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Section 52 – (i) Appeal – By a person who is not a party to the proceedings – Permissibility – Where a judgment and decree prejudicially effects such a person, he can prefer an appeal with the leave of the Appellate Court – Law governing grant of leave to appeal, summarized.

(ii) Transferee *pendent lite* – Impleadment of – Principles summarized.

धारा 52 – (i) अपील – ऐसे व्यक्ति द्वारा जो कार्यवाही में पक्षकार नहीं है – अनुज्ञेयता – जहां कोई निर्णय और डिक्री ऐसे व्यक्ति पर प्रतिकूल प्रभाव डालती है, वह अपीलीय

Part-IIA
(GUIDELINES)

EDITORIAL

Esteemed readers,

At the outset, it is with immense pride and great pleasure that we extend a warm welcome to our new Chairman, Hon'ble Shri Justice Atul Sreedharan. His Lordship brings with him a distinguished record of service and scholarship, having previously served as a member of the Committee for Judicial Training and as a respected resource person at the National Judicial Academy. We look forward with great anticipation to His Lordship's guidance, insight and valuable contributions in steering our academic and professional endeavours. We also express our gratitude to Hon'ble Shri Justice Sushrut Arvind Dharmadhikari, our former Chairman for his constant guidance and support. We wish His Lordship the best of tenure at the Kerala High Court.

The Academy reaffirms its commitment to promoting judicial excellence through a structured and comprehensive training schedule. Among the key initiatives in the last two months, the Academy conducted Institutional Advance Training Course for District Judges (Entry Level) on promotion from 3rd March, 2025 to 29th March, 2025. This intensive programme is designed to equip newly promoted District Judges with the jurisprudential and managerial skills essential for the effective discharge of their enhanced responsibilities. Further, an Awareness Programme focusing on Civil Appeals, Criminal Appeals, and Criminal Revisions was organized on 5th April, 2025 through online platforms and other modes of telecommunications, offering participants insights into contemporary practices and procedural nuances.

In addition, a Refresher Course for District and Additional Sessions Judges who have completed one year of service was organized from 21st April to 26th April, 2025, aimed at reinforcing core judicial competencies, promoting best practices, and fostering peer learning. To address broader continuing education needs, a series of Educational and Continuing Training (ECT) programmes were launched, covering various aspects of substantive and procedural law, judicial ethics and court management. Recognizing the pivotal role of the Bar, the Academy held two Special Workshops for Advocates on 05.04.2025 at Jabalpur and Bench at Indore, seeking to strengthen advocacy skills and enhance collaboration between the Bench and the Bar.

The Academy also emphasizes the urgent need to address the long-standing issue of delay in civil execution proceedings. It is imperative that courts exercise active supervision to ensure that executions are not reduced to protracted processes, thereby frustrating the rights of decree-holders. The Hon'ble Supreme Court, in its recent judgment in ***Periyammal (Dead) through LRs & ors. v. V. Rajamani & anr. etc., 2025 INSC 329***, has unequivocally called upon courts to treat execution proceedings with the seriousness they deserve. The judgment, which finds mention in Part IIA of this Journal, reiterates that expeditious execution is integral to the credibility of the justice delivery system and must be pursued with utmost diligence.

This edition also features Our Legends series, where we revisit the inspiring journey of Justice U.L. Bhat, the founder of this Academy. Justice Bhatt's visionary leadership and commitment to judicial education laid the foundation for the institution's enduring legacy. We hope that readers will draw inspiration from his life and work, which continue to guide and illuminate our collective path.

We earnestly invite our readers to contribute actively to this Journal by sharing their articles, views on emerging legal issues and suggestions for future editions. Your thoughtful engagement enriches this platform and strengthens the vibrant intellectual exchange that lies at the heart of our mission.

Lastly, I want to share an insight I felt in the recent times. I have a *peepal* tree in my yard. For the past two years, I've observed a fascinating cycle. Around March to April, the tree begins to shed all its leaves and stands bare for a few days, completely leafless, silent, almost as if it is resting. And then, magically, small buds start to appear. These buds slowly blossom into tender brown leaves, which gradually turn green. This entire transformation spans about two to three weeks.

Watching this cycle unfold reminds me of life itself, how periods of stillness or emptiness are not signs of an end, but gentle pauses before renewal. Just like the *peepal* tree, we too go through seasons, when we feel bare, vulnerable or lost. But with patience and trust in the process, life begins to bloom again.

Renewal always comes, quietly but surely.

