of judgments, the Delhi High Court in ***Rajesh Tyagi case*** (supra), issued Claims Tribunal Agreed Procedure (CTAP), on which certain suggestions were made. After incorporating the suggestions, the Delhi High Court issued Modified Claims Tribunal Procedure (MCTAP). Meanwhile in 2009, the Supreme Court in the case of ***Jaiprakash*** (supra) adopted the CTAP and MCTAP. Additionally, the Supreme Court also issued certain directions to authorities like Police, Claim Tribunals and Insurance Companies.

CHANGING WORLD

The first law of Newton is about inertia which says that if a body is at rest or moving at a constant speed in a straight line, it will remain at rest or keep moving in a straight line at constant speed unless it is acted upon by a force. The concept of Detailed Accident Report (in short 'DAR') was in static state and there was an urgent need of outer force to move it and the cases of ***Rajesh Tyagi*** (supra) and ***Jaiprakash*** (supra) did this job. On the direction given in these cases, Delhi was the first State among all the states to make it real. The Claims Tribunals,

Delhi Police, Delhi Legal Services Authority and Insurance Companies joined hands to ensure proper implementation of directions given by the higher Courts. The rest is history and in Delhi, a scheme namely; FASTDAR was launched as a pilot project with the aim to compensate the people or their legal representative(s) as soon as possible. This scheme was limited to fatal accidents only but the response was overwhelming as it showed the disposal of almost 60% of cases through FASTDAR scheme. Later on, State of Tamil Nadu also took the initiative to use DAR, for which, Tamil Nadu Police resorted to internet tools and started uploading Accident Information Report (AIR) on their official website.

Before 2022, every Tribunal was duty bound to adapt the procedure prescribed in ***Rajesh Tyagi case*** (supra) which was approved by the Supreme Court in case of ***Jaiprakash*** (supra). In the year 2022, the Central Government amended the Central Motor Vehicles Rules and inserted a new Rule 150 A with a sub heading **"procedure for investigation of road Accident"**. These Rules are made in accordance with the guidelines issued by the Delhi High Court, the Madras High Court and the Supreme Court in various judgments regarding DAR and matter related to claim case for their early disposal. The amended Rule 150 A is now applicable w.e.f 01.04.2022 and from now on, every stakeholder, whether the Claims Tribunal, Insurance Company or police have to work according to these Rules. It will be very beneficial to understand the DAR Rules if we divide it into duties and rights of different stakeholders in such a way that by using these, one can easily understand the DAR Rules.

1. Duties of Police

A police officer shall intimate the accident to the Claims Tribunal within 48 hours of the accident by submitting First Accident Report (FAR) in Form I. The copy of this Form I will be provided to victim (s), Insurance Company (if information is available) and the State Legal Services Authority (sub rule 2).

When Investigation Officer reaches the site of the accident, he shall inspect the spot, take photograph/ video of the scene and the vehicle involved, prepare site plan, drawn to scale as to indicate the layout and width of the road or place, position of vehicle and person involved and take photograph of the injured in the hospital and any other factor, which in his knowledge is relevant.

After all these necessary formalities, the Investigation Officer shall conduct spot enquiry by examining the eyewitnesses and bystanders (sub rule 1). It is the duty of the Investigation officer to produce the driver(s), owner(s), claimant(s) and eye witness(es) before the Claims Tribunal (sub rule 19).

It is the duty of the Investigation officer to submit Interim Accident Report (IAR) within 50 days and DAR within 90 days of the accident. If he fails to file the above within the stipulated time, he shall approach the Claims Tribunal for extension of time (sub rule 17).

The Investigation Officer shall file verification report of the forms submitted by the driver (form III) and owner (form IV) in FORM X and file it before the Tribunal along with DAR (sub rule 7).

It is the duty of the Investigation Officer to produce victim(s), / claimant(s), driver(s), owner(s) before the Claims Tribunal on the date so fixed. If he is unable to do for reasons beyond his control, the Claims Tribunal may issue notices to them to be served by the Investigation Officer on a date for appearance which is not later than 30 days (sub rule 19).

2. Rights of Victim

It is the duty of the Investigation Officer to give information to the victim(s) about the procedure of the scheme in flow chart as mentioned in FORM II. It shall be done within 10 days of the accident. This Form II shall be filed with DAR (sub rule 3). The Investigation Officer also provides a blank copy of FORM VI to the victim or their legal representatives to furnish the information and to attach the relevant documents to him within 60 days of the accident (sub rule 8) and if the victim (s) is a minor, FORM VIA be filled and submitted to the Investigation Officer within 60 days (sub rule 9).

3. Duties of Driver and Owner

It is obligatory on the part of the driver and the owner of the vehicle involved in an accident to provide information in the given form. For this, the Investigation Officer shall provide blank Proforma of FORM III to the driver and FORM IV to the owner of the vehicle involved. Both the driver and owner shall furnish the relevant information in the given format to the investigation officer within 30 days of the accident (sub rules 4 & 5).

4. Duties of the Insurance Company

Sub rules 23 to 25 cast duties on the Insurance Company. According to sub rule 23, it is the duty of the Insurance Company to appoint a designated officer within 10 days of receipt of FAR who shall be responsible for all the proceedings and to pass in writing, a reasoned order of compensation payable to the claimants.

Apart from it, sub rule 24 provides that every Insurance Company shall appoint a nodal officer with intimation to the Police about name, telephone number, address, Email address of the nodal officer so as to send all the forms and document to such nodal officer by email.

As per sub rule 25, it is obligatory on the part of the Insurance Company to verify the correctness / genuineness of every claim.

It is obligatory on the part of the Insurance Company to verify Forms VI and VIA submitted by the claimants or victims as the case may be, within 30 days from the date of receipt of DAR (sub rule 10).

If the Insurance Company does not dispute the claim, the Company will take decision about the quantum of compensation within 30 days of the date of intimation of the accident and submit its reasoned decision in FORM XI and if the company disputes the claim, it shall disclose the ground of defence in above FORM XI.

5. Duties of RTO and Hospital

The registering authority shall verify the registration certificate of the vehicle along with fitness certificate and permit (if any), within 15 days of application being made by the Investigation Officer (sub rule 15). For hospitals, it is necessary for them to issue MLC or Post Mortem as the case may be to the investigation officer within 15 days of the accident (sub rule 16).

THE PROCEDURE

As per sub rule 6, the Investigation officer shall submit Interim Accident Report (IAR) in FORM V to the Claims Tribunal within 50 days of the accident with all relevant documents alongwith the copy to Insurance Company, Victim(s), claimant(s) and State Legal Services Authority. As per Rule 11, the Investigation Officer shall complete the investigation of the criminal case within 60 days of the accident and submit its copy along with DAR. As per sub rule 12, the Investigation Officer shall submit DAR in FORM VII within 90 days of the accident which shall be accompanied by:

(i) Site Plan as per FORM VIII

(ii) Mechanical Inspection Report as per FORM IX

(iii) Verification Report as per FORM X

(iv) Report u/s 173 of Cr.P.C. 1973

The copy of DAR is also submitted to the Insurance Company, victim(s)/ claimant(s), driver(s), owner(s) and State Legal Services Authority as per sub rule 13. The Investigation officer shall submit a copy of DAR before the concerned criminal court within 7 days of submitting the same before the Claims Tribunal (sub rule 39). If the victim(s), claimant(s), driver(s), owner(s) fail to furnish the information to the Investigation Officer, who may seek necessary direction from the Claims Tribunal which can direct the parties in default to submit the requisite information with document (if any), before him within 15 days.

When the Investigation Officer submits FAR, IAR and DAR before the Claims Tribunal, it shall examine them and if found complete in all respect, a date is fixed for appearance of the driver(s), owner(s), claimant(s) and Insurance Company (ies). Alternatively, if the Claims Tribunal finds the report to be incomplete, the Investigation Officer will be directed to complete it and a day may be fixed for resubmission of the same.

Once the claimant(s) appears before the Claims Tribunal, the DAR will be treated as a claim petition filed under section 166(4) of the Motor Vehicles Act

and if the claimants have already filed claim petition, DAR will be tagged with it. If the report u/s 173 of Cr.P.C. has not been filed along with DAR, the Claims Tribunals shall either wait for it or record the statement of eye witnesses to satisfy with respect to the negligence before passing the award. If the claimants fail to appear on the date fixed, DAR will be registered as MJC till the appearance of the claimants (sub rule 21). The Claims Tribunal may register the DAR under section 166 of the Motor Vehicles Act in case of rash and negligent driving or under section 164 the Motor Vehicles Act in case of no fault. (sub rule 22)

After registration of the case, if the Insurance Company does not dispute the liability and submits FORM XI in respect of its offer regarding compensation, the claimants may respond to the offer of the Company. For it, the Claims Tribunal can grant time which is not later than 30 days to respond to the said offer. (sub Rules 26 & 28)

If both the parties agree, the Claims Tribunal shall pass a consent award and provide 30 days time to Insurance Company to deposit the award amount. Such consent award shall be passed within 6 months of the accident (sub rule 27).

If the claimants do not accept the offer of the Insurance Company or the Insurance Company disputes the claim, the Claims Tribunal shall proceed to conduct an inquiry under sections 168 and 169 of the Motor Vehicles Act, 1988 (sub rules 29 & 30).

In case written statements are required to be filed, both the parties shall file the written statement in FORM XIII for death case and FORM XVI for injury case. (Sub rule 33)

The Claims Tribunal shall satisfy itself with respect to genuineness of the claim. For it, the Claims Tribunal may take evidence if it is necessary or examine the parties. If the Insurance Company is willing to bear the cost, the Claim Tribunal may direct to take evidence by the Local Commissioner. This enquiry should be completed within one year from the date of accident. The Claims Tribunal may extend this time by recording reason.

While passing the award, the Claims Tribunal shall incorporate the summary of computation of compensation of award in FORM XV for death case and FORM XVI for injury case. The Claims Tribunal shall also incorporate FORM XVII in award for showing date wise compliance of procedure of the scheme. (sub rule 37)

The Claims Tribunal may ascertain the financial conditions and needs of claimants for disbursement of the amount awarded. For this, the Claims Tribunal may direct the claimants to file AADHAAR CARD, PAN CARD, details of linked BANK ACCOUNT, two sets of PHOTOGRAPH, SPECIMEN SIGNATURE of the claimant(s).

The amount awarded shall be deposited with interest either electronically or otherwise within 30 days from the date of award. (Sub rule 34) After depositing

of amount awarded, the Claims Tribunal shall, depending upon the financial status and financial need of the claimants, release such fund as may be considered necessary and direct the remaining amount to be kept in fixed deposit to be released in a phased manner in accordance with the MOTOR ACCIDENT CLAIMS TRIBUNAL ANNUITY DEPOSIT (MACAD) SCHEME stipulated in FORM XIX (sub rule 36).

The Claims Tribunal shall fix a date for reporting of compliance of the award and ask for such proof being filed of deposit the amount with interest (sub rule 38). If the award amount is not deposited within stipulated time, then on application by the decree holder, the Claims Tribunal shall execute the award in accordance with sections 169(4) and 174 of the Motor Vehicles Act, 1988 but this execution will be stated after the expiry of 90 days from the date of award. If the award is stayed by the High Court then the Claim Tribunal shall close the matter with liberty to claimants to revive it after the decision of the appeal.

The Claims Tribunal and Investigation Officer shall send certified copy to criminal Court and State Legal Services Authority (sub rules 39 & 40). The Criminal Court, if convicts the accused, shall send the copy of the judgement to State Legal Services Authority with affidavit of accused with respect to his assets and income to conduct a summary inquiry and submit a Victim Impact Report (VIR) in FORM XII before him within 30 days of conviction

The record of the award passed by the Claims Tribunal shall be maintained in the prescribed format in FORM XVIII to understand the chronological stage i.e. from filing of DAR to disbursement of the award.

CONCLUSION

Granting compensation to the victim/claimants in their hour of need is an absolute necessity. Rendering help to the needy after their bad patch is far too less significant and at times even inconsequential. It is with this objective of awarding compensation at the earliest to the victim/claimant that this provision has been made in Rule 150A of the Central Motor Vehicles Rules. The spirit underlying the direction given in ***Rajesh Tyagi*** (supra) and ***Jaiprakash*** (supra) is to give impetus to the said provision. The mandate of the said Rule does not only cast duty on the Claims Tribunal to apply the law in accordance with the object with which it has been made but also expects the Claims Tribunals to inspire other stake holders in effectively implementing DAR rules so that a just disposal of claim case is expedited.

The DAR Rules, if implemented in compliance with the objective behind it, will not only simplify the procedure but will also be instrumental in lessening and gradually eliminating the possibilities of false and multiple claims as well as fabricating various reports that is why implementation thereof is the most pressing need of hour. For convenience of readers, a table showing the forms and flow chart of Form III describing the procedure is annexed with this article for ready reference.

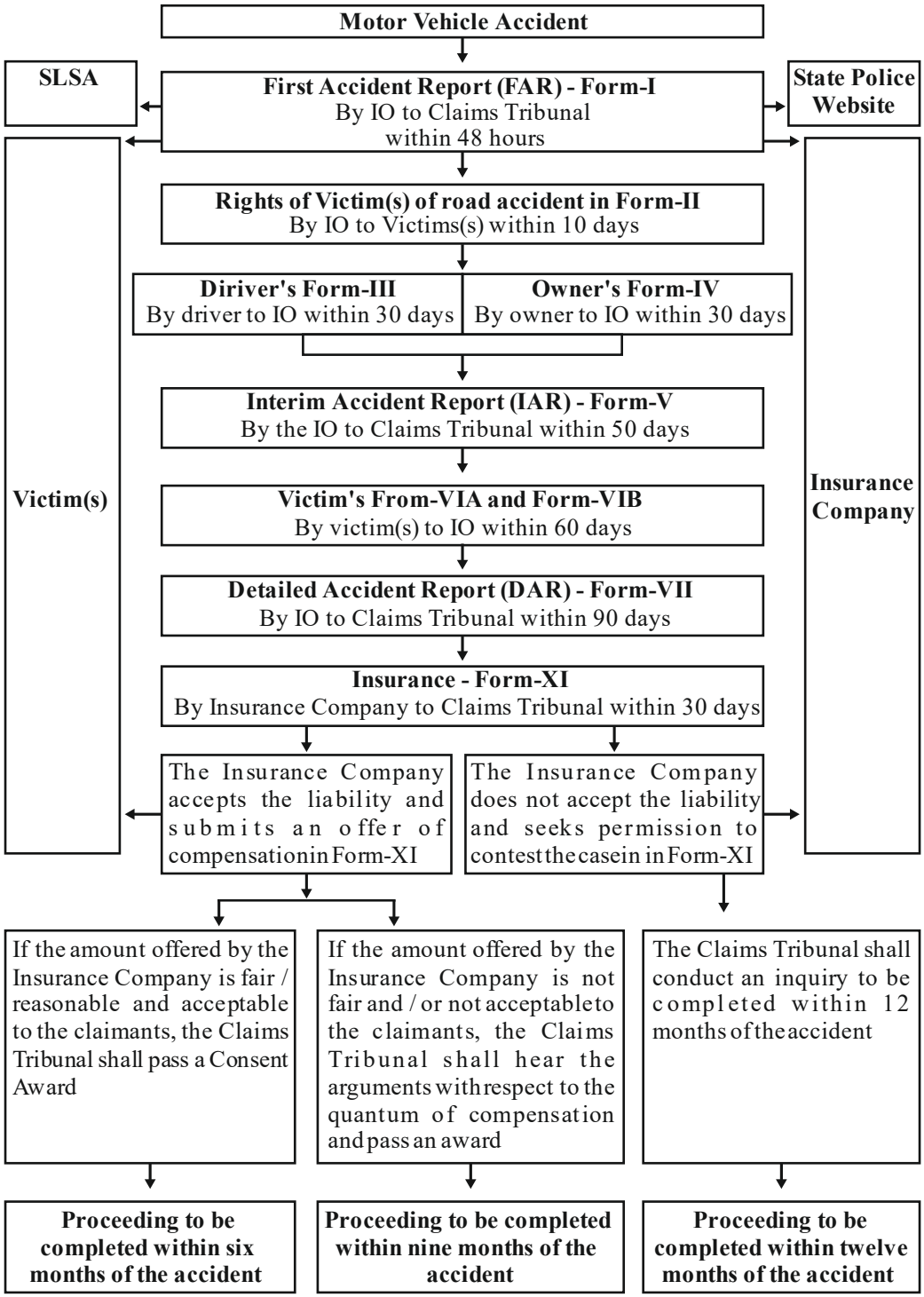
Table showing FORMS details

S.No	Form No.	Time limit	Concerning sub rule	Description
1	I	48 HOURS*	2	FIRST ACCIDENT REPORT
2	II	10 DAYS*	3	RIGHTS OF VICTIM AND FLOW CHART
3	III	30 DAYS*	4	DRIVERS FORM
4	IV	30 DAYS*	5	OWNERS FORM
5	V	50 DAYS*	6	INTERIM ACCIDENT REPORT IAR
6	VI	60 DAYS*	8	VICTIM FORM
7	VIA	30 DAYS*	9	IF VICTIM IS MINOR
8	VII	90 DAYS*	12	DETAILED ACCIDENT REPORT DAR
9	VIII		12	SITE PLAN
10	IX		12	MECHANICAL INSPECTION REPORT
11	X		12	VERIFICATION REPORT
12	XI	30 DAYS**	26,30	QUANTUM OF COMPENSATION IF LIABILITY IS ADMITTED
13	XII	30 DAYS of the conviction	42	VICTIM IMPACT REPORT PREPEARED BY SLSA AND BE PRESENTED BEFORE CRIMINAL COURT
14	XIII		33	WRITTEN SUBMISSION IN DEATH CASES
15	XIV		33	WRITTEN SUBMISSION IN INJURY CASES
16	XV		37	SUMMARY OF COMPUTATION OF COMPENSATION IN AWARD IN DEATH CASE
17	XVI		37	SUMMARY OF COMPUTATION OF COMPENSATION IN AWARD IN INJURY CASE
18	XVII		37	COMPLIANCE OF PROCEDURE
19	XVIII		41	FORMAT OF THE RECORD OF AWARD
20	XIX		36	DEPOSIT SCHEME
21	XX		-	FORMAT FOR THE INFORMATION OF MACT

*within... of the accident

**within..... of the intimation

FLOW CHART OF SCHEME FOR MOTOR ACCIDENT CLAIMS



ASSESSMENT OF MESNE PROFITS – VARIOUS ASPECTS

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OBJECT

Often proceedings in civil disputes are dragged for a long time on one count or the other and a person who is in wrongful possession, draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time. In such situations, for protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders in terms of mesne profits.

RELEVANT PROVISIONS

Mesne profits is defined in Section 2(12) of the Civil Procedure Code, 1908 (hereinafter referred to as ''of the Code'') as follows:

- **Section 2 (12) : Mesne profits** – Mesne profits of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.
- **Order 20 Rule12** – Decree for possession and mesne profits:
  - (1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree –
    - (a) for the possession of the property;
    - (b) for the rents, which have accrued on the property during the period prior to the institution of the suit or directing an enquiry as to such rent;
    - (ba) for the mesne profits or directing an enquiry as to such mesne profits;
    - (c) directing an inquiry as to rent or mesne profits from the institution of the suit until:
      - (i) the delivery of possession to the decree-holder;
      - (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court or
      - (iii) the expiration of three years from the date of the decree, whichever event first occurs.
  - (2) Where an inquiry is directed under Clause (b) or Clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

HOW TO ASSESS MESNE PROFITS

In ***Lucy Kochuvareed v. P. Mariappa Gounder and ors., AIR 1979 SC 1214***, the three Judge Bench of the Supreme Court, observed that mesne profits being in the nature of damages, no invariable rule governing their award and assessment in every case. Wrongful possession of the defendant is the very essence of a claim for mesne profits and the very foundation of the defendant's liability. As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the immoveable property is liable for mesne profits. Recently in ***Martin & Harris Private Limited and another v. Rajendra Mehta and others, 2022 SCC OnLine SC 792*** (decided on July 6, 2022) it has been reiterated that the basis of determination of the amount of mesne profits, depends on the facts and circumstances of each case considering the place where property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. whether commercial or residential area and the rate of rent precedent on which premises can be let out are the guiding factors in the facts of individual case. In ***Union of India v. Banwari Lal & Sons (P) Ltd., (2004) 5 SCC 304***, it has been mentioned that there are different methods of valuation, namely; income/profit method, cost of construction method, rent method and contractors' method.

To assess the mesne profit, market value of the property is a considerable factor in ***Fateh Chand v. Balkishan Dass, AIR 1963 SC 1405***, the Constitution Bench guided as follows:

> "The normal measure of mesne profits is therefore the value of the user of the land to the person in wrongful possession..... It is not necessary to consider in case whether mesne profits at a rate exceeding the rate of the standard rent of the house may be awarded, for there is no evidence as to what the standard rent of the house was."

In ***Shyamacharan Raghubar Prasad Tiwari v. Sheojee Bhai Jairam Chattri and anr., AIR 1971 MP 120***, it has been held that the controlled rents are for the benefit of a lawful tenant and it would be wrong to allow only that rate against unlawful possessor. The owner is not bound to let it out and he might have used the property himself and derived the full benefit of its use. In case where there is no evidence to find out the controlled rent and, therefore, no other alternative but to accept the market rental value of the property

AWARDING MESNE PROFITS ON HIGHER RATE

In ***Magunta Kota Reddy (died) and ors. v. Pothula Chendrasekhara Reddy, AIR 1963AP 42***, it has been observed that in case where plaintiff had no special means of knowing the exact income from the lands during the relevant period and he was, therefore, not estopped from claiming a larger sum as mesne profits than what was claimed in his plaint. Again in ***Marshall Sons and Co. (I) Ltd. v. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325***, the Apex Court has given the dictum for awarding the mesne profit on higher rate as under:

> "For protecting the interest of the judgment-creditor, it is necessary to pass appropriate orders so that reasonable mesne profit which may be equivalent to the market rent is paid by a person who is holding over the property. In appropriate cases, the Court may appoint a receiver and direct the person who is holding over the property to act as an agent of the receiver with a direction to deposit the royalty amount fixed by the receiver or pass such other order which may meet the interest of justice. This may prevent further injury to the plaintiff in whose favour the decree is passed and to protect the property including further alienation."

Again in ***Basodi alias Munshilal and anr. v. Smt. Meera Bai and ors., AIR 2006 MP 179***, it has been reiterated that the Court is within its jurisdiction in awarding the mesne profit on higher rate but before awarding it, the person concerned should be given an opportunity to be heard on this question.

PAST AND FUTURE MESNE PROFITS

In ***Gopalakrishna Pillai and ors. v. Meenakshi Ayal and ors., AIR 1967 SC 155***, a 3 Judge Bench of the Supreme Court has an occasion to discuss this issue in detail and guided that O.20 R.12 CPC 1908 enables the Court to pass a decree for both past and future mesne profits but there are important distinctions in the procedure for the enforcement of the two claims. With regard to past mesne profits, a plaintiff has an existing cause of action on the date of the institution of the suit. In view of O. 7 Rr. 1 and 2 and O. 7 R. 7 of the Code and section 7 (1) of the Court Fees Act, 1870, the plaintiff must plead this cause of action, specifically claim a decree for the past mesne profits, value the claim approximately and pay Court fees thereon. With regard to future mesne profits, the plaintiff has no cause of action on the date of the institution of the suit, and it is not possible for him to plead this cause of action or to value it or to pay Court fees thereon at the time of the institution of the suit. Moreover, he can obtain relief in respect of this future cause of action only in a suit to which the provisions of O. 20 R.12 apply. But in a suit to which the provisions of O.20 R.12 apply, the Court has a discretionary power to pass a decree directing an enquiry into the future mesne profits, and the Court may grant this general relief though, it is not specifically asked for in the plaint.

In ***Gopalakrishna Pillai*** (supra), future mesne profits were not claimed though there was a claim for past mesne profits. The Supreme Court held that as the suit in that case was for the recovery of possession of immovable property and for past mesne profits, the Court had ample power to pass a decree directing an enquiry as to future mesne profits, though there was no specific prayer for the same in the plaint.

In ***Amar Singh v.Chandrashekhar Rao, AIR 1984 MP 1(FB)***, it has been opined that for passing a decree for future mesne profits the Court derives jurisdiction to pass a decree in that behalf not by virtue of any claim made by the plaintiff in the plaint but by virtue of the provisions of Order 20 Rule 12 of the Code which are attracted in a case where claim for recovery of possession of immovable property is accompanied by a claim for rent or mesne profits, past or future. It therefore, follows that the decision in ***Deepchand v. Sukhlal, AIR 1969 MP 232*** and in ***Karansingh v. Fundibai*** (Civil First Appeal No. 26 of 1965) in so far as they hold that a plaintiff is not entitled to a decree for future mesne profits merely on the ground that there is no claim for past mesne profits, cannot be held to lay down correct law. A decree for future mesne profits in a suit for recovery of possession of immovable property cannot be passed only when in the suit, there is no claim either for rent or for mesne profits, past or future. Finally, the Full Bench answered the question arising in the reference that where in a suit for recovery of possession of immovable property, there is only a claim for future mesne profits from the date of institution of the suit and there is no claim for past mesne profits, the Court is empowered to pass a decree for future mesne profits while passing a decree for possession of the property.

However, in ***Mohd. Amin v. Vakil Ahmad, AIR 1952 SC 358***, it has been held that where the plaint claimed only declaration of title and recovery of possession of immovable properties and made no demand or claim for either past or future mesne profits or rent in these circumstances, the Court could not pass a decree for future mesne profits under O.20 R.12 of the Code.

JUDICIAL NOTICE OF INCREASE OF RENT

In case of ***D.C. Oswal v. V. K. Subbiah, AIR 1992 SC184***, the Apex Court has taken judicial notice of the fact that rental has escalated everywhere. After referring ***D.C. Oswal*** (supra) case, in ***Vinod Khanna and ors. v Bakshi Sachdev (deceased) through L.Rs. and ors., AIR 1996 Del 32***, it has been reiterated that it is true that no substantial evidence has been led by the plaintiffs in respect of the increase of rent in the properties like that of the suit property. However, it is a well known fact that the amount of rent for various properties in urban area has been rising staggeringly and we cannot see why such judicial notice could not be taken of the fact about such increase of rents in the premises in and around urban areas. Again in ***Sardar Bhag Singh v. Vikram Sandhu, (2018) 18 SCC 374***, it has been laid down that it is correct that the appellant had not led any evidence on the issue of mesne profits though such an issue was specifically framed. However, in the interest of justice, the appellant could have been granted some reasonable compensation for the wrongful possession of the premises from the respondent herein.

INTEREST ON MESNE PROFITS

A Three-Judge Bench of the Supreme Court in ***Mahant Narayana Dasjee Varu and ors. v. The Board of Trustees Tirumalai Tirupathi, Devasthanam, AIR 1965 SC 1231***, has held that under Section 2(12) of the Code which contains the

definition of “mesne profits”, interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of mesne profits itself. That proceeds on the theory that the person in wrongful possession appropriating income from the property himself gets the benefit of the interest on such income. It is, no doubt, true that the rate of interest to be allowed in regard to mesne profits or under Section 34 of the Code in such cases is discretionary, as there is no question of any contractual rate or any particular rate fixed by the statute. In ***Fateh Chand*** (supra),it was guided that the plaintiff is not only entitled to mesne profits at the monthly rate but is also entitled to interest on such profits till the date on which possession was delivered to the plaintiff (such period not exceeding three years from the date of decree) together with interest at the rate of six per cent on the amount due accruing month after month.

TENANCY PREMISES

In ***Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705***, it has been observed that under the general law, and in cases where the tenancy is governed only by the provisions of the Transfer of Property Act, 1882, once the tenancy comes to an end by determination of lease under Section 111 of the Transfer of Property Act, the right of the tenant to continue in possession of the premises comes to an end and for any period thereafter, for which he continues to occupy the premises, he becomes liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. In the case of premises being governed by rent control legislation after passing the decree of eviction, the tenancy terminates and from the said date, the landlord is entitled for mesne profits or compensation depriving him from the use of the premises. The view taken in the case of ***Atma Ram*** (Supra) has been reaffirmed by three Judges Bench of the Supreme Court in the case of ***State of Maharashtra v. Super Max International Pvt. Ltd., (2009) 9 SCC 722***.

MESNE PROFITS IN APPEAL

In ***Marshall Sons & Vo. (I) Ltd. V. Sahi Oretrans (P) Ltd., (1999) 2 SCC 325***, the Supreme Court held that once a decree for possession has been passed and the execution is delayed depriving the decree holder to reap the fruits, it is necessary for the Appellate Court to pass appropriate orders fixing reasonable mesne profits which may be equivalent to the market rent required to be paid by a person who is holding over the property. In the case of ***Atma Ram Properties (P) Ltd.*** (supra) it was held that Appellate Court does have jurisdiction to put reasonable terms and conditions as would in its opinion be reasonable to compensate the decree holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provision of the Delhi Rent Control Act, observed that on passing the decree for eviction by a competent Court, the tenant is liable to pay mesne profit or compensation for use and occupation of the premises at the same rate at which the landlord would let out the premises in present and would have earned the profit had the tenant vacated the premises. The Court has explained that because of pendency

of the appeal which may be in continuation of suit the doctrine of merger does not have effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a later date.

ENQUIRY UNDER ORDER 20 RULE 12 OF THE CODE

In ***Chittoori Subbanna v. Kudappa Subbanna, AIR 1965 SC 1325***, the Supreme Court discussed the nature and scope of an enquiry under O.20 R.12 of the Code in as under:

> ''The decree for future mesne profits or directing enquiry about them is not based on the decision of any controversy between the parties but is made in the exercise of the discretionary power vested in the courts by the provisions of Order 20 Rule 12(1)(c) CPC 1908. This power was given to the court in order to avoid multiplicity of suits between the decree-holder and the judgment-debtor for mesne profits which the decree-holder could rightly claim. The period was, however, restricted to three years in order to discourage decree-holders from making delays in taking possession. If a decree-holder be not diligent in executing the decree, he would have to forego mesne profits for the period in excess of three years or would have to institute separate suits to recover them. We are therefore of opinion that it is open to the court to construe the direction in the preliminary decree about the inquiry with respect to future mesne profits when such direction is not so fully expressed as to cover all the alternatives mentioned in Order 20 Rule 12(1)(c) CPC and to hold that the decree be construed in accordance with those provisions''

While considering the limitation aspect of Order 20 Rule 12 of the Code in ***Lucy Kochuvareed*** (supra),the Supreme Court observed that the period of three years mentioned in sub-clauses (iii) of clause (c) of Rule 12 (1) is to be computed from the date of the decree of this Court, and it will expire on the date on which possession was delivered or relinquished by the defendant in favour of the decree-holder pursuant to that decree. In other words, the decree mentioned in sub-clause (iii) of the aforesaid clause (c) would be the appellate decree. The words "whichever event first occurs" in sub-clause (iii) imply that the maximum period for which future mesne profits can be awarded, is three years from the date of the decree of possession and mesne profits, finally passed. The only question is whether a decree wherein the Court does not mention the period for which mesne profits would be paid or the Court states that mesne profits would be payable upto the delivery of possession, should be construed to be a decree directing that mesne profits would be decreed for a period of 3 years from the date of the decree, if possession be not delivered within that period. The *ratio*

decidendi mainly is that the court had no power to pass a decree against the clear provisions of Rule 12 Order 20 of the Code and that therefore, the decree should be so construed as to be in accordance with these provisions.

POSSESSION OF RECEIVER

Possession of an immovable property by the receiver is custody and possession by the court. The receiver on behalf of the court, holds the property as trustee and for the benefit of the party found entitled to it on final adjudication of the case. Hence, while the property is in the possession of the receiver appointed by the Court, it can never be said that it is in the wrongful possession of the defendant.

CLAIM FOR MESNE PROFITS AGAINST SEVERAL TRESPASSERS

In ***Lucy Kochuvareed*** (supra),it has been held that where the plaintiff's dispossession, or, his being kept out of possession can be regarded as a joint or concerted act of several persons, each of them who participates in the commission of that act would be liable for mesne profits even though he was not in actual possession and the profits were received not by him but by some of his confederates. In such a case, where the claim for mesne profits is against several trespassers who combined to keep the plaintiff out of possession, it is open to the Court to adopt either of the two courses:

(i) It may by its decree hold all such trespassers jointly and severally liable for mesne profits, leaving them to have their respective rights adjusted in a separate suit for contribution; or,

(ii) It may, if there is proper material before it, ascertain and apportion the liability of each of them on a proper application made by the defendant during the same proceedings.

RES JUDICATA

The Court's dictum in ***Chittoori Subbanna*** (supra) that when the court ordered enquiry into mesne profits under Order 20 Rule 12 of the Code for the period post decree, then that issue was not one of the issues in the suit. It was a "matter in controversy in future".Hence, the preliminary decree directing eviction and enquiry into mesne profits did not become *res judicata*. However in ***Ambalal Sarabhai Enterprises Limited v. Rajeev Daga and anr., 2022 SCC*** On Line Cal 168 after referring to ***Chittoori Subbanna*** (supra),it has been observed that if the mere method of computation and the amount of mesne profits were the subject-matter of dispute then unquestionably the ratio of the Supreme Court case would have applied. But where the judgment and decree of the first court had categorically declared the possession of the appellant to be wrongful and directed calculation of mesne profits by the Special Referee for a specific period including the period of physical possession by the special officer cond. This finding was not challenged before the appellate court so it has become final and binding. This issue had become squarely res judicata between the parties.

BAR OF ORDER 2 RULE 2

In ***Shiv Kumar Sharma v. Santosh Kumari, (2007) 8 SCC 600***, it has been observed thata suit for recovery of possession on declaration of one's title and/ or injunction and a suit for mesne profits or damages may involve different causes of action. For a suit for possession, there may be one cause of action; and for claiming a decree for mesne profits, there may be another. In terms of Order 2 Rule 4 of the Code, however, such causes of action can be joined and therefore, no leave of the court is required to be taken. If no leave has been taken, a separate suit may or may not be maintainable but even a suit wherefrom a prayer for grant of damages by way of mesne profit or otherwise is claimed, must be instituted within the prescribed period of limitation. If the respondent intended to claim damages and/or mesne profits, in view of Order 2 Rule 2 of the Code itself, he could have done so, but he chose not to do so. For one reason or the other, he, therefore, had full knowledge about his right. Having omitted to make any claim for damages, the plaintiff cannot be permitted to get the same indirectly. Law in this behalf is absolutely clear. What cannot be done directly cannot be done indirectly.

In ***Raptakos Brett & Co. Ltd. v. Ganesh Property, (2017) 10 SCC 643***, it has been held that in a case where the plaintiff has claimed mesne profits or arrears of rent in a suit filed for ejectment of the tenant and has relinquished his rights vis-à-vis mesne profits or arrears of rent in the suit proceedings itself, the provisions of Order 2 Rule 2 will come into play and in comparison to the second suit for mesne profits or arrears of rent till the decree, the earlier suit will attain finality.

COURT FEES

Order 7 Rule 2of the Code provides that where the plaintiff sues for mesne profits, the plaint shall state approximately the amount sued for. Paragraph 1 of section 7 of the CourtFees Act, 1870 provides that courtfee is to be paid according to the amount claimed.In suits for money (inclining suits for damages or compensation, or arrears of maintenance of annuities, or of other sums payable periodically). If court fees is payable under paragraph 1 of section 7, only upon the mesne profits claimed antecedent to the suit. In ***Ramgulam Sahu v. Chintaman Singh, AIR 1926 Pat 218***, it was held that neither Order 7 Rule 2 of the Code nor section 7(iv)(f) of the Court fees Act, applies to unascertained mesne profits.

Section 11 of the Court Fees Act, 1870 is in two parts. The first part of Section 11 deals basically with a situation in which a suit is decreed for an amount in excess of that claimed in the suit and on the basis of which the suit is valued by the plaintiff. In such a case, Section 11 proscribes execution of the decree till the difference between the court fees actually paid and the court fees which would have been payable at the suit covered the amount finally decreed, is finally paid by the decree holder. In ***Gallus Chattels Pvt. Ltd. and ors. v. Ishwar***

Industries Ltd., 2022 SCC OnLine Del 1552, it has been held that it does not, in any manner, either expressly or by necessary implication, hold that the execution petition is not maintainable for want of payment of requisite court fees or that the execution petition could be dismissed on that ground.

In ***Shiv Kumar Sharma*** (supra),it has been clarified that if the plaintiff was to ask for a decree, he was required to pay requisite court fees on the amount claimed. In such a situation, having regard to Order 20 Rule 12 of the Code, a preliminary decree was required to be passed: In a case where damages are required to be calculated, a fixed court fee is to be paid but on the quantum determined by the court and the balance court fee is to be paid when a final decree is to be prepared.

In ***Thakan Chaudhuri v. Lachhmi Narain, ILR (1935) 14 Pat 4 (FB)***, it has been held that there is no provision in the Court Fees Act, 1870 under which a plaintiff can be called upon to pay Court fees on the amount of interest which accrues after the institution of the suit.

CONCLUSION

- The term “mesne profits” may be used to denote compensation recoverable from a person who has been in wrongful possession and in such circumstances, means that which the plaintiff has lost by reason of the tortious act of the defendant, and is not the profit actually made by the defendant but that which the plaintiff might reasonably be expected to have made, had his possession not been wrongfully disturbed. On the other hand, it may be used in the sense of the profits actually received by the defendant which he is bound to hand over to the plaintiff towards whom he owes some fiduciary duty.
- Order 20 Rule 12 of the Code enables the Court to pass a decree for both past and future mesne profits. With regard to past mesne profits, a plaintiff has an existing cause of action on the date of the institution of the suit. With regard to future mesne profits, the plaintiff has no cause of action on the date of the institution of the suit and it is not possible for him to plead this cause of action or to value it or to pay Court fees thereon at the time of the institution of the suit.
- The Court is within jurisdiction in awarding the mesne profits on higher rate but before awarding it, the person concerned should be given an opportunity of hearing on this question.
- Mesne profits, being in the nature of damages, no invariable rule governing their award and assessment in every case can be laid down and the Court may mould it according to the justice of the case.
- The basis of determination of the amount of mesne profit depends on the facts and circumstances of each case considering the place where the property is situated i.e. village or city or metropolitan city, location, nature

of premises i.e. whether commercial or residential area and the rate of rent precedent on which premises can be let out etc are the guiding factors depending on the facts of individual case.

- In case where there is no evidence to find out the controlled or standard rent and, therefore, there is no other alternative but to accept the market rental value of the property. Judicial notice of the fact that rental has escalated everywhere can be taken.
- In case of premises being governed by rent control legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior forum at any subsequent stage or date, would not, by reference to the doctrine of merger have the effect of postponing the date of termination of tenancy.
- U/s 2(12) of the Code which contains the definition of “mesne profits”, interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of mesne profits itself.
- Where the claim for mesne profits is against several trespassers who combined to keep the plaintiff out of possession, it is open to the Court to adopt either of the two courses: It may by its decree hold all such trespassers jointly and severally liable for mesne profits, leaving them to have their respective rights adjusted in a separate suit for contribution; or, it may, if there is proper material before it, ascertain and apportion the liability of each of them on a proper application made by the defendant during the same proceedings.
- The period of three years mentioned in sub-clauses (iii) of clause (c) of Rule 12 (1) is to be computed from the date of the decree of Final Appellate Court.
- The direction about the enquiry ‘with respect to future mesne profits does not amount to an adjudication between the parties in the suit. The provisions of Order 20 Rule 12(1)(c) are just to avoid multiplicity of suits with consequent harassment to the parties.
- Where the plaintiff sues for mesne profits, the plaint shall state approximately the amount sued for. Paragraph 1 of section 7 of the Court Fees Act, 1870 provides that Court fee is to be paid according to the amount claimed. Neither Order 7 Rule 2 of the Code nor section 7(iv)(f) of the Court Fees Act, 1870 applies to unascertained mesne profits.
- There is no provision in the Court Fees Act under which a plaintiff can be called upon to pay Court fees on the amount of interest which accrues after the institution of the suit.

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INTELLECTUAL PROPERTY RIGHTS
SCOPE OF GRANT OF INJUNCTIVE RELIEF

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In order to introduce the subject, it is worthwhile to discuss at the outset what Injunction signifies and what its pre-requisites are. An injunction is an official order from a Court of Law to do or not to do something. It is a remedy granted by the Court that prohibits the commission of a wrong threatened or the continuance of a wrongful course of action. Requisites of an application for Injunction are that the petitioner should have a strong *prima facie* case; which has the potential to succeed, the balance of convenience is in petitioner's favour and not granting Injunction would make the petitioner suffer irreparable damage.

For enforcement of Intellectual Property Rights, generally the remedy sought is grant of injunction against the infringers. When owner(s) of IPRs discern that their rights are being or are about to be infringed, they apply for grant of perpetual injunction against the infringing party for restraining him/it from carrying on his/its act of infringement and while the pendency of claim for grant of perpetual injunction, grant of temporary injunction, as regulated as per the provisions of Order XXXIX Rules 1 to 5 of the Civil Procedure Code [CPC], is also applied for.

Now, before going deeper in to study the scope of grant of injunctions, it is imperative to comprehend the nature and kinds of injunctions, which the Courts can grant.

Mandatory and Prohibitory Injunctions:

An injunction, which prohibits or restrains a party from committing or continuing of some wrongful act is prohibitory injunction while an injunction that commands doing of an act to rectify wrong, generally for restoration of *status quo ante* is mandatory injunction. In cases of enforcement of IP rights, generally prohibitory injunction is sought in order to dissuade the infringer from continuing the wrong. In such cases, the owner of the IP rights can file an application on discovery of his rights being infringed or even in cases of his reasonable apprehension of infringement of the same. In the matters of apprehended danger, *quia timet* action can also be initiated.

As regards mandatory injunction in the matters of enforcement of IP rights, it is granted only in exceptional circumstances, where it appears that not granting the same would cause extreme hardship to the owner of the right. Grant of such injunction as an *ad interim measure* is considered only in very rare and exceptional cases and only where circumstances compel to do so. It is only when the applicant has a very strong *prima facie* case *i.e. prima facie* of a standard much higher than just *prima facie* case and the considerations of balance of

convenience and irreparable injury forcefully tilt the balance of the case in favour of the applicant can mandatory injunction be granted as *ad interim measure*, as has been elucidated by the honourable the Supreme Court in ***Deoraj v State of Maharashtra AIR 2004 SC 1975***.

The guideline that no relief should be granted as an *ad interim* relief which virtually amounts to grant of final relief has been underlined by Honourable the Apex Court time and again. In ***Secretary, U.P.S.C. v. S. Krishna Chaitanya AIR 2011 SC 3101;*** also the Hon'ble Supreme Court reiterated the principles in this regard but kindly went on to add that an irreparable injury, which forcibly tilts the balance of convenience in favour of the applicant may persuade the Court to do so. The question of substance would be whether withholding of mandatory injunction at interim stage would carry a higher risk of injustice than granting it.

Quia timet Injunctions

An application for seeking *quia timet* injunction for preventing situations where the wrong sought to be remedied has not occurred but is on the verge of occurring. In ***Mars Incorporated v. Kumar Krishna Mukherjee & Ors***, ***2003 (26) PTC 60;*** the observations of the Hon'ble High Court of Delhi have been mentioned. In ***Gorbatschow Wodka KG v. John Distilleries Ltd., 2011 SCC OnLine Bom 557***, while considering the case of the plaintiff in respect of an action against passing off, the Hon'ble High Court of Bombay also entertained the *quia timet* action for restraining the defendants from launching their business.

Quia timet in Latin means 'because he fears or apprehends'. If the applicant shows reasonable apprehension that a wrongful act is on the verge of being committed, the Courts can consider grant of *quia timet* injunction. The spirit embodied in the aphorism 'a stitch in time saves nine' may well be resorted to by the applicant and he/it is not expected to wait for loss to actually occur to him/it since in some of such cases, the party might well be left to 'flogging a dead horse', which the law cannot countenance. The law does not leave any individual remedy less at any stage.

In ***Super Casette Industries Ltd v. Myspace Inc. & anr. (2011) 48 PTC 49***, the Hon'ble Delhi High Court held that principle of *quia timet* is applicable to any tortuous liability including copyright infringement and the same is not confined to instances of trade mark infringement. The only issue for the Court to consider is whether the two ingredients for a *quia timet* action; whether there is an imminent danger even if there is no damage and if yes, whether the apprehended damage will, if it comes; be substantial are satisfied.

Mareva Injunctions

The orders of freezing the assets of the infringers are Mareva Injunctions. These injunctive orders are passed where the infringer is seen to be acting in such a manner that would frustrate enforcement of any subsequent order or decree. The observation in this regard Honourable Delhi High Court in judgement reported in ***Rite Approach Group Ltd v. Rosoboronexport AIR 2007 Del 145,*** can be referred to.

Mareva Injunctions derive their nomenclature from the decision of the Court of Appeals in ***Mareva Compania Naviera SA v. International Bulkcarriers SA (1980) 1 AII ER 213*** The orders are known as '*saisie conservatoire*' in French Law, which literally means a 'conservative seizure' or 'a seizure of assets so as to conserve them for the creditor in case he should afterwards get judgement'.

A Mareva Injunction is akin to an order under Order XXXVIII Rule 5 of the CPC pertaining to attachment before judgement. Honourable the Delhi High Court, relying on its earlier decisions, observing as above, mandated that the test to be satisfied in an action under Order XXXVIII Rule 5 of the CPC must be satisfied while granting Mareva Injunction also. The observation in this regard of honourable the Supreme Court in the judgement reported in ***Mohit Bhargava v Bharat Bhushan Bhargava (2007) 4 SCC 795,*** can also be referred to.

Anton Piller and Delivery Up Orders:

Anton Piller Orders are orders passed *ex parte* granting the plaintiff relief to enter premises of the defendant to inspect the documents and to remove them or their copies. These orders can be passed only where it was essential that the plaintiff should have inspection, where if the defendant is forewarned, the danger that vital evidence would be destroyed, concealed or moved out of jurisdiction of the Court would be grave and where the inspection would do no real harm to the defendant. For seeking an Anton Piller Order, the plaintiff must be able to convince the Court that order is indeed essential to the ends of justice. Order XXVI Rule 9 and 10 of the CPC permits the appointment of a commission for local investigation. Section 135(2) of the Trade Marks Act, 1999 also provides for issuance of interlocutory order for discovery of documents, preserving of evidence related to the subject matter of the suit and restraining the defendant from disposing of or dealing with his assets in manner, which may adversely affect the plaintiff's rights. In ***Bucyrus Europe Limited v Vulcan Industries Engineering Company Private Limited 2005 (30) PTC 279***, the Hon'ble Calcutta High Court has discussed the principles governing Anton Piller Orders in the context of copyright infringement and laid down safeguards to be observed while passing the said orders. The Court found that an Anton Piller order can be passed in situations where (i) the plaintiff has an extremely strong *prima facie* case; (ii) the actual or potential damage to the plaintiff is very serious; (iii) it was clear that the defendant possessed vital evidence; (iv) there was a real possibility of such material being destroyed or disposed of to defeat the ends of justice and (v) the purpose of Anton Piller orders is preservation of evidence.

Apart from directing the Commissioner to conduct a search as described above, the Court can also pass Delivery Up orders by directing that the seized infringing copies or plates may be delivered to the plaintiff in the matter of copyright infringement. The owner of the Copyright derives such right from the provisions of section 58 of the Copyright Act, 1957.

Tests to be applied while considering case for grant of injunction:

Now, comes the discussion on the tests, which need to be applied while considering case for grant of injunction. For establishing claim of IP rights, the owner thereof must satisfy the Court that he does possess the intellectual property right at the first place and thereafter for an injunctive order, the owner must also satisfy that the act of the alleged infringer is or likely to infringe his rights. The tests, which the Courts must apply for grant of injunction and relevant factors, on the basis of which assessment must be made, are enumerated as below.

- **Use of the common phrase in the Mark;**

  In ***Cadila Healthcare Ltd v Gujarat Co-operative Milk Marketing Federation Ltd., 2009 (41) PTC 336***, monopoly over the expression ***"Sugar Free"*** was sought by the plaintiff. Honourable Division Bench the of Delhi High Court observed that once a common phrase in English is adopted by any business enterprise, which directly describes the product, the adoption entails the risk that others in the field will also be entitled to use such phrase.

- **Whether similarity is deceptive;**

  Deceptive similarity needs to be assessed using the conceptual framework of 'likelihood of confusion'. What is required to be examined is with respect to a person of average intelligence and imperfect recollection and whether such a person is likely to be misled by the use of the defendant's mark and associate such with plaintiff's mark. In ***Veeplast Houseware Private Limited v Bonjour International & anr. 2011 SCC OnLine Del 2558*** also, the Hon'ble Delhi Court laid down the same principle. Likelihood of confusion needs to be gauged from the standpoint of average consumer, who perceives the mark as a whole and does not analyse its various details.

  In ***Heinz Italia & anr. v. Dabur India Ltd., (2007) 6 SCC 1***, the Hon'ble Supreme Court held that overall effect of packaging must be seen. The colour combination of the packaging was identical with happy family superimposed on both the packaging and the names being 'Glucose-D' and 'Glucon-D' gave an overall effect of similarity.

- **'Whose eye' is the reference point of judgement;**

  It is necessary to be kept in mind that an average consumer rarely has a chance to make a direct comparison between the marks and is bound to rely on imperfect picture of the mark in his mind. In most persons, the eye is not an accurate recorder of visual detail. The marks are remembered by general impression or by some significant detail than by any photographic recollection of the whole.

  The Courts also need to take into account the ultimate purchasers for determining likelihood of similarity. Although the first purchaser might not be deceived but if the article is calculated to deceive a subsequent purchaser, it becomes illegal.

- **Triple Test**

  In ***Amritdhara Pharmacy v. Satyadeo Gupta, AIR 1963 SC 449***, the Hon'ble Supreme Court held that overall similarity between the two names; *'Amritdhara'* and *'Lakshamandhara'* in respect of the same description of goods was likely to cause deception or confusion. the Hon'ble Supreme Court cited the ***Triple Test from Pianotist Co.'s Application, [1906] 23 RPC 774***, in which, in respect of comparison of two words it was held as below;

  > *'You must take the two words. You must judge them, both by their look and by their sound. You must consider the goods to which they are applied. You must consider the nature and kind of consumer who would be likely to buy those goods. In fact you must consider all the surrounding circumstances and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks."*

- **Likelihood of and not actual confusion;**

  It is the likelihood of the confusion and not actual confusion that needs to be the point of consideration before the Courts except in the peculiar circumstances in factual matrices, where it is shown to the Court that proving actual confusion was actually material. In ***Toyota Jidosha Kabushiki Kaisha v. Prius Auto Industries Limited and others, (2018) 2 SCC 1*** also, the Hon'ble Supreme Court has laid down that burden of proving actual confusion is not necessary.

- **Skill and Judgement with flavour of creativity standard;**

  In ***Eastern Book Company and others v. D.B. Modak and another, (2008) 1 SCC 1***, the issue relating to test and standard of originality in respect of derivative or secondary literary work was before hon'ble the Supreme Court, in which it was kindly held that to claim copyright in a derivative work, the author must produce the material with exercise of his skill and judgement with a flavour of creativity which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital. The decision in ***Modak*** (supra) raises the standard for originality under copyright law to a degree higher than the '*sweat of the brow*' test.

- **The Locus Classicus on substantial similarity;**

  In ***R.G. Anand v Deluxe Films, (1978) 4 SCC 18***, hon'ble the Supreme Court laid down that ideas, principles, themes or subject matter or historical or legendry facts, being common property, could not be the subject matter of copyright. Honourable the Court observed that similarities are bound to occur when two writers wrote on the same subject. The film 'New Delhi' was not held to be infringement of copyright of the plaintiff's play 'Hum Hindustani'.

- **The pith and marrow doctrine;**

  In ***Bajaj Auto Ltd. v. TVS Motors Company Ltd, JT 2009 (12) SC***, controversy over the unauthorized use of patented DTS-i technology was before the Court. In this case, doctrine of pith and marrow also known as the doctrine of equivalents was applied. A purposive construction was given to understand if the 'novel feature' constitutes 'pith and marrow' or not i.e. if the new feature claimed by the plaintiff in their patent is an essential feature of the invention or not. Hon'ble the Madras High Court held that the patent right vests with the Bajaj Auto Limited as it has been manufacturing products using the patent technology for last 5 years.

- **Unauthorised use amounts to infringement of IPR;**

  In ***Marico Limited v. Abhijeet Bhansali 2020 (81) PTC 244 (Ban)***, the hon'ble Bombay High Court directed the defendant, who made objectionable and disparaging comments on 'Parachute hair oil' in one of his videos and used the parachute hair oil bottle in his video, to remove the video holding that the defendant violated the exclusive trademark rights of the plaintiff by not seeking prior permission or consent of the plaintiff.

  In addition to above, the following guidelines also need to be taken into consideration while considering the case of the applicants/plaintiffs for grant of injunctive relief.

- **Acquiescence, Delay and Laches;**

  At the time of deciding plaintiff's claim, it is also required to be examined as to whether the plaintiff has approached the Court at the earliest point of time or not. Injunction is an equitable relief and if the conduct of the plaintiff acquiesces the act of the defendant either expressly or impliedly, he stands precluded from complaining the same. *Volenti non fit injuria* being the raison *d'etre*. Also, since *vigilantibus non dormientibus aequitas subvenit*, equity does not aid a person who sleeps over his rights.

- **Domain name protection;**

  In ***Satyam Infoway Ltd v. Sifynet Solutions Pvt Ltd, (2004) 6 SCC 145***, the questions as to whether domain name falls within the ambit of a service as provided under section 2(z) of the TM Act and whether the principles of passing off will apply to domain name disputes were answered by Honourable the Supreme Court in affirmative signifying that protection of domain name is available in India and formidably so.

  Yahoo! Inc. v. Akash Arora & anr., 78 (1999) DLT 285 is a landmark judgement on IPR on the internet in respect of similar and identical to registered trademarks and service marks also known as 'Cyber Squatting'. In this case, it was held that the domain name 'Yahoo India' has the potential to confuse and deceive internet users into believing that the same belongs to the 'Yahoo!'.

- **Copyrightability in Dictionaries and Compilations;**

  The question as to whether originality can be claimed in Dictionaries compilations and maps etc. was before Honourable the Madras High Court in ***V. Govindan v E.M. Gopalkrishna Kone, AIR 1955 Mad 391***, in respect of which it was held that in law books and books of above description, the amount of 'originality' will be very small but that small amount is protected by law.

Comparative Advertising and Parodies in respect of Trade Mark;

In ***Pepsi Co., Inc. v. Hindustan Coca Cola Ltd.; 2003 (27) PTC 305***, the issue before the Hon'ble Delhi High Court was as to whether the campaign '*Yeh Dil Maange No More*' run by the defendant ridicules the plaintiff's product 'Pepsi' and its slogan '*Yeh Dil Maange More*'. Honourable the Court decided that the phrase '*Yeh Dil Maange No More*' in the defendant's advertisement could at best be construed as mocking or parodying in the context in which it was used and would not amount to infringement of plaintiff's mark.

Tests relating to piracy in respect of Registered Designs:

Novelty and originality:

The prime prerequisites for registration of designs are its novelty and originality and these prerequisites need to be taken into consideration while dealing with the issue of piracy of registered designs. In this connection, the tests relating to piracy of registered designs have been enunciated by Hon'ble the Madras High Court in ***Britannia Industries v. Sara Lee Bakery, AIR 2000 Mad 497***. The Court clarified that correct test of piracy under the designs Act was that of 'fraudulent obvious imitation, whereas under the copyright law, it is 'reproduction of work or substantial part thereof and in passing off action, the test is 'deceptive similarity'.

The Court defined 'fraudulent imitation' and 'obvious imitation' and reiterated the 'test of substantial differences' to determine the identity of designs laid down in ***Western Engineering v Paul Engineering, AIR 1968 Cal 109***. The Court held that the differences between the designs of the plaintiff and defendant on the biscuit with the eye of the children customer cannot be said to be substantially similar. Thus, class of purchasers, 'children' in the said case, may also be a relevant consideration in determining piracy.

Prior publication of design;

Prior publication of the design can be taken as a valid ground of defence in an action for injunction in view of the provisions of Section 4(b) of the Designs Act, 2000. The Hon'ble Calcutta High Court in ***Khadim Shoe Pvt. Ltd v. Bata India Ltd. (2005) 1 CALLT 6024C*** held that '*prior publication*' would mean a publication by which the members of the public at large are made known the design prior to its registration. The idea being whether the people knew of the design or not prior to the date of its registration.

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उत्तराधिकार प्रमाण पत्र का अनुदत्त किया जाना : मार्गदर्शी सिद्धांत

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

भारतीय उत्तराधिकार अधिनियम, 1925 (संक्षेप में अधिनियम, 1925) वसीयती तथा निर्वसीयती उत्तराधिकार संबंधी विधि का समेकन करता है इसके पूर्व उत्तराधिकार प्रमाण पत्र अधिनियम, 1889 प्रचलन में था जिसको अधिनियम, 1925 द्वारा निरसित किया गया लेकिन निरसित अधिनियम के सुसंगत प्रावधानों को अधिनियम, 1925 में उचित स्थान भाग 10 तथा धारा 214 के अंतर्गत प्रदान किया गया है। अधिनियम, 1925 की धारा 370 से 390 उत्तराधिकार प्रमाण पत्र अनुदत्त करने के संबंध में उपबंध करती है जो गैर हिन्दुओं के संबंध में भी लागू है। न्यायदृष्टांत ***निर्मला बाई विरूद्ध नित्यगोपाल, 2009 (2) एमपीएलजे 90*** के अनुसार उत्तराधिकार प्रमाण पत्र का उद्देश्य संपत्ति पर स्वत्व का निर्धारण करना नहीं है अपितु यह निर्धारित करना है कि उस संपत्ति की अभिरक्षा किसको दी जानी चाहिए। मृतक के निकट उत्तराधिकारी के निर्धारण हेतु प्रमाण पत्र अनुदत्त करने का न्यायालय का अंतिम निर्णयन नहीं होता है बल्कि तत्संबंधी प्रमाण पत्र तो प्राप्तकर्ता को यह अधिकारिता प्रदान करता है कि वह ऋण या प्रतिभूति की राशि प्राप्त करके उसके वैध ऋण या प्रतिभूति का उन्मोचन कर सके और जहां आवश्यक हो वह राशि उन व्यक्तियों को सौंपे जो उसको प्राप्त करने के वैध रूप से हकदार हो। व्यक्ति के पक्ष में उत्तराधिकार प्रमाण पत्र अनुदत्त करने के कारण वह व्यक्ति उस राशि के सम्बंध में जो मृतक को देय थी, न्यासी बन जाता है जिसका कार्य मृतक को देय राशि का उसके वारिसों तथा उत्तराधिकारियों में वितरण करना होता है। इससे उसको कोई प्रास्थिति प्राप्त नहीं होती है। यह मृतक तथा व्यक्ति के बीच संबंध को प्रमाणित नहीं करता है। न्यायदृष्टांत ***आशीष कुमार विरूद्ध लीला बाई, 2002(3) एमपीएलजे 110*** एवं ***रमेश चंद विरूद्ध शंकुतला देवी, 2001 (1) एमपीएलजे 46*** के अनुसार उत्तराधिकार प्रमाण पत्र संक्षिप्त जांच के उपरांत अनुदत्त किया जाना है इसको पृथक सिविल वाद द्वारा चुनौती दी जा सकती है। सिविल न्यायालय का निर्णय प्रमाण पत्र के संबंध में अधिभावी प्रभाव रखता है।

1. संपत्ति चल अथवा अचल – न्यायदृष्टांत ***विशालाक्षी विरूद्ध बैंक ऑफ इंडिया, एआईआर 2006 केरला 255*** के अनुसार उत्तराधिकार प्रमाण पत्र केवल चल संपत्ति के संबंध में अनुदत्त किया जा सकता है यह अचल संपत्ति के संबंध में अनुदत्त नहीं किया जा सकता है। यदि अधिनियम, 1925 की धारा 214, 370 तथा 372 की शब्दावली का अर्थान्वयन किया जाये तो यह स्पष्ट होता है कि उत्तराधिकार प्रमाण पत्र केवल मृतक द्वारा वसूलनीय ऋण या प्रतिभूति प्राप्त करने हेतु ही अनुदत्त किया जा सकता है जो मुख्य रूप से उन ऋणों तथा प्रतिभूतियों के संबंध में मृत व्यक्ति के उत्तराधिकारियों को सुरक्षा प्रदान करता है। अधिनियम, 1925 की धारा 370 की उपधारा 2 के अनुसार प्रतिभूति के अन्तर्गत किसी सरकार का वचन पत्र, डिबेन्चर या स्टॉक, किसी कम्पनी या निगमित संस्था का डिबेन्चर, स्टॉक या शेयर, स्थानीय प्राधिकारी द्वारा जारी डिबेन्चर या अन्य प्रतिभूति जिसे राज्य सरकार प्रतिभूति के रूप में घोषित करे, आती है किन्तु भाग 10 में कहीं भी ऋण को परिभाषित नहीं किया गया। कोई संपत्ति ऋण अथवा प्रतिभूति के अंतर्गत आती है या नहीं इसका निर्धारण प्रमाण पत्र अनुदत्त करने हेतु आवश्यक शर्त है।

2. न्यायालय का क्षेत्राधिकार – अधिनियम, 1925 के अंतर्गत उत्तराधिकार प्रमाण पत्र के संबंध में दो प्रकार के क्षेत्राधिकार की बात की गई है पहला वह न्यायालय किस संवर्ग का होगा जहाँ आवेदन प्रस्तुत किया जाना है तथा दूसरा किस स्थानीय अधिकारिता के न्यायालय में आवेदन प्रस्तुत किया जायेगा। अधिनियम, 1925 की धारा 371 के अनुसार प्रमाण पत्र के लिये आवेदन हस्ताक्षरित और सत्यापित आवेदन के द्वारा ऐसे जिला न्यायाधीश, जिसकी अधिकारिता के भीतर मृतक अपनी मृत्यु के समय मामूली तौर पर निवास करता था या यदि उस समय उसका कोई नियत निवास स्थान नहीं था तो वह जिला न्यायाधीश जिसकी अधिकारिता के भीतर मृतक की संपत्ति का कोई भाग पाया जाता है, को किया जायेगा। यहां संपत्ति चल अथवा अचल हो सकती है। न्यायदृष्टांत ***सावित्री विरूद्ध चंद्रकला, 2005 एमपीएलजे 455*** के अनुसार स्थानीय अधिकारिता तय करने में मृतक की मृत्यु का स्थान सुसंगत नहीं होता है। इसके अतिरिक्त स्थानीय अधिकारिता के संबंध में न्यायदृष्टांत ***सोमवती तिवारी विरूद्ध सर्वसाधारण, 2003 (3) एमपीएलजे 512*** भी अवलोकनीय है। अब जहां तक न्यायालय के संवर्ग का संबंध है धारा 371 जिला न्यायाधीश को प्रमाण पत्र के संबंध में कार्यवाही करने का क्षेत्राधिकार देती है। व्यवहार न्यायालय अधिनियम, 1958 की धारा 10(2) के अनुसार उच्च न्यायालय साधारण या विशेष आदेश के द्वारा अधिनियम, 1925 के भाग 10 के संबंध में जिला न्यायाधीश के अधिकारों के प्रयोग की शक्ति उससे निम्न श्रेणी के न्यायाधीश को प्रदान कर सकता है। धारा 388 के अनुसार राज्य सरकार ऐसे जिला न्यायाधीश के कृत्य को करने की शक्ति उससे अपर श्रेणी के किसी न्यायालय को राजपत्र में अधिसूचना द्वारा प्रदान कर सकती है। मध्यप्रदेश शासन द्वारा अधिसूचना क्रमांक–II–7375–XXI–बी–58 दिनांक 01.01.1959 के माध्यम से सिविल जज, वर्ग–1 को अधिनियम, 1925 के भाग 10 के अन्तर्गत कार्य करने की शक्ति प्रदान की गई है। अतः मध्यप्रदेश राज्य में उत्तराधिकार प्रमाण पत्र अनुदत्त करने की अधिकारिता सिविल जज, वर्ग–1 (अब सिविल जज वरिष्ठ खण्ड) के न्यायालय को प्राप्त है।

3. न्यायालय फीस – न्यायालय फीस अधिनियम, 1870 की प्रथम अनुसूची का अनुच्छेद 12 उत्तराधिकार प्रमाण पत्र पर देय न्यायालय फीस से संबंधित है। धारा 379 प्रमाण पत्र पर न्यायालय की फीस के संग्रहण की रीति बताती है जिसके अनुसार आवेदन पत्र प्रस्तुत किये जाते समय आवेदक को न्यायालय फीस अधिनियम के अनुच्छेद 12 के अनुसार संदेय फीस के समतुल्य राशि जमा करनी होती है और यदि आवेदन स्वीकार किया जाता है तो न्यायालय के निर्देश के अधीन आवेदक द्वारा जमा राशि को फीस के भुगतान हेतु स्टाम्प क्रय करने में व्यय किया जाता है। यदि आवेदन अस्वीकार किया जाता है या आंशिक रूप से स्वीकार किया जाता है तो बची हुई राशि को आवेदक को प्रतिदत्त कर दिया जाता है। व्यवहार न्यायालय नियम, 1961 के नियम 434 के अनुसार फीस की गणना संबंधित संपत्ति की वास्तविक राशि या मूल्य पर की जायेगी इस प्रकार स्पष्ट है कि आवेदन पर लगने वाली फीस आवेदन पत्र की विषय वस्तु के मूल्य के आधार पर तय होगी और ऐसे मूल्य के आधार पर अनुच्छेद 12 के अनुसार निर्धारित न्यायालय द्वारा फीस के समतुल्य राशि आवेदक द्वारा न्यायालय में प्रारंभ में ही जमा की जायेगी। यदि आवेदक द्वारा सम्पत्ति के किसी अंश के सबंध में प्रमाण पत्र मांगा जाता है तो न्यायालय द्वारा फीस का निर्धारण उतने अंश के अनुसार किया जायेगा। कभी–कभी न्यायालय के समक्ष ऐसी परिस्थिति निर्मित हो जाती है कि आवेदन प्रस्तुत किये जाते समय न्यायालय फीस का भुगतान संभव नहीं हो पाता है ऐसी स्थिति में न्यायदृष्टांत ***ऊषा विरूद्ध राज्य, एआईआर***

1993 एमपी 41 के अनुसार न्यायालय फीस का भुगतान प्रमाण पत्र अनुदत्त किये जाने के समय भी किया जा सकता है। यहां ध्यान रखना आवश्यक है कि फीस के भुगतान हेतु न्यायिक स्टाम्प का प्रयोग किया जाता है तथा वर्तमान में फीस का भुगतान ऑनलाईन भी किया जा सकता है।

4. आवेदन के पक्षकार/प्ररूप – सामान्य रूप से अनावेदक के रूप में उन सभी व्यक्तियों को पक्षकार बनाना चाहिये जो उस संपत्ति में हित रखते हैं। केवल सर्वसाधारण को पक्षकार बनाने से प्राकृतिक न्याय के सिद्धांत की पूर्ति नहीं होती है। न्यायदृष्टांत ***गिरिजा बाई विरूद्ध मध्यप्रदेश राज्य, आईएलआर 2008 एमपी 1167*** में शासकीय सेवक की मृत्यु उपरांत उसके द्वारा शासकीय अभिलेख में नामित व्यक्ति को पक्षकार के रूप में जोड़े बिना सक्षम प्राधिकारी से प्राप्त उत्तराधिकार प्रमाण पत्र को विधि अनुसार नहीं ठहराया गया। इसके अतिरिक्त धारा 373 न्यायाधीश को यह विशेष अधिकार प्रदान करती है कि वह उस व्यक्ति पर भी आवेदन की तामील करवा सकता है जिसे सुना जाना उसकी राय में आवश्यक हो। आवश्यक पक्षकार को जोड़े जाने का आदेश न्यायालय स्वप्रेरणा से भी कर सकता है। अधिनियम, 1925 की अनुसूची दो में आवेदन का कोई प्ररूप नहीं दिया गया है किन्तु धारा 372 आवेदन के हस्ताक्षरित एवं सत्यापित रूप में प्रस्तुत किये जाने की अपेक्षा करती है तथा आवेदन की अर्न्तवस्तु के संबंध में उल्लेख करती है।

5. आवेदन पर प्रक्रिया – आवेदन प्रस्तुत होने पर उसे एमजेसी प्रकरण में पंजीवद्ध नहीं किया जाना है क्योंकि व्यवहार न्यायालय नियम, 1961 के नियम 372 में उत्तराधिकार प्रमाण पत्र संबंधी आवेदन का उल्लेख नहीं है। अधिनियम, 1925 के अधीन जो आवेदन प्रस्तुत किये जाते है उनके संधारण हेतु नियम 373 प्रावधान करता है जिसके अनुसार आवेदन पत्रों का पृथक रजिस्टर संधारित किया जाना होता है। अधिनियम, 1925 की धारा 373 प्रमाण पत्र अनुदत्त किये जाने की प्रक्रिया बताती है जिसके अनुसार प्रमाण पत्र के अधिकार का संक्षिप्त रीति से विनिश्चय किया जाना होता है और इस प्रकार के विनिश्चय हेतु अनावेदक/ अनावेदकगण को यथोचित रीति से सूचना देकर सर्वोत्तम हक रखने वाले व्यक्ति का विनिश्चय किया जाता है। न्यायदृष्टांत ***जसकुंबर विरूद्ध कंचन बाई, 1991 एमपी 362*** के अनुसार उत्तराधिकार प्रमाण पत्र प्राप्त करने के लिए आवेदक पात्र है या नहीं यह निर्धारण विचारण नहीं है यह संक्षिप्त जांच की प्रक्रिया है जिसमें प्रमाण पत्र प्राप्त करने के लिए आवेदक को सर्वप्रथम यह बताना है कि व्यक्ति की मृत्यु हो चुकी है, मृतक से उसका संबंध क्या है और वह किस आधार पर मृतक का उत्तराधिकारी होने का दावा करता है। आवेदक मृतक का उत्तराधिकारी है या नहीं यह उसकी स्वीय विधि से निर्धारित होता है।

6. संयुक्त प्रमाण पत्र – प्रायः एक ही आवेदन में एक से अधिक व्यक्तियों द्वारा संयुक्त रूप से प्रमाण पत्र अनुदत्त किये जाने का निवेदन किया जाता है। धारा 373 (4) की भाषा से स्पष्ट है कि जहां एक से अधिक आवेदक है और प्रथमदृष्टया सभी हितबद्ध दर्शित होते है वहां उपयुक्तता तथा हितबद्धता को विचार में लेते हुए न्यायाधीश यह विनिश्चित कर सकता है कि प्रमाण पत्र किसको अनुदत्त किया जावे। यह प्रावधान हितबद्ध आवेदकों के पक्ष में संयुक्त प्रमाण पत्र अनुदत्त करने की बात नहीं करता है। यदि एक से अधिक आवेदक है तो उनमें से उपयुक्त कौन है इसकी जाँच में उनके हित का ध्यान रखा जा सकता है। इस प्रकार स्पष्ट है कि सामान्य रूप से एक से अधिक व्यक्तियों के पक्ष में संयुक्त रूप से प्रमाण पत्र अनुदत्त नहीं किया जा सकता है। इस संबंध में न्यायदृष्टांत ***सच्चिदानंद विरूद्ध***

विचित्रानंद, एआईआर 1990 उड़ीसा 172 एवं न्यायदृष्टांत ***स्टील अथॉरिटी ऑफ इंडिया विरूद्ध मधुसूदन दास, 2008 (15) स्केल 39*** अवलोकनीय है।

7. एकाधिक आवेदक – कई बार मृतक के उत्तराधिकारी होने का दावा एक से अधिक लोग संयुक्त रूप से नहीं करते हुये पृथक–पृथक आधार पर करते हैं। उदाहरण स्वरूप एक मृतक की चल संपत्ति के संबंध में प्रमाण पत्र प्राप्त करने हेतु तीन आवेदकगण द्वारा तीन पृथक–पृथक आवेदन प्रस्तुत किये गये। पहला आवेदक वसीयत के आधार पर, दूसरा आवेदक उत्तराधिकार के आधार पर तथा तीसरा आवेदक दत्तक के आधार पर न्यायालय के समक्ष आया। ऐसी स्थिति में न्यायदृष्टांत ***कृष्णा प्यारी विरूद्ध गोविंद मिश्रा, 1992 जेएलजे 624*** के अनुसार जहां विधि अथवा तथ्य का कोई प्रश्न अवधारित करने में न्यायालय को कठिनाई होती है तब न्यायालय से यह अपेक्षित है कि वह उस पर प्रथमदृष्टया सर्वोत्तम हक रखने वाले व्यक्ति को प्रमाण पत्र प्रदान कर दे। यदि एक से अधिक आवेदक हैं और उनमें से किसी एक के पक्ष में प्रमाण पत्र सर्वोत्तम प्रथमदृष्टया हक के आधार पर अनुदत्त किया जाता है तो उनसे धारा 375 के अंतर्गत प्रतिभूति की मांग की जा सकती है। यद्यपि यह न्यायालय का विवेकाधिकार है जो प्रत्येक मामले के तथ्य और परिस्थिति पर निर्भर करता है। प्रतिभूति की मांग के संबंध में न्यायदृष्टांत ***रामचन्द्र रामरत्न विरूद्ध रामगोपाल, 1956 एससीसी ऑनलाईन मध्यप्रदेश 80*** अवलोकनीय है। प्रथम विवाह के अस्तित्व में रहते मृतक द्वारा दूसरा विवाह किया गया। दूसरी पत्नी तथा उसकी संतान के द्वारा आवेदन प्रस्तुत किया गया। यह निर्धारित किया गया कि दूसरी पत्नी के पक्ष में प्रमाण पत्र अनुदत्त नहीं किया जा सकता क्योंकि वह वैध विवाहित पत्नी की श्रेणी में नहीं आती है, दूसरी पत्नी के बच्चों के संबंध में प्रमाण पत्र अनुदत्त किया जा सकता है। इस संबंध में न्यायदृष्टांत ***सरिता बाई विरूद्ध चन्द्रा बाई, 2011 (2) एमपीएलजे 609*** एवं न्यायदृष्टांत ***सावित्री देवी विरूद्ध मनोरमा देवी, एआईआर 1998 एमपी 114*** अवलोकनीय है। एक व्यक्ति की मृत्यु पर उसके भाई द्वारा प्रमाण पत्र प्राप्त करने हेतु आवेदन किया गया। एक महिला द्वारा मृतक की पत्नी होने के आधार पर आपत्ति प्रस्तुत की गई। मृतक उसका पति था यह प्रमाणित करने का भार पत्नी पर था ऐसी स्थिति में मृतक का भाई, पत्नी की तुलना में अपेक्षाकृत उच्च स्थान पर खड़ा होना पाते हुए भाई के पक्ष में प्रमाण पत्र अनुदत्त किया जाना उचित पाया गया। इस संबंध में न्यायदृष्टांत ***वैजन्ती बाई विरूद्ध खान्दरे जनार्दन, एआईआर 2007 बॉम्बे 193*** अवलोकनीय है।

8. प्रमाण पत्र का प्ररूप – अधिनियम, 1925 की अनुसूची आठ में प्रमाण पत्र तथा विस्तारित प्रमाण पत्र का प्ररूप दिया गया है इसको ध्यान में रखकर प्रमाण पत्र अनुदत्त किया जाना चाहिए। प्रमाण पत्र सादे कागज पर तैयार करके अनुदत्त किया जा सकता है।

9. प्रमाण पत्र का प्रतिसंहरण / संशोधन / विस्तार – अधिनियम, 1925 की धारा 378 के अनुसार संशोधन की आवश्यकता तथा समाधानप्रद कारण दर्शित करने पर एक बार अनुदत्त प्रमाण पत्र में संशोधन किया जा सकता है। एक ही संपत्ति के लिये एक से अधिक प्रमाण पत्र अनुदत्त नहीं किये जा सकते। यदि एक आवेदक पूर्व में अनुदत्त प्रमाण पत्र द्वारा प्रतिकूल रूप से प्रभावित है तो वह उस प्रमाण पत्र के प्रतिसंहरण हेतु धारा 383 में उल्लेखित त्रुटिपूर्ण कार्यवाही, कपट, छिपाव, असत्य अभिकथन (भले ही गलती से किया हो) प्रमाण पत्र अप्रभावी हो गया, किसी न्यायालय की डिक्री का अधिभावी प्रमाव हो गया है, के आधार पर उसी न्यायालय में प्रमाण पत्र के प्रतिसंहरण हेतु आवेदन प्रस्तुत कर सकता है किन्तु प्रतिसंहरण की प्रक्रिया में पूर्व अनुदत्त प्रमाण पत्र के सभी पक्षकारों को

पक्षकार के रूप में जोड़ना होगा तथा वैसे ही संक्षिप्त जांच होगी जैसी प्रमाण पत्र अनुदत्त करते समय की गई थी। यदि एक बार प्रमाण पत्र अनुदत्त करने के बाद कोई संपत्ति पूर्व में समाहित किये जाने से रह गई है तो उस संम्पत्ति के संबंध में पूर्व से अनुदत्त प्रमाण पत्र का विस्तार धारा 376 के अंतर्गत किया जा सकता है। न्यायदृष्टांत ***जोसफ ईस्वरन विरूद्ध शिरली कथलीन, (2019) 5 एससीसी 58*** के अनुसार उत्तराधिकार प्रमाण पत्र का प्रतिसंहरण केवल तब किया जा सकता है जब धारा 383 की उपधारा (क) से (ड़) के तहत वर्णित आधार की संतुष्टि होती है। धारा 389 के अनुसार प्रतिसंहरित/अविधिमान्य प्रमाण पत्र न्यायालय की वांछा पर न्यायालय में जमा किये जायेंगे। यह सही है कि प्रमाण पत्र के अनुदत्त किये जाने को सिविल न्यायालय में चुनौती दी जा सकती है किन्तु न्यायदृष्टांत ***शंकुन्तला मित्तल विरूद्ध श्यामलाल, आईएलआर 2010 एमपी 1826*** के अनुसार केवल इस आधार पर कि सिविल वाद प्रस्तुत करने की वैकल्पिक सहायता उपलब्ध है उत्तराधिकार प्रमाण पत्र के प्रतिसंहरण के आवेदन पर विचार करने से इंकार नहीं किया जा सकता।