Best wishes,

Krishnamurty Mishra
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Hon'ble Chief Justice Shri Suresh Kumar Kait with the participants of Institutional Advance Training Course for District Judges (Entry Level) on promotion (03.03.2025 to 29.03.2025)

Hon'ble Shri Justice Vivek Rusia, Administrative Judge, High Court of Madhya Pradesh, Bench at Indore, inaugurat programme for Technical staff of District Courts including Judicial Officers (ECT_11_2024) zone-wise under "e-Committee Special Drive Training and Outreach Programme through the State Judicial Academies" at Indore (01.03.2025)

REFRESHER COURSE FOR DISTRICT JUDGES (ENTRY LEVEL) (ON COMPLETION OF ONE YEAR SERVICE) (21.04.2025 - 26.04.2025)

Group A

Group B

HON'BLE SHRI JUSTICE ATUL SREEDHARAN ASSUMES CHARGE AS JUDGE OF HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Atul Sreedharan, on His Lordship's transfer from High Court of Jammu & Kashmir and Ladakh, was administered oath of office on 24th March, 2025 by Hon'ble the Chief Justice Shri Suresh Kumar Kait.

His Lordship was born on 24th May, 1966. After obtaining degrees of B.A. (History) from the University of Madras in 1987 and LL.B. from Meerut University in the year 1992, His Lordship was enrolled as an Advocate of M.P. State Bar Council on 3rd April, 1992 and practiced under the able guidance of Mr. Gopal Subramanium till 1997 and assisted him in Civil and Criminal matters before the Supreme Court of India, High Court of Delhi and Trial Court at Delhi. From 1997 to December, 2000, practised independently at Delhi. Thereafter, shifted to Indore in the year 2001 and has been practicing continuously before the High Court of M.P., Bench Indore. His Lordship took oath as Additional Judge, High Court of Madhya Pradesh on 7th April, 2016 and Permanent Judge on 17th March, 2018.

After approximately a period of seven years, His Lordship was transferred to the High Court of Jammu & Kashmir & Ladhak and took oath as Judge of High Court of Jammu & Kashmir and Ladakh on 10th May, 2023. His Lordship has joined us again on 24th March 2025.

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

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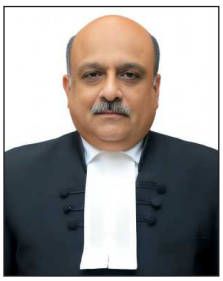
TRANSFER OF HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI TO HIGH COURT OF KERALA



Hon'ble Shri Justice Sushrut Arvind Dharmadhikari, who occupied the august office of the Judge of the High Court of Madhya Pradesh for nine years, has been transferred to the High Court of Kerala as Judge.

His Lordship was born on 8th July, 1966 at Raipur (Chhattisgarh). After obtaining Bachelor's Degree in Commerce from G.S. College of Commerce & Economics, Nagpur and LL.B. Degree from University College of Law Main Branch, Nagpur, His Lordship enrolled as an Advocate with the State Bar Council of Madhya Pradesh in the year 1992 and joined the profession as a junior Advocate to Shri Y.S. Dharmadhikari, Senior Advocate (Ex Advocate General of

Madhya Pradesh) in the High Court of Madhya Pradesh at Jabalpur in 1992. His Lordship, started independent practice in the year 1996 and practiced in Civil, Constitutional, Criminal branches of law for about 24 years.

His Lordship took oath as Additional Judge, High Court of Madhya Pradesh on 7th April, 2016 and Permanent Judge on 17th March, 2018.

During His Lordship's tenure in the High Court of Madhya Pradesh rendered invaluable services as Judge, Administrative Judge, Chairman, Governing Council of Madhya Pradesh State Judicial Academy and Member of various Administrative Committees of the High Court. His Lordship provided wholehearted support and motivation to the Academy in conduction of its various activities. His Lordship was accorded farewell ovation on 21st April, 2025 at High Court of Madhya Pradesh, Principal Seat, Jabalpur.

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

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HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA DEMITS OFFICE

Hon'ble Shri Justice Prakash Chandra Gupta has demitted office on His Lordship's attaining superannuation. Hon'ble Shri Justice Prakash Chandra Gupta was born on 1st April, 1963.

His Lordship joined Judicial Services on 31st July, 2002 as officiating District Judge in Higher Judicial Service. His Lordship was granted Selection Grade Scale with effect from 30th September, 2009 and Super Time Scale with effect from 1st June, 2017.

During His Lordship's tenure as Judicial Officer, was posted at various places. His Lordship also worked as Principal Registrar (Vigilance), High Court of Madhya Pradesh, Jabalpur and District Judge (Inspection), Gwalior. Prior to elevation as Judge of the High Court of Madhya Pradesh, His Lordship was posted as Principal District & Sessions Judge, Ujjain. His Lordship was appointed as Judge of High Court of Madhya Pradesh on 15th February, 2022.