10. अपील – अधिनियम, 1925 की धारा 384 के अनुसार भाग 10 के अधीन प्रमाण पत्र को अनुदत्त, नामंजूर या प्रतिसंहरत करने वाले जिला न्यायाधीश के आदेश की अपील उच्च न्यायालय में की जा सकती है। चूंकि मध्यप्रदेश शासन की अधिसूचना क्रमांक–II–7375–XXI–बी–58 दिनांक 01.01.1959 के माध्यम से मध्यप्रदेश राज्य में उत्तराधिकार प्रमाण पत्र अनुदत्त करने की अधिकारिता सिविल जज, वर्ग–1 (अब सिविल जज वरिष्ठ खण्ड) के न्यायालय को प्राप्त है अतः धारा 388 के अनुसार सिविल जज के आदेश की अपील जिला न्यायाधीश को की जायेगी। उत्तराधिकार प्रमाण पत्र का अनुदत्त किया जाना एक आदेश होता है जिसकी डिक्री तैयार नहीं की जाती है। प्रमाण पत्र अनुदत्त करने अथवा न करने का आदेश अधिनियम, 1925 की धारा 384 के अन्तर्गत अपील योग्य है तथा ऐसी अपील को व्यवहार न्यायालय नियम, 1961 के नियम 385 (ग्यारह) के अनुसार विविध अपील के रूप में विविध अपीलों के रजिस्टर में दर्ज किया जाता है। ऐसी अपील पर न्यायालय फीस अधिनियम, 1870 की द्वितीय अनुसूची के अनुच्छेद 11 के अनुसार न्यायालय फीस देय होगी।

11. पूर्व न्याय – उत्तराधिकार प्रमाण पत्र के संबंध में *पूर्व न्याय* (*res judicata*) का सिद्धांत लागू नहीं होता है। इस संबंध में न्यायदृष्टांत ***जोगिंदर पाल विरूद्ध इंडियन रेड क्रॉस सोसायटी, (2000) 8 एससीसी 143*** एवं न्यायदृष्टांत ***माधवी अम्मा विरूद्ध कुमजी कुटी, (2000) 6 एससीसी 301*** अवलोकनीय है।

12. विभिन्न परिस्थितियां – न्यायालय के समक्ष प्रायः उत्पन्न होने वाली परिस्थितियों के संबंध में स्थिति स्पष्ट करने का प्रयास किया जा रहा है जो इस प्रकार है :–

1. **बैंक में गिरवी रखा सोना** – ऋण या प्रतिभूति की श्रेणी में नहीं आता है अतः प्रमाण पत्र की आवश्यकता नहीं है। इस संबंध में न्यायदृष्टांत ***ब्रांच मैनेजर, स्टेट बैंक ऑफ इंडिया विरूद्ध सत्यभान पाठाल एवं अन्य, एआईआर 1989 ओड़िसा 236*** एवं न्यायदृष्टांत ***ब्रांच मैनेजर, स्टेट बैंक ऑफ हरियाणा विरूद्ध गाड़ीराजू रामा भास्करा, एआईआर 1993 आन्ध्रप्रदेश 337***

2. **बैंक का लॉकर** – लॉकर में रखा सामान प्राप्त करने के लिए बैंकिंग रेगूलेशन एक्ट, 1949 की धारा 45 महत्वपूर्ण है जिसमें उल्लेख है कि यदि लॉकर के सम्बंध में किसी सक्षम प्राधिकारी की डिक्री/प्रमाण पत्र प्रस्तुत किया जाता है तो बैंक उसको विचार में लेगा। इसी से भ्रम उत्पन्न होता है। न्यायदृष्टांत ***शारदा चौपड़ा विरूद्ध स्टेट बैंक ऑफ इंडिया, एआईआर 1997 एमपी 196*** में उक्त प्रावधान को विचार में लेते हुए यह अभिमत दिया गया है बैंक के लॉकर में रखा सामान ऋण या दायित्व की श्रेणी में नहीं आता है इसलिये उत्तराधिकार प्रमाण पत्र नहीं मांगा जाना चाहिए केवल इंडेम्निटी बॉन्ड भरवाया जाना पर्याप्त होगा। लेकिन यदि किसी आपवादिक मामले में यदि बैंक को आवश्यक लगता है तो वह ऐसी मांग भी कर सकता है। उपरोक्त के अतिरिक्त न्यायदृष्टांत ***स्टेट बैंक ऑफ इंडिया विरूद्ध नेतई, एआईआर 1982 कलकत्ता 92*** भी अवलोकनीय है।

3. **खाता में जमा राशि** – बैंक के चालू खाता में जमा राशि ऋण है, इस संबंध में न्यायदृष्टांत ***स्टेट बैंक ऑफ इंडिया विरूद्ध इनुगन्ती वेन्कट सत्यनारायण, एआईआर 1964 आन्ध्रप्रदेश 378*** अवलोकनीय है।

4. **अनुकंपा नियुक्ति** – अनुकंपा नियुक्ति के लिए प्रमाण पत्र अनुदत्त नहीं किया जा सकता है। अनुकंपा नियुक्ति का दावा अधिकार के रूप में नहीं किया जा सकता है इसमें एक मात्र कमाने वाले की मृत्यु का तथ्य प्रमाणित करना होता है ताकि न्यूनतम सहायता प्रदान की जा सके। अनुकंपा नियुक्ति उत्तराधिकार प्रमाण पत्र का विषय नहीं है। इस संबंध में न्यायदृष्टांत ***स्टील अथॉरिटी ऑफ इंडिया विरूद्ध मधुसूदन दास, 2008 (15) स्केल 39*** अवलोकनीय है।

5. **निष्पादन कार्यवाही** – यदि डिक्रीदार की निष्पादन आवेदन प्रस्तुत करने के पहले मृत्यु हो जाती है तब ऐसी डिक्री धन की डिक्री की तरह होगी और ऋण की परिभाषा में आएगी। इस कारण अधिनियम, 1925 की धारा 214(1)(एफ) के अन्तर्गत बिना प्रमाण पत्र पेश किए मृत डिक्रीदार के विधिक प्रतिनिधि के द्वारा निष्पादन आवेदन प्रस्तुत करना वर्जित किया गया है। अतः मृतक के विधिक प्रतिनिधि, बिना प्रमाण पत्र पेश किये निष्पादन आवेदन प्रस्तुत नहीं कर सकते है। यदि डिक्रीदार द्वारा पूर्व से प्रस्तुत निष्पादन प्रकरण के लंबित रहते डिक्रीदार की मृत्यु हो जाती है तब उसके विधिक प्रतिनिधि धारा 146 सीपीसी के अंतर्गत प्रकरण को निरंतर रख सकते हैं। लेकिन अधिनियम, 1925 की धारा 214 डिक्रीदार की मृत्यु निष्पादन प्रकरण प्रस्तुत करने के पहले हुई या बाद में, इसमें भेद नहीं करती है इस कारण यदि लंबित निष्पादन प्रकरण में डिक्रीदार की मृत्यु होती है तब भी विधिक प्रतिनिधि को प्रकरण को निरंतर रखने के लिए उत्तराधिकार प्रमाण पत्र प्रस्तुत करना होगा। इस संबंध में न्यायदृष्टांत ***भारत संघ विरूद्ध रमन आयरन फाउण्डरी, एआईआर 1974 एससी 1265*** एवं न्यायदृष्टांत ***तेजराज राजमल विरूद्ध राम प्यारी, एआईआर 1938 नागपुर 528*** अवलोकनीय है।

6. **वाद** – विधिक प्रतिनिधि ने ऋण की वसूली के लिए वाद प्रस्तुत किया लेकिन उत्तराधिकार प्रमाण पत्र प्रस्तुत नहीं किया। विचारण न्यायालय ने डिक्री पारित की कि विधिक प्रतिनिधि डिक्री का निष्पादन तब तक नहीं करवा सकता है जब तक उत्तराधिकार प्रमाण पत्र प्रस्तुत नहीं किया जाता है। इस संबंध में न्यायदृष्टांत ***माणक चन्द जैन विरूद्ध श्रीमती पुखराज बाई, 2008 (2) एमपीएलटी 155*** अवलोकनीय है।

7. **किराया / राजस्व / मध्यवर्ती लाभ** – तीनो ऋण की परिभाषा में नहीं आते हैं। इस संबंध में न्यायदृष्टांत ***नारायण स्वामी नायडू विरूद्ध चैल्लामल, 1970 (2) एमएलजे 633*** अवलोकनीय है। किरायेदार से बकाया किराये की वसूली के लिए वाद प्रस्तुत करने हेतु भूस्वामी के उत्तराधिकारियों को प्रमाण पत्र प्रस्तुत करने की आवश्यकता नहीं है क्योंकि धारा 214 में ऋण के अन्तर्गत बकाया किराया या मध्यवर्ती लाभ नहीं आते है। इस संबंध में न्यायदृष्टांत ***(1987) 2 राजस्थान एलआर 933*** अवलोकनीय है।

8. **धन की डिक्री** – धन की डिक्री के निष्पादन के लिए प्रमाण पत्र आवश्यक है किन्तु केवल हर्जे की वसूली के लिए प्रमाण पत्र अनुदत्त नहीं किया जा सकता क्योंकि यह ऋण नहीं है। इस संबंध में न्यायदृष्टांत ***गोकुल विरूद्ध रामसेवक, एआईआर 1968 पटना 128*** तथा ***एस. राजलक्ष्मी विरूद्ध एस. सीता महालक्ष्मी, एआईआर 1976 आन्ध्रप्रदेश 36*** अवलोकनीय है।

9. **सेवानिवृत्ति के लाभ** – सेवानिवृत्त व्यक्ति के सेवानिवृत्ति के लाभ तथा बीमा की राशि ऋण है। प्रमाण पत्र अनुदत्त किया जा सकता है। इस संबंध में न्यायदृष्टांत ***श्रीमती कृष्णा प्यारी बाई दीक्षित विरूद्ध गोविंद मिश्रा, एआईआर 1992 एमपी 145*** अवलोकनीय है। भविष्य निधि की राशि प्राप्त करने के लिए प्रमाण पत्र अनुदत्त किया जा सकता है। इस संबंध में न्यायदृष्टांत ***रज्जूदेवी विरूद्ध नागेश्वर, एआईआर 1965 इलाहाबाद 267*** अवलोकनीय है।

10. **नॉमिनी विरूद्ध विधिक प्रतिनिधि** – शासकीय सेवक की ग्रेच्युटी की राशि उसके द्वारा नामित व्यक्ति को मिलनी चाहिए और यदि ऐसा व्यक्ति नहीं है तो उसके विधिक प्रतिनिधि को मिलनी चाहिये। इस संबंध में न्यायदृष्टांत ***धन्नालाल विरूद्ध डायरेक्टर कृषि, 2005 (1) एमपीडब्ल्यूएन 57*** अवलोकनीय है। एक प्रकरण में पति ने दूसरी पत्नी को शासकीय दस्तावेज में नॉमिनी बनाया पहली पत्नी और दूसरी पत्नी, दोनों ने उत्तराधिकार प्रमाण पत्र के लिए आवेदन किया। विचारण न्यायालय ने पहली पत्नी का दावा खारिज किया तथा दूसरी पत्नी के पक्ष में प्रमाण पत्र अनुदत्त किया। उच्च न्यायालय ने विचारण न्यायालय का आदेश अपास्त किया और उच्च न्यायालय ने अभिनिर्धारित किया कि दूसरी पत्नी ना केवल मृतक की नॉमिनी थी अपितु वह अपने बच्चों की ओर से प्रमाण पत्र की मांग कर रही थी। पहली पत्नी केवल विधि अनुसार विवाहित होने के आधार पर दूसरी पत्नी की तुलना में प्रमाण पत्र की हकदार नहीं है जो पूरा समय उसकी पत्नी बनकर रही है और उसके बच्चे भी है। लेकिन उच्चतम न्यायालय ने पहली पत्नी को सेवानिवृत्ति के लाभ का 1/5 हिस्सा दिया। इस संबंध में न्यायदृष्टांत ***विद्याधारी विरूद्ध सुखर्णा बाई, (2008) 2 एससीसी 238*** अवलोकनीय है।

11. **पारिवारिक पेंशन** – पारिवारिक पेंशन सरकार की परिवार पेंशन योजना के तहत दी जाती है। इसके संबंध में उत्तराधिकार प्रमाण पत्र अनुदत्त नहीं किया जा सकता है। इस संबंध में न्यायदृष्टांत ***श्रीमती सत्यवती शर्मा विरूद्ध कृष्णा शर्मा, 2004 (2) एमपीएचटी 34*** अवलोकनीय है।

12. **भार / भरण–पोषण** – सम्पत्ति पर भार की वसूली के लिए तथा भरण–पोषण की डिक्री के अन्तर्गत वसूली के लिए प्रमाण पत्र आवश्यक नहीं है। इस संबंध में न्यायदृष्टांत ***महादेव***

रातरेकर विरूद्ध सीता राम, एआईआर 1991 राजस्थान 97 अवलोकनीय है जिसमें न्यायदृष्टांत ***एआईआर 1952 नागपुर 88*** का अवलम्ब लिया गया है।

13. **समझौता डिक्री के अधीन राशि** – समझौता डिक्री के अंतर्गत निष्पादन प्रकरण प्रस्तुत करने हेतु प्रमाण पत्र आवश्यक नहीं है। इस संबंध में न्यायदृष्टांत ***रानी प्रभावती विरूद्ध शैलेष नाथ, एआईआर 1978 कलकत्ता 147*** अवलोकनीय है।

14. **बंधक धन** – बंधक धन की वसूली के लिए वाद प्रस्तुत करने हेतु प्रमाण पत्र की आवश्यकता नहीं है। इस संबंध में न्यायदृष्टांत ***आयशा बीबी विरूद्ध अब्दुल करीम, एआईआर 1972 केरला 64*** अवलोकनीय है।

15. **लाभांश** – परिसमापक (liquidator) के यहां से मृतक के लाभांश (dividend) की राशि प्राप्त करने के लिए प्रमाण पत्र आवश्यक है। इस संबंध में न्यायदृष्टांत ***वियुम्मा विरूद्ध ऑफिसियल लिक्वीडेटर, एआईआर 1999 केरला 190*** अवलोकनीय है।

16. **निष्पादन कार्यवाही में पंचाट धारक की मृत्यु** – निष्पादन न्यायालय उत्तराधिकार संबंधी प्रश्न का विनिश्चय करने के लिए सक्षम नहीं है। उत्तराधिकार प्रमाण पत्र प्रस्तुत करना होगा। भू–अर्जन कार्यवाही में पारित पंचाट भारतीय उत्तराधिकार अधिनियम की धारा 214 (2) के अन्तर्गत ऋण है। इस संबंध में न्यायदृष्टांत ***लालजी विरूद्ध मध्यप्रदेश राज्य, 2019 (2) एमपीएलजे 373*** अवलोकनीय है।

17. **पट्टा विलेख के अन्तर्गत सुरक्षा राशि** – किसी संविदा/निविदा को प्राप्त करने के लिए कुछ सुरक्षा निधि जमा किया जाना आवश्यक था तभी खनन का पट्टा मिल सकता था। मृतक ने राष्ट्रीय बचत प्रमाण पत्र के रूप में सुरक्षा निधि जमा करवाई। ऐसी राशि धारा 370 के अन्तर्गत प्रतिभूति की श्रेणी में आती है इस हेतु प्रमाण पत्र अनुदत्त किया जा सकता है। इस संबंध में न्यायदृष्टांत ***बुधवंत कौर विरूद्ध रावत सिंह, एआईआर 1988 राजस्थान 1*** अवलोकनीय है।

18. **प्रतिकर** – मोटर दावा दुर्घटना का प्रतिकर ऋण या प्रतिभूति नहीं है अतः उत्तराधिकारियों को उत्तराधिकार प्रमाण पत्र प्रस्तुत करने की आवश्यकता नहीं है। इस संबंध में न्यायदृष्टांत ***चन्द्र विरूद्ध रणवीर सिंह, 2014 एसीजे 891 (एमपी)*** अवलोकनीय है। रेलवे के विरूद्ध सम्पत्ति के खोने के संबंध में दावा प्रस्तुत करने हेतु प्रमाण पत्र की आवश्यकता नहीं है। इस संबंध में न्यायदृष्टांत ***मोहम्मद इकराम विरूद्ध भारत संघ, एआईआर 1959 पटना 337*** अवलोकनीय है।

19. **सहायता राशि** – अस्पताल ने मरीज की दोनों किडनी उसकी पत्नी तथा मां की सहमति से निकाल दी। मरीज की किडनी के लिए रू. 2,70,000/– स्वीकृत किए गए। जब किडनी निकाली गई तब मरीज जीवित था यह राशि ऋण है ना कि प्रतिकर। प्रमाण पत्र अनुदत्त किया जा सकता है। इस संबंध में न्यायदृष्टांत ***बीना एस नायर विरूद्ध पी. राजम्मा, एआईआर 2002 केरला 378*** अवलोकनीय है।

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RIGHT OF PRIVATE DEFENCE IS MOMENTARY: BEGINS WITH APPREHENSION AND ENDS BY THE DISAPPEARANCE OF APPREHENSION

Manish Sharma
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> "The right of defence is absolutely necessary. The vigilance of Magistrate can never make up for the vigilance of each individual on his own behalf. The fear of the law can never restrain bad men so effectually as the fear of the sum total of individual resistance. Take away this right and you become, in so doing, the accomplice of all bad men."
>
> – Bentham's *Principle of Penal Laws*

Self-help is the first rule of criminal law. The need of self preservation is rooted in the doctrine of necessity. The right of private defence legally accords to the individuals the right to take reasonably necessary measures to protect themselves under special circumstances. The right therefore, creates an exception to criminal liability. The right of private defence is a natural right which is evinced from particular circumstances rather than being in the nature of privilege.

Indian Legal Corridor

According to Article 51(a)(i) of the Constitution of India, the State is having a fundamental duty to protect public property and abjure violence. It implies that it is the duty of the State to protect its citizens and their property from any harm, and in case the aid or help of State is not available and the danger is overhanging and is unavoidable at the moment then the person is authorized to use his force to protect himself from any harm or injury. The term 'private defence' is not defined anywhere in the Penal Code. It has generally developed and evolved over the years by the judgments of various courts. The main motive behind providing this right to every citizen was to remove their hesitation in taking any action (generally illegal) to protect themselves due to the fear of prosecution.

Scope of the Right of Self-Defence

Sections 96 to 106 of the Indian Penal Code, 1860 contain the provisions regarding right of private defence available to every citizen of India. Section 96 says that an act which is done in exercise of right of private defence is no offence. The first thing to remember is that the right of self-defence can under no circumstance justify anything which strictly is of no defence but an offence. However, it may sometimes happen that an attack is the most effective way of making defence and in such cases, the attack is justifiable. Section 97 broadly specifies the offences against which the right of private defence can be exercised. Section 99 provides for limitation. These two sections combined together lay

down the principles of the right of private defence. The striking feature of this provision is that right of private defence extends not only to the defence of one's own body against any offence affecting the human body but also in defending the body of another person. This right also embraces the protection of property, whether one's own or of another person against theft, robbery mischief and criminal trespass, subject to limitations enumerated in section 99. Even it can be exercised against the act of unsound mind (sec 98) and even against the innocent person in case of deadly assault.

Sections 100, 101, 103 and 104 must be read together which deal with the right of self-defence of body and property. These are related to the extent of injury that can be inflicted on an assailant in exercise of right of self-defence. Wherever the right of self-defence exists, it extends to the causing of any injury, short of death necessary for the purposes of defence, but in certain special cases, may extend to causing death and it is justified. As per section 105, the right once available continues as long as an apprehension of danger to the property exists and section 106 describes about the harm to innocent person when it is extremely necessary but should not be excessive.

This right is based on two principles:

a) Right of private defence is available against the aggressor only; and

b) This right is available only when the defender entertains reasonable apprehension

Certain factors needed for considering the act of private defence are:

I. Whether there was sufficient time for recourse to public authorities or not?

II. Whether the harm caused was more than what was necessary to be caused or not?

III. Whether there was a necessity to take such an action or not?

IV. Whether the accused person was the aggressor or not?

V. Whether there was a reasonable apprehension of death, grievous hurt or hurt to the body or property?

In the case of ***Vidya Singh v. State of Madhya Pradesh, AIR 1971 CriLJ 1296***, the Apex Court observed that the right of self-defence should not be construed narrowly. Situations have to be adjudicated from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with those exact circumstances of peril and not by any minute and pedantic analysis of the situation by objectivity which would be natural in a courtroom, or would seem absolutely necessary to a perfectly relaxed bystander. The person facing a reasonable apprehension of threat to himself cannot be probable to modulate his defences tier by tier, similar to a man in ordinary times or under normal circumstances. The right of self-defence initiates as soon as reasonable apprehension occurs and it is *co-terminus* with the extent of such apprehension. Again, it is a defensive and not a retaliatory right, and can be

exercised only in cases where there is no chance to have a recourse from the public authorities.

Plea of private defence

The Apex Court has settled the question by laying down that though the plea has not been taken in the statement u/s 313 Cr.P.C. if necessary, basis for that plea is laid in the cross-examination of the P.Ws. as well as adducing defence evidence, the court can consider such a plea (See: ***Munsi Ram v. Delhi Administration AIR 1968 SC 702***). This law, however, does not permit an accused person to require the court to pick up factors from here and there and build a case of exercise of self defence by adopting the imaginative approach.

It is pertinent to mention that law without doubt does not permit an accused person to take one after the other false defence pleas nor does it encourage such a course of action. If a particular plea is taken in his answer to question u/s 313 Cr.P.C., but a different case is sought to be proved in evidence and the plea is not supported by defence witness, the accused cannot be given the benefit of right of private defence. (See: ***Ram Manohar v. State of M.P. 1988 SCC Online MP 138***).

Plea of private defence cannot be taken together with plea of alibi. It can also not be taken when a few people have assembled to form an unlawful assembly, the object of which from the very inception is unlawful, clearly the assembly is an aggressor. No question of right of private defence arises in such a case.

Burden of proof:

Right must not be assumed. It is a well-settled principle that the accused need not prove their case beyond all reasonable doubt in a plea of self-defence under section 105 of the Evidence Act, 1872, to be proved on account of preponderance of probabilities. If the plea of self-defence becomes plausible, then the same should be accepted or at least, a benefit of doubt arises. The most important thing which is to be kept in mind is that the initial onus is on the accused to satisfy the court.

In the celebrated judgement of ***Kashiram v. State of M.P., (2002) 1 SCC 71***, the Apex Court held that Section 105 of the Evidence Act, 1872 provides that the burden of proving the existence of circumstances which would bring the act of the accused alleged to be an offence within the exercise of right of private defence is on him and the court shall presume the absence of such circumstances. If on the material available on record, a preponderance of probabilities is raised which renders the plea taken by the accused plausible then the same should be accepted and in any case benefit of doubt deserves to be extended to the accused. The Court emphasised the difference between a flimsy or fantastic plea taken by the defence which is to be rejected altogether and a reasonable though incompletely proved plea which casts a genuine doubt on the prosecution version would therefore, indirectly succeed.

Against public servant

Section 99 deals with the acts against which there is no right of private defence. The first part of this section means a person has no right of private defence against an act which does not cause instant fear of death or grievous hurt if done by a public servant who is acting in good faith and under the colour of his office not his personal power, even if that act might not be strictly justifiable by law. However, a person is not deprived of his right of private defence against an act of public servant unless the point where he does not know the person doing the act is public servant. The second part of this section means a person has no right of private defence against an act which does not cause instant fear of death or grievous hurt if done by the direction of a public servant who is acting in good faith and under the name of his office not his personal power, even if that direction or act might not be strictly justifiable by law, but a person is not deprived of his right of private defence against the direction of a public servant unless the point where he doesn't know the person doing act is doing by such direction or unless such person states such authority under which he is acting or produces such authority or shows in writing.

The words 'colour of office' refer to the irregular as distinguished from illegal act. If what has been done in good faith under the colour of his office, no right of private defence will arise (***Ranveer Singh v. State of U.P., 1997 CriLJ 2266***).

Therefore, we can say that the operation of section 99 extends to acts which are not strictly justifiable by law. Section 99 is designed to protect a public servant, and to limit the amount of resistance which may be offered to him.

When right can be exercised to cause death

If the offence which is committed by the deceased and which had occasioned the cause of the exercise of the right of private defence of body and property falls within any of the seven categories enumerated in sections 100 or four categories in section 103 of the Penal Code, then both these sections authorise a person to take away life in exercise of his right of private defence. This section exercises a limit on the right of private defence to the extent of absolute necessity. It must not be more than what is necessary for defending aggression.

To prove that the person was under fear of death or grievous hurt; the following conditions need to be fulfilled:

- The accused must not have caused the fault i.e. he must not have started the encounter first. It needs to be the victim who should cause the fear of death or grievous hurt without fault of the accused.
- There must be an approaching danger to life or of great bodily harm. This danger must be so evident and real that the other person felt the necessity to cause death.
- There must not be any other safe or reasonable way to escape from that situation.

- There must be a necessity to do so. The act of voluntarily causing death can be excused only when the person feels that it is necessary to act that way.

In ***Sukumaran v. State, (2019) 15 SCC 117,*** Hon'ble the Supreme Court has acquitted a Forest Range Officer accused of killing a man allegedly belonging to a smuggling party on the ground that he did it in his self defence. A murder charge was slapped on Sukumaran; accused of shooting and killing a man, in Dharmapuri forest area in the State of Tamil Nadu. The prosecution had further alleged that he loaded 64 billets of sandal woods weighing 276 Kg and also kept one SBML gun in the lorry with a view to show that the deceased party was smuggling sandal woods from the forest area without holding a valid permit/ license. The Trial Court convicted him.

Hon'ble Apex Court held that firstly, the appellant had every reason to believe that due to suspicious moment of the deceased party in the forest, they were trying to smuggle the sandal wood from the forest. Secondly, the deceased party was aggressor because, as held above, they first pelted the stones and damaged the appellant's vehicle shouting "fire them". Thirdly, the appellant's duty was to apprehend the culprits who were involved in the activity of smuggling sandalwoods and at the same time to protect himself and his driver in case of any eventuality while apprehending the culprits.

Real or apparent danger

The apprehension of death or grievous hurt which was present in the mind of the accused to enable him to invoke the aid of private defence is to be ascertained objectively with reference to events and deeds at the time of the offence and the surrounding circumstances.

- ***Intention of Rape :*** If a person feels that the other person is committing assault with an intention of rape; the death can be committed in self-defence. In the case of ***State of Orissa v. Nirupama Pandey, 1988 SCC Online Ori 65***, the victim entered into the house of accused and tried to rape her. There was a scuffle between them and the accused lady finally stabbed the man and he died. She was not held liable because she was acting in her right of private defence.
- ***Intention of satisfying unnatural lust :*** If a person is committing assault with an intention of satisfying his unnatural lust; the other person can exercise his right of private defence to the extent of causing the death of that person.
- ***Intention of kidnapping or abduction :*** If a person feels that the other person is acting with an intention of kidnapping or abducting him or any other person, he may use his right to cause death of kidnapper.
- ***Intention of wrongful confinement :*** If a person feels that the other person is intending to wrongfully confine him or any other person and if the person is confined, he will not be able to escape or take help of public authorities for his release.

- ***Act of throwing or administering acid or attempt :*** If a person attempts or throw acid on victim which may cause reasonable apprehension that grevious hurt will otherwise be the consequences.

Commencement, continuance and the end

Section 102 deals with the commencement and continuance of right of private defence with respect to body only. The person exercising the right must consider whether the threat to the person is real and immediate or not.

Commencement: In a celebrated case of ***Deo Narayan v. State of U.P., 1973 SCC (Cri) 330***, it was held by Hon'ble the Apex Court that the extent to which the right can be exercised does not depend upon the actual danger but on the reasonable apprehension of danger. The right to private defence gives right to defend one self from any reasonable apprehension of danger. The threat, however, must give rise to presence of an imminent danger and not remote or distant danger.

Continuance: As long as the fear of danger continues, the person is free to use his right of private defence. A person exercising the right of private defence is entitled to secure his victory as long as the contest is continued. He is not obliged to retreat but may continue to defend till he finds himself out of danger.

End: When it can be reasonably seen that the danger no longer exists, the person's right of private defence ends. He has no such right after that. If in case he commits any hurt to other after the fear ends, he will not be immune and will be held liable for his act.

Reasonable Apprehension

The Hon'ble Apex Court observed that deceased and the others were attempting to strangulate the appellant and it would have been unrealistic to expect the appellant to modulate his defence step by step with any arithmetical exactitude.The appellant reasonably apprehended a danger to his life when the deceased and his brothers started strangulating him after pushing him to the floor. A mere reasonable apprehension is enough to put the right of self-defence into operation and it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the appellant apprehended that such an offence is contemplated and is likely to be committed if the right of private defence is not exercised (***Suresh Singhal v. State (Delhi Administration), (2017) 2 SCC 737***).

Quantum of necessary force / Golden scale

Such a question came for consideration before the Supreme Court and the court pointed out that while exercising the right of private defense it is not possible for an average person whose mental excitement could be better imagined than described, to weigh the position in golden scale and it was well-nigh impossible for the person placed in the position to take a calm and objective view expected in the detached atmosphere of a court, and calculate with

arithmetical precision as to how much force will effectively serve the purpose of self defence and when to stop. (***G.V. Subramanyam v The State of Andhra Pradesh, AIR 1970 SC 1079***).

The Hon'ble Supreme Court in ***Buta Singh v. State of Punjab, (1991) 2 SCC 612***, noted that where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private defence commences as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed, and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to and hyper-technical approach has to be avoided while considering what happens in the spur of the moment, on the spot, and keeping in view, the normal human reaction and conduct, where self-preservation is of paramount consideration.

But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private defence can legitimately be negated. The court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, a finding of fact.

Non-explanation of injury of accused

In ***Laxmi Singh and ors v. State of Bihar, AIR 1976 SC 2263***, Hon'ble the Apex Court held that where the prosecution fails to explain the injuries on the accused, two results follow –

(i) That the evidence of the prosecution witnesses is untrue; and

(ii) That the injuries probabilize the plea taken by the appellants.

It was further observed that :

> "In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:
>
> (i) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.
>
> (ii) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore their evidence is unreliable.
>
> (iii) That in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one"

In ***Babulal Bhagwan Khandare and anr. v. State of Maharashtra, AIR 2005 SC 1460***, Hon'ble the Apex Court expressed that non-explanation of the injuries sustained by accused at about the time of occurrence or in the same course of altercation is a very important circumstance. But mere non-explanation of the injuries by prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omissions on the part of the prosecution to explain the injuries.

In every case non-explanation of injuries to accused by prosecution is not fatal, but it depends upon case to case and facts of the case can determine the importance of non-explanation of injuries to accused.

(Readers are requested to go through the Article – *Law relating to Right of Private Defence of Body when the injuries on the person of an accused have not been explained* published in Part I of the JOTI Journal June 2008 at page no.64)

Aggressor or Revenge

The question of justification of the right of private defence has largely been raised in all cases focusing on the protection of the right to aggressor. It should not be allowed to be pleaded or availed for as a pretext for a vindictive, aggressive or retributive purpose. Act by way of retaliation is not covered by the general exception to criminal liability.

In ***State of U.P. v. Ramswaroop, 1975 SCR (1) 409***, it was laid down by Hon'ble the Supreme Court that a stringent test with regard to permitting the initial aggressor to claim this right of private defence under exceptional situations. It necessitates that the aggressor should have made every effort to negate the aggression, thereby escaping from the situation already created by him in every possible manner.

In ***State of Rajasthan v. Mehram and ors., (2020) 5 SCC 143***, the Hon'ble Apex Court has held that two theories (of being aggressors as opposed to exercise of right of private defence) are antithesis of each other.

Exceeding Private Defence

The right of private defence arises when an aggressor has struck or a reasonable apprehension of a grievous hurt arises depending upon the facts of each case. For instance, if a person is going to slap you, you cannot shoot the person with a gun in self-defence. But such a right in no case extends to the inflicting of more harm than is necessary to inflict for the purpose of defence.

In ***Arvind Kumar alias Nemichand and ors. v. State of Rajasthan, 2022 CriLJ 374***, Hon'ble the Apex Court held that once a private defence is accepted, there are only two questions that has to be answered by the court, namely; the defence coming within the purview of section 96 to section 102 IPC and the other acting

in excess. The concept of acting in excess has to be seen from the point of view of continued existence of the apprehension of danger. When the apprehension of danger has ceased and yet a person continues his attack, he exceeds the right of private defence. If it is found that accused has exceeded his right of private defence and caused death, then his case will come under Exception 2 of Section 300 IPC.

House trespass not open land

In ***Jassa Singh v. State of Haryana, 2002 CriLJ 563***, Hon'ble the Supreme Court held that the right of private defence of property would not extend to cause death of the person who committed such acts if the act of trespass is in respect of an open land. Only a house trespass committed under such circumstances as may reasonably caused death or grievous hurt is enumerated as one of the offences under Section 103.

Free fight

In ***Mohd. Khalil Chisti v. State of Rajasthan, (2013) 2 SCC 541***, the Hon'ble Apex Court has held that each accused can be fastened with individual liability taking into consideration the specific role or part attributed to each of the accused. In other words, both sides can be convicted for their individual acts and normally no right of private defence is available to either party and they will be guilty of their respective acts.

Guidelines of Right of Private Defence

The Hon'ble Supreme Court in ***Darshan Singh v. State of Punjab, (2010) 2 SCC 333*** laid down the Guidelines for Right of Private Defence for Citizens.

- Self-preservation is a basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.
- The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
- A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.
- The right of private defence commences as soon as a reasonable apprehension arises and it is *co-terminus* with the duration of such apprehension.

- It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.
- In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
- It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.
- The accused need not prove the existence of the right of private defence beyond reasonable doubt.
- The Indian Penal Code confers the right of private defence only when the unlawful or wrongful act is an offence.
- A person who is in imminent and reasonable danger of losing his life or limb may, in exercise of self defence, inflict any harm (even extending to death) on his assailant either when the assault is attempted or directly threatened.

Conclusion

While deciding a case relating to right of private defence, the Court's assessment would be guided by several circumstances including the position on the spot at the relevant point of time, the nature of apprehension in the mind of the accused, the kind of situation that the accused was seeking to ward off, the confusion created by the situation that had suddenly cropped up resulting the in knee jerk reaction of the accused, the nature of the overt acts of the party who had threatened the accused resulting in his resorting to immediate defensive action, etc.The underlying factor should be that such an act of private defence should have been done in good faith and without malice.

While the burden is on the accused, the accused could show that the preponderance of probabilities is in favour of his plea, just as in a civil case. It is necessarily a defensive right which is available only when the circumstances so justify it. The courts must keep in mind that the extent of the violence used by the accused for defending himself or his property should be in proportion to the injury apprehended, it was made clear that, this is not to say that a step-by-step analysis of the injury that was apprehended and the violence used is required to be undertaken by the Court; nor is it feasible to prescribe specific parameters for determining whether the steps taken by the accused to invoke private self-defence and the extent of force used by him was proper or not. It is the duty of the court to see whether, taking into consideration the acts of the accused in defending their person or property, they are innocent or not.

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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 अपील के लंबित रहने तक अपील न्यायालय ''दोषसिद्धि के निष्कर्ष'' को निलंबित कर सकता है?

धारा 389 दं.प्र.सं. के अनुसार दोषसिद्ध व्यक्ति द्वारा अपील प्रस्तुत किये जाने पर अपील न्यायालय कारणों को अभिलिखित करते हुये दण्डादेश या आदेश के निष्पादन को अपील के लंबित रहने तक निलंबित कर सकता है। दोषसिद्धि को स्थगित किये जाने के संबंध में पृथक से कोई प्रावधान दं.प्र.सं. में नहीं है। धारा 389 निष्पादन के निलम्बन का उपबंध करती है जैसे कारावास की सजा का निष्पादन या अर्थदण्ड का निष्पादन और ऐसे आदेश जिनका निष्पादन किया जा सकता हो। दण्डादेश के विरूद्ध अपील में यदि दण्डादेश का निलम्बन किया जाकर अपीलार्थी को जमानत पर छोड़ा जाता है तब भी दोषसिद्धि निरंतर रहती है अतः यह कहा जा सकता है कि दोषसिद्धि का आदेश निष्पादन योग्य नहीं होता है। किन्तु कुछ मामलों में दोषसिद्धि का परिणाम प्रतिकूल हो सकता है। ऐसे मामले सामान्यतः दोषसिद्धि के परिणाम स्वरूप पद से हटाए जाने या चुनाव लड़ने हेतु अयोग्य ठहराए जाने के हो सकते हैं। इन मामलों में यह कहा जा सकता है कि दोषसिद्धि का प्रतिकूल परिणाम भी निलम्बित किया जाए। सामान्य नियम यह है कि दण्डादेश के निलम्बन के अन्तर्गत स्वतः ही दोषसिद्धि के आदेश का निलम्बन समाहित नहीं है। अतः सामान्य रूप से अपील न्यायालय दोषसिद्धि के आदेश का निलम्बन नहीं कर सकता है।

न्यायदृष्टांत ***रामनारंग विरूद्ध रमेश नारंग, (1995) 1 एस.सी.सी. 513*** के अनुसार यदि कोई व्यक्ति दोषसिद्धि के संबंध में स्थगन चाह रहा है तो उसे अपील न्यायालय का ध्यान विशेष रूप से दोषसिद्धि से उद्भूत होने वाले परिणामों की ओर आकर्षित कराना चाहिये। अपील न्यायालय प्रकरण के तथ्यों और परिस्थितियों का अवलोकन करने पर यदि यह पाता है कि दोषसिद्धि को निलंबित नहीं किया गया तो अभियुक्त को ऐसी क्षति होगी जिसकी भरपाई अपील या पुनरीक्षण स्वीकार किये जाने पर भी नहीं हो सकती, तब केवल अपवादिक मामले में ऐसा निलंबन किया जा सकता है।

इसके अतिरिक्त न्यायदृष्टांत ***रमेश चन्द्र श्रीवास्तव विरूद्ध स्टेट ऑफ एम.पी., 1999 (1) एमपीएलजे 571,*** न्यायदृष्टांत ***जमना प्रसाद विरूद्ध मध्यप्रदेश राज्य, 2003 (1) एमपीएचटी 77,*** न्यायदृष्टांत ***रविकांत विरूद्ध सार्वभौम, (2007) 1 एस.सी.सी. 673*** एवं ***न्यायदृष्टांत नवजोत सिंह सिद्धू विरूद्ध स्टेट, (2007) 2 एस.सी.सी. 574*** भी अवलोकनीय है।

इस प्रकार यह निष्कर्ष दिया जा सकता है कि सामान्य रूप से अपील न्यायालय दोषसिद्धि के आदेश का निलम्बन नहीं कर सकता है किन्तु जहां दोषसिद्धि का परिणाम ऐसा हो जिसका प्रतिकूल प्रभाव अपीलार्थी को पद से हटाये जाने अथवा किसी कार्य को किये जाने से अयोग्य करार दिये जाने की परिणिति के रूप में होता हो तब प्रकरण के तथ्यों के आधार पर न्याय के उद्देश्य की पूर्ति के लिये धारा 389(1) के अन्तर्गत अपील न्यायालय दोषसिद्धि को निलम्बित कर सकता है।

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2. किसी आपराधिक प्रकरण में जप्त/प्रस्तुत कूटरचित दस्तावेजों की अभिरक्षा के संबंध में विचारण के दौरान क्या आदेश किया जाना चाहिए?

जब किसी प्रकरण में ऐसा दस्तावेज जप्त/प्रस्तुत किया गया है जो धारा 463 भा.दं.सं. में यथापरिभाषित 'कूटरचना' की श्रेणी में आता है तब नियम तथा आदेश (आपराधिक) के नियम 483 में बताई गई प्रक्रिया का पालन किया जाना चाहिए जो इस प्रकार है –

''ऐसे दस्तावेज जिनका जाली होना ज्ञात है या जिनका जाली होने का संदेह है तथा दस्तावेज जिसे विशेष अभिरक्षा में रखा जाता है, उन्हें रीडर पृथक सीलबंद लिफाफे में अभिलेखापाल के पास भेजेगा जिसकी कि रिकार्ड कीपर पावती देगा। दस्तावेज एक विशेष बस्ते में ताला लगाकर रखी जावेगी तथा जिस अभिलेख से वे संबंधित है उसमें इस बात का संदर्भ किया जायेगा कि वे कहां रखे गये है।''

उपरोक्त प्रावधान का मुख्य उद्देश्य यह सुनिश्चित करना है कि ऐसे दस्तावेजों को सुरक्षित रखा जावे क्योंकि अभियोजन का कूटरचना संबंधी अभियोग इसी दस्तावेज पर निर्भर करता है। सुविधा के लिये ऐसे कूटरचित दस्तावेज की प्रतिलिपि अभिलेख में रखी जा सकती है और साक्ष्य के दौरान जब कूटरचित दस्तावेज को आहूत किया जाता है तब उसके साथ–साथ उसकी इस प्रतिलिपि पर भी प्रदर्श अंकित किया जाना उचित होगा ताकि अपील होने की दशा में अपील न्यायालय इस प्रतिलिपि पर विचार कर सके और आवश्यकता होने पर ही मूल दस्तावेज को आहूत करे।

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3. क्या मोटर दावा दुर्घटना अधिकरण, अपने द्वारा पारित अधिनिर्णय का पुनर्विलोकन कर सकता है?

मोटर दावा दुर्घटना अधिकरण की प्रक्रिया तथा शक्तियां मोटर यान अधिनियम, 1988 की धारा 169 में दी गई है। उपधारा (1) के अनुसार अधिकरण जांच करते समय ऐसे किन्हीं नियमों के अधीन रहते हुए जो इस निमित्त बनाए जाएं, ऐसी संक्षिप्त प्रक्रिया का अनुसरण करेगा जो वह ठीक समझे। इस प्रावधान का तात्पर्य यह है कि अधिकरण को स्वतंत्रता है कि वह कोई भी प्रक्रिया अपना सकता है और यदि वह न्याय संगत है और नैसर्गिक सिद्धांतों के पालन में हस्तक्षेप नहीं करती है तो ऐसी प्रक्रिया को मनमाना नहीं कहा जा सकता है। यद्यपि मोटर यान नियम, 1994 का नियम 240 प्रत्यक्ष रूप से सिविल प्रक्रिया संहिता के आदेश 47 के दुर्घटना दावा

अधिकरण की प्रक्रिया पर लागू होने के सम्बंध में उल्लेख नहीं करता है लेकिन न्याय के उद्देश्य की पूर्ति के लिए अधिकरण को वह सभी शक्तियां प्राप्त है जो सिविल प्रक्रिया संहिता में उल्लेखित है। अधिकरण को मोटर यान अधिनियम, 1988 की धारा 169 के अन्तर्गत अन्तर्निहित शक्तियां प्राप्त है। यदि प्रक्रिया की त्रुटि, अधिकरण द्वारा कारित भूल, गलती अथवा प्रक्रिया के दुरूपयोग को रोकने के लिए आवश्यक हो तो अधिकरण द्वारा अपने अधिनिर्णय का 'पुनर्विलोकन' किया जा सकता है।

इस सम्बंध में न्यायदृष्टांत ***नेशनल इंश्योरेंस कंपनी लिमिटेड विरूद्ध लच्छीबाई उर्फ लक्ष्मीबाई, एआईआर 1997 एमपी 172*** एवं ***न्यायदृष्टांत नारायण लीलाहरे विरूद्ध दिनेश, 2007 (2) एमपीएचटी 32 (डीबी)*** अवलोकनीय है।

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4. क्या जमानत को स्वीकार करने या अस्वीकार करने या पूर्व में प्रदत्त जमानत को निरस्त करने के आदेश के विरूद्ध पुनरीक्षण याचिका प्रचलनशील है?

दण्ड प्रक्रिया संहिता की धारा 397 सत्र न्यायालय या उच्च न्यायालय की पुनरीक्षण की शक्तियों के संबध में प्रावधान करती है। उपधारा (2) के अनुसार पुनरीक्षण की शक्तियों का प्रयोग किसी अपील, जांच, विचारण या अन्य कार्यवाही में पारित किसी अन्तरवर्ती आदेश के बावत् नहीं किया जा सकता है। यहां यह निर्धारित किया जाना आवश्यक है कि क्या किसी न्यायालय द्वारा पूर्व में प्रदत्त जमानत को निरस्त करने का आदेश अन्तरवर्ती आदेश है अथवा अंतिम। न्यायदृष्टांत ***उस्मान भाई विरूद्ध गुजरात राज्य, (1988) 2 एससीसी 271*** के अनुसार जमानत देने से इंकार करने का आदेश अंतिम आदेश नहीं होता है क्योंकि इस हेतु नया आवेदन प्रस्तुत किया जा सकता है। न्यायदृष्टांत ***मधुलिमये विरूद्ध महाराष्ट्र राज्य, एआईआर 1978 एससी 47*** एवं न्यायदृष्टांत ***अमरनाथ विरूद्ध हरियाणा राज्य, (1977) 4 एससीसी 137*** में विनिर्दिष्ट रूप से यह अभिनिर्धारित किया गया है कि जमानत को स्वीकार अथवा अस्वीकार करने का आदेश एक अन्तरवर्ती आदेश है इस हेतु पुनरीक्षण याचिका प्रचलनशील नहीं है।

न्यायदृष्टांत ***मोहन लाल विरूद्ध राजस्थान राज्य, 2017 (4) सीआरएलआर 1702 (राजस्थान)*** के अनुसार जमानत को निरस्त करने का आदेश अन्तरवर्ती आदेश है इस हेतु पुनरीक्षण याचिका प्रचलनशील नहीं है।

इस प्रकार स्पष्ट है कि पुनरीक्षण याचिका अन्तरवर्ती आदेश के सम्बंध में प्रचलनशील नहीं होती है। जमानत को स्वीकार करने या अस्वीकार करने या पूर्व प्रदत्त जमानत को निरस्त करने का आदेश एक अन्तरवर्ती आदेश होता है। आवेदन उसी न्यायालय में पुनः प्रस्तुत किया जा सकता है या धारा 439 दण्ड प्रक्रिया संहिता के अन्तर्गत वरिष्ठ न्यायालय में प्रस्तुत किया जा सकता है। ऐसा आदेश अंतिम नहीं होकर अन्तरवर्ती होता है। अतः ऐसे आदेश के विरूद्ध पुनरीक्षण याचिका प्रचलनशील नहीं है।

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PART - II

NOTES ON IMPORTANT JUDGMENTS

166. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Sections 12(1) and 13

(i) Protection against eviction – Section 13 would apply even if the ground of eviction is not one u/s 12(1) (a) of the Act.

(ii) Duty of tenant to deposit rent – If suit is instituted on any ground mentioned u/s 12, the tenant is obliged to deposit the amount of rent throughout the proceeding – Failure to do so would attract section 13 (6) and it is open to the court to strike off the defence and proceed further in the matter.

(iii) Execution of decree – Compliance of section 13 does not amount to stay of decree for eviction.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धाराएं 12(1) एवं 13

(i) निष्कासन के विरूद्ध संरक्षण – यदि अधिनियम की धारा 12(1)(क) के अंतर्गत निष्कासन का आधार न हो तो भी धारा 13 प्रयोज्य होगी।

(ii) किराया निक्षिप्त करने का अभिधारी का कर्तव्य – यदि वाद धारा 12 में उल्लेखित किसी आधार पर संस्थित किया गया है, अभिधारी संपूर्ण कार्यवाही के दौरान किराये की राशि निक्षिप्त करने के लिए बाध्य है – ऐसा करने में विफल रहने से धारा 13(6) आकर्षित होगी और न्यायालय के लिए अनुमत होगा कि वह प्रतिवादी की प्रतिरक्षा काट दें और मामले में अग्रिम कार्यवाही करे।

(iii) डिक्री का निष्पादन – धारा 13 का अनुपालन निष्कासन की डिक्री के स्थगन के समतुल्य नहीं होगा।

Heera Traders v. Kamla Jain

Judgment dated 22.02.2022 passed by the Supreme Court in Civil Appeal No. 5996 of 2021, reported in AIR 2022 SC 1377

Relevant extracts from the judgment:-

Section 13 clearly is intended to apply in a Suit or proceeding instituted by the landlord on any other grounds under Section 12. If that be so, the words, "for the period, for which, the tenant may have made default", may not apply, as the tenant may not be in default and no ground under Section 12(1)(a) may even be pleaded. Therefore, in such a proceeding by the landlord, the words, "for the period, for which, the tenant may have made default", pales into insignificance and irrelevance. It would then mean that, in a proceeding under Section 12, which does not involve Section 12(1)a), or in other words, when there is no default within the meaning of Section 12(1)(a), the protection would be available to the tenant, only if, he makes a deposit or payment for the period during the pendency of the proceeding. In other words, throughout the proceeding by the landlord, on any of the grounds under Section 12, the tenant

is obliged to deposit the amount of rent. The failure to do so, would attract Section 13(6) and it is open to the Court to strike off the defence and proceed further in the matter.

x x x

We are unable to accept the appellants case that Section 13 of the Act, being a special law, the power under Order XLI Rule 5, cannot be exercised to direct deposit or payment of mesne profits. Compliance with Section 13 by the appellants, does not, as found by us, amount to a stay of the Decree for Eviction. The power of the Appellate Court to impose conditions for staying the Decree, cannot be confined by the dictate in Section 13 of the Act, to the appellants/ tenants, to deposit the agreed rent, particularly, having regard to the time consumed in litigation and, more importantly, the impact of the Decree of Eviction, depriving the appellant of his status as a tenant.

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167. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 23A

Eviction suit – Necessary party – Impleadment of third party claiming title on rented premises – It is not permissible as relationship of landlord and tenant is to be decided on the basis of pleadings and evidence produced.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धारा 23क

निष्कासन का वाद – आवश्यक पक्षकार – किरायाधीन परिसर पर स्वामित्व का दावा करते हुए तीसरे पक्ष को पक्षकार बनाना – चूंकि भूमिस्वामी और किरायेदार के संबंध का विनिश्चय अभिवचनों और प्रस्तुत किये गये साक्ष्यों के आधार पर किया जाना है अतः यह अनुज्ञेय नहीं है।

Shyamlal Vyas (dead) through LRs. Gopi Vyas and ors. v. Inderchand (dead) through LRs. Om Prakash Jain and ors.

Order dated 07.01.2022 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Revision No. 403 of 2021, reported in 2022 (2) MPLJ 352

Relevant extracts from the judgment:

It is clear that the scope of eviction proceedings is very limited. If on consideration of the pleadings and the evidence led by both the sides, the landlord-tenant relationship is established between the parties and the ground of eviction is proved then the decree or order of eviction would be passed. To ascertain the landlord-tenant relationship, the issue of title or ownership over the property is not to be decided by the concerned adjudicating forum. Thus, all the issues related to eviction can be finally and effectually decided between the landlord and tenant without impleading any third party may be claiming title over the property. Thus, impleadment of third party in eviction proceedings on the basis of claiming the title over the rented property is not permissible.

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168. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 23J
Specific category of landlord – Definition – Extended to employees of the companies, corporation or public undertaking of the State Government as well as the Central Government.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) – धारा 23ञ

भू–स्वामी का विनिर्दिष्ट प्रवर्ग – परिभाषा – राज्य सरकार के साथ–साथ केंद्र सरकार की कंपनियों, निगमों या सार्वजनिक उपक्रम के कर्मचारियों तक इसका विस्तार है।

Gayatri Parasher v. Tulsiram Kori

Judgment dated 05.01.2022 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Civil Revision No. 490 of 2021, reported in 2022 (2) MPLJ 327

Relevant extracts from the judgment:

The landlord in this case is an employee of NFL Vijaypur which is undisputedly a Government of India undertaking. Therefore, in view of the above well settled legal position, he comes in the purview of definition of 'landlord' under section 23-J of the Act. In the above stated judgment of this court i.e ***Subhash Chandra (D) Through LRs. v. Gulab Bai and ors., 2019 MPLJ Online (SC) 103*** it has been held that the Municipal Corporation is an independent entity separate from the State Government and its employee is not covered by the definition of 'landlord' as mentioned under Section 23-J of the Act of 1961.

In the above stated judgment of this court i.e ***Subhash Chandra (D) through LRs.*** (supra), it has been held that the Municipal Corporation is an independent entity separate from the State Government and its employee is not covered by the definition of 'landlord' as mentioned under Section 23-J of the Act of 1961. Further, in ***Central Warehousing Corporation v. Municipal Corporation Khandwa and anr., 1996 MPLJ 73*** the Central Ware Housing Corporation has been held to be an independent entity for the purpose of Property Tax. But in view of the above mentioned legal position as expounded by the Division Bench of this Court as well as by Hon'ble Supreme Court, both these judgments do not help the applicant.

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169. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 16 and 34
MADHYASTHAM ADHIKARAN ADHINIYAM, 1983 (M.P.) – Sections 2, 3 and 7

(i) Work contract – Jurisdiction – All disputes relating to work contract shall be exclusively decided by the Tribunal created under the M.P. Madhyastham Adhikaran Adhiniyam, 1983 and not under the Arbitration and Conciliation Act, 1996.

(ii) Objection – Lack of jurisdiction – Though no objection regarding jurisdiction was raised before Arbitration Tribunal but such objection can be raised before the Court in application u/s 34 of the Act.

माध्यस्थम और सुलह अधिनियम, 1996 – धाराएं 16 एवं 34
माध्यस्थम अधिकरण अधिनियम, 1983 (म.प्र.) – धाराएं 2, 3 एवं 7

(i) कार्य संविदा – क्षेत्राधिकार – कार्य संविदा संबंधी सभी विवाद विनिर्दिष्टतः मध्य प्रदेश माध्यस्थम अधिकरण अधिनियम, 1983 के अंतर्गत गठित अधिकरण द्वारा ही विनिश्चित किये जायेंगे न कि माध्यस्थम और सुलह अधिनियम, 1996 के अधीन।

(ii) आक्षेप – क्षेत्राधिकार का अभाव – यद्यपि क्षेत्राधिकार के संबंध में कोई आक्षेप माध्यस्थम अधिकरण के समक्ष नहीं उठाया गया था परंतु ऐसा आक्षेप अधिनियम की धारा 34 के अतंर्गत आवेदन में न्यायालय के समक्ष उठाया जा सकता है।

Gayatri Project Ltd. v. Madhya Pradesh Road Development Corporation Ltd.

Judgment dated 07.01.2022 passed by the High Court of Madhya Pradesh in Arbitration Appeal No. 79 of 2021, reported in 2022 (2) MPLJ 425

Relevant extracts from the judgment:

The correctness of the decision of the Hon'ble Supreme Court in ***VA Tech Escher Wyass Floverl Ltd. v. Madhya Pradesh State Electricity Board and anr., (2011) 13 SCC 261*** was doubted in ***M.P. Rural Development Authority v. L.G. Chaudhary Engineers and Contracts, (2012) 3 SCC 495*** In separate opinions, it was held that ***VA Tech*** (supra) is *per in curium*. It was held that Section 2(4) of the Act of 1996 saves other inconsistent legislations and hence in Madhya Pradesh, the Act of 1983 prevails over the Act of 1996 in respect of disputes of "works contract". It was held that proceeding could continue only before Tribunal and not before arbitrator. Gyan Sudha Mishra J., however, gave a part dissent to the effect that where the "works contract" is terminated by a party then the Act of 1983 would not apply and Act of 1996 would apply. In view of the partial dissent by Gyan Sudha Mishra J., the matter was referred to a larger bench of three judges.

A bench of three Judges of the Hon'ble Supreme Court in ***L.G. Chaudhary*** (supra) decided the reference and affirmed the opinion of A.K. Ganguly J. It was held that the dissenting opinion of Gyan Sudha Mishra J. does not lay down the correct law.

Thus, the legal position, after the aforesaid decision of three judges of Hon'ble Supreme Court is clear that the jurisdiction of arbitral tribunal under the Act of 1996 is barred by operation of law.

Further in ***State of Chattisgarh v. KMC Contruction, (2018) 10 SCC 839,*** the Hon'ble Supreme Court, after referring to aforesaid decision of three-judges' bench in ***L.G. Chaudhary*** (supra) held that the tribunal has "exclusive" jurisdiction to decide disputes of "works contract".

However, a bench of three-judges of the Hon'ble Supreme Court in a subsequent decision in ***Lion Engg. Consultants v. State of M.P., (2018) 16 SCC 758*** partly overruled ***MSP Infrastructure Ltd. v. M.P. Rural Development Construction Ltd., (2015) 13 SCC 713*** and held that the objection regarding lack of jurisdiction can be taken under Section 34 of the Act of 1996, even if no objection under Section 16(2) was taken before the arbitral tribunal. Thus, in view of the subsequent decision of the larger bench, this Court is of the view that the objection regarding lack of jurisdiction could have been taken before the learned trial Court under Section 34 of the Act of 1996, even though no such objection was taken before the arbitral tribunal under Section 16(2) of the Act. The Hon'ble Supreme Court in the matter of ***M/s. JMC Projects (India) Ltd. v. Madhya Pradesh Road Development Construction, Civil Appeal No. 204/2020*** has not referred to the decision in the matter of ***Lion Engineers*** (supra) which was subsequent to the decision of C.A. No. 2616 of 2018. Hence, the learned trial Court acted in accordance with law while entertaining the objection under Section 34 of the 1996 Act and setting aside the arbitral award on the ground of lack of jurisdiction.

Our aforesaid view is fortified on a different reasoning as well. If we examine Section 34 of the Act of 1996, it has two parts. Part (a) deals with grounds where a "party making an application furnishes proof", whereas, part (b) deals with where "the Court finds". Thus, even if no ground is taken in a petition under Section 34 of the 1996 Act, if the Court finds that the award is in respect of subject matter incapable of arbitration by operation of law; the court is duty bound to set it aside under Section 34(2)(b)(i) of the 1996 Act. The legislature has consciously cast a duty on the court to set aside an award even though no specific challenge is made by a party.

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170. ARBITRATION AND CONCILIATION ACT, 1996 – Section 34 (4)

Remission of matter to Arbitrator – Arbitrator may be given a chance to give reasons in support of award by the Court on request of a party – He may also be given an opportunity to fill up the gaps in the already elaborated reasonings.

माध्यस्थम एवं सुलह अधिनियम, 1996 – धारा 34 (4)

मध्यस्थ को प्रकरण का प्रेषण – किसी पक्षकार के निवेदन पर न्यायालय द्वारा मध्यस्थ को अवार्ड के समर्थन में कारण दिये जाने का अवसर दिया जा सकता है – उसे पूर्व में दिये जा चुके कारणों की कमियों को भी पूरा करने का अवसर दिया जा सकता है।

I-Pay Clearing Services Private Limited v. ICICI Bank Limited

Judgment dated 03.01.2022 passed by the Supreme Court in Civil Appeal No. 7 of 2022, reported in (2022) 3 SCC 121

Relevant extracts from the judgment:

A harmonious reading of Section 31, 34(1), 34(2A) and 34(4) of the Arbitration and Conciliation Act, 1996, make it clear that in appropriate cases, on the request made by a party, Court can give an opportunity to the arbitrator

to resume the arbitral proceedings for giving reasons or to fill up the gaps in the reasoning in support of a finding, which is already rendered in the award. But at the same time, when it prima facie appears that there is a patent illegality in the award itself, by not recording a finding on a contentious issue, in such cases, Court may not accede to the request of a party for giving an opportunity to the Arbitral Tribunal to resume the arbitral proceedings.

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171. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11 (a) and (d)
Jurisdiction of Civil Court – Cancellation of license by Krashi Upaj Mandi Samiti – Civil Court has no jurisdiction as alternative remedy is available to challenge the order before the Appellate Authority.

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

सिविल न्यायालय का क्षेत्राधिकार – कृषि उपज मंडी समिति द्वारा अनुज्ञप्ति का निरस्त किया जाना – चूंकि आदेश को अपीलीय प्राधिकरण के समक्ष चुनौती देने का वैकल्पिक उपचार उपलब्ध है अतः सिविल न्यायालय का क्षेत्राधिकार नहीं है।

Krishi Upaj Mandi Samiti, Dhar v. M/s Khemchand Jain, Dhar
Order dated 21.02.2022 passed by the High Court of Madhya Pradesh (Bench Indore) in Civil Revision No. 339 of 2021, reported in 2022 (2) MPLJ 419

Relevant extracts from the order:

This Court is of the considered opinion that the Krishi Upaj Mandi has jurisdiction to cancel or suspend the licence under section 33 of the Adhiniyam, 1973 and respondent/plaintiff did not file any appeal against the said order under section 34 of the M.P. Krishi Upaj Mandi Adhiniyam.

As per the section 66 of the Adhiniyam, the Civil Court has no jurisdiction to entertain the civil suit in respect of anything in good faith to be done or intend to be done under this Adhiniyam, but the learned trial Court has not considered all these material legal aspects, therefore, the impugned order passed by the Court below suffers from non-exercising jurisdiction vested in the Court as well as procedural irregularity. The impugned order passed by the Court below is contrary to law and deserves to be set aside.

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172. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11 (d) and Order 23 Rule 3A
Rejection of plaint – Bar of jurisdiction – Suit for challenging compromise decree is not maintainable.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11 (घ) एवं आदेश 23 नियम 3क

वादपत्र का नामंजूर किया जाना – क्षेत्राधिकार का वर्जन – समझौता आज्ञप्ति को चुनौती देने वाला वाद पोषणीय नहीं है।

M/s. Sree Surya Developers and Promoters v. N. Sailesh Prasad and ors.

Judgment dated 09.02.2022 passed by the Supreme Court in Civil Appeal No. 439 of 2022, reported in AIR 2022 SC 1031

Relevant extracts from the judgment:

If we consider the reliefs of declaration of title, recovery of possession, cancellation of revocation of Gift Deed, declaration for DGPA and Deed of Assignment-cum-DGPA, the said reliefs can be granted only if the Compromise Decree dated 13.01.2016 passed in O.S. No.1750 of 2015 is set aside. Therefore, by asking such multiple reliefs, the plaintiff by clever drafting wants to get his suit maintainable, which otherwise would not be maintainable questioning the Compromise Decree. All the aforesaid reliefs were subject matter of earlier suits and thereafter also subject matter of O.S. No.1750 of 2015 in which the Compromise Decree has been passed. Therefore, it is rightly held by the Trial Court that the suit in the present form and for the reliefs sought would be barred under Order XXIII Rule 3A CPC and therefore the Trial Court rightly rejected the plaint in exercise of powers under Order VII Rule 11(d) of the CPC. The High Court has erred in setting aside the said order by entering into the merits of the validity of the Compromise Decree on the ground that the same was hit by Order XXXII Rule 7 CPC, which was not permissible at this stage of deciding the application under Order VII Rule 11 CPC and the only issue which was required to be considered by the High Court was whether the suit challenging the Compromise Decree would be maintainable or not.

As observed hereinabove and it is not in dispute that as such the respondent No.1 – Original plaintiff has already moved an appropriate application before the concerned Court, which passed the decree setting aside the compromise Decree by submitting an application under Order XXIII Rule 3A CPC therefore the said application will have to be decided and disposed of in accordance with law in which all the defences / contentions which may have been available to the respective parties on the validity of the Compromise Decree would have to be gone into by the concerned court in accordance with law and on its own merits.

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173. CIVIL PROCEDURE CODE, 1908 – Order 8 Rule10
COMMERCIAL COURTS ACT, 2015 – Section 16
Limitation to file written statement – Exclusion of period of pandemic – Extended to filing of written statement in suit related to commercial disputes.

सिविल प्रक्रिया संहिता, 1908 – आदेश 8 नियम 10
वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 16
लिखित कथन दाखिल करने हेतु परिसीमा – महामारी की अवधि का अपवर्जन – व्यावसायिक विवादों से संबंधित वादों में लिखित कथन दाखिल करने तक विस्तारित।

Prakash Corporates v. Dee Vee Projects Limited
Judgment dated 14.02.2022 passed by the Supreme Court in Civil Appeal No. 1318 of 2022, reported in AIR 2022 SC 946

Relevant extracts from the judgment:

It is beyond cavil that if the prescribed period for any suit/appeal/application expires on day when the Court is considered 'closed', such proceedings may be instituted on the re-opening day. Significantly, the Explanation to Section 4 of the Limitation Act, 1963 makes it clear that a day when the Court may not as such be closed in physical sense, it would be 'deemed' to be closed, if during any part of its normal working hours, it remains closed on that day for any particular proceedings or work.

As noticed from the relevant parts of the order dated 05.04.2021 (vide paragraph 15 hereinabove) that at the relevant time, limited number of Courts were to function on rotational basis in Raipur and that too, with curtailed working hours from 11:00 a.m. to 2:00 p.m.; and they were to function during full working hours only for bail and remand matters. Having regard to the situation prevalent at the relevant time and the contents as also spirit of the administrative order issued by the jurisdictional High Court, there is nothing to doubt that w.e.f. 06.04.2021, the Court in question could not have been considered functioning normally; and that period of operation of the said administrative order dated 05.04.2021 could have only been considered dies non juridicus for the purpose of the prescribed period for doing anything in the proceedings in that Court. It has not been pointed out if, as on 06.05.2021, the said order dated 05.04.2021 had been withdrawn and the situation had returned to such normalcy that the appellant should have attended the Trial Court and should have filed the written statement. Quite contrary to any such proposition, the submission on behalf of the appellant, even on 22.06.2021, had been about the ailments of the partners of the appellant firm as also their lawyer and their families, where the lawyer lost his mother due to health complications. Any proposition, which suggests that during such non-regular-business days of the Trial Court, and rather bleak days for the humanity, the written statement ought to have been filed, could only be disapproved as being impractical and rather preposterous.

Another error of procedure by the Trial Court.

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174. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 228
INDIAN PENAL CODE, 1860 – Sections 34, 294, 323, 498A and 506

(i) Matrimonial dispute – Delayed FIR – When not fatal – Wife realized that there is no possibility of reconciliation, she lodged the report – It cannot be said that FIR was the product of counterblast of divorce petition.

(ii) Framing of charge – Roving and detailed enquiry at the stage of framing of charge – Not permissible.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154 एवं 228

भारतीय दण्ड संहिता, 1860 – धाराएं 34, 294, 323, 498क एवं 506

(i) वैवाहिक विवाद – विलंबित प्रथम सूचना रिपोर्ट – कब घातक नहीं – जब पत्नी ने महसूस किया कि सुलह की कोई संभावना नहीं है तब उसने रिपोर्ट दर्ज करवाई – यह नहीं कहा जा सकता कि ऐसी प्रथम सूचना रिपोर्ट विवाह विच्छेद की याचिका की जवाबी कार्यवाही का प्रतिफल थी।

(ii) आरोप की विरचना – आरोपों की विरचना की अवस्था में अतिगामी और विस्तृत जांच – अनुज्ञेय नहीं।

Balkrishna Devda and ors. v. State of M.P. and anr.

Order dated 11.01.2022 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Revision No. 2045 of 2021, reported in 2022 CriLJ 1538

Relevant extracts from the order:

Every lady would like to save her matrimonial life. The moment an FIR is lodged about the cruelty meted out to the wife, then there is every possibility that the family life of the wife may get ruined, so in order to save her matrimonial life if the respondent No.2 did not lodge the FIR, then it cannot be said that the FIR was lodged by way of counterblast after receiving the notice of divorce petition. At the most, it can be said that when the respondent No.2 realized that now there is no possibility of reconciliation, then if she decided to go for lodging of FIR against the applicants, then it cannot be said that the FIR was the product of counterblast. Furthermore, the divorce petition is to be decided on its own merits and it is well established principle of law that the findings recorded by the Civil Court are not binding on the criminal court.

x x x

It is established principle of law that roving and detailed enquiry at the stage of framing of charge is not permissible.

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175. CRIMINAL PROCEDURE CODE, 1973 – Section 167 (2)

Default bail – Right of accused – Accrues only prior to filing of challan and does not survive or remain enforceable, after challan being filed.

दण्ड प्रक्रिया संहिता, 1973 – धारा 167 (2)

व्यतिक्रम जमानत – अभियुक्त का अधिकार – यह केवल अभियोग पत्र प्रस्तुत करने के पूर्व प्राप्त होता है एवं अभियोग पत्र प्रस्तुत हो जाने के पश्चात् प्रभावशील नहीं रहता।

Serious Fraud Investigation Officer v. Rahul Modi & ors.

Judgment dated 07.02.2022 passed by the Supreme Court in Criminal Appeal No. 185 of 2022, reported in 2022 (1) Crimes 390 (SC)

Relevant extracts from the judgment:

It is necessary to closely examine the judgment passed in ***Suresh Kumar Bhikamchand Jain v. State of Maharashtra & anr., (2013) 3 SCC 77***. The petitioner in the said case was arrested on 11.03.2012 on the allegation of misappropriation of amounts meant for development of slums in Jalgaon City.

The petitioner therein was accused of committing offences punishable under Sections 120-B, 409, 411, 406, 408, 465, 466, 468, 471, 177 and 109 read with Section 34, IPC and also under Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The contention of the petitioner therein was that he could not have been remanded to custody in view of cognizance not being taken for want of sanction within the statutory period of 90 days. The scheme of the provisions relating to remand of an accused first during the stage of investigation and thereafter, after cognizance is taken, indicates that the legislature intended investigation of certain crimes to be completed within the period prescribed therein, according to this Court in ***Bhikamchand Jain*** (supra). This Court held that in the event of investigation not being completed by the investigating authorities within the prescribed period, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. This Court was of the firm opinion that if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the court has no option but to release the accused on bail. However, once the charge-sheet was filed within the stipulated period, the right of the accused to statutory bail came to an end and the accused would be entitled to pray for regular bail on merits. It was held by this Court that the filing of charge-sheet is sufficient compliance with the provisions of proviso (a) to Section 167(2), CrPC and that taking of cognizance is not material to Section 167. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage, which is the taking of cognizance and trial. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced, with such Magistrate being vested with power to remand the accused to police custody and/or judicial custody, up to a maximum period as prescribed under Section 167(2). Acknowledging the fact that an accused has to remain in custody of some court, this Court concluded that on filing of the charge-sheet within the stipulated period, the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309, CrPC. This Court clarified that the two stages are different, with one following the other so as to maintain continuity of the custody of the accused with a court.

It is clear from the judgment of this Court in ***Bhikamchand Jain*** (supra) that filing of a charge-sheet is sufficient compliance with the provisions of Section 167 CrPC and that an accused cannot demand release on default bail under

Section 167(2) on the ground that cognizance has not been taken before the expiry of 60 days. The accused continues to be in the custody of the Magistrate till such time cognizance is taken by the court trying the offence, which assumes custody of the accused for the purpose of remand after cognizance is taken. The conclusion of the High Court that the accused cannot be remanded beyond the period of 60 days under Section 167 and that further remand could only be at the post-cognizance stage, is not correct in view of the judgment of this Court in ***Bhikamchand Jain*** (supra).

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***176. CRIMINAL PROCEDURE CODE, 1973 – Sections 205, 273, 299, 353, 367 and 391**

EVIDENCE ACT, 1872 – Sections 30 and 33

Statement of co-accused – Admissibility of – Evidence recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-accused, who has been tried on the basis of evidence recorded in a separate trial, though for the commission of the same offence.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 205, 273, 299, 353, 367 एवं 391

साक्ष्य अधिनियम – धाराएं 30 एवं 33

सह अभियुक्त का कथन – ग्राहयता – आपराधिक विचारण में किसी अभियुक्त के विरूद्ध अभिलिखित साक्ष्य केवल उसी अभियुक्त की दोषिता तक सीमित रह सकती है और उसका ऐसे सह अभियुक्त पर कोई प्रभाव नहीं पड़ता है जिसे पृथक विचारण में अभिलिखित साक्ष्य के आधार पर विचारित किया गया हो यद्यपि ऐसा समान अपराध के लिए किया गया हो।

A.T. Mydeen and anr. v. Assistant Commissioner, Customs Department

Judgment dated 29.10.2021 passed by the Supreme Court in Criminal Appeal No. 1306 of 2021, reported in 2022 CriLJ 1041 (SC) (Three Judge Bench)

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***177. CRIMINAL PROCEDURE CODE, 1973 – Sections 304 and 374**

Criminal appeal – Non-appearance of counsel – If accused does not appear through counsel appointed by him on the date of hearing, Court is obliged to appoint *amicus curiae* – Appeal cannot be dismissed merely on the basis of non-appearance or defect of default counsel.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 304 एवं 374

आपराधिक अपील – अधिवक्ता की अनुपस्थिति – यदि अभियुक्त उसके द्वारा नियुक्त अधिवक्ता के माध्यम से उपस्थित नहीं होता है तो न्यायालय को *न्याय मित्र* नियुक्त कर सुनवाई करनी चाहिये – केवल इस आधार पर कि अधिवक्ता उपस्थित नहीं है अपील निरस्त नहीं की जा सकती।

K. Muruganandam & ors. v. State Rep. By the Deputy Superintendent of Police & anr.

Judgment dated 12.08.2021 passed by the Supreme Court in Criminal Appeal No. 809 of 2018, reported in 2022 (2) Crimes 122 (SC)

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178. CRIMINAL PROCEDURE CODE, 1973 – Sections 378 and 386

Appeal against acquittal – Powers of appellate court – General principles summarized.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 378 एवं 386

दोषमुक्ति के विरूद्ध अपील – अपील न्यायालय की शक्तियां – सामान्य सिद्धांत संक्षेपित किए गए।

Rajesh Prasad v. State of Bihar and anr.

Judgment dated 07.01.2022 passed by the Supreme Court in Criminal Appeal No.111of 2015, reported in (2022) 3 SCC 471 (Three Judge Bench)

Relevant extracts from the judgment:

This Court referring to ***Chandrappa v. State of Karnataka, (2007) 4 SCC 415***, culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words:

> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
>
> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

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

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

In ***Nepal Singh v. State of Haryana, (2009) 12 SCC 351***, this Court reversed the judgment of the High Court which had set aside the judgment of acquittal pronounced by the trial court and restored the judgment of the trial court acquitting the accused on reappreciation of the evidence.

The circumstances under which an appeal would be entertained by this Court from an order of acquittal passed by a High Court may be summarized as follows:

(A) Ordinarily, this Court is cautious in interfering with an order of acquittal, especially when the order of acquittal has been confirmed upto the High Court. It is only in rarest of rare cases, where the High Court, on an absolutely wrong process of reasoning and a legally erroneous and perverse approach to the facts of the case, ignoring some of the most vital facts, has acquitted the accused, that the same may be reversed by this Court, exercising jurisdiction under Article 136 of the Constitution. [***State of U.P. v. Sahai, (1982) 1 SCC 352***]. Such fetters on the right to entertain an appeal are prompted by the reluctance to expose a person, who has been acquitted by a competent court of a criminal charge, to the anxiety and tension of a further examination of the case, even though it is held by a superior court, [***Arunachalam v. P.S.R. Sadhananthan, (1979) 2 SCC 297***]. An appeal cannot be entertained against an order of acquittal which has, after recording valid and weighty reasons, has arrived at an unassailable, logical conclusion which justifies acquittal, [***State of Haryana v. Lakhbir Singh, (1991) SCC (Cri) 242***].

B) However, this Court has on certain occasions, set aside the order of acquittal passed by a High Court. The circumstances, under which this Court may entertain an appeal against an order of acquittal and pass an order of conviction, may be summarised as follows:

(i) Where the approach or reasoning of the High Court is perverse:

(a) Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic, [***State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393***]. For example, where direct, unanimous accounts of the eye-witnesses, were discounted without cogent reasoning, [***State of U.P. v. Shanker, 1981 SCC (Cri) 428***];

(b) Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were 'interested' witnesses, [***State of U.P. v. Hakim Singh, (1980) 3 SCC 55***];

(c) Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter, [***State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393***];

(d) Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons present at the site of occurrence of the crime, [***Arunachalam v. P.S.R. Sadhananthan (supra)***];

(e) Where the High Court applied an unrealistic standard of 'implicit proof' rather than that of 'proof beyond reasonable doubt' and therefore evaluated the evidence in a flawed manner, [***State of U.P. v. Ranjha Ram, (1986) 4 SCC 99***];

(f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [***State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610***] or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused, [***Gurbachan v. Satpal Singh, (1990) 1 CSC 445***];

(g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish 'motive', [***State of A.P. v. Bogam Chandraiah, (1986) 3 SCC 637***].

(ii) Where acquittal would result is gross miscarriage of justice:

(a) Where the findings of the High Court, disconnecting the accused persons with the crime, were based on a

perfunctory consideration of evidence, [***State of U.P. v. Pheru Singh, (1989) SCC (Cri) 151***] or based on extenuating circumstances which were purely based in imagination and fantasy. [***State of U.P. v. Pussu, (1983) 3 SCC 502***]

(b) Where the accused had been acquitted on ground of delay in conducting trial, which delay was attributable not to the tardiness or indifference of the prosecuting agencies, but to the conduct of the accused himself; or where accused had been acquitted on ground of delay in conducting trial relating to an offence which is not of a trivial nature, [***State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 CSC 610***].

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179. CRIMINAL PROCEDURE CODE, 1973 – Section 439

Bail – While deciding bail application, possibility of the accused threatening, influencing the witness, gravity of offence and factum of previous enmity should be considered.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439

जमानत – जमानत आवेदन का विनिश्चय किये जाते समय अभियुक्त द्वारा साक्षी को धमकाने, प्रभावित करने की संभाव्यता, अपराध की गंभीरता, पूर्व वैमनस्यता के तथ्य को विचार में लिया जाना चाहिए।

Manoj Kumar Khokhar v. State of Rajasthan and anr.

Judgment dated 09.02.2022 passed by the Supreme Court in Criminal Appeal No. 84 of 2022, reported in 2022 (1) Crimes 440 (SC)

Relevant extracts from the judgment:

The allegations against respondent accused as well as the contentions raised at the Bar have been narrated in detail above. On a consideration of the same, the following aspects of the case would emerge:

a) The allegation against the respondent accused is under section 302 of the IPC with regard to the murder of the deceased Ram Swaroop Khokhar, the father of the informant appellant who was a disabled person. Thus, the offence alleged against the respondent accused is of a grave nature.

b) The accusation against the accused is that he overpowered the deceased who was suffering from impairment of both his legs, pinned him to the ground, sat on him and throttled his neck. As per the postmortem report, the cause of death was ante mortem strangulation.

c) It is also the case of the appellant that the respondent accused is a person exercising significant political influence in the Bhopawaspachar village and that owing to the same, the informant found it difficult to get an FIR registered against him. That the accused was arrested

only following a protest outside a police station demanding his arrest. Thus, the possibility of the accused threatening or otherwise influencing the witnesses, if on bail, cannot be ruled out.

d) That the respondent accused had earlier preferred applications seeking bail, under section 437 of the CrPC before the Court of the Additional Metropolitan Magistrate, Jaipur, on two occasions. The same came to be rejected by orders dated 23rd January, 2020 and 6th March, 2020. The accused had also preferred a bail application under section 439 of the CrPC which was rejected by the Additional Sessions Judge, Jaipur Metropolis by order dated 12th March, 2020 having regard to the gravity of the offences alleged against the accused.

e) The High Court in the impugned order dated 7th May, 2020 has not considered the aforestated aspects of the case in the context of the grant of bail.