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

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

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PART – I

OUR LEGENDS
HON'BLE SHRI JUSTICE U. L. BHAT
14TH CHIEF JUSTICE, HIGH COURT OF MADHYA PRADESH

"Law without conscience is tyranny and conscience without courage is silence."

These words aptly sum up the legacy of Justice Ullal Lakshminarayana Bhat – a jurist whose career was defined by unwavering integrity, intellectual rigor and a profound commitment to justice.

Born in 1933 in the serene village of Ullal, near Mangalore, Justice Bhat's formative years were shaped by discipline, resilience and a deep reverence for public service. He received his early education in Vizianagaram, Andhra Pradesh and graduated with a degree in Law from Madras Law College in 1954. A year later, he began his legal practice before the Chief Justice's Bench of the Madras High Court, working under the tutelage of the legendary B.S. Kakkillaya.

In 1961, Justice Bhat was selected as Munsiff by the Kerala Public Service Commission. However, the State Government, for political reasons, denied him the appointment. This early career setback did not deter him. In 1968, he was selected as a District and Sessions Judge in the Kerala High Court and assumed office in 1970.

In 1980, Justice Bhat was elevated to the Kerala High Court, where he soon earned a reputation for clarity of thought and humane jurisprudence. He served as the Acting Chief Justice in 1991 and in 1993, was appointed Chief Justice of the Gauhati High Court, where he passed several landmark judgments. In 1995, he was transferred as Chief Justice of the High Court of Madhya Pradesh, a position he held until his retirement.

At his welcome ovation, His Lordship was showered with compliments and high expectations owing to the fair, hardworking and swift image he had built. To this, he responded:

> "I am quite conscious of the stress and strain which this great Judiciary has been passing through in the recent past. Firstly, I am grieved about the causes and the roots of the stress and strain, which, perhaps, are a sort of warning to me. I am overwhelmed for two reasons – overwhelmed by the galaxy of Chief Justices and Judges who adorned the Benches of this Court, which has set up a very great and high tradition of judicial statesmanship, delivery of justice based on unchangeable principles of integrity, straightforwardness and devotion to judicial duty."

He also recognized the mammoth task ahead, as reflected in his words:

> "The second factor that overwhelms me is the vast geography of the State, the large number and variety of people, the numerical strength of the Benches and the Bar and what appears to me a very high pendency of 60,000 cases in all three permanent Benches of this Court, the phenomenally large number of subordinate courts with very high case pendency and the large number of tribunals. But from my talks with my companion Judges and members of the Bar, I have derived a sense of self-assurance and confidence due to the total and unreserved cooperation and support assured to me by them. I feel that with the efforts of all of us together – the family of the Judiciary comprising the Bench, the Bar, the subordinate Judiciary, the High Court staff and the staff of the subordinate Judiciary – we shall be able to overcome our present problems and carry forward the high traditions of this Judiciary."

His Lordship's fairness, humility, diligence and impartiality can be further discerned from his words:

> "Speaking for myself, I am a very simple person and not at all a complicated individual. I am outspoken. I speak what I feel in my heart and mind. What is inside is what is outside, and what is outside is what is inside me. I am a human being and hence not infallible. A perfect human being is not yet born. A perfect Judge or Chief Justice is yet to be born. But it will be my endeavor to strive for the perfection of this institution, with the all-round cooperation assured to me. I believe that total cooperation alone will make us rise to the

> occasion. I cannot say where the slightest faltering in cooperation will lead us. We have foibles. We have our weaknesses. But we also have our strengths. Let us try to rise above our foibles and weaknesses. Fulfilment of the oath I have taken at Bhopal shall be my solemn duty. Justice to all shall be our endeavor. Judges of this Court will freely and frankly discuss all problems confronting us; but once any decision is taken, it has to be implemented fully and without any reservation."

His Lordship took keen interest in improving the judicial and administrative setup of the State. Because of this proactive approach, he made several notable contributions to the district judiciary. But perhaps his most enduring legacy lay in judicial education.

He was instrumental in revitalizing the Judicial Officers' Training Institute in Jabalpur (now renamed as the Madhya Pradesh State Judicial Academy). He also launched a bi-monthly legal journal, *JOTI Journal*, in Jabalpur to promote reflective judicial writing. The *JOTI Journal*, started under his guidance, has now entered its 31st year of publication. It is widely read among judicial officers and has become a unique feature of the Academy and the High Court. Its readers will recognize how it has evolved into a unifying thread across the State.

His Lordship also helped to establish similar institutions in Guwahati and Kerala. Justice Bhat was also a pioneer of the Lok Adalat movement in the North-East, advocating for accessible, informal and speedy justice. He actively participated in Lok Adalats across the region, personally interacting with litigants to help reach fair resolutions. A true scholar, he served as a Designated Professor at the National Judicial Academy in Bhopal, where he mentored hundreds of young judges.

His judgments often combined strong legal reasoning with a deep sense of justice. Whether in matters of civil liberties or administrative law, Justice Bhat upheld fairness and independence throughout.

After his retirement, Justice Bhat continued to serve the nation. He became President of the Customs, Excise and Gold Control Appellate Tribunal (CEGAT) for three years. Later, he was designated a Senior Advocate of the Supreme Court of India and settled in Bengaluru, where he occasionally appeared before the Karnataka High Court.

He also authored an autobiography, *Story of a Chief Justice*. In this book, he shares a profound anecdote that reflects his deep thinking. One of the defining moments of his judicial philosophy occurred during his tenure as Sessions Judge in Palakkad. He presided over a murder trial where a man named Madhavan was believed to have been killed. The evidence was purely circumstantial – a charred body allegedly identified by family members and witnesses who claimed *Madhavan* was last seen with the accused. But there was no conclusive proof. Justice Bhat acquitted the accused, pointing to the lack of a complete chain of evidence and the presence of reasonable doubt. Years later, while sipping his morning coffee and reading the newspaper, he was stunned by the headline: *"Madhavan Returns."* The man thought to be dead was, in fact, alive. This case reaffirmed a principle he consistently taught judicial officers in his sessions: convictions must be based on certainty, not speculation. There must be no room for alternative explanations.

It is noteworthy that Justice U. L. Bhat passed away on June 6, 2024, in New Delhi, at the age of 91. His passing marked the end of an era but his legacy lives on through the judgments he delivered, the institutions he built, and the generations of legal minds he mentored.

In times when judicial courage is more important than ever, Justice Bhat's life is a powerful reminder that fairness, humility and fidelity to the Constitution are not just virtues - they are responsibilities. His was not just a career in law, but a lifelong commitment to truth, justice and the dignity of the individual.

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PROCEEDS OF CRIME: AN ANALYSIS IN THE LIGHT OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

Dr. Dharmendra Kumar Tada
Faculty Member (Sr.), MPSJA

The Bharatiya Nagarik Suraksha Sanhita, 2023, which came into force on 1st July, 2024, has introduced a significant provision within the Indian Criminal Justice System, specifically concerning "Attachment, forfeiture or restoration of Proceeds of Crime." Article 300-A of the Constitution of India stipulates that "no person shall be deprived of his property save by authority of law". Consequently, to deprive any person of their property, it is incumbent upon the State, *inter alia*, to establish that the property was illegally obtained, constitutes Proceeds of Crime, or that the deprivation is justified for a public purpose or in the public interest as has been laid down in ***Abdul Vahab v. State of M.P., (2022) 13 SCC 310*.**

Genesis of Proceeds of Crime under Criminal Law

This provision is a new section introduced in the Sanhita. Prior to the enforcement of the BNSS 2023, various other legislations were already in effect, addressing the attachment and confiscation/forfeiture of the Proceeds of Crime associated with specific offences. These include:

(a) The Forfeiture Act, 1857 [Repealed in 1922];
(b) The Criminal Law Amendment Ordinance, 1944;
(c) The Unlawful Activities (Prevention) Act, 1967 [Chapter V (inserted in 2013)];
(d) The Wild Life (Protection) Act, 1972 [Chapter VIA inserted in 2003];
(e) The Code of Criminal Procedure, 1973 [Chapter XXXIV – Disposal of Property];
(f) The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [SAFEMA];
(g) The Narcotic Drugs and Psychotropic Substances Act, 1985 [Chapter VA inserted in 1989];
(h) The Prevention of Corruption Act, 1988 [Section 5(6)];
(i) The Maharashtra Control of Organized Crime Act, 1999 [Section 20];
(j) Madhya Pradesh Vishesh Nyayalaya Adhiniyam, 2011;
(k) The Anti-Hijacking Act, 2016 [Section 19];
(l) The Banning of Unregulated Deposit Schemes Act, 2019 [Chapter V]; and
(m) The Prevention of Money-Laundering Act, 2002 [Sections 5, 8 & 9].