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***180. EMPLOYEES COMPENSATION ACT, 1923 – Section 4-A**

Assessment of interest – Whether interest is payable from the date of accident? Held, yes.

कर्मचारी प्रतिकर अधिनियम, 1923 – धारा 4–क

ब्याज का निर्धारण – क्या ब्याज दुर्घटना दिनांक से भुगतान योग्य होगा? अभिनिर्धारित, हाँ।

P. Meenaraj v. P. Adigurusamy and anr.

Judgment dated 06.01.2022 passed by the Supreme Court in Civil Appeal No.209 of 2022, reported in 2022 ACJ 1001

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181. EVIDENCE ACT, 1872 – Sections 9 and 60

CRIMINAL TRIAL:

(i) Credibility of witness – Identity of assailants was on the basis of rumours – Source of such information establishing the identity of the assailants was neither disclosed nor any evidence led by prosecution – Held, in absence of primary source, other evidence would not be adequate and trustworthy.

(ii) Test identification parade – No occasion for a witness to have seen the accused earlier – No test identification parade was conducted – Box identification for the first time in court – Held, could not by itself be relied upon to establish the identity of the assailants.

साक्ष्य अधिनियम, 1872 – धाराएं 9 एवं 60

आपराधिक विचारणः

(i) साक्षी की विश्वसनीयता – हमलावरों की पहचान अफवाहों के आधार पर थी – हमलावरों की पहचान स्थापित करने वाली ऐसी जानकारी का न तो कोई स्त्रोत प्रकट किया गया और न ही अभियोजन द्वारा इसकी कोई साक्ष्य प्रस्तुत की गई – अभिनिर्धारित, प्राथमिक साक्ष्य के अभाव में अन्य साक्ष्य पर्याप्त और विश्वसनीय नहीं होगी।

(ii) पहचान परेड – साक्षी के लिये अभियुक्त को पहले कभी देखे जाने का कोई अवसर नहीं था – कोई पहचान परेड आयोजित नहीं की गई – प्रथम बार न्यायालय में कटघरे में पहचान की गई – अभिनिर्धारित, हमलावरों की पहचान स्थापित करने हेतु केवल इस पर निर्भर नहीं रहा जा सकता।

Suryavir v. State of Haryana

Judgment dated 03.02.2022 passed by the Supreme Court in Criminal Appeal No 177 of 2022, reported in (2022) 3 SCC 260

Relevant extracts from the judgment:

It is quite clear that PW-12 and PW-15 were not aware of the identity of the assailants. Their source of information was rumours, on the basis of which an assertion about the identity of the appellant was made in the first information report. What was the source of information, was never disclosed at any juncture nor any witness was examined by the prosecution to establish that. In the absence of primary source who knew the identity and had witnessed the incident, such assertions in the first information report as well as the examination-in-chief of the witnesses would not be adequate and trustworthy. It was not even the case of PW-15 that two convicted accused had come to her house on the previous day. As a matter of fact, she did not even assert anything about the incident that occurred on the previous day. There was, thus, no occasion for her to have seen the convicted accused earlier. Furthermore, no test identification parade was conducted. Box identification by the witnesses for the first time in court, in the circumstances, could not by itself be relied upon to establish the identity of the assailants.

That leaves us with subsidiary evidence regarding recovery, which in the absence of substantive evidence, by itself would not be sufficient. In the circumstances, in our considered view, the prosecution failed to establish its case beyond reasonable doubt. The appellant would, therefore, be entitled to acquittal. The instant appeal is thus allowed acquitting him of the charges leveled against him.

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***182. EVIDENCE ACT, 1872 – Section 35**

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Section 94

(i) Determination of age – Family register – Maintained in the ordinary course of business by a public servant in discharge of his official duty – Relevant for determining the age.

(ii) Plea of juvenility – Document produced not reliable or dubious in nature – No benefit can be granted to accused who approach the Court with untruthful statement.

साक्ष्य अधिनियम, 1872 – धारा 35

(i) आयु का निर्धारण – परिवार पंजी – अपने कर्तव्य के सामान्य अनुक्रम में लोक सेवक द्वारा तैयार की गई – आयु निर्धारण हेतु सुसंगत।

(ii) किशोरवयता का अभिवाक् – प्रस्तुत दस्तावेज अविश्वसनीय और संदिग्ध प्रकृति के – अभियुक्त को कोई सहायता प्रदान नहीं की जा सकती जो असत्य कथन करते हुए न्यायालय में आया हो।

Manoj @ Monu @ Vishal Chaudhary v. State of Haryana & anr.

Judgment dated 15.02.2022 passed by the Supreme Court in Criminal Appeal No. 1655 of 2019, reported in 2022 (1) Crimes 479 (SC) (Three-Judge Bench)

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183. FAMILY COURTS ACT, 1984 – Section 7(1) Explanation (b)

Jurisdiction – Matrimonial status – Family Court is having jurisdiction to decide the gravement of the offence alleged in criminal complaint – Matrimonial status of a person can be decided by the Family Court.

कुटुम्ब न्यायालय अधिनियम, 1984 – धारा 7(1) स्पष्टीकरण (ख)

क्षेत्राधिकार – वैवाहिक प्रास्थिति – परिवार न्यायालय को आपराधिक परिवाद में अपराध की गंभीरता के संबंध में निर्धारण करने का क्षेत्राधिकार है – किसी व्यक्ति की वैवाहिक प्रास्थिति का विनिश्चय परिवार न्यायालय द्वारा किया जा सकता है।

Musstt Rehana Begum v. State of Assam & anr.

Judgment dated 21.01.2022 passed by the Supreme Court in Criminal Appeal No. 118 of 2022, reported in 2022 (2) Crimes 79 (SC)

Relevant extracts from the judgment:

In the present case the appellant and the second respondent were parties to the decision of the Family Court. No contentious material or disputed issues of evidence arise. In the above backdrop, allowing the criminal proceeding to proceed for an offence under Sections 494 and 495 of IPC would constitute an abuse of the process. As between the appellant and the second respondent the issue as to whether she had a subsisting marriage on the date on which she

entered into a marriage with the second respondent is the subject matter of a conclusive finding of the Principal Judge of the Family Court which has attained finality. Explanation (b) to Section 7(1) of the Family Courts Act 1984 expressly confers the Family Court with jurisdiction to determine the matrimonial status of a person. Section 7(1) of the Family Courts Act 1984 grants a Family Court with the status of a District Court and Section 7(2) confers it with jurisdiction exercisable by a Magistrate of the first class under Chapter IX of the CrPC, thus enabling to collect evidence to make such a determination. Thus, relying on the judgement of the Family Court which has jurisdiction to decide the gravamen of the offence alleged in the criminal complaint, would not be same as relying on evidentiary materials that are due for appreciation by the Trial Court, such as the investigation report before it is forwarded to the Magistrate.

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184. HINDU MARRIAGE ACT, 1955 – Section 13(1)(ib)

Matrimonial relationship – Resumption of cohabitation – Wife not filed petition for restitution of conjugal rights – Evidence does not disclose any effort made by the wife to resume matrimonial relationship – Merely on account of the death of the husband's mother, the wife visited her matrimonial home and stayed there for only one day, cannot be said that there was a resumption of cohabitation.

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

वैवाहिक सम्बन्ध – सहवास का पुनर्स्थापन – पत्नी ने दाम्पत्य अधिकारों के पुनर्स्थापन के लिये कोई याचिका दायर नहीं की – साक्ष्य से प्रकट नहीं होता है कि वैवाहिक संबंधों को पुनर्जीवित करने के लिये उसने कोई प्रयास किये – केवल इस कारण से कि पति की माँ की मृत्यु होने पर पत्नी ने उसके वैवाहिक निवास का भ्रमण किया और केवल एक दिन रूकी यह नहीं कहा जा सकता कि वह सहवास का पुनर्स्थापन था।

DebanandaTamuli v. Smti Kakumoni Kataky

Judgment dated 15.02.2022 passed by the Supreme Court in Civil Appeal No. 1339 of 2022, reported in AIR 2022 SC 1099

Relevant extracts from the judgment:

The perusal of the respondent's evidence does not disclose any effort made by her to resume the matrimonial relationship. She has not filed a petition for restitution of conjugal rights. As can be seen from the evidence on record, the appellant is carrying on business at Tezpur. The respondent is working as a Lecturer in University Law College at Gauhati. There is no dispute that from 1st July, 2009 till date, they are staying separately.

Merely because on account of the death of the appellant's mother, the respondent visited her matrimonial home in December 2009 and stayed there only for one day, it cannot be said that there was a resumption of cohabitation. She has not stated that she came to her matrimonial home on 21st December

2009 with the intention to resume cohabitation. The intention on the part of the respondent to resume cohabitation is not established. Thus, in the facts of the case, the factum of separation has been proved. From the evidence on record, an inference can be drawn that there was animus deserendi on the part of the respondent. She has not pleaded and established any reasonable cause for remaining away from her matrimonial home.

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185. HINDU MARRIAGE ACT, 1955 – Sections 13(1) (ia) and 13(1)(ib)

(i) Cruelty – Proof of – Mental cruelty is difficult to establish by direct evidence unlike physical cruelty – Inference can be drawn from the facts and circumstances of the case taken cumulatively.

(ii) Divorce – Irretrievable break down – Not a ground for divorce but can be taken into consideration.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 13(1)(क) एवं 13(1)(ख)

(i) क्रूरता – सबूत – शारीरिक क्रूरता के विपरीत मानसिक क्रूरता को प्रत्यक्ष सबूत द्वारा स्थापित किया जाना कठिन है – मामले के तथ्यों और परिस्थितियों को संचयी रूप से विचार में लेकर निष्कर्ष निकाला जा सकता है।

(ii) विवाह विच्छेद – अपूरणीय भग्नता – विवाह विच्छेद का आधार नहीं है किंतु विचार में लिया जा सकता है।

Vibha v. Kailash

Judgment dated 03.01.2022 passed by the High Court of Madhya Pradesh in First Appeal No. 547 of 2019, reported in 2022 (2) MPLJ 320 (DB)

Relevant extracts from the judgment:

Cruelty is a course of conduct of one which adversely affects the others. It can be physical or mental or both. Mental cruelty is difficult to establish by direct evidence unlike in the case of physical cruelty. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case taken cumulatively. [See ***Dinesh Nagda v. Shantibai, 2011 (4) MPLJ 710 (DB)***]. Filing of case alone of course would not amount to causing cruelty, however, if the allegations are false and with a view to cause mental harassment, then such an act amounts to cruelty as has been held in the case of ***Anuradha Prafull Vaidh v. Prafull Vaidh, 2007 (4) MPLJ 123***.

In the instant case, we are constrained to observe that for all practical purposes, the marriage has become dead. Undisputedly, the parties are living separately since last almost 17 years. It is unfortunate that parties after marriage have not lived together even for once. It would serve no useful purpose to continue with such ceremonial relationship which has no life. It is true that the marriage is irretrievably broken down is not a ground for divorce. However, this fact can always be taken into consideration while deciding such cases.

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***186. HINDU MINORITY AND GUARDIANSHIP ACT, 1956 – Sections 6 and 13**

(i) Custody of child – Consideration of well being and welfare of the child must get precedence over individual or personal rights of the parents – Paramount consideration is the welfare of the minor child and not the rights of the parties litigating over the custody issue.

(ii) Direction by court – In custody petition, Court cannot direct a parent to leave the country and go abroad with the child as it will affect the right to privacy of the parent.

हिन्दू अप्राप्तवयता और संरक्षकता अधिनियम, 1956 – धाराएं 6 एवं 13

(i) बालक की अभिरक्षा – बालक के सुख तथा कल्याण के विचार को माता–पिता के व्यक्तिगत या निजी अधिकारों पर वरीयता मिलनी चाहिए – अवयस्क बालक का कल्याण ही सर्वोच्च विचार है न कि अभिरक्षा के मुद्दे पर विवादरत पक्षकारों के अधिकार।

(ii) न्यायालय द्वारा निर्देश – अभिरक्षा की याचिका में न्यायालय माता या पिता को देश छोड़ने तथा बालक के साथ विदेश जाने का निर्देश नहीं दे सकती क्योंकि यह माता–पिता के निजता के अधिकार को प्रभावित करेगा।

Vasudha Sethi and ors. v. Kiran V. Bhaskar and anr.

Judgment dated 12.01.2022 passed by the Supreme Court in Criminal Appeal No. 82 of 2022, reported in AIR 2022 SC 476

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187. HINDU SUCCESSION ACT, 1956 – Section 14
CIVIL PROCEDURE CODE, 1908 – Section 11

(i) Hindu female – Creation of restricted estate – Legally permissible if the document creates independent and new title in favour of a female and not as a recognition of pre-existing right.

(ii) *Res judicata* – Effect of change in law – Earlier decision would not create any binding precedent.

हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 14

सिविल प्रक्रिया संहिता, 1908 – धारा 11

(i) हिन्दू महिला – संपत्ति का सीमित उपभोग– विधितः अनुमत यदि दस्तावेज स्वतंत्र और नवीन स्वत्व महिला को प्रदान करता है न कि पूर्व अधिकार को मान्यता प्रदान करता है।

(ii) *पूर्व न्याय* – विधि में परिवर्तन का प्रभाव – पूर्व निर्णय बाध्यकारी प्रभाव नहीं रखेगा।

Jogi Ram v. Suresh Kumar and ors.

Judgment dated 01.02.2022 passed by the Supreme Court in Civil Appeal No. 1543 of 2019, reported in (2022) 4 SCC 274

Relevant extracts from the judgment:

On the first aspect the High Court found that the factual scenario and legal principles enunciated in ***Shakuntla Devi v. Kamla, (2005) 5 SCC 390*** squarely applicable to the facts of the present case. In the factual scenario of that case, one Uttamdasi was the successor of the suit property and had alienated the same through a sale deed and gift deed. The daughter of Uttamdasi, Takami, successfully challenged the alienation and the decree became final. Uttamdasi thereafter executed a Will with respect to the same suit property. Tikami instituted a suit for possession on the basis of a previous declaratory decree wherein she had been held to have ownership right of the property. This Court opined that the case would constitute as a principle of res judicata. The first declaratory decree in favour of Tikami was granted on the basis of a limited right held by Uttamdasi in the suit property. By the time the second decree was tried, the Supreme Court in ***V. Tulasamma & ors. v. Sesha Reddy (dead) by LRs., (1977) 3 SCC 99*** had declared the law under Section 14 of the said Act to the extent that the beneficiary under a Will such as Uttamdasi with limited rights would become the absolute owner of the same. Since the law had been altered since the first declaratory decree, the same would not operate as res judicata in a decree for possession. The judgment in ***V. Tulasamma*** (supra) was not retrospective but a declaratory decree simpliciter would not attain finality if it is used in a future decree of possession and it would be open for a defendant in a future suit for possession to establish that the earlier declaratory decree was not lawful. Thus, the respondents were held entitled to challenge the appellant's possession of the suit property.

Sub-Section (2) of Section 14 of the said Act is in the nature of a proviso. It begins with a 'non-obstante clause'. Thus, it says that "nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court...." etc. where a restricted estate in such property is prescribed. In our view the objective of sub-Section (2) above is quite clear as enunciated repeatedly by this Court in various judicial pronouncements, i.e., there cannot be a fetter in a owner of a property to give a limited estate if he so chooses to do including to his wife but of course if the limited estate is to the wife for her maintenance that would mature in an absolute estate under Section 14(1) of the said Act.

In our view the relevant aspect of the aforesaid conclusion is para 4 which opines where sub-section (2) of Section 14 of the said Act would apply and this does inter alia applies to a Will which may create independent and new title in favour of females for the first time and is not a recognition of a pre-existing right. In such cases of a restricted estate in favour of a female is legally permissible and Section 14(1) of the said Act will not operate in that sphere.

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188. HINDU SUCCESSION ACT, 1956 – Sections 14 and 15

(i) Right of daughter – Male Hindu dying intestate – If property is self-acquired or obtained in partition of a co-parcenery or a family property, the same would devolve by inheritance and not by survivorship – Daughter of such male Hindu entitled to inherit such property in preference to other collaterals.

(ii) Death of female Hindu – Female Hindu dying issueless and intestate – Property inherited from her father or mother would go to the heirs of her father whereas property inherited from her husband or father-in-law, would go to the heirs of the husband.

(iii) Section 15(1)(a) of the Act – Operation of – Comes into operation when a female Hindu dies leaving behind her husband or any issue – Properties left behind including the properties which she inherited from her parents would devolve simultaneously upon her husband and her issues as provided in Section 15(1)(a) of the Act.

हिन्दू उत्तराधिकार अधिनियम, 1955 – धाराएं 14 एवं 15

(i) पुत्री का अधिकार – यदि निर्वसीयती मृत हिन्दू पुरूष की सम्पत्ति स्वअर्जित सम्पत्ति है या सहदायिकी सम्पत्ति या पारिवारिक सम्पत्ति में विभाजन के द्वारा प्राप्त की गई है ऐसी सम्पत्ति उत्तराधिकार के द्वारा न्यागत होगी न कि उत्तरजीविता के द्वारा – ऐसे हिन्दू पुरूष की पुत्री उक्त सम्पत्ति को अन्य सगोत्रीय पर वरीयता में उत्तराधिकार में प्राप्त करने की हकदार होगी।

(ii) हिन्दू महिला की मृत्यु – यदि हिन्दू महिला की मृत्यु निर्वसीयती एवं संतान विहीन होती है तब ऐसी सम्पत्ति जो उसे उत्तराधिकार में अपने पिता या माता से प्राप्त हुई है उसके पिता के वारिसों को जाएगी और ऐसी सम्पत्ति जो उसे अपने पति या ससुर से प्राप्त हुई है पति के वारिसों को जाएगी।

(iii) अधिनियम की धारा 15(1)(क) – प्रवर्तन – यदि हिन्दू महिला की मृत्यु अपने पीछे पति तथा संतान को छोड़कर हुई है तब अधिनियम की धारा 15(1)(क) प्रवर्तन में आयेगी और अपने माता–पिता से उत्तराधिकार में प्राप्त सम्पत्ति सहित उसके द्वारा पीछे छोड़ी गई सम्पत्तियां धारा 15(1)(क) में उल्लेखित अनुसार उसके पति और संतान को एक साथ न्यागत होगी।

Arunachala Gounder (Dead) by LRs. v. Ponnusamy and ors.
Judgment dated 20.01.2022 passed by the Supreme Court in Civil Appeal No. 6659 of 2011, reported in AIR 2022 SC 605

Relevant extracts from the judgment:

Right of a widow or daughter to inherit the self-acquired property or share received in partition of a coparcenary property of a Hindu male dying intestate is well recognized not only under the old customary Hindu Law but also by various judicial pronouncements and thus, our answer to it are as under:

> "If a property of a male Hindu dying intestate is a self-acquired property or obtained in partition of a co-parcenery or a family property, the same would devolve by inheritance and not by survivorship, and a daughter of such a male Hindu would be entitled to inherit such property in preference to other collaterals."

In the case at hands, since the property in question was admittedly the self-acquired property of Marappa Gounder despite the family being in state of jointness upon his death intestate, his sole surviving daughter Kupayee Ammal, will inherit the same by inheritance and the property shall not devolve by survivorship.

Under the old customary Hindu Law, there are contradictory opinions in respect of the order of succession to be followed after the death of such a daughter inheriting the property from his father. One school is of the view that such a daughter inherits a limited estate like a widow, and after her death would revert back to the heirs of the deceased male who would be entitled to inherit by survivorship. While other school of thought holds the opposite view. This conflict of opinion may not be relevant in the present case inasmuch as since Kupayee Ammal, daughter of Marappa Gounder, after inheriting the suit property upon the death of Marappa Gounder, died after enforcement of Hindu Succession Act, 1956 (hereinafter referred to as 'The Act of 1956'), which has amended and codified the Hindu Law relating to intestate succession among Hindus. The main scheme of this Act is to establish complete equality between male and female with regard to property rights and the rights of the female were declared absolute, completely abolishing all notions of a limited estate. The Act brought about changes in the law of succession among Hindus and gave rights which were till then unknown in relation to women's property. The Act lays down a uniform and comprehensive system of inheritance and applies, inter-alia, to persons governed by the Mitakshara and Dayabhaga Schools and also to those governed previously by the Murumakkattayam, Aliyasantana and Nambudri Laws. The Act applies to every person, who is a Hindu by religion in any of its forms including a Virashaiva, a Lingayat or a follower of the Brahmo Pararthana or Arya Samaj and even to any person who is Buddhist, Jain or Sikh by religion excepting one who is Muslim, Christian, Parsi or Jew or Sikh by religion.

The legislative intent of enacting Section 14(I) of the Act was to remedy the limitation of a Hindu woman who could not claim absolute interest in the properties inherited by her but only had a life interest in the estate so inherited.

Section 14 (I) converted all limited estates owned by women into absolute estates and the succession of these properties in the absence of a will or testament would take place in consonance with Section 15 of the Hindu Succession Act, 1956.

The scheme of sub-section (1) of Section 15 goes to show that property of Hindu females dying intestate is to devolve on her own heirs, the list whereof is

enumerated in Clauses (a) to (e) of Section 15 (1). Sub-section (2) of Section 15 carves out exceptions only with regard to property acquired through inheritance and further, the exception is confined to the property inherited by a Hindu female either from her father or mother, or from her husband, or from her father-in-law. The exceptions carved out by sub-section (2) shall operate only in the event of the Hindu female dies without leaving any direct heirs, i.e., her son or daughter or children of the pre-deceased son or daughter.

Thus, if a female Hindu dies intestate without leaving any issue, then the property inherited by her from her father or mother would go to the heirs of her father whereas the property inherited from her husband or father-in-law would go to the heirs of the husband. In case, a female Hindu dies leaving behind her husband or any issue, then Section 15(1)(a) comes into operation and the properties left behind including the properties which she inherited from her parents would devolve simultaneously upon her husband and her issues as provided in Section 15(1)(a) of the Act.

The basic aim of the legislature in enacting Section 15(2) is to ensure that inherited property of a female Hindu dying issueless and intestate, goes back to the source.

Section 15(1)(d) provides that failing all heirs of the female specified in Entries (a)-(c), but not until then, all her property howsoever acquired will devolve upon the heirs of the father. The devolution upon the heirs of the father shall be in the same order and according to the same rules as would have applied if the property had belonged to the father and he had died intestate in respect thereof immediately after her death. In the present case the since the succession of the suit properties opened in 1967 upon death of Kupayee Ammal, the 1956 Act shall apply and thereby Ramasamy Gounder's daughters being Class-I heirs of their father too shall be heirs and entitled to 1/5th share each in the suit properties.

This Court while analysing the provisions of Sections 15 & 16 of the Act in the case of ***State of Punjab v. Balwant Singh & ors., AIR 1991 SC 2301***, has held as under:-

> "Sub-section (1) of Section 15 groups the heirs of a female intestate into five categories and they are specified under clauses (a) to (e). As per Sections 16 Rule 1 those in one clause shall be preferred to those in the succeeding clauses and those included in the same clause shall take simultaneously. Sub- section (2) of Section 15 begins with a non-obstante clause providing that the order of succession is not that prescribed under sub-section (1) of Section 15. It carves out two exceptions to the general order of succession provided under sub-section (1). The first exception relates to the property inherited by a female Hindu from her father or mother. That property shall devolve, in the absence of any son or daughter of the deceased

(including the children of the pre-deceased son or daughter), not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father. The second exception is in relation to the property inherited by a female Hindu from her husband or from her father-in-law. That property shall devolve, in the absence of any son or daughter of the deceased (including the children of the pre-deceased son or daughter) not upon the other heirs referred to under sub-section (1) in the order specified thereunder but upon the heirs of the husband.

The process of identifying the heirs of the intestate under sub-section (2) of Section 15 has been explained in ***Bhajya v. Gopikabai and anr., AIR 1978 SC 793***. There this Court observed that the rule under which the property of the intestate would devolve is regulated by Rule 3 of Section 16 of the Act. Rule 3 of Section 16 provides that "the devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of Section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death".

Again in the case of ***Bhagat Ram (dead) by LRs. v. Teja Singh (dead) by LRs., (2002) 1 SCC 210*** a two-Judge Bench of this Court analysing the provisions of Sections 14, 15 and 16 of the Act reiterating the view taken in the ***Balwant Singh*** (supra), observed as under :-

"The source from which she inherits the property is always important and that would govern the situation. Otherwise persons who are not even remotely related to the person who originally held the property would acquire rights to inherit that property. That would defeat the intent and purpose of sub-Section 2 of Section 15, which gives a special pattern of succession."

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189. INDIAN PENAL CODE, 1860 – Sections 34, 120B and 302
CRIMINAL PROCEDURE CODE, 1973 – Sections 378 and 384
Appeal against order of acquittal – When the testimony of witness is not believed on cogent reasoning – Conviction cannot be based on an inference or mere surmise.

भारतीय दण्ड संहिता, 1860 – धाराएं 34, 120ख एवं 302
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 378 एवं 384

दोषमुक्ति के आदेश के विरूद्ध अपील – साक्षी की अभिसाक्ष्य पर ठोस आधारों के बिना विश्वास नहीं किया जा सकता – दोषसिद्धी केवल अंदाजे या अनुमान के आधार पर नहीं की जा सकती।

Mohan @ Srinivas @ Seena @ Tailor Seena v. State of Karnataka

Judgment dated 13.12.2021 passed by the Supreme Court in Criminal Appeal No. 759 of 2018, reported in 2022 (2) Crimes 114 (SC)

Relevant extracts from the judgment:

Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

Now we may come to the reasoning of the High Court. We feel it is unnecessary on the part of the High Court to make such strong comments on the judgment written by the trial court. When the evidence of PWs 1, 2 and 25 were not accepted by the trial court, there cannot be a dying declaration in existence. The dying declaration was put forth by the prosecution through the mouth of said three witnesses. As we find, that the evidence let in by them was found to not be trustworthy, there cannot be any dying declaration either in fact or in law. The High Court also did not consider the basis upon which the evidence of PWs 1, 2 and 25 could be accepted and as to how the various reasons given by the trial court are not acceptable especially when it did not consider the evidence of the other witnesses. It rendered a conviction on mere surmise, even though an inference can never be the basis of a conviction when the testimony of a witness is not believed on cogent reasoning. We do not know as to how the High Court could give a finding that the investigating officer was supporting the accused qua the contradiction elicited between Section 161 CrPC statement

given by the witness as against deposition before the Court. We may note that the alleged occurrence was said to have happened at about 5 p.m. on a busy road with heavy traffic and even the evidence of PW-1 and PW2 suggests that there were about 1000 persons. Except the evidence of PW-1 and PW-2, there was no other evidence relied upon by the prosecution.

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190. INDIAN PENAL CODE, 1860 – Sections 34 and 300
EVIDENCE ACT, 1872 – Section 3
Murder – Determination of common intention – Accused alongwith his father went to the house of deceased to call him for dinner – Father of accused inflicted axe blows on the head of deceased – Except the fact of calling the deceased out for dinner, no specific role or overt act alleged against accused – Conviction set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 34 एवं 300
साक्ष्य अधिनियम, 1872 – धारा 3

हत्या – सामान्य आशय का निर्धारण – अभियुक्त अपने पिता के साथ मृतक को रात्रि भोज के लिये आमंत्रित करने गया – अभियुक्त के पिता द्वारा मृतक के सिर पर कुल्हाड़ी से प्रहार किया गया – मृतक को रात्रि भोज के लिए बुलाने के तथ्य के अतिरिक्त कोई विनिर्दिष्ट भूमिका या सक्रिय भागीदारी अभियुक्त के विरूद्ध कथित नहीं की गई – दोषसिद्धी अपास्त।

Mukesh v. State of Madhya Pradesh
Judgment dated 18.01.2022 passed by the Supreme Court in Criminal Appeal No. 35 of 2022, reported in 2022 CriLJ 915 (SC)

Relevant extracts from the judgment:

The specific role and overt act is alleged against accused No.1 and accused No.3. However, unfortunately accused No.3 has been acquitted by the High Court against which no appeal is preferred by the State as of today. Be that it may, solely on the basis that appellant – accused No.2 – Mukesh accompanied with accused No.1 when they went to the house of the deceased and invited him to dinner in their house by that itself it cannot be said that there was any criminal conspiracy hatched by all the accused. On the contrary, there are specific allegations against accused No.1 and accused No.3 only and as observed hereinabove no overt act at all is alleged so far as accused No.2 Mukesh is concerned. As observed hereinabove, there are no allegations even by PW1 that Mukesh had dragged the deadbody and thrown it into the courtyard of the deceased. Therefore, the finding recorded by the learned Trial Court against appellant – accused No.2 – Mukesh that he also dragged the dead body and thrown into the courtyard of the deceased is not supported by any evidence. Therefore, we are of the opinion that both, Trial Court as well as the High Court have committed a grave error in convicting appellant herein – accused No.2 –

Mukesh for the offences punishable under Section 302 read with Section 34 of the IPC. Conviction and sentence of appellant – accused No.2 – Mukesh is hence unsustainable.

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191. INDIAN PENAL CODE, 1860 – Sections 34, 302, 341, 447, 504 and 506 EVIDENCE ACT, 1872 – Sections 40 and 44

(i) Common intention – Applicability of section 34 IPC – Basic assumption or foundation in criminal law is the principle of personal culpability – Common intention is necessarly a psycological fact as it required pre-meeting of minds – Direct evidence normally not available – Therefore, it is to be determined by drawing inference from the fact proved – This requires an inquiry into: antecedents, conduct, manner, nature of injury, weapon used, act of co-perpetrators at the time and after occurence, object and purpose etc, are all relevent facts – Common intention should not be confused with "intention" or "*mens-rea*".

(ii) Criminal Act – Refers to the physical act which has been done by co-perpetrators/participants is distinct from the effect, result or consequences – Criminal act is different from "offence".

(iii) Act in furtherance – As criminal offence is distinctly remote and unconnected with the common intention, Section 34 would not be applicable – "Furtherance" propounds a wider scope but should not be expected beyond intent and purpose of the statute.

भारतीय दण्ड संहिता, 1860 – धाराएं 34, 302, 341, 447, 504 एवं 506 साक्ष्य अधिनियम, 1872 – धाराएं 40 एवं 44

(i) सामान्य आशय – धारा 34 भा.दं.सं. की प्रयोज्यता – आपराधिक विधि की मूल धारणा या आधार व्यक्तिगत आपराधिकता है – सामान्य आशय एक मनोवैज्ञानिक तथ्य है क्योंकि इसमें मस्तिष्क का पूर्व मिलन आवश्यक है – सामान्यतः प्रत्यक्ष साक्ष्य उपलब्ध नहीं होती – इसलिए इसका निर्धारण जो तथ्य प्रमाणित होते हैं उनके आधार पर करना होता है – इसके लिये पूर्व का कृत्य, आचरण, तौर–तरीका, चोट की प्रकृति, उपयोग में लिया गया हथियार, सह अभियुक्त का घटना के समय और उसके बाद किया गया कृत्य, उद्देश्य, आशय आदि सुसंगत है, जिनके संबंध में जाँच किया जाना आवश्यक है – सामान्य आशय के संबंध में ''आशय'' या ''दुराशय'' से भ्रमित नहीं होना चाहिए।

(ii) आपराधिक कृत्य – सह अपराधी द्वारा किया गया कोई भौतिक कृत्य जो प्रभाव, अंतिम नतीजा या परिणाम से भिन्न हो, उसे आपराधिक कृत्य कहा जा सकता है – आपराधिक कृत्य, अपराध से भिन्न है।

(iii) अग्रसरण में किया गया कार्य – आपराधिक कृत्य स्पष्ट तौर पर दूरस्थ एवं असंबंधित होने की दशा में उसे धारा 34 के अंतर्गत सामान्य आशय के अग्रसरण में किया गया कार्य नहीं माना जा सकता – ''अग्रसरण'' का एक व्यापक दायरा है परन्तु इसका इरादा और उद्देश्य कानून के दायरे से बाहर नहीं हो सकता।

Krishnamurthy @ Gunodu and ors. v. State of Karnataka
Judgment dated 16.02.2022 passed by the Supreme Court in Criminal Appeal No. 288 of 2022, reported in 2022 (2) Crimes 101 (SC)

Relevant extracts from the judgment:

Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or pre-arranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be pre-arranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants. Further, the expression/term “criminal act” in Section 34 IPC refers to the physical act, which has been done by the co-perpetrators/participants as distinct from the effect, result or consequence. In other words, expression “criminal act” referred to in Section 34 IPC is different from “offence”. For example, if A and B strike Lathi at X, the criminal act is of striking lathis, whereas the offence committed may be of murder, culpable homicide or simple or grievous injuries. The expression “common intention” should also not be confused with “intention” or “mens rea” as an essential ingredient of several offences under the IPC. Intention may be

an ingredient of an offence and this is a personal matter. For some offences, mental intention is not a requirement but knowledge is sufficient and constitutes necessary mens rea. Section 34 IPC can be invoked for the said offence also [refer ***Afrahim Sheikh and ors. v. State of West Bengal, AIR 1964 SC 1263***]. Common intention is common design or common intent, which is akin to motive or object. It is the reason or purpose behind doing of all acts by the individual participant forming the criminal act. In some cases, intention, which is ingredient of the offence, may be identical with the common intention of the co-perpetrators, but this is not mandatory.

Section 34 IPC also uses the expression "act in furtherance of common intention". Therefore, in each case when Section 34 is invoked, it is necessary to examine whether the criminal offence charged was done in furtherance of the common intention of the participator. If the criminal offence is distinctly remote and unconnected with the common intention, Section 34 would not be applicable. However, if the criminal offence done or performed was attributable or was primarily connected or as a known or reasonably possible outcome of the preconcert/ contemporaneous engagement or a manifestation of the mutual consent for carrying out common purpose, it will fall within the scope and ambit of the act done in furtherance of common intention. Thus, the word "furtherance" propounds a wide scope but should not be expanded beyond the intent and purpose of the statute. Russell on Crime, (10th edition page 557), while examining the word "furtherance" had stated that it refers to "the action of helping forward" and "it indicates some kind of aid or assistance producing an effect in the future" and that "any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting that felony." An act which is extraneous to the common intention or is done in opposition to it and is not required to be done at all for carrying out the common intention, cannot be said to be in furtherance of common intention [refer judgment of R.P. Sethi J. in ***Suresh and anr. v. State of Uttar Pradesh, (2001) 3 SCC 673***.

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192. INDIAN PENAL CODE, 1860 – Sections 84, 302 and 304 Part I

(i) Unsoundness of mind – Exoneration from liability – A person at the time of doing the act, is either incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

(ii) Last seen together theory – If the time gap between last seen together and the death of the deceased is of few minutes – Principle applied.

(iii) Culpable homicide not amounting to murder – Expert stated that the patients of psychosis are not in a position to understand as to what is correct or what is wrong – The accused was a complete stranger – He had no grudge against the deceased or his family members – No motive proved – Held,

the act of the accused would fall u/s 304 Part I of I.P.C. and not u/s 302 of I.P.C.

भारतीय दण्ड संहिता, 1860 – धाराएं 84, 302 एवं 304 भाग–1

(i) मस्तिष्क की विकृतचित्तता – उत्तरदायित्व से मुक्ति – कृत्य कारित करते समय व्यक्ति या तो कार्य की प्रकृति अथवा यह कि वह जो कर रहा है या तो गलत है या विधि के विरूद्ध है समझने में असमर्थ हो।

(ii) अंतिम बार साथ देखे जाने का सिद्धांत – यदि अंतिम बार साथ देखे जाने और मृतक की मृत्यु के बीच कुछ क्षणों का समय अंतराल हो – सिद्धांत प्रयोज्य।

(iii) आपराधिक मानववध जो हत्या नहीं है – विशेषज्ञों के कथनानुसार साइकोसिस के रोगी इस स्थिति में नहीं होते कि वे समझ सकें कि क्या सही और क्या गलत है – अभियुक्त पूर्णतः अजनबी था – उसकी मृतक अथवा उसके पारिवारिक सदस्यों से कोई वैमनस्यता नहीं थी – हेतुक प्रमाणित नहीं किया गया – अतः यह अभिनिर्धारित किया गया कि अभियुक्त का कृत्य भा.दं.सं. की धारा 304 के भाग 1 अंतर्गत होगा न कि भा.दं.सं. की धारा 302 के अंतर्गत।

Ram Bahadur Thapa v. State of M.P.

Judgment dated 28.10.2021 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Appeal No. 881 of 2011, reported in 2022 CriLJ 1473

Relevant extracts from the judgment:

There are two types of insanity i.e. Medical Insanity and Legal Insanity. Under Section 84 of I.P.C., a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing (a) the nature of the act, or (b) that he is doing what is either wrong or contrary to law. The burden to prove insanity is on the accused.

In the present case, the time gap between last seen together and the death of the boy is of few minutes. Thus, there is a close proximity between the circumstance of last seen together and the death of the boy.

In cross-examination, this witness has also stated that the patient of psychosis usually commits offence not deliberately or intentionally but being the patient of psychosis. He further stated that the patients of psychosis are not in a position to understand as to what is correct or what is wrong. Further, it is clear from the jail record, Ex. D.2C, the behavior of the appellant at the time of his admission in jail was not normal and he was very aggressive and was attacking the other inmates. Thus, considering the physical/mental condition of the appellant, it is held that although he was not suffering from Legal Insanity, but he was certainly suffering from psychosis. Further, he had no grudge against the deceased or his family members. The appellant was a complete stranger. No motive has been proved. Thus, it is held that the act of the appellant would fall under Section 304 Part I of I.P.C

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193. INDIAN PENAL CODE, 1860 – Sections 149, 302 and 452
EVIDENCE ACT, 1872 – Sections 118 and 134

(i) Conduct of witnesses – Credibility – Eye witnesses testified about the presence of accused – One of these witnesses had suffered injuries in the transaction and the rest of them had taken the deceased as well as the injured to medical centre immediately after the occurrence lends credibility to the case of the prosecution – Nothing has been brought on record in their cross-examinations to dislodge the credibility of these witnesses – Witnesses found reliable.

(ii) Testimony of sole eye witness – If the version of a single witness is found reliable by the Court, can be the foundation of conviction.