The concept of attachment and subsequent forfeiture of properties under criminal law is, therefore, not a novel one. Numerous penal statutes in the past have incorporated such measures for the attachment and forfeiture of properties derived from criminal activity pertaining to the commission of offences. The international community has deliberated extensively on the mechanisms to address the serious threat posed by processes and activities connected with the Proceeds of Crime, and on integrating these mechanisms within the formal financial systems of various countries. These issues were thoroughly debated in forums such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Basle Statement of Principles enunciated in 1989, the Financial Action Task Force (FATF) established at the summit of seven major industrial nations held in Paris from 14th to 16th July, 1989, the Political Declaration and Global Programme of Action adopted by the United Nations General Assembly vide its Resolution No. S-17/2 of 23.02.1990 and the United Nations Special Session on Countering World Drug Problem, which concluded on 8th to 10th June, 1998, with a call for State parties to enact comprehensive legislation.

Notwithstanding the pre-existing legal framework to address proceeds of crime, Parliament enacted the Prevention of Money-Laundering Act, in response to international commitments to rigorously combat the menace of money-laundering of Proceeds of Crime, given its transnational consequences and potential to destabilize the financial systems of nations. The Act came into force on 01.07.2005.

The Criminal Law Amendment Ordinance, 1944, enforced w.e.f. 23.08.1944, was promulgated through the exercise of powers u/s 72 of the Government of India Act, 1935. It is aimed at preventing the disposal or concealment of property procured by means of the offences specified in its Schedule. The Ordinance was introduced to safeguard government funds and properties believed to have been obtained by embezzling either Government money or Government property. (***G.L. Salwan v. Union of India, AIR 1960 P&H 35***) Attachment under the 1944 Ordinance was provided as a consequence of the commission of specific offences under the Indian Penal Code, 1860, which were identified as scheduled offences. In interpreting the provisions of the 1944 Ordinance, the Hon'ble Supreme Court in ***State of West Bengal v. S.K. Ghosh, AIR 1963 SC 255***, held that the primary objective behind the enactment was to introduce attachment and subsequently forfeiture upon conviction, as a form of civil recovery mechanism, to deprive criminals of their ill-gotten gains. The 1944 Ordinance remains in force and is incorporated by reference in the Prevention of Corruption Act, 1988 to govern attachment proceedings in respect of offences committed under that Act.

Chapter VIII (Sections 111 to 124) of BNSS, corresponding to Chapter VII-A of the Criminal Procedure Code, 1973 (hereinafter referred to as 'CrPC'), pertains to "Reciprocal Arrangements for Assistance in certain matters and Procedure for Attachment and forfeiture of Property". Under Chapter VI-A of CrPC, provisions relating to the attachment of property were introduced to implement an agreement between India and the United Kingdom of Great Britain and Northern Ireland, aimed at confiscation of proceeds of 'cross border' crimes. (Statement of Objects and Reasons of Amending Act No. 40 of 1993). The Hon'ble Supreme Court in the case of ***State of Madhya Pradesh v. Balram Mihani, (2010) 2 SCC 602***, held that the provisions of Chapter VIIA were applicable only to offences with an international dimension and that "ordinary property earned out of ordinary offences committed in India" could not be attached under the said Chapter. The scope of section 107 of BNSS extends to all types of properties derived from the commission of any offence or constituting proceeds of crime related to offences under the Bharatiya Nyaya Sanhita, 2023.

The Criminal Procedure Code, 1973 provided for the attachment and forfeiture of properties primarily to ensure the attendance of accused persons or witnesses. Sections 83, 84, 85, 86, 105C and 105E of CrPC are relevant in this context. Section 102 of the CrPC confers the power to attach, seize and seal property; however, this section does not extend to immovable property. The Hon'ble Supreme Court in ***Nevada Properties (P) Ltd. v. State of Maharashtra, (2019) 20 SCC 119***, held that Section 102 of the CrPC does not empower a Police Officer to seize immovable property. Section 102 of the CrPC is not a general provision that enables and authorizes a police officer to seize immovable property for being produced in a criminal court during a trial. For the purposes of sections 451, 452 and 456 of the CrPC, "property" includes immovable property, but under sections 102 and 457, it does not extend to immovable property. Therefore, if the proceeds of crime consist of immovable property, the investigating officer is not empowered to seize or take action in respect of this category of proceeds of crime. In contrast, the BNSS allows for the attachment of immovable property and the court can take action under section 107 of the BNSS.