भारतीय दण्ड संहिता, 1860 – धाराएं 149, 302 एवं 452

साक्ष्य अधिनियम, 1872 – धाराएं 118 एवं 134

(i) साक्षीगण का आचरण – विश्वसनीयता – प्रत्यक्षदर्शी साक्षियों ने अभियुक्त की उपस्थिति के संबंध में कथन किये – इन साक्षियों में से एक को संव्यवहार के दौरान उपहति कारित होना और उनमें से शेष द्वारा मृतक के साथ चोटिल को भी घटना के तुरंत बाद चिकित्सकीय केन्द्र ले जाना अभियोजन के प्रकरण को विश्वसनीयता प्रदान करता है – प्रतिपरीक्षण में अभिलेख पर ऐसा कुछ नहीं लाया गया जो इन साक्षियों की विश्वसनीयता को अपवर्जित करता हो – साक्षीगण विश्वसीय पाए गए।

(ii) एक मात्र प्रत्यक्षदर्शी साक्षी की साक्ष्य – यदि न्यायालय द्वारा एक मात्र साक्षी का अभिकथन विश्वसनीय पाया जाये, दोषसिद्धी का आधार हो सकता है।

State of Rajasthan v. Bablu alias Om Prakash
Judgment dated 24.11.2021 passed by the Supreme Court in Criminal Appeal No. 1475 of 2021, reported in AIR 2022 SC 1288

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194. INDIAN PENAL CODE, 1860 – Sections 201 and 304-B

(i) Death in abnormal circumstances – Deceased went missing from her matrimonial home within a few months of her marriage and immediately after demands of dowry were made on her – Death occurred under abnormal circumstances – Such death would have to be charactarized as "dowry death".

(ii) Demand of dowry – Lacking of specific allegation – Effect – From the evidence on record, it appears that only certain omnibus allegations have been made against mother-in-law with respect to dowry demands – State not able to prove any specific allegation against her in these circumstances – Conviction cannot be held.

भारतीय दण्ड संहिता, 1860 – धाराएं 201 एवं 304–ख

(i) असामान्य परिस्थितियों में मृत्यु – मृतका विवाह के कुछ माह के भीतर और उससे की गई दहेज की मांग के तुरंत पश्चात् अपने वैवाहिक निवास से लापता हो गई – उसकी मृत्यु असामान्य परिस्थितियों के अन्तर्गत कारित हुई – ऐसी मृत्यु को ''दहेज–मृत्यु'' के रूप में विशेषित किया जाना चाहिए।

(ii) दहेज की मांग – विनिर्दिष्ट आक्षेप का अभाव – प्रभाव – अभिलेख पर उपलब्ध साक्ष्य से यह दर्शित होता है कि सास के विरूद्ध केवल निश्चित बहुप्रयुक्त आक्षेप दहेज की मांग के संदर्भ में लगाये गये – राज्य उसके विरूद्ध किसी विनिर्दिष्ट आक्षेप को प्रमाणित करने में असमर्थ रहा – इन परिस्थितियों में दोषसिद्धी नहीं की जा सकती।

Parvati Devi v. State of Bihar now State of Jharkhand and ors.
Judgment dated 17.12.2021 passed by the Supreme Court in Criminal Appeal No. 574 of 2012, reported in AIR 2022 SC 1268 (Three Judge Bench)

Relevant extracts from the judgment:

In the instant case, despite the shoddy investigation conducted by the prosecution, we are of the view that the circumstances set out in Section 304B of the IPC have been established in the light of the fact that the deceased, Fulwa Devi had gone missing from her matrimonial home within a few months of her marriage and immediately after demands of dowry were made on her and that her death had occurred under abnormal circumstances, such a death would have to be charactarized as a "dowry death".

As for Parvati Devi, A-3 (Mother-in-law), from the evidence on record only certain omnibus allegations have been made against her with respect to dowry demands. Learned counsel for the respondent-State has not been able to indicate any specific allegations, nor point to any specific evidence or testimony against her. In fact, in the only direct evidence before the Court, PW-3 (informant and father of the victim) mentions that A-2 threatened to harm the deceased. In view of the above, we are of the opinion that it is necessary to interfere with the findings of the Courts below convicting A-3 (appellant in Criminal Appeal No. 574 of 2012) for the offence under Sections 304B and 201 read with Section 34, IPC. The said appeal filed by A-3 is accordingly allowed.

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195. INDIAN PENAL CODE, 1860 – Section 300

(i) Murder – Inquest Report – Objective – Not being a substantive evidence and purpose is limited to finding out the apparent cause of death of a person who died under suspicious circumstances.

(ii) Plea of alibi – Proof – Non-production of material evidence – Plea of alibi not tenable.

भारतीय दण्ड संहिता, 1860 – धारा 300

(i) हत्या – मृत्यु समीक्षा रिपोर्ट – उद्देश्य – सारभूत साक्ष्य न होते हुए इसका सीमित उद्देश्य व्यक्ति की मृत्यु के दृश्यमान कारणों की जांच करना है जो संदेहास्पद परिस्थितियों में मृत हुआ है।

(ii) अन्यत्र उपस्थिति का अभिवाक् – सबूत – तात्विक साक्ष्य का प्रस्तुत नहीं किया जाना – अन्यत्र उपस्थिति का अभिवाक् स्वीकार योग्य नहीं।

Pappu Tiwary v. State of Jharkhand

Judgment dated 31.01.2022 passed by the Supreme Court in Criminal Appeal No. 1492 of 2021, reported in AIR 2022 SC 758

Relevant extracts from the judgment:

It has been rightly pointed out by the learned counsel for the State that the burden was on Law Tiwari to establish the plea of alibi [***Vijay Pal v. State (Govt. of NCT of Delhi), AIR 2015 SC 1495*** and ***Jitender Kumar v. State of Haryana, AIR 2012 SC 2488***], which he failed to discharge. It was not a case where opportunity was not granted to him. In fact, two witnesses were produced in defence by Law Tiwari and two court witnesses were also summoned. However, the relevant evidence was not led.

It has been rightly pointed out that the most material witness would have been Dr. M.P. Singh, who was not produced as a defence witness nor summoned.

We may note that there is some identity confusion in the judgment of the trial court as a reference has been made to one Dr. M.P. Singh (PW-1), who is not the same doctor. The advise stated to be given by Dr. M.P. Singh was also not proved nor was the x-ray plate produced. DW-2 stated that he took Law Tiwari to Garhwa Hospital but no papers of admission or treatment at the hospital were produced in support of the treatment of a fractured leg in the hospital. Thus, on all these aspects Law Tiwari failed to discharge the burden to establish the plea of alibi and, thus, the trial court and the High Court cannot be said to have fallen into any error in rejecting the plea of alibi. This was the only aspect to be examined by us.

On examination of the aforesaid pleas, insofar as the factual context is concerned, there is little doubt that there is not a minor but a major difference in recording the number of injuries suffered by the deceased in the inquest report and the post-mortem report. However, this will not be fatal in our view. We say so keeping in mind the purpose of an inquest report, which is not a substantive evidence. The objective is to find out whether a person who has died under suspicious circumstances, what may be the apparent cause of his death. In the present case the death was unnatural. There were wounds. There is no doubt that it is a homicide case. The expert is the doctor who carries out the post-mortem and has been medico legal expert. The two fire arm injuries have been clearly identified with the wounds at the entry and at the exit being identified. We have already discussed the proximity of the time period between the

intimation and the police proceeding with it right up to the stage when the post-mortem commenced. We do not find any substance in this plea.

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196. INDIAN PENAL CODE, 1860 – Section 302

Murder – Multiple blows on vital part of the body – Use of weapon with such force resulting in skull fracture – Case falls under clauses thirdly and fourthly of section 300 IPC.

भारतीय दण्ड संहिता, 1860 – धारा 302

हत्या – शरीर के मार्मिक हिस्सों पर कई वार – हथियार का ऐसे बल के साथ प्रयोग जिसके परिणामस्वरूप मस्तिष्क में अस्थिभंग होता है – मामला भारतीय दण्ड संहिता की धारा 300 के तीसरे और चौथे खण्ड के अंतर्गत आता है।

State of Uttarkhand v. Sachendra Singh Rawat

Judgment dated 04.02.2022 passed by the Supreme Court in Criminal Appeal No. 143 of 2022, reported in 2022 (1) Crimes 397 (SC)

Relevant extracts from the judgment:

Applying the law laid down by this Court in ***Stalin v. State, (2020) 9 SCC 524, Mahesh Balmiki v. State of M.P., (2000) 1 SCC 319, Dhirajbhai Gorakhbhai Nayak v. State of Gujarat, (2003) 9 SCC 322, Pulicherla Nagaraju v. State of A.P., (2006) 11 SCC 444; Singapagu Anjaiah v. State of A.P., (2010) 9 SCC 799, State of Rajasthan v. Kanhaiya Lal, (2019) 5 SCC 639; Arun Raj v. Union of India, (2010) 6 SCC 457, Ashokkumar Magabhai Vankar v. State of Gujarat, (2011) 10 SCC 604, State of Rajasthan v. Leela Ram, (2019) 13 SCC 131, Bavisetti Kameswara Rao v. State of A.P., (2008) 15 SCC 725*** and ***Virsa Singh v. State of Punjab, AIR 1958 SC 465*** to the facts of the case on hand and the fact that the accused gave several blows/ multiple blows on the vital part of the body – head which resulted into grievous injuries and he used "Phakadiyat" with such a force which resulted in Skull fracture and a frontal wound on left side and wounds with 34 stitches on the left side of the skull extended from mid of the left side of the skull along with coronal sutures of 16 cm, we are of the opinion that the case would fall under Clauses thirdly and fourthly of Section 300 IPC. Clauses thirdly and fourthly of Section 300 IPC read as under:

> "*Thirdly*.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.
>
> *Fourthly*.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

Therefore, as per Section 300 IPC, if the case falls within Clauses thirdly and fourthly to Section 300 IPC, culpable homicide can be said to be amounting to murder. Therefore, in the facts and circumstances of this case, the High Court has committed a grave error in observing that culpable homicide did not amount to murder, by applying exception Fourth to Section 300 IPC. As observed hereinabove, exception Fourth to Section 300 IPC ought not to have been applied by the High Court at all considering the fact that the main second incident had taken place subsequently at 12:00 in the night, much after the first incident of altercation was over in the mehendi ceremony. The impugned judgment and order passed by the High Court is unsustainable both, on facts as well as on law.

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197. INDIAN PENAL CODE, 1860 – Section 302
EVIDENCE ACT, 1872 – Section 106

(i) Circumstantial evidence – Prosecution failed to prove the chain of circumstances – Section 106 of the Act do not relieve it of the duty of the prosecution.

(ii) Falsity of defence – If the chain is complete pointing to the guilt of accused, the court is compelled to arrive at the conclusion that the accused had committed the alleged crime – False defence can be taken as an additional circumstance.

भारतीय दण्ड संहिता, 1860 – धारा 302
साक्ष्य अधिनियम, 1872 – धारा 106

(i) परिस्थितिजन्य साक्ष्य – अभियोजन परिस्थितियों की कड़ियों को साबित करने में असफल रहा – अधिनियम की धारा 106 अभियोजन को अपने दायित्व से मुक्त नहीं करती।

(ii) बचाव का मिथ्या होना – यदि अन्य कड़ियां पूर्णतः अभियुक्त के अपराध की ओर संकेत देती हैं, न्यायालय इस निष्कर्ष पर पहुंचने के लिए बाध्य है कि अभियुक्त ने आक्षेपित अपराध कारित किया है – मिथ्या बचाव अतिरिक्त परिस्थिति के रूप में लिया जा सकता है।

Satye Singh and anr. v. State of Uttarakhand
Judgment dated 09.02.2022 passed by the Supreme Court in Criminal Appeal No. 84 of 2022, reported in 2022 (1) Crimes 467 (SC)

Relevant extracts from the judgment:

In the case on hand, the prosecution having failed to prove the basic facts as alleged against the accused, the burden could not be shifted on the accused by pressing into service the provisions contained in section 106 of the Evidence Act. There being no cogent evidence adduced by the prosecution to prove the entire chain of circumstances which may compel the court to arrive at the conclusion that the accused only had committed the alleged crime, the court

has no hesitation in holding that the Trial Court and the High Court had committed gross error of law in convicting the accused for the alleged crime, merely on the basis of the suspicion, conjectures and surmises.

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198. INDIAN PENAL CODE, 1860 – Section 304 B
DOWRY PROHIBITION ACT, 1961 – Section 3
EVIDENCE ACT, 1872 – Sections 3 and 113-B

(i) Dowry death – Pre-requisites to prove the offence – Enumerated.

(ii) Words "soon before" – Time lag may differ from case to case – Phrase "soon before" is different from the phrase "immediately before".

(iii) Definition of dowry – Demand of money for construction of house – Falls within the meaning of the word "dowry".

भारतीय दण्ड संहिता, 1860 – धारा 304 ख
दहेज प्रतिषेध अधिनियम, 1961 – धारा 3
साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 113–ख

(i) दहेज मृत्यु – अपराध साबित करने की पूर्व आवश्यकताएं – प्रगणित की गई।

(ii) शब्द ''ठीक पूर्व'' – अंतराल प्रत्येक प्रकरण की परिस्थितियों पर निर्भर करेगा – वाक्यांश ''ठीक पूर्व'' ''तुरंत पूर्व'' से भिन्न है।

(iii) दहेज की परिभाषा – भवन निर्माण के लिये राशि की मांग – दहेज की परिभाषा के अंतर्गत आयेगी।

State of Madhya Pradesh v. Jogendra and anr.

Judgment dated 11.01.2022 passed by the Supreme Court in Criminal Appeal No. 190 of 2012, reported in AIR 2022 SC 933 (Three-Judge Bench)

Relevant extracts from the judgment:

In the facts of the instant case, we are of the opinion that the trial Court has correctly interpreted the demand for money raised by the respondents on the deceased for construction of a house as falling within the definition of the word "dowry". The submission made by learned counsel for the respondents that the deceased was also a party to such a demand as she had on her own asked her mother and maternal uncle to contribute to the construction of the house, must be understood in the correct perspective. It cannot be lost sight of that the respondents had been constantly tormenting the deceased and asking her to approach her family members for money to build a house and it was only on their persistence and insistence that she was compelled to ask them to contribute some amount for constructing a house. The Court must be sensitive to the social milieu from which the parties hail. The fact that the marriage of the deceased and the respondent No.1 was conducted in a community marriage

organization where some couples would have tied the knot goes to show that the parties were financially not so well off. This position is also borne out from the deposition of P.W.-1 who had stated that he used to bear the expenses of the couple. Before the marriage of the deceased also, P.W.-1 had stated that he used to bear her expenses and that of her mother and brother [his sister and nephew] as her father had abandoned them. In this background, the High Court fell in an error in drawing an inference that since the deceased had herself joined her husband and father-in-law, respondents herein and asked her mother or uncle to contribute money to construct a house, such demand cannot be treated as a "dowry demand". On the contrary, the evidence brought on record shows that the deceased was pressurized to make such a request for money to her mother and uncle. It was not a case of complicity but a case of sheer helplessness faced by the deceased in such adverse circumstances.

In the above context, we may usefully refer to a recent decision of a three Judge Bench of this Court in ***Gurmeet Singh v. State of Punjab, (2021) 6 SCC 108*** that has restated the detailed guidelines that have been laid down in ***Satbir Singh and anr. v. State of Haryana, (2021) 6 SCC 1***, both authored by Chief Justice N.V. Ramana, relating to trial under Section 304-B IPC where the law on Section 304-B IPC and Section 113-B of the Evidence Act has been pithily summarized in the following words:

> "Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.
>
> The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B of the Evidence Act operates against the accused.
>
> The phrase "soon before" as appearing in Section 304-B IPC cannot be construed to mean "immediately before".
>
> The prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.
>
> Section 304-B IPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the fact that death occurring "otherwise than under normal circumstances" can, in cases, be homicidal or suicidal or accidental."

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199. INDIAN PENAL CODE, 1860 – Section 306
CRIMINAL PROCEDURE CODE, 1973 – Section 161

(i) Abetment to suicide – Merely having an extramarital relationship may not be sufficient to prosecute a person for offence u/s 306 of IPC, but when mental or physical cruelty is meted out to the deceased for having an extramarital relation, it would certainly amount to abetment of suicide.

(ii) Recording of statement – Mere delay in recording the statement u/s 161 of CrPC is not sufficient to discard the evidence of witnesses outrightly.

भारतीय दण्ड संहिता, 1860 – धारा 306

दण्ड प्रक्रिया संहिता, 1973 – धारा 161

(i) आत्महत्या का दुष्प्रेरण – केवल विवाहेतर संबंध रखना किसी व्यक्ति को धारा 306 के अन्तर्गत अभियोजित करने के लिए पर्याप्त नहीं है किन्तु जब विवाहेतर संबंध के कारण मृतक को मानसिक या शारीरिक क्रूरता कारित हुई हो, यह निश्चित रूप से आत्महत्या का दुष्प्रेरण माना जाएगा।

(ii) कथन का अभिलेखन – धारा 161 दं.प्र.सं. के अन्तर्गत कथन के अभिलेखन में विलम्ब मात्र साक्षी की साक्ष्य को सिरे से खारिज करने के लिए पर्याप्त नहीं है।

Pradeep Sakhawar v. State of M.P. and anr.
Order dated 25.02.2022 passed by the High Court of Madhya Pradesh (Bench Gwalior) in MCRC No. 35848 of 2021, reported in 2022 CriLJ 1814

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200. INDIAN PENAL CODE, 1860 – Sections 366 and 376(2)(n)
CRIMINAL PROCEDURE CODE, 1973 – Section 311

(i) Determination of age – Duty of court – Prosecution initially relied upon the school record of the prosecutrix – Even in the list of documents annexed with the chargesheet, no school Head Master or teacher was cited as a witness – Held, Trial Court had to exercise its power u/s 311 of CrPC and could have called the Head Master or teacher of the concerning school to prove the date of birth of the prosecutrix.

(ii) Summoning of witness by the court – Cannot be termed as a witness of any particular party – Court should give right of cross-examination to the complainant.

भारतीय दण्ड संहिता, 1860 – धाराएं 366 एवं 376(2)(ढ)

दण्ड प्रक्रिया संहिता, 1973 – धारा 311

(i) आयु का निर्धारण – न्यायालय का कर्तव्य – अभियोजन ने आरंभ में अभियोक्त्री के स्कूल अभिलेखों पर विश्वास किया – यहां तक कि अंतिम प्रतिवेदन के साथ

दस्तावेजों की सूची संलग्न की गई परन्तु स्कूल के प्रधानाध्यापक या शिक्षक को साक्षी के रूप उल्लेखित नहीं किया गया – अभिनिर्धारित, विचारण न्यायालय द्वारा दं.प्र.सं. की धारा 311 के अंतर्गत शक्तियों का प्रयोग कर अभियोक्त्री की जन्मतिथि को प्रमाणित करने के लिये संबंधित स्कूल के प्रधानाध्यापक या शिक्षक को आहूत किया जा सकता था।

(ii) न्यायालय द्वारा आहूत साक्षी – किसी पक्ष विशेष का साक्षी होना निरूपित नहीं किया जा सकता – न्यायालय को परिवादी को प्रतिपरीक्षण का अधिकार प्रदान करना चाहिए।

Jagdish Singh and anr. v. State of M.P.

Judgment dated 13.12.2021 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Criminal Appeal No. 898 of 2017, reported in 2022 CriLJ 826

Relevant extracts from the judgment:

It is really surprising that the prosecution had initially relied upon the school record of the prosecutrix, according to which, date of birth of the prosecutrix was 02/04/1997 and the prosecutrix went missing on 14/05/2014. On 19/09/2014 the APO, namely, Shri S.B. Soni filed the trial programme requesting the Trial Court to summon only five witnesses, i.e. Dr. Abha Sharma (PW-1), Prosecutrix, "A" (PW-3) father of the prosecutrix, "B" (PW-4) mother of the prosecutrix and ASI Livon Minj (PW-5). Even in the list of documents annexed with the charge-sheet, no school Head Master/teacher was cited as a witness. Why the Investigating Officer and the APO did not think it proper to get the school record proved, specifically when the Investigating Officer had himself filed a photocopy of the progress report of the prosecutrix of Class-VIII? Further, the Trial Court is not expected to act as a Post Office. When the prosecution itself had filed a copy of the school record of the prosecutrix to show that her date of birth is 02/04/1997, then the Trial Court could have exercised its power under Section 311 of CrPC and could have called the Head Master/teacher of the concerning school to prove the date of birth of the prosecutrix.

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The object of Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by the court gives evidence against the complainant, he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party, the court should give the right of cross-examination to the complainant.

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***201. INDIAN PENAL CODE, 1860 – Section 498A**
CRIMINAL PROCEDURE CODE, 1973 – Sections 177 and 178
Cruelty – Jurisdiction of court – Courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, also have jurisdiction to entertain a complaint alleging commission of offences u/s 498-A of the Code.

भारतीय दण्ड संहिता, 1860 – धारा 498क

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 177 एवं 178

क्रूरता – न्यायालय का क्षेत्राधिकार – जहां पत्नी अपने पति या उसके रिश्तेदार द्वारा की गई क्रूरता के कार्य के कारण वैवाहिक गृह को छोड़कर या उससे दूर जाकर रहती है संहिता की धारा 498–क के अन्तर्गत अपराध का आक्षेप करने वाले परिवाद को सुनने का क्षेत्राधिकार उस स्थान के न्यायालय को भी है।

Achin Phulre and ors. v. State of M.P. and anr.
Order dated 16.02.2022 passed by the High Court of Madhya Pradesh in MCRC No.31135 of 2021, reported in 2022 CriLJ 1719

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202. INDIAN PENAL CODE 1860 – Section 498A
Matrimonial disputes – Allegation of cruelty – Proceeding against distant relatives – The relative of the husband should not be roped in on the basis of omnibus allegation unless specific instances of their involvement are made out.

भारतीय दण्ड संहिता, 1860 – धारा 498क

वैवाहिक विवाद – क्रूरता का आक्षेप – दूर के रिश्तेदारों के विरूद्ध आक्षेप – पति के रिश्तेदारों को बहुप्रयोजनीय आक्षेपों के आधार पर तब तक नहीं फंसाया जाना चाहिए जब तक कि विनिर्दिष्टतः उनकी संलिप्तता दर्शित न हों।

Kahkashan Kausar @ Sonam and ors. v. State of Bihar and ors.
Judgment dated 08.02.2022 passed by the Supreme Court in Criminal Appeal No. 195 of 2022, reported in 2022 (1) Crimes 376 (SC)

Relevant extracts from the judgment:

The decisions in ***Rajesh Sharma and ors. v. State of U.P. & anr., (2018) 10 SCC 472, Arnesh Kumar v. State of Bihar and anr., (2014) 8 SCC 273, Preeti Gupta & anr. v. State of Jharkhand & anr., (2010) 7 SCC 667, Geeta Mehrotra & anr. v. State of UP & anr., (2012) 10 SCC 741*** and ***K. Subba Rao v. The State of Telangana, (2018) 14 SCC 452*** clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the

accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no *prima facie* case is made out against them.

Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.2019, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that 'all accused harassed her mentally and threatened her of terminating her pregnancy'. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR. Respondent No. 1 i.e., the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the Ld. Principal Judge Purnea, to not harass the Respondent wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 01.04.19, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11.12.2017.

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203. INDIAN PENAL CODE, 1860 – Section 498A

Sentence – Offence of cruelty commited by a woman against another woman – Makes the offence more serious – Specially mother-in-law should be more sensitive towards her daughter-in-law – In such cases, Court is not required to show leniency towards mother-in-law who has been found guilty for the offence of cruelty against her daughter-in-law.

भारतीय दण्ड संहिता, 1860 – धारा 498क

दण्डादेश – एक महिला द्वारा दूसरी महिला के विरूद्ध कारित क्रूरता का अपराध ऐसे अपराध को और अधिक गम्भीर बनाता है – विशेष रूप से सास को अपनी बहू के प्रति

अधिक संवेदनशील होना चाहिए – ऐसे प्रकरणों में न्यायालय द्वारा सास जिसे बहू के प्रति क्रूरता के अपराध के लिये दोषी पाया गया है, के प्रति उदारता प्रदर्शित करने की आवश्यकता नहीं होती है।

Meera v. State by the Inspector of Police Thiruvotriyur Police Station Chennai

Judgment dated 11.01.2022 passed by the Supreme Court in Criminal Appeal No. 31 of 2022, reported in (2022) 3 SCC 93

Relevant extracts from the judgment:

It is to be noted that the appellant – mother-in-law is held to be guilty for the offence under Section 498A of IPC. Being a lady, the appellant, who was the mother-in-law, ought to have been more sensitive vis-à-vis her daughter-in-law. When an offence has been committed by a woman by meting out cruelty to another woman, i.e., the daughter-in-law, it becomes a more serious offence. If a lady, i.e., the mother-in-law herein does not protect another lady, the other lady, i.e., daughter-in-law would become vulnerable.

In the present case, even the husband of the victim was staying abroad. The victim was staying all alone with her in-laws. Therefore, it was the duty of the appellant, being the mother-in-law and her family to take care of her daughter-in-law, rather than harassing and/or torturing and/or meting out cruelty to her daughter-in-law regarding jewels or on other issues. Therefore, as such, no leniency is required to be shown to the appellant in this case.

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204. LAND ACQUISITION ACT, 1894 – Section 18

(i) Rejection of reference – Absence of prosecution – Non-participation of any party could not confer jurisdiction on the Civil Court to dismiss the reference for default.

(ii) Order – No reasons assigned – Reasons are heartbeats of the order and absence of it reflects non-application of mind.

भूमि अधिग्रहण अधिनियम, 1894 – धारा 18

(i) निर्देश का खारिज किया जाना – अभियोजन का अभाव – किसी भी पक्षकार की सहभागिता का अभाव निर्देश खारिज करने हेतु सिविल न्यायालय को क्षेत्राधिकार नहीं देता है।

(ii) आदेश – कारण समनुदेशित नहीं किये गये – कारण आदेश की धड़कन होते हैं और कारणों का अभाव मस्तिष्क का उपयोग नहीं किया जाना दर्शित करता है ।

Mohd. Sakhawat Noor v. State of M. P. and ors.

Order dated 17.02.2022 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 4059 of 2019, reported in 2022 (2) MPLJ 342

Relevant extracts from the order:

Counsel appearing for the State and the respondent No.2 has pointed out that the order impugned does not only reflect that it is dismissed for want of prosecution rather the objection filed by the petitioner was also taken into consideration and not found to be satisfactory, therefore, the reference was rejected, but the fact remains that the order impugned does not reflect any application of mind by the Authorities. There is no consideration of any objection filed by the petitioner. No reasons are assigned while rejecting the reference. The reasons are the heart beats of the orders or judgments as has been held by the Hon'ble Supreme Court in the case of ***Kranti Associates Private Limited and anr. v. Masood Ahmed Khan and ors., (2010) 9 SCC 496*** wherein the Hon'ble Supreme Court has held as under :-

> "47. Summarizing the above discussion, this Court holds:-
>
> (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (b) A quasi-judicial authority must record reasons in support of its conclusions. (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. 5 A.F.R. (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
>
> (g) Reasons facilitate the process of judicial review by superior Courts.
>
> (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency. (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See ***David Shapiro in Defence of Judicial Candor, (1987) 100 Harward Law Review 731-737***).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See ***(1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405***, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

From the judgment passed by the Supreme Court in the case of ***Khazan Singh (Dead) by LRs. v. Union of India, (2002) 2 SCC 242*** it is apparently clear that the reference cannot be dismissed for want of prosecution. The Hon'ble Supreme Court has held as under :-

"The provisions above subsumed would thus make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default."

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

Accident by stolen vehicle – No willful breach of terms and conditions of the insurance policy by the insured – Insurance Company held liable. [*United India Insurance Co. Ltd. v. Lehru, 2003 ACJ 611 (SC)* relied]

मोटर यान अधिनियम, 1988 – धारा 147

चुराए गए वाहन द्वारा दुर्घटना – बीमित द्वारा बीमा पॉलिसी की शर्तों का जानबूझकर उल्लंघन नहीं किया गया – बीमा कम्पनी को दायित्वधीन ठहराया गया। [***यूनाइटेड इंडिया इंश्यूरेंश कं. लिमि. विरूद्ध लहरू, 2003 एसीजे 611 (एससी),*** अनुसरित]

United India Insurance Co. Ltd. v. Anita Devi and ors.

Judgment dated 17.01.2022 passed by the High Court of Delhi in MAC Appeal No.15 of 2022, reported in 2022 ACJ 1108 (Delhi)

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

(i) Dependant – Parents and married daughter of the deceased are also entitled for compensation.

(ii) Determination of dependency – Even if dependency is a relevant criterion to claim compensation for loss of dependency, it does not mean that financial dependency is the '*ark of the covenant*' – Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency and so on and so forth which can never be equated in terms of money.

मोटर यान अधिनियम, 1988 – धारा 166

(i) आश्रित – मृतक के माता – पिता तथा विवाहित पुत्री भी प्रतिकर प्राप्त करने के अधिकारी है।

(ii) आश्रितता का निर्धारण – यद्यपि आश्रितता की हानि के लिए प्रतिकर का दावा करने के लिए आश्रितता एक सुसंगत कसौटी है किन्तु इसका मतलब नहीं है कि आर्थिक आश्रितता '*वाचा का संदूक*' है – आश्रितता के अन्तर्गत अनुग्रह सेवा

आश्रितता, शारीरिक आश्रितता, भावनात्मक आश्रितता, मानसिक आश्रितता और कई अन्य जिन्हें धन के रूप में नहीं तौला जा सकता, सम्मिलित है।

United India Insurance Co. Ltd. v. Shalumol and ors.
Judgment dated 25.08.2021 passed by the High Court of Kerala in MAC Appeal No.1768 of 2021, reported in 2022 ACJ 1251 (Kerala)

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207. MOTOR VEHICLES ACT, 1988 – Section 166
Split multiplier – Cannot be applied – Retirement in near future is not a just reason for applying split multiplier.

मोटर यान अधिनियम, 1988 – धारा 166
पृथक–पृथक गुणांक – निकट भविष्य में सेवानिवृत्ति पृथक–पृथक गुणांक लागू करने हेतु उचित कारण नहीं है।

Sumathi and ors. v. National Insurance Co. Ltd. and anr.
Judgment dated 15.12.2021 passed by the Supreme Court in Civil Appeal No. 7729 of 2021, reported in 2022 ACJ 1315 (SC)

Relevant extracts from the judgment:

The High Court has applied split multiplier by referring to the judgment of this Court in the case of ***Puttamma & ors. v. K. L. Narayana Reddy & anr., 2014 ACJ 526 (SC)*** without recording any specific reason, contrary to the said judgment. The High Court has applied split multiplier only on the ground that the deceased was 54 years of age at the time of accident and leftover service was only four years. In the judgment in the case of ***Puttamma*** (supra) in similar circumstances, where the split multiplier was applied for the purpose of assessing compensation by the High Court, this Court has allowed the appeal by setting aside the judgment of the High Court. Para 66 of the judgment of the case of ***Puttamma*** (supra) is relevant for the purpose of disposal of this appeal. The relevant para 64 reads as under:

> "64. In the appeal which was filed by the claimants before the High Court, the High Court instead of deciding the just compensation allowed a meagre enhancement of compensation. In doing so, the High Court introduced the concept of split multiplier and departed from the multiplier system generally used in the light of the decision in ***Sarla Verma (Smt.) and ors. v. Delhi Transport Corporation & anr., 2014 ACJ 526 (SC)*** without disclosing any reason. The High Court has also not considered the question of prospect of future increase in salary of the deceased though it noticed that the deceased would have continued in pensionable services for more than 10 years.

> When the age of the deceased was 48 years at the time of death it wrongly applied multiplier of 10 and not 13 as per decision in ***Sarla Verma*** (supra). Thus, we fail to appreciate as to why the High Court chose to apply split multiplier and applied multiplier of 10. We, thus, find that the judgment of the High Court is perverse and contrary to the evidence on record and is fit to be set aside for not having considered the future prospects of the deceased and also for adopting split multiplier method against the law laid down by this Court. In view of our aforesaid finding, we hold that the judgment of the High Court deserves to be set aside. We, accordingly, set aside the impugned judgment and hold that the claimants are entitled for total compensation of Rs.23,43,688. They shall also get interest on the enhanced compensation at the rate of 12% per annum from the date of filing of the complaint petition. Respondent 2 Insurance Company is directed to pay the enhanced/additional compensation and interest to the claimants within a period of three months by getting prepared a demand draft in their name."

From a reading of the above judgment, it is clear that in normal course, the compensation is to be calculated by applying the multiplier, as per the judgment of this Court in the Case of ***Sarla Verma*** (supra). Split multiplier cannot be applied unless specific reasons are recorded. The finding of the High Court that the deceased was having leftover service of only four years, cannot be construed as a special reason, for applying the split multiplier for the purpose of assessing the compensation. In normal course, compensation is to be assessed by applying multiplier as indicated by this Court in the judgment in the case of ***Sarla Verma*** (supra). As no other special reason is recorded for applying the split multiplier, judgment of the High Court is fit to be set aside by restoring the award of the Tribunal.

For the aforesaid reasons, this civil appeal is allowed by setting aside the judgment of the High Court dated 8th November, 2017 passed in C.M.A.(MD) No.1135 of 2015 passed by Madurai Bench of Madras High Court. Further, we restore the award passed by the Tribunal and the claimants are entitled for compensation as per the award dated 15.12.2012 passed by the Motor Accident Claims Tribunal, Subordinate Court, Paramakudi in MACOP No.76 of 2011. The compensation payable to the appellants, as per the aforesaid award, shall be paid by the first respondent – Insurance Company, within a period of two months from the date of this order.

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208. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

Complaint by company – Authorized employee of the company is *de facto* complainant – Such *de facto* complainant can change from time to time – Court can take cognizance on statement of such employee.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

कंपनी द्वारा परिवाद – कंपनी का अधिकृत कर्मचारी वस्तुतः परिवादी है – इस तरह का परिवादी समय समय पर बदल सकता है – न्यायालय इस तरह के कर्मचारी के कथनों पर संज्ञान ले सकता है।

M/s. TRL Krosaki Refractories Ltd. v. M/s. SMS Asia Private Limited & anr.

Judgment dated 09.02.2022 passed by the Supreme Court in Criminal Appeal No. 84 of 2022, reported in 2022 (1) Crimes 415 (SC)

Relevant extracts from the judgment:

In that view, the position that would emerge is that when a company is the payee of the cheque based on which a complaint is filed under Section 138 of N.I. Act, the complainant necessarily should be the Company which would be represented by an employee who is authorized. *Prima facie*, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by anauthorized person who has knowledge, would be sufficient. The employment of the terms "specific assertion as to the knowledge of the power of attorney holder" and such assertion about knowledge should be "said explicitly" as stated in ***A.C. Narayanan v. State of Maharashtra & anr., (2014) 11 SCC 790*** cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the "payee" and if the person who is prosecuting the complaint is different from the payee, the authorization therefor and that the contents of the complaint are within his knowledge. When, the complainant/ payeeis a company, an authorized employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not being authorized or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial. As noted in ***Samrat Shipping Co. Pvt. Ltd. v. Dolly George, (2002) 9 SCC 455***, dismissal of a complaint at the threshold by the Magistrate on the question of authorisation, would not be

justified. Similarly, we are of the view that in such circumstances entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorization and knowledge can only be an issue for trial.

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209. PREVENTION OF CORRUPTION ACT, 1988 – Sections 7 and 13 (1)(d) Illegal gratification – Mere recovery of the amount from the person would not be sufficient to convict him.

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 7 एवं 13 (1)(घ)

अवैध परितोषण – किसी व्यक्ति से केवल धन की बरामदगी मात्र उसे दोषसिद्ध करने हेतु पर्याप्त नहीं है।

K. Shanthamma v. The State of Telangana

Judgment dated 21.02.2022 passed by the Supreme Court in Criminal Appeal No. 261 of 2022, reported in 2022 (1) Crimes 425 (SC)

Relevant extracts from the judgment:

We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is *sine quo non* for establishing the offence under Section 7 of the PC Act. In the case of ***P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and anr., (2015) 10 SCC 152***, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:

> "23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

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***210. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 2(q), 17 and 43**

Eviction from shared household – Protection against eviction or dispossession of a woman u/s 17 of the Act is not absolute or unqualified – Can be evicted from the shared household in accordance with the procedure established by law – Embargo contained in section 17(2) of the Act operates only against a person who is a respondent within the meaning of section 2(q) of the Act.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धाराएं 2(थ), 17 एवं 43

साझी गृहस्थी से निष्कासन – अधिनियम की धारा 17 के अन्तर्गत महिला को निष्कासन अथवा बेदखल किए जाने से संरक्षण पूर्ण एवं आत्यंतिक नहीं है – विधि द्वारा स्थापित प्रक्रिया के अनुसरण में साझी गृहस्थी से निष्कासित की जा सकती है – अधिनियम की धारा 17(2) का प्रतिरोध केवल उस व्यक्ति के विरूद्ध लागू होता है जो अधिनियम की धारा 2(थ) के अर्थ में प्रत्यर्थी है।

Krishna Bhadoria v. Geeta Bhadoria and anr.

Order dated 04.01.2022 passed by the High Court of Madhya Pradesh (Bench Gwalior) in First Appeal No.239 of 2014, reported in 2022 (1) MPLJ 677

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211. REGISTRATION ACT, 1908 – Section 17

CIVIL PROCEDURE CODE, 1908 – Section 11

(i) Registration – Need of – Document which neither creates right in specific property nor assets of the family in favour of specific person – Registration of such document not required.

(ii) *Res judicata* – Previous suit decided on erroneous facts – Binding upon the parties cannot be challenged – Principle of *res judicata* applicable.

पंजीकरण अधिनियम, 1908 – धारा 17

सिविल प्रक्रिया संहिता, 1908 – धारा 11

(i) पंजीकरण – आवश्यकता – दस्तावेज जो किसी विशिष्ट संपत्ति में कोई अधिकार सृजित नहीं करता और न ही विशिष्ट व्यक्ति के पक्ष में परिवार की संपदा को दिये जाने का उपबंध करता है – ऐसे दस्तावेज के पंजीकरण की आवश्यकता नहीं है।

(ii) *पूर्व न्याय* – पूर्व वाद त्रुटिपूर्ण तथ्यों पर निर्णित – पक्षकारों पर बाध्यकारी – *पूर्व न्याय* का सिद्धांत लागू होगा।

K. Arumuga Velaiah v. P.R. Ramasamy and anr.

Judgment dated 27.01.2022 passed by the Supreme Court in Civil Appeal No. 2564 of 2012, reported in (2022) 3 SCC 757 (Three-Judge Bench)

Relevant extracts from the judgment:

On a perusal of the award which is in the form of a resolution, it is clear that there was no right created in any specific item or asset of the joint family properties in any person but the parties resolved to take certain actions in pursuance of a family arrangement. Therefore under Annexure P-10 (Ex. B-13) there was no right created in favour of any party in any specific item of joint family property. The said document which has been styled as an award is, in our view, only a memorandum of understanding/family arrangement to be acted upon in future. Hence, in our considered view, the said document did not create rights in specific properties or assets of the family, in favour of specific persons. Therefore, the same did not require registration under section 17 (1) (e) of the Act. The said document was in the nature of a document envisaged under section 17 (2) (v) of the Act.

This finding is sought to be questioned before us by placing reliance on a judgment of the Apex Court in ***Asrar Ahmed v. Durgah Committee, Ajmer, AIR 1947 PC 1*** to contend that the plea of res judicata does not arise in the instant case. We have perused the same. Learned Counsel for the appellant placed heavy reliance on this judgment contend that when a finding has been given by a lower court based on sufficient evidence, if erroneous, is not binding between the parties to the said proceeding on the principle of res judicata. The said judgment is not applicable to the present case.

Having regard to the fact that in the instant case there has been no challenge to the finding of partition between the parties till date and the same has attained finality we do not think that the appellant can seek to rely on the judgment in ***Asrar Ahmed*** (supra). Hence, the partition of the ancestral/joint family properties having found to have taken place in the 1964 and the same having been acted upon, a fresh suit for partition and separate possession of the suit properties was not at all maintainable. The principle of res judicata squarely applies in the present case.