The provisions of section 452 of the CrPC govern the disposal of property upon conclusion of a trial. When an inquiry or trial in any criminal court is concluded, the Court may issue an order as it deems fit for the disposal, by confiscation of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence. In this section, the term "property" includes property involved in the case regarding which an offence appears to have been committed, encompassing not only property originally in the possession or

under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Proceeds of Crime: Meaning and Quantification

The "proceeds of crime" constitute a core element for attachment proceedings under this section. This implies that all properties connected with criminal activity related to the commission of any offence are considered proceeds of crime. However, neither section 2 nor section 107 of the BNSS defines the term "Proceeds of Crime." Section 107 of the BNSS stipulates that "any property derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence" is termed Proceeds of Crime.

Section 111 of the BNSS establishes the foundation for subsequent sections by providing clear and precise definitions of key terms used throughout the Chapter. This section is crucial in ensuring a consistent understanding of important legal concepts such as "property," "seizure," "forfeiture" and "proceeds of crime." Clause (c) of this section specifies that within this Chapter, unless the context indicates otherwise, "proceeds of crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property.

Another pertinent definition of "proceeds of crime" is provided in section 2(1)(u) of the PMLA 2002. According to this section, "Proceeds of Crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence, or the value of any such property, or, where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Explanation clarifies that, to remove any doubt, "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property that may directly or indirectly be derived or obtained as a result of any criminal activity related to the scheduled offence. Therefore, only property derived or obtained directly or indirectly as a result of criminal activity pertaining to the commission of an offence can be classified as proceeds of crime.

Competent Court

The competent court is identified as the one that exercises jurisdiction "to take cognizance" or "to commit for trial or try the case". This implies that an attachment application can be filed even before cognizance is taken or the case has been committed for trial. The Court or the Judicial Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case has the authority to proceed with attachment and further proceedings concerning proceeds of crime. For the purposes of this section, "Court" means the Court of

Session exercising jurisdiction to take cognizance or try the case and the Judicial Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case has jurisdiction to entertain an application for attachment of proceeds of crime.

Attachment of Proceeds of Crime

This section 107 of BNSS is applicable when the Investigating Officer has reason to believe that any property constitutes proceeds of crime. As per section 107(1) of BNSS, if a police officer conducting an investigation has reasons to believe that any property is derived or obtained, directly or indirectly, as a result of criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of Police or Commissioner of Police, submit an application for the attachment of such property.

According to section 107(2) of BNSS, if the Court or the Judicial Magistrate has reason to believe, whether before or after taking evidence, all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice to the concerned person, directing them to show cause within fourteen days as to why an order of attachment should not be issued.

What does the term "Reasons to believe" denote?

The *sine qua non* for exercising powers u/s 107(1) and (2) was found to be that investigating officer or court or Magistrate must have "*reasons to believe*", recorded in writing, as the basis for inferring that the person is in possession of proceeds of crime, which are likely to be concealed. The reasons to believe must have *direct nexus or live link* with the material in possession pertaining to above two aspects. The reasons to believe of court or Magistrate must be formed and constituted independent of the "*reasons to believe*" formed by the investigating officer u/s 107(1). Both have to exist separately and independently of each other and that the formation of "*reasons to believe*" by the court or Magistrate must be separate, independent of the belief formed u/s 107(1).

The words "*reasons to believe*" is neither defined section 2 nor section 107 of the BNSS. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "*reason to believe*". "Reason to believe" is another facet of the state of mind. "*Reason to believe*" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "*Reason to believe*" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus: *"A person is said to have 'reason to believe' a thing, if he has sufficient cause*

to believe that thing but not otherwise." In substance as per ***Joti Parshad v. State of Haryana, 1993 Supp (2) SCC 497 : 1993 SCC (Cri) 691,*** what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned.

The concept of "*reasons to believe*" in light of section 26 IPC, 1860 and drawing analogy from judgments delivered under *pari materia* provisions of other enactments. Referring to the judgments of ***Calcutta Discount Co. Ltd. v. ITO, AIR 1961 SC 372*; *S. Narayanappa v. CIT, AIR 1967 SC 523*; *Sheo Nath Singh v. CIT, (1972) 3 SCC 234*** **and** ***ITO v. Lakhmani Mewal Das, (1976) 3 SCC 757,*** the Court held that the phrase implies and contemplates existence of reasons on which the belief is founded and not merely a belief in the existence of reasons inducing the belief. The said belief must not be premised on suspicion, but on information. If any authority passes an order without the precondition being satisfied, then it is supposed to be "acting without jurisdiction". A rational connection with the formation of belief and live material on the basis of such formation of beliefs takes place is necessary. The communication of "*reasons to believe*" accompanies with itself a mandatory duty and direction of communication of the same to the person affected. Any order passed contrary to the aforementioned procedure is nullity in the eyes of law and attached property can be directed to be released from attachment. This principle has been highlighted by the Hon'ble Telangana High Court in ***Vanpic Ports (P) Ltd. v. Directorate of Enforcement, 2023 SCC Online TS 1793.***

The Delhi Police Handbook clarifies that when filing an application for attachment, the Investigating Officer must document factors such as sources of income, verification of Income Tax Returns (ITR) and mode of payment for the property, to establish a "reason to believe" that a property is "proceeds of crime." Upon the filing of such an application, section 107(2) of BNSS contemplates the presentation of evidence before the relevant Court or Magistrate. This evidence is to be presented solely for the purpose of determining whether a show-cause notice should be issued to the affected person. Subsequently, an attachment order may be issued based on these factors.