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212. SPECIFIC RELIEF ACT, 1963 – Section 19 (b)

Specific performance – Bonafide purchaser – Decree of specific performance in favour of the plaintiff who knew that the suit property was already purchased by a bonafide purchaser through registered deed before institution of the suit should not be passed.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 19 (ख)

विनिर्दिष्ट अनुपालन – सद्भावी क्रेता – ऐसे वादी के पक्ष में विनिर्दिष्ट पालन की आज्ञप्ति पारित नहीं किया जाना चाहिए जो यह जानता था कि वाद प्रस्तुति के पूर्व ही वाद–संपत्ति को सद्भावी क्रेता द्वारा पंजीकृत विलेख द्वारा खरीदा जा चुका था।

Seethakathi Trust Madras v. Krishnaveni

Judgment dated 17.01.2022 passed by the Supreme Court in Civil Appeal No. 5384 of 2014, reported in (2022) 3 SCC 150

Relevant extracts from the judgment:

In our view, it is not necessary to go into the issue of adverse possession as both parties are claiming title. The crucial aspect is the decree obtained for specific performance by the respondent and the manner of obtaining the decree. The respondent was fully aware of the prior registered transaction in respect of the same property originally in favour of Niraja Devi. This is as per the deposition of her manager. In such a scenario it is not possible for us to accept that a decree could have been obtained behind the back of a bona fide purchaser, more so when the transaction had taken place prior to the institution of the suit for specific performance.

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213. SPECIFIC RELIEF ACT, 1963 – Section 20

Specific performance of contract – Test of readiness and willingness – Agreement clearly provided that after paying the balance consideration, the sale deed would be executed – Respondent failed to provide any document or communication regarding readiness and willingness – Merely averting that he was waiting with the balance consideration and believed that the appellants would clear the encumbrance is insufficient to prove that the respondent was willing to perform his obligations under the contract.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

संविदा का विनिर्दिष्ट पालन – इच्छुक एवं तत्पर होने का परीक्षण – अनुबंध स्पष्ट रूप से अभिव्यक्त करता है कि अवशेष राशि का भुगतान करने के उपरांत ही विक्रय पत्र निष्पादित होगा – इच्छुक एवं तत्पर होने के संबंध में प्रत्यर्थी किसी भी दस्तावेज अथवा संसूचना को उपलब्ध कराने में असफल रहा – केवल यह अभिकथन कि वह अवशेष प्रतिफल की प्रतीक्षा कर रहा था और विश्वास करता था कि अपीलार्थी बाधा को दूर कर देगा यह साबित करने के लिए कि प्रत्यर्थी संविदा के अंतर्गत अपने दायित्वों को पूर्ण करने में इच्छुक था, अपर्याप्त है।

Shenbagam and ors. v. K.K. Rathinavel

Judgment dated 20.01.2022 passed by the Supreme Court in Civil Appeal No. 150 of 2022, reported in AIR 2022 SC 1275

Relevant extracts from the judgment:

On a plain reading of the agreement, we are unable to accept the respondent's plea that he was willing to perform his obligations under the contract. It is evident that he was required to pay the remaining consideration (or indicate his willingness to pay) and only then could have sought specific PART C performance of the contract. The respondent has also urged that the additional amount of Rs. 10,000 was paid to the appellants to discharge the mortgage. The acknowledgment signed by the appellants indicates that the money was to meet urgent family expenses. Since no further details have been provided and no evidence has been adduced by the respondent-plaintiff, we cannot conclude that the money was for discharge of the mortgage. Even assuming that the respondent is correct, the agreement still required the respondent to pay the balance consideration. In this regard, the High Court, while holding in favour of the respondent, has noted that the appellants were free to demand a further amount for discharging the mortgage. This finding ignores the plain terms of the contract. The agreement clearly provided that the balance consideration would be paid and then the sale deed would be executed. How the appellants chose to discharge the mortgage was for them to decide. The respondent had to prove his readiness and willingness to perform the contract.

The respondent has failed to provide any documents or communication which would indicate that he called upon the appellants to perform their obligations or discharge the mortgage within the time period stipulated in the contract. Even after the expiry of the six months, the respondent did not reach out to the appellants. It is only in response to the appellants legal notice that the respondent demanded performance of their obligations. Merely averring that he was waiting with the balance consideration and believed that the appellants would clear the encumbrance is insufficient to prove that the respondent-plaintiff was willing to perform his obligations under the contract.

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214. SPECIFIC RELIEF ACT, 1963 – Section 21(5)

Suit for specific performance of agreement – Relief of damages or compensation – Neither specifically pleaded nor any step in this regard taken by the plaintiff – Relief cannot be granted.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 21(5)

अनुबंध के विनिर्दिष्ट पालन के लिए वाद – क्षतिपूर्ति अथवा प्रतिकर का अनुतोष – वादी द्वारा न तो विनिर्दिष्ट रूप से अभिवचन किये गये और न ही इस संबंध में कोई कदम उठाये – अनुतोष प्रदत्त नहीं किया जा सकता।

Universal Petro Chemicals Ltd. v. B.P. PLC and ors.

Judgment dated 18.02.2022 passed by the Supreme Court in Civil Appeal No. 3127 of 2009, reported in AIR 2022 SC 1183

Relevant extracts from the judgment:

The learned Single Judge expressly mentioned in his judgment that the Appellant did not claim any relief for damages. Even in the appeal filed by the Appellant, no relief for damages was claimed by the Appellants. In fact, it was a specific submission on behalf of the Appellant before the Division Bench that no relief in the nature of damages and/or compensation could be granted. It was submitted that it was difficult to quantify such damages/compensation as neither the anticipated loss of business nor estimated value of the goodwill could be prospectively assessed. It might be true that the Appellant was interested in the relief of specific performance of the Collaboration Agreement when he filed the Special Leave Petition in 2008 as the collaboration agreement subsisted till 31.12.2009. However, even thereafter no steps were taken by the Appellant to specifically plead the relief of damages or compensation.

We are afraid that the request of the Appellant for grant of damages cannot be accepted.

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215. SPECIFIC RELIEF ACT, 1963 – Section 34
TRANSFER OF PROPERTY ACT, 1882 – Section 122
Gift deed – Proof – Plea not to be decided on general presumption and assertion – Should be based upon a holistic examination of the entire evidence relating to execution and validity of gift deed.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34

संपत्ति अंतरण अधिनियम, 1882 – धारा 122

दान विलेख – सबूत – अभिवाक् सामान्य उपधारणा और अभिकथन के आधार पर विनिश्चय नहीं होगा – यह दानपत्र की वैधता और उसके निष्पादन के संबंध में सम्पूर्ण साक्ष्य और उसके सम्पूर्ण परीक्षण पर आधारित होना चाहिये।

Keshav and ors. v. Gian Chand and anr.
Judgment dated 24.01.2022 passed by the Supreme Court in Civil Appeal No. 364 of 2022, reported in AIR 2022 SC 678

Relevant extracts from the judgment:

The question whether a person was in a position to dominate the will of the other and procure a certain deed by undue influence is a question of fact, and a finding thereon is a finding of fact, and if arrived at fairly in accordance with the procedure prescribed, it is not liable to be reopened in second appeal [See: ***Ladli Parshad Jaiswal v. The Karnal Distillery Co. Ltd., Karnal & ors., AIR 1963 SC 1279*** and ***Bellachi (D) by LRs. v. Pakeeran, AIR 2009 SC 3293***]. In the present case, the plea as to invalidity of the gift deed is not to be decided on general presumption and assertion. Concurrent findings of facts arrived at in the present case were based upon a holistic examination of the entire evidence relating to execution and validity of the gift deed. The lower courts did not adopt a legalistic

approach but took into account not one but several factual facets to accept the version given by Keshav that the gift deed was not a valid document. These concurrent findings are not perverse but rather good findings based upon cogent and relevant material and evidence on record. These findings of the facts can be interfered in the second appeal only if they are perverse or some gross illegalities have been committed in arriving at such findings. To reverse the findings is not only to assess errors but also deal with the reasons given by the court below and record findings and grounds for upsetting the conclusion [See: ***Nazir Mohamed v. J. Kamala & ors., AIR 2020 SC 4321*** and ***Hero Vinoth (Minor) v. Sheshammal, AIR 2006 SC 2234***].

We have elaborately referred to the reasoning given by the trial court, which the first appellate court had independently examined and affirmed. The findings were recorded after in-depth consideration of the factual matrix, including the statement of Hardei, an illiterate and aged woman, who during her lifetime in 1989, had staunchly refuted having executed any gift deed transferring the property to the plaintiffs. Hardei was residing with Keshav, who was looking after her and providing for all her needs. Further, the plaintiffs did not take any steps to get the mutation of the land records for about four years from 1st January 1986 till 1989. The rejection by the revenue authority in 1989 remained unchallenged till Hardei died in 1991. The views and findings recorded by the lower courts are well reasoned and have taken into account several factors that repel and contradict the claim of a valid execution of the gift deed by Hardei favouring the plaintiffs.

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216. SPECIFIC RELIEF ACT, 1963 – Sections 34 and 36

Cancellation of registered sale deed – Procedure – If a registered sale deed is cancelled by registered deed, such cancellation deed is always subject to adjudication of rights of parties by competent Civil Court.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 34 एवं 36

पंजीकृत विक्रय विलेख का रद्दकरण – प्रक्रिया – यदि पंजीकृत विक्रय विलेख पंजीकृत विलेख द्वारा रद्द किया जाता है, ऐसा रद्दकरण विलेख सदैव सक्षम सिविल न्यायालय द्वारा पक्षकारों के अधिकारों के न्यायनिर्णयन के अध्यधीन है।

Amudhavali and ors. v. P. Rukumani and ors.

Judgment dated 07.12.2021 passed by the Supreme Court in Civil Appeal No. 7464 of 2021, reported in 2022 (2) MPLJ 264 (SC)

Relevant extracts from the judgment:

From a perusal of the impugned order passed by the High Court, it is clear that the said judgment is rendered mainly relying on the judgment of this Court in the case of ***Satya Pal Anand v. State of Madhya Pradesh, (2016) 10 SCC 767***. The

aforesaid case relates to allotment of a site by a co-operative society and on the ground that the condition of allotment is violated by not constructing house within the time frame, and the original allottee has breached the condition, cooperative society has cancelled the allotment and subsequently executed an extinguishment deed.

In the aforesaid judgment, it is held that the original allottee has also entered into compromise with subsequent purchasers of the land and notwithstanding the same, he has raised dispute under Section 64 of the Madhya Pradesh Cooperative Societies Act, 1960. When the dispute was pending on the very same cause of action, writ petition was filed. When the original purchaser has approached the Sub-registrar for cancellation of a cancellation deed, the registering authority by a speaking order has rejected the same on two grounds, i.e., firstly, dispute was pending between the parties in the Civil Court; and secondly on the ground that it had no jurisdiction to cancel the registration of a registered document.

In the case on hand it is not in dispute, that after registering the cancellation deed, respondent nos.1 to 4 have filed a civil suit which is pending in O.S.No.142 of 2008, seeking declaration that sale deed dated 09.03.2005 executed in favour of the appellants is null and void. In the said suit the appellants have already filed written statement. The learned Single Judge of the High Court also observed that the subsequent cancellation deed is always subject to adjudication of rights of the parties by the competent civil court. As much as the appellants have already filed a written statement in the civil suit in O.S. No.142 of 2008, and contesting the same, we are not inclined to examine the validity and effect of such cancellation deed, at this stage, by interfering with the impugned order of the High Court.

It is settled legal position that registration of document is always subject to adjudication of rights of the parties by the competent civil court. Had the appellants not entered their appearance by filing a written statement, it would have been a different situation. It is also to be noted that subsequent to registration of cancellation deed, a portion of the land is transferred to respondent no. 8, to an extent of 0.25 cents.

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PART - IIA

GUIDELINES FOR THE INVESTIGATING AGENCIES AND CRIMINAL COURTS REGARDING ARREST AND DECIDING OF BAIL APPLICATION

Hon'ble the Supreme Court has issued guidelines in ***Satender Kumar Antil v. Central Bureau of Investigation [SLP (Cr.) 5191/2021, order dated 11.07.2022***] to be followed by the Investigating Agencies and Criminal Courts regarding arrest and deciding of bail application.

The guidelines are as under:

(a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

(b) The investigating agencies and their officers are duty-bound to comply with the mandate of Sections 41 and 41A of the Code and the directions issued by this Court in ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273***. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

(c) The court will have to satisfy themselves on the compliance of Sections 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

(d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Sections 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

(e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.

(f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in ***Siddharth v. State of Uttar Pradesh, 2021 SCC Online SC 615***.

(g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Government will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

(h) The High Courts are directed to undertake the exercise of finding out the under trial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

(i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

(j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at district judiciary level and the High Court as earlier directed by this Court in ***Bhim Singh v. Union of India, (2015) 13 SCC 605***, followed by appropriate orders.

(k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

(i) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

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PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

मध्यप्रदेश नियम तथा आदेश (आपराधिक) में संशोधन

क्र.D–1174, जबलपुर, दिनांक 19 मई 2022

भारतीय संविधान के अनुच्छेद 227 सहपठित धारा 477 दं.प्रं.सं., 1973 (1974 का 2) द्वारा प्रदत्त शक्तियों को प्रयोग में लाते हुए, मध्य प्रदेश उच्च न्यायालय, माननीय सर्वोच्च न्यायालय द्वारा स्वप्रेरणा रिट याचिका (आपराधिक) क्रमांक 1/2017 संदर्भः आपराधिक विचारणों में कमियों और अपर्याप्तताओं के संबंध में दिशानिर्देश जारी करने संबंधी पारित आदेश के अनुसरण में, एतद् द्वारा, मध्य प्रदेश नियम तथा आदेश (आपराधिक) में निम्नलिखित संशोधन करती है, अर्थात्;

संशोधन

उक्त नियमों में,–

1. नियम 107 के पश्चात् निम्नानुसार नियम जोड़ा जाए, अर्थात्;

"108. अभियोजकों एवं अन्वेषकों का पृथक्करण–

अन्वेषण के दौरान अन्वेषण अधिकारी को सलाह देने के लिए राज्य सरकार लोक अभियोजकों से भिन्न अधिवक्ताओं की नियुक्ति करेगी।"

2. नियम 117 के पश्चात्, निम्नलिखित नियम जोड़े जाएं, अर्थात्;

"117.क. धारा 173, 207 एवं 208 दण्ड प्रक्रिया संहिता,1973 के अंतर्गत दस्तावेज प्रदान करना–

दण्ड प्रक्रिया संहिता, 1973 की धारा 207 एवं 208 के अनुसार प्रत्येक अभियुक्त को दं.प्र.सं. की धारा 161 एवं 164 के अधीन अभिलिखित साक्षियों के कथन एवं अन्वेषण के दौरान जब्त किए गए दस्तावेजों, आवश्यक वस्तुओं तथा प्रदर्शों की एक सूची, जिन पर अन्वेषण अधिकारी (आई.ओ.) निर्भर रहा है, प्रदाय किए जाएंगे।

स्पष्टीकरणः– कथनों, दस्तावेजों, आवश्यक वस्तुओं तथा प्रदर्शों की सूची उन कथनों, दस्तावेजों, आवश्यक वस्तुओं तथा प्रदर्शों को विनिर्दिष्ट करेगी जिन पर अन्वेषण अधिकारी निर्भर नहीं रहा है।

117.ख. जमानत–

(1) अजमानतीय मामलों में जमानत के लिए आवेदन सामान्यतः प्रथम सुनवाई की तारीख से 3 से 7 दिनों की अवधि के भीतर निपटाए जाएंगे। यदि आवेदन ऐसी अवधि के भीतर निपटाया नहीं जाता है तो पीठासीन अधिकारी आदेश में ही उसके कारण देंगे। आदेश एवं जमानत आवेदन का उत्तर अथवा प्रास्थिति प्रतिवेदन (पुलिस या अभियोजन द्वारा) यदि कोई हो तो, की प्रति अभियुक्त को आदेश सुनाए जाने की तारीख को ही दी जाएगी।

(2) पीठासीन अधिकारी, किसी भी समुचित मामले में अपने स्वविवेकानुसार मामले के भारसाधक अभियोजक द्वारा कथन प्रस्तुत किए जाने पर जोर दे सकते हैं।"

3. नियम 170 के पश्चात्, निम्नलिखित नियम जोड़ा जाए, अर्थात्;

"170.क. आरोप विरचित करने के आदेश के साथ दं.प्र.सं., 1973 की अनुसूची II के प्ररूप 32 में औपचारिक आरोप होगा जो कि पीठासीन अधिकारी द्वारा संपूर्ण एवं पूर्ण रूप से बुद्धि का संपूर्ण एवं पूर्ण अनुप्रयोग करके व्यक्तिगत रूप से तैयार किया जाएगा।"

4. नियम 180, 181, 182, 183, 184, 185, 186 एवं 187 के स्थान पर निम्नलिखित नियम स्थापित किए जाएं, अर्थात्;

"180. प्रक्रिया–

(1) साक्षियों की अभिसाक्ष्य, यदि संभव हो तो, टंकित प्रारूप में अभिलिखित की जाएगी। पीठासीन अधिकारी के बोलने पर न्यायालय में साक्ष्य का अभिलेख, यदि उपलब्ध हो तो कम्प्यूटर पर तैयार किया जाएगा। किसी मामले में, यदि टंकित प्रारूप में अभिसाक्ष्य को अभिलिखित करना संभव नहीं है तो साक्षी की अभिसाक्ष्य न्यायालय द्वारा उसकी स्वयं की हस्तलिपि में लिखी जाएगी।

परन्तु जब किसी मामले में अभिसाक्ष्य अंग्रेजी या राज्य की भाषा के अलावा किसी अन्य भाषा में अभिलिखित की जानी है, तो पीठासीन अधिकारी उसी समय या तो स्वयं या एक सक्षम अनुवादक के माध्यम से अभिसाक्ष्य का अंग्रेजी में अनुवाद करेगें।

(2) अभिसाक्ष्य को साक्षी की भाषा में और जब अनुवाद किया जाता है तो उपनियम (1) में यथा उपबंधित अंग्रेजी में अभिलिखित किया जाएगा।

(3) अभिसाक्ष्यों को बिना किसी अपवाद के पीठासीन अधिकारी द्वारा न्यायालय में पढ़कर सुनाया जाएगा। इस प्रकार अभिलिखित की गई गवाही की हार्ड कॉपी, जिसे पीठासीन अधिकारी/न्यायालय अधिकारी द्वारा एक सत्यप्रतिलिपि के रूप में सम्यक रूप से हस्ताक्षरित किया गया है, अभियुक्त या अभियुक्त का प्रतिनिधित्व करने वाले अधिवक्ता को, साक्षी को और अभियोजक को उसे अभिलिखित करने की तिथि पर, पावती लेकर, निःशुल्क उपलब्ध कराई जाएगी।

(4) पीठासीन अधिकारी एक ही समय पर एक से अधिक प्रकरणों में साक्ष्य अभिलिखित नहीं करेंगे।

181. प्रत्येक न्यायालय में एक अनुवादक उपलब्ध कराया जाएगा और पीठासीन अधिकारियों को स्थानीय भाषाओं में, पीठासीन अधिकारी के निवेदन पर प्रशिक्षित किया जाएगा।

यदि अनुवादक न्यायालय का कर्मचारी नहीं है या सरकार द्वारा नियुक्त अनुवादक नहीं है तो न्यायालय उसे उसकी सेवाओं के लिए उचित पारिश्रमिक देने के लिए प्राधिकृत है, जो अर्द्धकुशल साक्षी को भुगतान किये गये डी ए की राशि से अधिक

नहीं हो। इस खाते के प्रभार उसी मद के नामे डाले जाएगें, जो साक्षी के खर्चे से संबंधित हो।

182. साक्षियों के प्ररूप–

(1) अभिसाक्ष्य विहित प्रपत्र पर और प्रथम पुरूष में अभिलिखित किये जाएगें।

(2) प्रत्येक साक्षी की अभिसाक्ष्य, अलग–अलग पैराग्राफ में विभक्त कर पैरासंख्या देते हुए अभिलिखित की जायेगी।

(3) अभियोजन साक्षियों को क्रमानुसार अ.सा. 1, अ.सा. 2 आदि के रूप में संख्यांकित किया जाएगा। इसी प्रकार बचाव साक्षियों को क्रमानुसार ब.सा. 1, ब.सा. 2 आदि के रूप में संख्यांकित किया जाएगा। न्यायालीय साक्षियों को क्रमानुसार न्या.सा. 1, न्या.सा. 2 आदि के रूप में संख्यांकित किया जाएगा।

(4) यदि अभिसाक्ष्य एक ही पत्रक में पूरा नहीं किया जा सके, तो इसे अगले पत्रक में जारी रखा जाना चाहिए। प्रथम अनुवर्ती पत्रक पर "2", दूसरे पर "3" और इसी प्रकार आगे की संख्या लिखी जाएगी। प्रत्येक पत्रक पर क्रमांक तथा अ.सा., ब.सा., न्या. सा. के रूप में संख्या इंगित करते हुए साक्षी का नाम होना चाहिए। प्रत्येक साक्षी का अभिसाक्ष्य पृथक–पृथक पत्रक पर और संहिता में विहित रीति में अभिलिखित किया जाना चाहिए। एक साक्षी का अभिसाक्ष्य विस्तारपूर्वक अभिलिखित करके और अन्य साक्षियों के नामों के सम्मुख यह प्रविष्ट करना कि वे "उपरोक्तानुसार कथन करते हैं" अवैध है।

(5) अभिसाक्ष्य पत्रकों और अनुवर्ती पत्रकों, दोनों के शीर्षक निरपवाद रूप से पीठासीन अधिकारी द्वारा स्वयं भरे जाने चाहिए। पूर्व दशा में, जब अपेक्षित हो, "प्रतिज्ञान" के स्थान पर शब्द "शपथ" स्थापित किया जाएगा। यदि साक्षी स्वयं की सही आयु बताने में समर्थ प्रतीत नहीं होता है तब शीर्षक में कथित आयु पीठासीन अधिकारी द्वारा अनुमानित की जाएगी। यदि, किसी विशेष कारण से, साक्षी का उसकी स्वयं की आयु के संबंध में कथन लिखा जाना आवश्यक हो, तो वह अभिसाक्ष्य के अंग के रूप में लिखा जाएगा। साक्षी का नाम, उसके पिता का नाम, निवास स्थान एवं व्यवसाय की विशिष्टियां उसके अभिसाक्ष्य का ही भाग होते हैं और यह शपथ या प्रतिज्ञान दिलाए जाने तक अभिलिखित नहीं किए जाने चाहिए। साक्षी का व्यवसाय यथार्थता के साथ अभिकथित किया जाना चाहिए। उदाहरण के लिए "नौकरी" पर्याप्त विवरण नहीं है, यह कथित होना चाहिए कि साक्षी किस प्रकार की नौकरी में है। इसी प्रकार, "निजी सेवा", जिसका तात्पर्य लोक–नियोजन के विपरीत निजी नियोजन से अधिक कुछ नहीं होता, इसे किसी विशिष्ट प्रकार के नियोजन के रूप में विचारित किया जाना चाहिए। किसी साक्षी का व्यवसाय केवल शासकीय सेवक नहीं लिखा जाना चाहिए, इसका कारण यह है कि सामान्यतः यह जानना उपयोगी होता है कि वह किस प्रतिष्ठा का है तथा कभी यह जानना विशेष महत्व का होता

है कि क्या वह पुलिस अधिकारी है या नहीं। यह ध्यान में रखा जाना चाहिए कि स्थानीय रूप से विख्यात एक साक्षी न्यायालय में विख्यात नहीं भी हो सकता है, जिसके लिये अन्ततः अभिलेख प्रस्तुत किया जा सकता है। यदि साक्षी विवाहित स्त्री है तब उसके पिता के स्थान पर उसके पति का नाम लिखा जाना चाहिए।

(6) अभिसाक्ष्य अभिलिखित करते समय, बोलचाल की भाषा के शब्दों के प्रयोग से बचना चाहिए और यदि ऐसे शब्द आवश्यक हैं तो उनके निकटतम अर्थ को कोष्ठकों में बताया जाना चाहिए ताकि संदिग्धता से बचा जा सके। भारतीय तिथियों के बाद कोष्ठकों में उनके अंग्रेजी समकक्ष होने चाहिए।

(7) यदि कोई साक्षी कुछ सीमा चिन्हों को दर्शाते हुए दूरी के संबंध में कथन करता है, तो पीठासीन अधिकारियों द्वारा अनुमानित दूरी अभिनिश्चित की जानी चाहिए तथा कोष्ठकों में उल्लिखित की जानी चाहिए।

(8) पीठासीन अधिकारी को साक्षी की भाव–भंगिमा के संबंध में टिप्पणी देने में, जबकि ऐसी भाव–भंगिमा ध्यान देने योग्य है तथा साक्षी द्वारा दी गई साक्ष्य के मूल्यांकन में उसके अनुमान को प्रभावित करती है, चूक नहीं करनी चाहिए।

(9) अभिसाक्ष्यों का अभिलेख मुख्य परीक्षण, प्रति परीक्षण एवं पुनः परीक्षण की तिथि उपदर्शित करेगा।

(10) पीठासीन अधिकारी, जहां कहीं आवश्यक हो, अभिसाक्ष्य को प्रश्न व उत्तर के रूप में अभिलिखित करेंगें।

(11) अभियोजन अथवा बचाव पक्ष के अधिवक्ता द्वारा की गई आपत्तियों पर ध्यान दिया जाएगा तथा उन्हें साक्ष्य में परिलक्षित किया जाएगा तथा उन्हें यथाशीघ्र, विधि के अनुसार या विद्वान न्यायाधीश के विवेक पर, प्रश्नगत साक्षी की अभिसाक्ष्य की समाप्ति पर विनिश्चित किया जाएगा।

(12) किसी पश्चातवर्ती तिथि पर साक्षी का नाम और क्रमांक स्पष्ट रूप से वर्णित किया जाएगा, यदि साक्ष्य उस तिथि पर समाप्त नहीं होती है जिस तारीख को वह आरंभ होती है।

(13) प्रत्येक साक्षी की साक्ष्य को, उस साक्षी को पढ़कर सुनाना चाहिए अथवा इसे स्वयं साक्षी द्वारा पढ़ा जा सकता है। प्रत्येक अभिसाक्ष्य को पीठासीन अधिकारी द्वारा हस्ताक्षरित (ना केवल अद्योहस्ताक्षरित) किया जाना चाहिए, जिन्हें अपने हस्ताक्षर में कम से कम अपने अधिकारिक पदनाम को दर्शाने वाले आद्याक्षरों को जोड़ना चाहिए, ताकि अभिसाक्ष्य स्वयं में पूर्ण हो सके। प्रत्येक अभिसाक्ष्य पत्र साक्षी द्वारा हस्ताक्षरित/अंगुष्ठ चिन्हित, जैसी भी स्थिति हो, किया जाएगा।

टिप्पणी:– किसी अभिसाक्ष्य या न्यायिक कार्यवाहियों के अभिलेख के भाग में किए गए प्रत्येक परिवर्तन, अंतरालेखन तथा मिटाऐ जाने को सदैव उसी समय पीठासीन अधिकारी द्वारा अपने अद्योहस्ताक्षरों द्वारा अनुप्रमाणित किया जाएगा। वह अभिसाक्ष्यों

या साक्ष्य के ज्ञापन को टंकित कर सकेगा किंतु वह ऐसी टंकित विषयवस्तु के प्रत्येक पृष्ठ को हस्ताक्षरित करेगा।

(14) प्रत्येक अभिसाक्ष्य के अंत में, पीठासीन अधिकारी द्वारा निम्नलिखित रीति में एक प्रमाणपत्र अनुलग्नित किया जाएगाः–

"मेरे द्वारा न्यायालय में लिखा गया या लिखवाया गया तथा साक्षी द्वारा समझा/पढ़ा गया अथवा साक्षी को समझाया/पढ़कर सुनाया गया।"

(15) यदि साक्षी अभिलेख की शुद्धता स्वीकार करता है, अथवा जब कोई आवश्यक शुद्धियां की गई है, तब पीठासीन अधिकारी को अभिसाक्ष्य के पाद भाग पर अलग से उपयुक्त पृष्ठांकन करके तथा हस्ताक्षरित करके उसे प्रमाणित करना चाहिए। यदि साक्षी साक्ष्य के किसी भाग की शुद्धता उस समय अस्वीकार करता है जब ऐसा भाग उसे पढ़कर सुनाया जाता है, तब पीठासीन अधिकारी अभिलेख में सुधार करने के बजाए, साक्षी द्वारा प्रस्तुत आपत्ति का उस पर ज्ञापन बना सकेगा एवं ऐसी विशिष्टियां जोड़ेगा जिन्हें वह आवश्यक समझे।

183. श्रव्य–दृश्य संपर्क के माध्यम से साक्ष्य का अभिलेखन–

साक्ष्य का श्रव्य–दृश्य संपर्क के माध्यम से अभिलेखन इस संबंध में पृथक रूप से बनाए गए नियमों के अनुसार किया जाएगा।

टिप्पणीः वर्तमान में "मध्यप्रदेश जिला न्यायालय वीडियो कॉन्फ्रेसिंग एवं ऑडियो–विजुअल इलेक्ट्रॉनिक लिंकेज नियम, 2020" दिनांक 20.11.2020 को राजपत्र में अधिसूचित किए गए हैं।

184. आवश्यक वस्तुओं एवं साक्ष्य का प्रदर्शित किया जाना–

(1) अभियोजन प्रदर्श पी 1, पी 2 आदि के रूप में क्रमानुसार चिन्हांकित किए जाएंगे। समानतः, प्रतिरक्षा प्रदर्श, प्रदर्श डी 1, डी 2 आदि के रूप में क्रमानुसार चिन्हित किए जाएंगे। न्यायालय प्रदर्श, प्रदर्श सी 1, सी 2 आदि के रूप में क्रमानुसार चिन्हित किए जाएंगें।

(2) उस साक्षी का आसानी से पता लगाने के लिए, जिसके माध्यम से सर्वप्रथम साक्ष्य में दस्तावेज प्रस्तुत किया गया था, प्रदर्श क्रमांक आगे, प्रदर्श संख्या के पश्चात् ऐसे साक्षी की साक्षी संख्या दर्शित करेंगें। यदि कोई प्रदर्श, बिना उचित प्रमाण के चिन्हित किया गया है, तो उसे कोष्ठक में (प्रमाण के अध्यधीन) दिखाकर दर्शाया जावेगा।

स्पष्टीकरणः यदि अभियोजन साक्षी क्र.1 (अ.सा.1) साक्ष्य में कोई प्रलेख प्रस्तुत करता है, तो उस प्रलेख को प्रदर्श पी. 1/अ.सा. 1 चिन्हित किया जाएगा। यदि उस प्रलेख को चिन्हांकित किए जाने के समय उसके लिए उचित प्रमाण प्रस्तुत नहीं किया जाता है, तो उसे प्रदर्श पी 1/अ.सा. 1 (प्रमाण के अधीन) चिन्हांकित किया जाएगा। अ.सा.1 द्वारा प्रस्तुत द्वितीय प्रलेख प्रदर्श पी. 2/अ.सा. 1 होगा।

(3) आवश्यक वस्तुएं क्रमानुसार आ.व. 1, आ.व. 2 इत्यादि के रूप में चिन्हित की जाएंगी।

185. अभियुक्त, साक्षी, प्रदर्शों तथा आवश्यक वस्तुओं का पश्चात्वर्ती उद्धरण–

(1) आरोप विरचना के पश्चात्, अभियुक्तों को आरोप में अभियुक्त श्रृंखला में उनकी रैंक व उनके नाम अथवा अन्य संदर्भों से संदर्भित किया जाएगा।

(2) साक्षियों की साक्ष्य अभिलिखित करने, प्रदर्श व आवश्यक वस्तुओं को चिन्हित करने के पश्चात्, अन्य साक्षियों की साक्ष्य अभिलिखित करने के दौरान, साक्षीगण, प्रदर्श व आवश्यक वस्तुएं उनके क्रमांक से संदर्भित की जाएंगी ना कि उनके नामों या अन्य संदर्भों से।

(3) जहां शिकायत या पुलिस रिपोर्ट में उद्धरित साक्षियों का परीक्षण नहीं हुआ है, वे उनके नामों व शिकायत या पुलिस रिपोर्ट में उन्हें आवंटित संख्या से संदर्भित किये जाएंगे।

186. दंड प्रक्रिया संहिता की धारा 161 व 164 के अंतर्गत कथन संबंधी उद्धरण–

(1) प्रतिपरीक्षण के दौरान संबंधित साक्षी का खंडन करने के लिए इस्तेमाल किये गये धारा 161 द.प्र.सं. के तहत दर्ज बयान के सुसंगत हिस्से को उद्धृत किया जाएगा। यदि उपरोक्तानुसार सुसंगत अंश उद्धृत किया जाना संभव न हो, तो पीठासीन अधिकारी, अपने स्वविवेक से, ऐसे सुसंगत अंश के प्रारंभिक व अंतिम शब्दों को, पृथक अंकन के माध्यम से, अभिसाक्ष्य अभिलिखित करते समय विनिर्दिष्टतः दर्शायेगा।

(2) ऐसे मामलों में, जहां सुसंगत अंश उद्धृत नहीं किया जाता है, केवल अंशों को ही अभियोजन या बचाव प्रदर्श के रूप में, जैसी भी स्थिति हो, स्पष्टतः चिन्हित किया जाएगा, ताकि साक्ष्य के अन्य अग्राह्य भाग अभिलेख का हिस्सा न हो।

(3) ऐसे मामलों में, जहां सुसंगत अंश उद्धृत नहीं किया जाता, वहां ग्राह्य भाग को स्पष्टतः अभियोजन अथवा बचाव प्रदर्श के रूप में, जैसी भी स्थिति हो, चिन्हित किया जाएगा।

(4) जब कभी जीवित व्यक्तियों के पूर्व कथनों के ऐसे अंश विरोधाभास/संपुष्टि हेतु प्रयुक्त किए जाते हैं, तब धारा 161 के अधीन अभिलिखित कथनों पर लागू होने वाले पूर्वोक्त नियम, द.प्र.सं. की धारा 164 के अंतर्गत अभिलिखित किए गये कथनों पर यथावश्यक परिवर्तन सहित लागू होंगें।

(5) द.प्र.सं. की धारा 161 व 164 के अधीन संपूर्ण कथन का सर्वव्यापक अंकन नहीं किया जाएगा।

187. संस्वीकृति कथनों का चिन्हांकन–

पीठासीन अधिकारी भारतीय साक्ष्य अधिनियम, 1872 की धारा 8 अथवा धारा 27 के अधीन ज्ञापन का प्रदर्श चिन्हित करने के अतिरिक्त यह भी सुनिश्चित करेगें कि

ऐसे ज्ञापन के ग्राह्य भाग को चिन्हित किया गया है तथा ऐसे भाग को एक पृथक पृष्ठ पर निकाला गया है तथा चिन्हित किया गया है और एक प्रदर्श संख्या दी गई है।"

5. नियम 189 का लोप किया जाए।

6. नियम 191 के स्थान पर, निम्नलिखित नियम स्थापित किया जाए, अर्थात्;

"191. शीघ्र विचारण हेतु निर्देश –

(1) प्रत्येक जांच व विचारण में, कार्यवाहियां यथासंभव शीघ्रता से की जाएंगी, एवं, विशेष रूप से, जब एक बार साक्षियों का परीक्षण आरंभ हो गया है, तो वे सभी हाज़िर साक्षियों की परीक्षा हो जाने तक दिन–प्रतिदिन जारी रखी जाएंगीं, जब तक कि ऐसे कारणों से, जो लेखबद्ध किए जाएंगे, न्यायालय उन्हें अगले दिन से परे स्थगित करना आवश्यक न समझे। (द.प्र.सं., 1973 की धारा 309(1))। इस प्रयोजनार्थ, प्रारंभ में एवं आरोप की विरचना के तत्काल बाद, न्यायालय यह ध्यान में रखकर कि क्या साक्षी महत्वपूर्ण हैं अथवा चक्षुदर्शी साक्षी हैं, अथवा औपचारिक साक्षी हैं अथवा विशेषज्ञ हैं, साक्ष्य अभिलिखित करने हेतु लगातार तारीखों को सुनिश्चित करने व नियत करने के लिए समयबद्ध सुनवाई आयोजित करेगा, न्यायालय तब ऐसी निरंतर तारीखों को दर्शित करते हुए एक कार्यक्रम बनाएगा, जब साक्षियों का परीक्षण किया जाएगा; यह किसी एक दिनांक को साक्षियों के एक समूह की, अगली दिनांक को अन्य समूह की और इसी तरह आगे, अभिसाक्ष्यों के अभिलेखन का कार्यक्रम बनाने हेतु स्वतंत्र है। न्यायालय, विचारण आरंभ होने के पूर्व, यह भी सुनिश्चित करेगा कि क्या पक्षकार द.प्र.सं., 1973 की धारा 294 के अंतर्गत किसी दस्तावेज को स्वीकृत कराना चाहते है एवं उन्हें ऐसा करने की अनुज्ञा देगा, जिसके पश्चात् विचारण हेतु ऐसी लगातार तारीखें नियत की जाएंगी।

(2) विचारण के आरंभ होने के पश्चात्, यदि न्यायालय यह आवश्यक या उचित समझता है कि किसी जांच या विचारण का आंरभ करना मुल्तवी कर दिया जाए या उसे स्थगित कर दिया जाए तो वह समय–समय पर, ऐसे कारणों से जो लेखबद्ध किए जाएंगे, ऐसे निबंधनों पर, जैसे वह ठीक समझे, उतने समय के लिए जितना वह युक्तियुक्त समझे, उसे मुल्तवी या स्थगित कर सकेगा। यदि साक्षी हाजिर हों तब उनकी परीक्षा किए बिना स्थगन या मुल्तवी करने की मंजूरी विशेष कारणों के बिना, जो लेखबद्ध किए जाएंगे, नहीं दी जाएगी। (द.प्र.सं. 1973 की धारा 309(2))

(3) सत्र मामलों को अन्य कार्यों से अधिक प्राथमिकता दी जा सकती है एवं जब तक किसी दिन कोई सत्र कार्य पूर्ण नहीं होता, तो सत्र दिनों में कोई अन्य कार्य नहीं लिया जाएगा। जब एक बार कोई सत्र मामला नियत किया जाता है, तो जब तक अपरिहार्य ना हो, उसे मुल्तवी नहीं किया जाना चाहिए, और जब एक बार विचारण प्रारंभ हो चुका है तो इसके पूर्ण होने तक इसे दिन–प्रतिदिन जारी रखना चाहिए।

यदि किसी कारण से, किसी मामले को स्थगित या मुल्तवी करना हो तो दोनों पक्षों को इसकी सूचना तुरंत दी जानी चाहिए तथा साक्षियों को रोकने एवं स्थगित तारीख पर उनकी उपस्थिति सुनिश्चित करने हेतु तुरंत कदम उठाए जाने चाहिए।"

7. नियम 238 के पश्चात्, निम्नलिखित नियम जोड़े जाएं, अर्थात्;

"238.क. प्रत्येक निर्णय में निम्नलिखित अंतर्विष्ट होगें–

(1) नियमों के प्ररूप–घ के अनुसार पक्षकारों के नाम दर्शित करने वाली प्रस्तावना से शुरूआत।