Protection of Third-Party Rights

In cases where an application for an attachment order is made and the competent court has reason to believe that the properties are proceeds of crime and any person asserts an interest in such property or proceeds of crime, sub-section (2) of section 107 of BNSS provides for the protection of third-party rights. According to section 107(3) of BNSS, if the notice issued to any person under sub-section (2)

identifies any property as being held by another person on behalf of the former, a copy of the notice shall also be served upon such other person.

Order of Attachment

When the competent Court receives an application for the attachment of proceeds of crime, its primary determination is whether, before or after taking evidence, there are reasons to believe that such properties are proceeds of crime. The Court or Magistrate may issue a notice to the person concerned, directing them to show cause within fourteen days. As per section 107(4) of BNSS, the Court or the Judicial Magistrate, after considering the explanation, if any, to the show-cause notice issued under sub-section (2) and the material facts available before the Court or Magistrate, and after providing a reasonable opportunity of being heard to the person or persons concerned, may issue an order of attachment in respect of those properties found to be proceeds of crime. The Court or Magistrate, considering both the explanations provided by the affected person and the 'material facts' before it, must make an affirmative determination that the property in question constitutes 'proceeds of crime'.

The Court or the Magistrate, having regard to the twin factors furnished by the affected person and the 'material facts' available before it, must arrive at an affirmative finding that the property in question is indeed 'proceeds of crime'. Upon reaching such a determination, the Court or the Magistrate may proceed to attach the said property under sub-section (4) of 107 of BNSS.

***Ex parte* Order of Attachment**

According to section 107(4) of BNSS, if a show-cause notice is duly issued and the person concerned fails to appear or represent his case before the Court or the Magistrate, within the fourteen-day period specified in the notice, the Court or the Magistrate is entitled to pass an *ex parte* order.

The competent Court is empowered to issue an interim order *ex parte*. Notwithstanding the provisions of sub-section (2) of 107 of BNSS, if the Court or the Judicial Magistrate is of the opinion that the issuance of notice under the said sub-section would defeat the purpose of the attachment or seizure, section 107(5) of BNSS stipulates that the Court or Judicial Magistrate may, by an interim order, direct *ex parte* attachment or seizure of the property. Such an order shall remain in effect until an order under sub-section (6) is passed.

Confiscation or Forfeiture or Distribution of Proceeds of Crime

As per section 107(6) of BNSS, if the Court or the Judicial Magistrate determines that the attached or seized properties are proceeds of crime, the Court or the Judicial Magistrate shall, by order, direct the District Magistrate to distribute such proceeds of crime proportionally among the persons affected by the crime. It is noteworthy that the Legislature does not employ the term "confiscation of

proceeds of crime" in this section. Instead, the section stipulates that if the competent court finds the attached or seized properties to be proceeds of crime, the Court or the Magistrate shall issue an order for the distribution of such proceeds of crime. The term used is "finds" the proceeds of crime, however, the word 'find' is not explicitly defined.

According to section 120 of BNSS, where the Court records a finding under this section that any property is proceeds of crime, such property shall stand forfeited to the Central Government, free from all encumbrances. Section 8(5) of PMLA of 2002 provides that where upon the conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for the commission of the offence of money-laundering shall stand confiscated to the Central Government. In accordance with section 120 of BNSS and section 8 of PMLA of 2002, Proceeds of Crime shall vest in the Central Government, free from all encumbrances. However, according to section 107 of BNSS, Proceeds of Crime are not automatically confiscated or forfeited and vested in the Central Government. Rather, after the conclusion of the trial of an offence under the Sanhita, if the Court finds the attached or seized property to be proceeds of crime, the court or the Magistrate shall, by order, direct the District Magistrate to distribute such proceeds of crime. This indicates that the Sanhita adopts a victim-centric approach and adheres to the principle of preventing unjust enrichment.