(2) नियमों के प्ररूप–ड़ के अनुसार सारणीबद्ध विवरण।

(3) नियमों के प्ररूप–च के अनुसार अभियोजन साक्षी, बचाव साक्षी, न्यायालय साक्षी, अभियोजन प्रदर्श, बचाव प्रदर्श, न्यायालय प्रदर्श एवं आवश्यक वस्तुओं की सूची देते हुए परिशिष्ट।

238.ख. द.प्र.सं., 1973 की धारा 354 एवं 355 के अनुपालन में, समस्त मामलों में निर्णय में अंतर्विष्ट होंगेः

क. अवधारण के लिए एक या अधिक प्रश्न,

ख. उन पर विनिश्चय, एवं

ग. विनिश्चय का कारण।"

8. नियम 240 के स्थान पर, निम्नलिखित नियम स्थापित किया जाए, अर्थात्;

"240(1) निर्णय युक्तियुक्त लंबाई के पदों में लिखा जायेगा और प्रत्येक पद को क्रमानुसार संख्यांकित किया जायेगा। यथाविधि वे नियत टंकित पृष्ठ के लगभग तीन चौथाई से अधिक नहीं होना चाहिए तथा उनका उपपदों में विभाजन करने से बचा जाना चाहिए। पीठासीन अधिकारी, अपने स्वविवेक से, निर्णय को विभिन्न वर्गों में व्यवस्थित कर सकते हैं। यह मुख्यतः अपीलीय अथवा पुनरीक्षण की न्यायालय में तर्क के दौरान, निर्णय के किसी विशेष भाग के उल्लेख को सुविधाजनक बनाने के लिए हैं।

(2) प्रारंभिक पदों में कमोवेश आरोप के विवरण देते हुए संक्षेप में यह बताया जाना चाहिए कि किस व्यक्ति पर क्या करने का आरोप है, जिससे कि प्रारंभ से ही यह बात पता लग जाए कि निर्णय किस बारे में है।

(3) अगले एक या दो पदों में स्वीकृत/अविवादित तथ्य दिये जाने चाहिए और अभियोजन मामले तथा प्रतिरक्षा के मध्य स्पष्ट रूप से अंतर करते हुए संक्षेप में उल्लेख करना चाहिए कि क्या स्वीकृत/अविवादित है और क्या नहीं ग्रामों तथा स्थानों की दशा, उनके मध्य की दूरी एवं पक्षकारों एवं साक्षियों के आपसी संबंध जैसे विषयों का संकेत किया जाना चाहिए, जब ऐसे विवरण ऐसे मामलों को स्पष्टतः समझने के लिए आवश्यक हों।

(4) उसके पश्चात् पक्ष एवं विपक्ष के साक्ष्य को क्रमबद्ध करते हुए एवं तर्क पर विचार करते हुए और दूसरे बिंदु पर अग्रसर होने के पूर्व पहले बिंदु पर स्पष्ट निष्कर्ष देते हुए जो बिंदु निर्णय के लिए उठते हैं उन्हें एक के बाद एक उल्लिखित करना चाहिए। विभिन्न बिन्दुओं को पृथक–पृथक पदों में अभिलिखित किए जाना चाहिए किंतु कुछ बिदुंओं के लिए एक से अधिक पदों की आवश्यकता पड़ सकती है। उद्देश्य के प्रश्न पर पहले विचार करना अनुचित है, क्योंकि वह ऐसे तर्क को आमंत्रित करता है कि एतद् द्वारा न्यायालय मामले के गुणदोषों का पूर्व से ही निर्णय कर लेती है।

(5) स्पष्ट एवं अविवादित बिन्दु पर श्रम नहीं करना चाहिए। उदाहरण के लिए यदि यह पाया जाता है कि एक व्यक्ति का सिर उसके शरीर से लगभग अलग हो गया है तो इस साक्ष्य पर विवेचन करना कभी–कभी ही आवश्यक हो सकता है कि वह व्यक्ति उसके बहुत पहले स्वस्थ नहीं था; उसकी चोटों की प्रकृति को इंगित करना और यह कहना कि यह स्पष्ट है और विवादित नहीं रहा है कि उसकी हत्या की गई थी, सामान्यतः पर्याप्त होगा और कि विनिश्चय के लिए केवल प्रश्न यह है कि उसकी किसने हत्या की।

(6) विनिश्चय हेतु उत्पन्न समस्त बिन्दुओं के विनिश्चय के पश्चात् सम्पूर्ण मामले का निर्णय उसी अथवा आगामी पद में दंडादेश, यदि कोई हो, सहित होगा। यदि अभियुक्त द्वारा एक से अधिक अपराध किया जाना पाया जाता है तब प्रत्येक अपराध के किये पृथक दंडादेश जब तक कि उससे भारतीय दंड संहिता की धारा 71 का अतिलंघन न होता हो, पारित किया जाना चाहिए, किंतु ऐसे दंडादेश समवर्ती रूप से चल सकेंगे।

(7) न्यायाधीश अथवा मजिस्ट्रेट को निर्णय का लेखन तब तक प्रारंभ नहीं करना चाहिए जब तक कि वह अपने मस्तिष्क में यह स्पष्ट नहीं कर लेता है कि कौन–कौन से बिन्दु पर उसे विनिश्चत करना है, उनका वह किस प्रकार निर्णय करने जा रहा है, और उनके निष्कर्षों के क्या कारण हैं तब वह इन बिदुंओं की, जहां तक संभव हो, स्पष्ट और संक्षिप्त चर्चा करेगा। निर्णय जब तक बाद में सतर्कतापूर्वक पढ़ा नहीं जाता और जहां आवश्यक हो सुधारा नहीं जाता, तब तक उसका पूरी तरह स्पष्ट होना असंभावित है।

(8) ये टिप्पणियां मुख्यतः विचारण न्यायालयों के मार्गदर्शन के लिए आशयित है, किन्तु सामान्य सिद्धांत अपील एवं पुनरीक्षण न्यायालयों द्वारा भी ध्यान में रखे जाना चाहिए।"

9. नियम 243 के स्थान पर, निम्नलिखित नियम स्थापित किया जाए, अर्थात्;

"**243.** (1) निर्णय में अभियुक्त, साक्षीगण, प्रदर्श तथा आवश्यक वस्तुओं को उनके नामपद्धति अथवा संख्या द्वारा संदर्भित किया जाएगा और न केवल उनके नाम से या अन्यथा।

जहां कहीं भी, अभियुक्त अथवा साक्षियों को उनके नाम से निर्दिष्ट करने की आवश्यकता हो, संख्या को कोष्ठक में उपदर्शित किया जाएगा।

(2) दोषसिद्धि के मामले में, अंर्तग्रस्त अपराध एवं दी गई सजा को निर्णय में पृथक रूप से दर्शाया जाएगा। यदि कई अभियुक्तगण है, तो उनमें से प्रत्येक के बारे में पृथक से कार्यवाही की जाएगी। दोषमुक्ति के मामले में एवं यदि अभियुक्त परिरोध में है, तो अभियुक्त को मुक्त करने के लिए निर्देश दिया जाएगा, जब तक कि ऐसा अभियुक्त किसी अन्य मामले में अभिरक्षा में न हो।"

10. नियम 458 में, अंतिम दो पैराग्राफ लोप किये जाएं।

11. प्ररूप–ग के पश्चात् निम्नलिखित प्ररूप जोड़े जाएं, अर्थात्;

प्ररूप–घ

समक्ष न्यायालयः ..... समक्ष ..... सत्र न्यायाधीश [निर्णय की तारीख] [प्रकरण सं. ..... /20 .....] (प्र.सू.रि./ अपराध और पुलिस थाने का विवरण)	
परिवादी	राज्य ..... या परिवादी का नाम
प्रतिनिधित्व द्वारा	अधिवक्ता का नाम
अभियुक्त	(1) नाम सभी विशिष्टयों सहित (अ 1) (2) नाम सभी विशिष्टयों सहित (अ 2)
प्रतिनिधित्व द्वारा	अधिवक्तागण का नाम

प्ररूप–ड़

अपराध की तारीख	
प्र.सू.रि. की तारीख	
आरोप–पत्र की तारीख	
आरोपों के विरचना की तारीख	
साक्ष्य प्रारम्भ किये जाने की तारीख	
निर्णय सुरक्षित किए जाने की तारीख	
निर्णय की तारीख	
दंडादेश, यदि कोई हो, की तारीख	

अभियुक्त का विवरण

अभियुक्त की श्रेणी	अभियुक्त का नाम	गिरफ्तारी की तारीख	जमानत पर रिहा किये जाने की तारीख	अपराध जिनका आरोप है	दोषमुक्ति या दोषसिद्धि	अधिरोपित दंडादेश	धारा 428 द.प्र.सं. के प्रयोजनार्थ विचारण के दौरान भोगी गई निरोध की अवधि

प्ररूप–च

अभियोजन/ प्रतिरक्षा/ न्यायालयीन साक्षियों की सूची

क. अभियोजन

श्रेणी	**नाम**	**साक्ष्य की प्रकृति** (चक्षुदर्शी साक्षी, पुलिस साक्षी, विशेषज्ञ साक्षी, चिकित्सीय साक्षी, पंच साक्षी, अन्य साक्षी)
अ.सा. 1		
अ.सा. 2		

ख. प्रतिरक्षा साक्षी, यदि कोई हो: –

श्रेणी	**नाम**	**साक्ष्य की प्रकृति** (चक्षुदर्शी साक्षी, पुलिस साक्षी, विशेषज्ञ साक्षी, चिकित्सीय साक्षी, पंच साक्षी, अन्य साक्षी)
ब.सा. 1		
ब.सा. 2		

ग. न्यायालयीन साक्षी, यदि कोई हो: –

श्रेणी	**नाम**	**साक्ष्य की प्रकृति** (चक्षुदर्शी साक्षी, पुलिस साक्षी, विशेषज्ञ साक्षी, चिकित्सीय साक्षी, पंच साक्षी, अन्य साक्षी)
न्या.सा. 1		
न्या.सा. 2		

अभियोजन/ प्रतिरक्षा/ न्यायालयीन प्रदर्शों की सूची

क. अभियोजन

सं. क्र.	प्रदर्श संख्या	विवरण
1	प्रदर्श पी. 1/ अ.सा. 1	
2	प्रदर्श पी. 2/ अ.सा. 2	

ख. प्रतिरक्षा :

सं. क्र.	प्रदर्श संख्या	विवरण
1	प्रदर्श डी. 1/ब.सा. 1	
2	प्रदर्श डी. 2/ब.सा. 2	

ग. न्यायालयीन प्रदर्श :

सं. क्र.	प्रदर्श संख्या	विवरण
1	प्रदर्श सी. 1/ न्या.सा. 1	
2	प्रदर्श सी. 2/ न्या.सा. 2	

घ. आवश्यक वस्तुएं :

सं. क्र.	भौतिक सामग्री संख्या	विवरण
1	आ.व. 1	
2	आ.व. 2	

*****

माननीय उच्च न्यायालय के
आदेशानुसार,
कृष्णमूर्ति मिश्रा, रजिस्ट्रार जनरल

मध्यप्रदेश सिविल न्यायालय नियम, 1961 में संशोधन

जबलपुर, दिनांक 19 मई 2022

क्र. D–1176,

भारत के संविधान के अनुच्छेद 227 के साथ पठित सिविल प्रक्रिया संहिता, 1908 (क्रमांक 5 सन् 1908) की धारा 122 एवं मध्य प्रदेश सिविल न्यायालय अधिनियम, 1958 (क्रमांक 19 सन् 1958) की धारा 23, द्वारा प्रदत्त शक्तियों को प्रयोग 5 में लाते हुए, मध्य प्रदेश उच्च न्यायालय, एतद् द्वारा, सिविल अपील क्रं. 2021 का 1659–1660 / विशेष अनुमति याचिका क्रमांक 7965–7966 / 2020 में माननीय उच्चतम न्यायालय द्वारा पारित निर्देश दिनांक 22.04.2021 के अनुसरण में मध्य प्रदेश सिविल न्यायालय नियम, 1961 में निम्नलिखित संशोधन करता है, अर्थात्:–

संशोधन

उक्त नियमों में,–

1. नियम 138 के उप–नियम (1) में, प्रारंभ में शब्द, क्रमांक तथा अक्षरों "आदेश 10 नियम 1 प्रावधानों की ओर जो कदाचित ही पालन किए जाते हैं की ओर पीठासीन न्यायाधीशों का ध्यान आकृष्ट किया जाता है।" के स्थान पर, निम्नलिखित शब्द, क्रमांक तथा अक्षर प्रतिस्थापित किये जाएं, अर्थात्:–

   "कब्ज़ा देने से संबंधित वादों में, न्यायालय को तीसरे पक्ष के हित के संबंध में आदेश 10 के अंतर्गत वाद के पक्षकारों की परीक्षा करना चाहिए। पीठासीन अधिकारी सिविल प्रक्रिया संहिता के आदेश 10 नियम 1 के उपबंधों का पालन करेंगे।"

2. नियम 143 में,–

   (1) उप–नियम (1) के पश्चात् निम्नलिखित उप–नियम जोड़ा जाए, अर्थात्:–

   "(1–क) कब्जा देने से संबंधित वादों में, न्यायालय को आदेश 11 नियम 14 के अतंर्गत शक्ति का प्रयोग करना चाहिए, जिसमें पक्षकारों को शपथ पर, ऐसे दस्तावेज प्रकट एवं पेश करने के लिए कहा जाए, जो पक्षकारों के कब्जे में हों, जिसमें ऐसी संपत्तियों में तीसरे पक्ष के हित से संबंधित घोषणा शामिल है।"

   (2) उप–नियम (2) के पश्चात् निम्नलिखित उप–नियम जोड़ा जाए, अर्थात्:–

   "(2–क) आदेश 10 के अंतर्गत पक्षकारों की परीक्षा या आदेश 11 के अंतर्गत दस्तावेज की प्रस्तुति या कमीशन की रिपोर्ट की प्राप्ति के पश्चात्, न्यायालय को वाद के सभी आवश्यक या उचित पक्षकारों को जोड़ना चाहिए जिससे कार्यवाहियों की बहुलता से बचा जा सके एवं ऐसे वाद हेतुकों का संयोजन भी उसी वाद में करना चाहिए।"

   (3) उप–नियम (4) के पश्चात्, निम्नलिखित उप–नियम जोड़ा जाए, अर्थात्:–

"(5) धन के संदाय के लिए वाद में, विवाद्यकों के स्थिरीकरण के पूर्व, प्रतिवादी जहाँ तक उसे वाद में उत्तरदायी बनाया जा रहा है, उस सीमा तक अपनी संपत्ति को शपथ पर प्रकट करने हेतु अपेक्षित किया जा सकेगा। न्यायालय इसके अतिरिक्त, किसी भी प्रक्रम पर, समुचित मामलों में, वाद लंबित रहने के दौरान, सिविल प्रक्रिया संहिता की धारा 151 के अंतर्गत शक्तियों को उपयोग करते हुए, किसी आज्ञप्ति की संतुष्टि सुनिश्चित करने हेतु प्रतिभूति अपेक्षित कर सकती है।"

3. नियम 168 में, विद्यमान पैराग्राफ उप–नियम (1) के रूप में क्रमांकित किया जाए व इस प्रकार क्रमांकित उप–नियम (1) के पश्चात्, निम्नलिखित उप–नियम जोड़ा जाए, अर्थात्:–

"(2) न्यायालय को, किसी संपत्ति के कब्जे के परिदान के संबंध में आज्ञप्ति पारित करने के पूर्व आवश्यक रूप से यह सुनिश्चित करना चाहिए कि आज्ञप्ति न केवल उस संपत्ति का स्पष्ट विवरण समाहित करे, बल्कि संपत्ति की स्थिति के संबंध में भी असंदिग्ध हो।"

4. नियम 184 में, उप–नियम (1) के अंत में, शब्दों "वाद का निराकरण यथासम्भव शीघ्र हो जाए।" के स्थान पर निम्नलिखित प्रतिस्थापित किया जाए, अर्थात्:–

"वे प्रवर्तन प्रकरण प्रस्तुत करने की दिनांक से छः माह के भीतर निराकृत हो जाएं, जिसे केवल लिखित में, ऐसे विलंब के कारणों को अभिलिखित करने पर ही बढ़ाया जा सकेगा।"

5. नियम 187 में, विद्यमान पैराग्राफ, उप–नियम (1) के रूप में क्रमांकित किया जाए व इस प्रकार क्रमांकित उप–नियम (1) के पश्चात्, निम्न उप–नियम जोड़ा जाए, अर्थात्:–

"(2) धन संबंधी वाद में, न्यायालय अनिवार्यतः निरपवाद रूप से आदेश 21 नियम 11 का प्रयोग कर, मौखिक आवेदन पर धन के भुगतान हेतु आज्ञप्ति के त्वरित निष्पादन को सुनिश्चित करेगा।"

6. नियम 197 में, विद्यमान पैराग्राफ को उप–नियम (1) के रूप में क्रमांकित किया जाए और इस प्रकार क्रमांकित उप–नियम (1) के बाद निम्न उप–नियम जोड़ा जाए, अर्थात्:–

"(2) सिविल प्रक्रिया संहिता की धारा 60 के अंतर्गत पद "..... निर्णीत–ऋणी के नाम में या किसी अन्य व्यक्ति द्वारा उसके लिए न्यास में या उसकी ओर से" को किसी अन्य व्यक्ति, जिससे वह हिस्सा, लाभ या संपत्ति प्राप्त करने की योग्यता रखता हो, को सम्मिलित करने हेतु उदारतापूर्वक पढ़ा जाना चाहिए।"

7. नियम 204 के बाद, निम्नलिखित नियम जोड़ा जाए, अर्थात्:–

"204–क (1) सिविल प्रक्रिया संहिता की धारा 47 या आदेश 21 के अंतर्गत अधिकारिता का प्रयोग करने वाले न्यायालय को अधिकारों का दावा करने वाले तीसरे पक्ष के आवेदन पर यंत्रवत सूचना जारी नहीं करना चाहिए। अग्रेतर, न्यायालय को ऐसे किसी भी आवेदन (आवेदनों) पर विचार करने से बचना चाहिए जिस पर पहले ही न्यायालय द्वारा वाद के न्यायनिर्णयन के समय विचार किया जा चुका हो या जो ऐसा विवाद्यक उठाता हो जो अन्यथा वाद के न्यायनिर्णयन के दौरान

उठाया और न्यायनिर्णीत किया जा सकता था यदि आवेदक द्वारा सम्यक सावधानी बरती गई होती।

(2) न्यायालय का निष्पादन की कार्यवाही के दौरान केवल आपवादिक व दुर्लभ मामलों में ही साक्ष्य लेने की अनुमति देनी चाहिए, जहां तथ्य का प्रश्न किसी अन्य त्वरित तरीके, जैसे कमिश्नर की नियुक्ति या शपथपत्र के साथ फोटो या वीडियो सहित इलेक्ट्रॉनिक सामग्री मंगाने, का सहारा लेकर विनिश्चित नहीं किया जा सकता।

(3) न्यायालय को उपयुक्त मामलों में, जहां वह आपत्ति या प्रतिरोध या दावा तुच्छ या दुर्भावनापूर्ण लगता है, आदेश 21 के नियम 98 के उप–नियम (2) का सहारा लेना चाहिए और साथ ही साथ धारा 35–क के अनुसार प्रतिकारात्मक खर्चे अनुदत्त करने चाहिए।"

8. नियम 232 में,–

(1) उप–नियम (1) के स्थान पर निम्नलिखित उप–नियम स्थापित किया जाए, अर्थात्:–

"(1) निष्पादन न्यायालय इस तथ्य से संतुष्ट होने पर कि पुलिस की सहायता के बिना डिक्री का निष्पादन संभव नहीं है, जिला पुलिस अधीक्षक/संबंधित थाने के भारसाधक अधिकारी को ऐसे कर्मचारियों को पुलिस सहायता उपलब्ध कराने हेतु निर्देश दे सकता है जो डिक्री के निष्पादन की दिशा में कार्य कर रहे हैं।"

(2) उप–नियम (2) में, "जिला पुलिस अधीक्षक" शब्दों के बाद चिन्ह व शब्द "/संबंधित थाने के भारसाधक अधिकारी" अंतर्विष्ट किए जाएं, जहाँ कहीं भी वे आते हैं।

(3) उप–नियम (2) के पष्चात्, निम्नलिखित उप–नियम जोड़ा जाए, अर्थात्:–

"(3) यदि लोक सेवक के विरूद्ध उसके कर्त्तव्यों के निर्वहन के दौरान किसी अपराध को न्यायालय के ज्ञान में लाया जाता है, तो उससे विधि के अनुसार कड़ाई से निपटा जाना चाहिए।"

9. नियम 243 के उप–नियम (1) में, अंत में, "सिविल प्रक्रिया संहिता" शब्दों के पश्चात्, निम्नलिखित जोड़ा जाए, अर्थात्:–

"तथा उपयुक्त मामले, जहाँ कब्ज़ा विवादित नहीं है और न ही न्यायालय के समक्ष न्यायनिर्णयन हेतु वह तथ्य का प्रश्न है, तब संपत्ति के सटीक विवरण तथा स्थिति का आकलन करने के लिए कमीशन जारी किया जा सकता है।"

10. नियम 276 में, अंत में, निम्नलिखित जोड़ा जाए, अर्थात्:–

"मामले के यथोचित न्यायनिर्णयन हेतु एक न्यायालय प्रापक को प्रश्नगत संपत्ति की स्थिति की निगरानी करने के लिए विधिक अभिरक्षक के रूप में नियुक्त किया जा सकता है।"

माननीय उच्च न्यायालय के आदेशानुसार,
कृष्णमूर्ति मिश्रा, रजिस्ट्रार जनरल

दण्ड विधि (मध्यप्रदेश संशोधन) अधिनियम, 2019

(दिनांक 28 जून, 2022 को राष्ट्रपति की अनुमति प्राप्त हुई; अनुमति;
''मध्यप्रदेश राजपत्र (असाधारण)'' में दिनांक 7 जुलाई, 2022 को प्रथमबार प्रकाशित की गई.)

मध्यप्रदेश राज्य को लागू हुए रूप में दण्ड प्रक्रिया संहिता, 1973 और भारतीय साक्ष्य अधिनियम, 1872 को और संशोधित करने हेतु अधिनियम,

भारत गणराज्य के सत्तरवें वर्ष में मध्यप्रदेश विधान–मंडल द्वारा निम्नलिखित रूप में यह अधिनियमित होः–

अध्याय–एक

प्रारंभिक

1. **संक्षिप्त नाम और प्रारंभ**.– (1) इस अधिनियम का संक्षिप्त नाम दण्ड विधि (मध्यप्रदेश संशोधन) अधिनियम, 2019 है।

(2) यह राजपत्र में इसके प्रकाशन का तारीख से प्रवृत्त होगा।

अध्याय–दो

दण्ड प्रक्रिया संहिता, 1973 का संशोधन

2. **मध्यप्रदेश राज्य को लागू हुए रूप में केन्द्रीय अधिनियम, 1974 का संख्यांक 2 का संशोधन** – मध्यप्रदेश राज्य को लागू हुए रूप में दण्ड प्रक्रिया संहिता, 1973 (1974 का 2) (जो इसमें इसके पश्चात् मूल अधिनियम के नाम से निर्दिष्ट है) को इसमें इसके पश्चात् उपबंधित रीति में संशोधित किया जाए।

3. **धारा 126 का संशोधन** – मूल अधिनियम की धारा 126 में, उपधारा (1) में, खण्ड (ग) में, पूर्ण विराम के स्थान पर, अल्प विराम स्थापित किया जाए और तत्पश्चात् निम्नलिखित खण्ड जोड़े जाएं, अर्थात् :–

''(घ) जहां धारा 125 की उपधारा (1) के खण्ड (ग) में निर्दिष्ट ऐसा व्यक्ति या उसकी धर्मज या अधर्मज संतान सामान्यतः निवास करता है/ निवास करती है,

(ङ) जहां धारा 125 की उपधारा (1) के खण्ड (घ) में निर्दिष्ट ऐसा व्यक्ति या उसके पिता या माता सामान्यतः निवास करता है/निवास करते हैं,

(च) जहां धारा 125 की उपधारा (1) के खण्ड (ङ) में निर्दिष्ट ऐसा व्यक्ति या उसके पितामह या मातामह सामान्यतः निवास करता है/निवास करते हैं।''

4. **धारा 273 का संशोधन** – (एक) पार्श्व शीर्ष के स्थान पर, निम्नलिखित पार्श्व शीर्ष स्थापित किया जाए, अर्थात् :–

''विचारण या अन्य कार्यवाही में साक्ष्य का लिया जाना'';

(दो) प्रारंभिक पैराग्राफ को उपधारा (1) के रूप में क्रमांकित किया जाए तथा इस प्रकार क्रमांकित उपधारा (1) के प्रारंभिक पैराग्राफ के स्थान पर, निम्नलिखित पैराग्राफ स्थापित किया जाए, अर्थात् :–

''(1) अभिव्यक्त रूप में जैसा उपबंधित है के सिवाय, विचारण या अन्य कार्यवाही के अनुक्रम में लिया गया सब साक्ष्य, साक्षी की वैयक्तिक उपस्थिति में या श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से और अभियुक्त की वैयक्तिक उपस्थित में, या श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से या, जब उसे वैयक्तिक हाजिरी से अभिमुक्त कर दिया गया है तब उसके अधिवक्ता की उपस्थिति में अभिलिखित किया जाएगा।'';

(तीन) उपधारा (1) के पश्चात्, निम्नलिखित नई उपधारा जोड़ी जाए, अर्थात् :–

''(2) उपधारा (1) में निर्दिष्ट साक्ष्य, उच्च न्यायालय द्वारा समय–समय पर विरचित नियमों और दिशानिर्देशों के अनुसार अभिलिखित किए जाएंगे।''

5 **धारा 278 का संशोधन** – मूल अधिनियम की धारा 278 में, उपधारा (1) के स्थान पर, निम्नलिखित उपधारा स्थापित की जाए, अर्थात् :–

''(1) जैसे–जैसे प्रत्येक साक्षी का साक्ष्य जो धारा 275 या धारा 276 के अधीन लिया जाए, पूरा होता जाता है, वैसे–वैसे वह, यदि अभियुक्त हाजिर हो तो उसकी उपस्थिति में, या यदि वह अधिवक्ता द्वारा हाजिर हो तो उसके अधिवक्ता की उपस्थिति में, या जब अभियुक्त की उपस्थिति धारा 273 के अधीन श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से हो, तो साक्षी को पढ़कर सुनाया जाएगा और यदि आवश्यक हो तो शुद्ध किया जाएगा।''

6. **धारा 281 का संशोधन** – मूल अधिनियम की धारा 281 में,–

''(एक) उपधारा (2) में, शब्द ''जब कभी अभियुक्त की परीक्षा महानगर मजिस्ट्रेट से भिन्न किसी मजिस्ट्रेट या सेशन न्यायालय द्वारा की जाती है'' के स्थान पर, ''जब कभी अभियुक्त की परीक्षा उसकी वैयक्तिक उपस्थिति में या श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से उसकी उपस्थिति में महानगर मजिस्ट्रेट से भिन्न किसी मजिस्ट्रेट या सेशन न्यायालय द्वारा की जाती है'' स्थापित किए जाए;

(दो) उपधारा (5) में, पूर्ण विराम के स्थान पर, कोलन स्थापित किया जाए और तत्पश्चात् निम्नलिखित परन्तुक जोड़ा जाए, अर्थात् :–

''परन्तु यदि अभियुक्त की परीक्षा श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से की जाती है तो अभियुक्त के हस्ताक्षर की आवश्कता नहीं होगी,''

7. **धारा 291 का संशोधन** – मूल अधिनियम की धारा 291 में, उपधारा (1) में, शब्द ''अभियुक्त की उपस्थिति में,'' के स्थान पर, शब्द ''अभियुक्त की वैयक्तिक उपस्थिति में या श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से उसकी उपस्थिति में'' स्थापित किए जाएं।

8. **धारा 305 का संशोधन** – मूल अधिनियम की धारा 305 में,–

(एक) उपधारा (3) में, शब्द ''प्रतिनिधि की हाजिरी में'' के स्थान पर शब्द '' प्रतिनिधि की वैयक्तिक उपस्थिति में या श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से उसकी उपस्थिति में'' स्थापित किए जाएं;

(दो) उपधारा (4) के स्थान पर, निम्नलिखित उपधारा स्थापित की जाए, अर्थात् :–

''(4) जहां निगम का कोई प्रतिनिधि या तो वैयक्तिक रूप से या श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से उपस्थित नहीं होता है, वहां कोई ऐसी अपेक्षा, जो उपधारा (3) में निर्दिष्ट

है, लागू नहीं होगी, किन्तु यदि वह श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से उपस्थित होता है, वहां कोई ऐसी अपेक्षा, जो उपधारा (3) में निर्दिष्ट है, लागू होगी।''

9. **धारा 317 का संशोधन** – मूल अधिनियम की धारा 317 में, निम्नलिखित स्पष्टीकरण जोड़ा जाए, अर्थात् :–

''स्पष्टीकरण.– इस धारा के प्रयोजन के लिए ''अभियुक्त की वैयक्तिक हाजिरी'' में श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से उसकी हाजिरी सम्मिलित होगी।''

10. **धारा 320 का संशोधन** – मूल अधिनियम की धारा 320 में, उपधारा (2) के नीचे सारणी में,–

(एक) कालम 1, 2 और 3 में, धारा 312 तथा उससे संबंधित प्रविष्टियों के पहले निम्नलिखित धाराएं तथा उनसे संबंधित प्रविष्टियां अन्तःस्थापित की जाएं, अर्थात् :–

1	2	3
''बलवा	147	वह व्यक्ति, जिसके विरूद्ध अपराध कारित करते समय बल या हिंसा का प्रयोग किया गया है; परन्तु अभियुक्त ऐसे अन्य अपराध के लिए आरोपित नहीं किया गया है, जो शमनीय नहीं है.
अश्लील कार्य या अश्लील शब्दों का प्रयोग	294	वह व्यक्ति, जिसे क्षोभ कारित करने हेतु अश्लील कार्य किए गए थे या अश्लील शब्दों का प्रयोग किया गया था।'';

(दो) कालम 1, 2 और 3 में, धारा 494 तथा उससे संबंधित प्रविष्टियों के पश्चात्, निम्नलिखित धारा तथा उससे संबंधित प्रविष्टियां अन्तःस्थापित की जाएं, अर्थात् :–

1	2	3
किसी स्त्री के पति या पति के नातेदार द्वारा उसके प्रति क्रूरता करना.	498–क	जिस स्त्री के साथ क्रूरता हुई :– परन्तु अपराध के शमन के लिए आवेदन के दिनांक से न्यूनतम छह माह की कालावधि व्यपगत हो गई हो और न्यायालय का, यदि यह समाधान हो जाता है कि शमन उस महिला के हित में है, तो वह आवेदन स्वीकार कर सकेगा जबकि कोई भी पक्षकार अनावर्ती कालावधि के भीतर ऐसे आवेदन को वापस नहीं ले लेता।'';

(तीन) कालम 1, 2 और 3 में, धारा 500 तथा उससे संबंधित प्रविष्टियों के पश्चात्, निम्नलिखित धारा तथा उससे संबंधित प्रविष्टियां अन्तःस्थापित की जाएं, अर्थात् :–

1	2	3
''आपराधिक अभित्रास, यदि धमकी, मृत्यु या घोर उपहति इत्यादि कारित करने की हो।	धारा 506 का भाग–दो	वह व्यक्ति, जिसके विरूद्ध आपराधिक अभित्रास का अपराध कारित किया गया था।''

11. धारा 353 का संशोधन – मूल अधिनियम की धारा 353 में, उपधारा (5) के स्थान पर, निम्नलिखित उपधारा स्थापित की जाए, अर्थात् :–

''(5) यदि अभियुक्त अभिरक्षा में है, तो यथास्थिति, व्यक्तिगत रूप से या श्रव्य–दृश्य इलेक्ट्रानिक साधनों के माध्यम से निर्णय सुनने के लिए उसे लाया जाएगा।''

12. धारा 390 का संशोधन. – मूल अधिनियम की धारा 390 में,–

(एक) पार्श्व शीर्ष, शब्द ''दोष मुक्ति से'' का लोप किया जाए;

(दो) शब्द तथा अंक ''जब धारा 378 के अधीन अपील उपस्थित की जाती है तब उच्च न्यायालय'' के स्थान पर, शब्द तथा अंक ''जब धारा 372 के परन्तुक या धारा 378 के अधीन अपील उपस्थित की जाती है तब उच्च न्यायालय या सेशन न्यायालय'' स्थापित किए जाएं।

13. धारा 451 का संशोधन. – मूल अधिनियम की धारा 451 उसकी उपधारा (1) के रूप में क्रमांकित की जाए और इस प्रकार क्रमांकित की गई उपधारा (1) के पश्चात्, निम्नलिखित नई उपधाराएं जोड़ी जाएं, अर्थात् :–

''(2) उपधारा (1) में अंतर्विष्ट किसी बात के होते हुए भी, कोई भी न्यायालय किसी ऐसी दुर्घटना जिसका परिणाम मृत्यु या शारीरिक रूप से उपहति या संपत्ति की क्षति हो, में अंतर्वलित मोटर यान को तब तक मुक्त नहीं करेगा जब तक कि ऐसा यान पंजीकृत स्वामी के नाम पर ली गई तृतीय पक्ष जोखिम के विरूद्ध बीमा पालिसी से आवृत्त नहीं हो या जब कि अन्वेषणकर्ता पुलिस अधिकारी द्वारा मांगे जाने के बावजूद पंजीकृत स्वामी ऐसी बीमा पालिसी को प्रस्तुत करने में असफल रहता है जब तक कि पंजीकृत स्वामी न्ययालय के संतोषप्रद रूप से प्रतिकर या भुगतान करने के लिए ऐसी पर्याप्त प्रतिभूति प्रस्तुत न कर दे जो कि ऐसी दुर्घटना से उद्भूत दावा प्रकरण में अवार्ड की जा सके।

(3) जहां मोटर यान, तृतीय पक्ष जोखिम के विरूद्ध बीमा पालिसी से आवृत्त नहीं है, या जब मोटर यान का पंजीकृत स्वामी उपधारा (2) में उल्लिखित परिस्थितियों में ऐसी पालिसी की प्रति प्रस्तुत करने में असफल रहता है, तो मोटर यान, अन्वेषणकर्ता पुलिस अधिकारी द्वारा यान कब्जे में लिए जाने की तारीख से तीन माह के समाप्त होने पर विहित रीति में, लोक नीलाम में विक्रय कर दिया जाएगा और उसके आगम, ऐसी दुर्घटना से उद्भूत होने वाले दावा प्रकरण में उस प्रतिकर के भुगतान के लिये जो दिया जा सकता है या दिया जा सकेगा, प्रश्नगत क्षेत्र में अधिकारिता रखने वाले दावा अभिकरण में पंद्रह दिन के भीतर जमा किए जाएंगे।''

14. धारा 457 का संशोधन.– मूल अधिनियम की धारा 457 में, उपधारा (2) के पश्चात्, निम्नलिखित नई उपधाराएं जोड़ी जाएं, अर्थात् :–

''(3) उपधारा (1) में अंतर्विष्ट किसी बात के होते हुए भी, कोई भी न्यायालय किसी ऐसी दुर्घटना जिसका परिणाम मृत्यु या शारीरिक रूप से उपहति या संपत्ति की क्षति हो, में

अंतर्वलित मोटर यान को तब तक मुक्त नहीं करेगा जब तक कि ऐसा यान पंजीकृत स्वामी के नाम पर ली गई तृतीय पक्ष जोखिम के विरूद्ध बीमा पालिसी से आवृत्त नहीं हो या जब कि अन्वेषणकर्ता पुलिस अधिकारी द्वारा मांगे जाने के बावजूद पंजीकृत स्वामी ऐसी बीमा पालिसी को प्रस्तुत करने में असफल रहता है जब तक कि पंजीकृत स्वामी न्यायालय के संतोषप्रद रूप में प्रतिकर का भुगतान करने के लिए ऐसी पर्याप्त प्रतिभूति प्रस्तुत न कर दे जो कि ऐसी दुर्घटना से उद्‌भूत दावा प्रकरण में अवार्ड की जा सके।

(4) उपधारा (2) में अंतर्विष्ट किसी बात के होते हुए भी, जहां मोटर यान, तृतीय पक्ष जोखिम के विरूद्ध बीमा पालिसी से आवृत्त नहीं है, या जब मोटर यान का पंजीकृत स्वामी उपधारा (3) में उल्लिखित परिस्थितियों में ऐसी पालिसी की प्रति प्रस्तुत करने में असफल रहता है, तो मोटर यान, अन्वेषणकर्ता पुलिस अधिकारी द्वारा यान कब्जे में लिए जाने की तारीख से तीन माह के समाप्त होने पर विहित रीति में, लोक नीलामी रीति में, लोक नीलामी में विक्रय कर दिया जाएगा और उसके आगम, ऐसी दुर्घटना से उद्‌भूत होने वाले दावा प्रकरण में उस प्रतिकर के भुगतान के लिये जो दिया जा सकता है या दिया जा सकेगा, प्रश्नगत क्षेत्र में अधिकारिता रखने वाले दावा अधिकरण में पन्द्रह दिन के भीतर जमा किए जाएंगे।''

15. **प्रथम अनुसूची का संशोधन**.– मूल अधिनियम की प्रथम अनुसूची में, शीर्षक ''1. भारतीय दंड संहिता के अधीन अपराध,'' के अधीन, कॉलम 6 में, धारा 317, 318, 392, 393, 394 तथा 435 के समक्ष, शब्द ''सत्र न्यायालय'' के स्थान पर, शब्द ''प्रथम वर्ग मजिस्ट्रेट'' स्थापित किए जाएं।''

स्पष्टीकरण.– इस संशोधन के प्रयोजन हेतु, यह स्पष्ट किया जाता है कि यह संशोधन सेशन न्यायालय के समक्ष लंबित मामलों के विचारण को प्रभावित नहीं करेगा।

अध्याय–तीन

भारतीय साक्ष्य अधिनियम, 1872 का संशोधन

16. **मध्यप्रदेश राज्य को लागू हुए रूप में केन्द्रीय अधिनियम, 1872 का 1 का संशोधन**.– मध्यप्रदेश राज्य को लागू हुए रूप में भारतीय साक्ष्य अधिनियम, 1872 (1872 का 1) (जो इसमें इसके पश्चात् मूल अधिनियम को नाम से निर्दिष्ट है) को इसके पश्चात् उपबंधित रीति में संशोधन किया जाएगा।

17. **धारा 65–ख का संशोधन**.– मूल अधिनियम की धारा 65–ख में, उपधारा (4) में, पूर्ण विराम के स्थान पर, कोलन स्थापित किया जाए और तत्पश्चात् निम्नलिखित परन्तुक जोड़ा जाए, अर्थात् :–

''परंतु यदि न्यायालय श्रव्य–दृश्य इलेक्ट्रानिक साधन, कम्प्यूटर या किसी अन्य इलेक्ट्रानिक उपकरण के माध्यम से साक्ष्य अभिलिखित करता है, तो इस उपधारा के उपबंध लागू नहीं होंगे।''

मध्यप्रदेश के राज्यपाल के नाम से तथा
आदेशानुसार,
राजेश यादव, अतिरिक्त सचिव,

****

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर

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