According to section 107 (7) of BNSS, upon receiving an order passed under sub-section (6), the District Magistrate is required, within sixty days, to distribute the Proceeds of Crime either personally or by authorizing a subordinate officer to effect such distribution. According to section 107(8) of BNSS, if there are no claimants to receive such proceeds, or if no claimant is ascertainable, or if there is a surplus after satisfying the claimants, such Proceeds of Crime shall be forfeited to the Government.

Conclusion

This Article has delved into the intricacies of identifying and quantifying Proceeds of Crime, a vital process for the potential attachment, confiscation or distribution of assets to affected victims. The discussion has emphasized that the quantification of Proceeds of Crime is not a standardized procedure; instead, it depends on the court's comprehensive investigation into any property derived or acquired, directly or indirectly, as a consequence of criminal activity associated with the commission of any offence.

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विधिक समस्यायें एव 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।)

प्रश्न 1. क्या ''लाइट मोटर व्हीकल'' (एल.एम.व्ही.) चलाने की अनुज्ञप्ति रखने वाला व्यक्ति उस अनुज्ञप्ति के आधार पर ''लाइट मोटर व्हीकल'' श्रेणी के ऐसे परिवहन यान जिसका लदान रहित भार 7500 किलोग्राम से अधिक नही है, को चलाने का हकदार हो सकता है?

उत्तर :– ***मुकुंद देवांगन विरूद्ध ओरियंटल इंश्योरेंस कंपनी लिमिटेड, (2017) 14 एससीसी 663*** के न्यायदृष्टांत में माननीय उच्चतम न्यायालय के 3 न्यायाधीशगण की पीठ ने यह मत प्रतिपादित किया था कि लाइट मोटर व्हीकल के वाहन चालक को 7500 किलोग्राम तक के परिवहन यान को चलाने के लिए अनुज्ञप्ति पर किसी अतिरिक्त पृष्ठांकन या अनुमोदन की आवश्यकता नहीं है। वर्ष 2022 में ***मुकुंद देवांगन*** (उपरोक्त) के मामले में दिये गए निर्णय की शुद्धता पर माननीय उच्चतम न्यायालय की समान पीठ ने संदेह व्यक्त किया और इसलिए मामले को 5 न्यायाधीशगण की पीठ को सौप दिया गया।

माननीय उच्चतम न्यायालय के 5 न्यायाधीशगण की पीठ ने दिनांक 06.11.2024 को ***बजाज एलायंस जनरल इंश्योरेंस कंपनी लिमिटेड वि. रंभा देवी एवं अन्य, 2024 एसीजे 2623*** में मोटरयान अधिनियम, 1988 के प्रावधानों की सामंजस्यपूर्ण व्याख्या को अपनाते हुए ***मुकुंद देवांगन (उपरोक्त)*** के निर्णय का समर्थन किया। माननीय उच्चतम न्यायालय द्वारा यह व्याख्या की गई कि:–

- 7500 किलोग्राम से कम वजन वाले वाहनों के लिए एल.एम.व्ही. का लाईसेंस रखने वाले चालक को मोटरयान अधिनियम कि धारा 10(2)(ई) के अंतर्गत अतिरिक्त प्राधिकार की आवश्यकता के बिना परिवहन यान चलाने की अनुमति है।
- मोटरयान अधिनियम की धारा 3(1) का द्वितीय भाग जो परिवहन यान चलाने के लिए विशिष्ट आवश्यकता के बारे में बताता है, वह मोटरयान अधिनियम की धारा 2(21) में प्रदान की गई एल.एम.व्ही. वाहन की परिभाषा का स्थान नहीं ले सकता।
- मोटरयान अधिनियम, 1988 और पृथक–पृथक प्रदेशों के मोटरयान नियमों में निर्दिष्ट अतिरिक्त पात्रता मानदण्ड आमतौर पर परिवहन यान चलाने के लिए केवल उन लोगों पर लागू होंगे जो 7500 किलोग्राम से अधिक के परिवहन यान यानी मध्यम माल यान, मध्यम यात्री मोटर यान, भारी माल यान एवं भारी यात्री मोटर यान चलाते हैं।

अतः यह स्पष्ट है कि कोई भी परिवहन यान जो 7500 किलोग्राम से अधिक भार का नही है, उसे लाइट मोटर व्हीकल चलाने की अनुज्ञप्ति रखने वाला व्यक्ति अनुज्ञप्ति पर बिना किसी अतिरिक्त अनुमोदन या पृष्ठांकन के चलाने का हकदार है अतः चालन अनुज्ञप्ति पर अतिरिक्त अनुमोदन या पृष्ठांकन न होने के आधार पर बीमा कंपनी अपने दायित्व से उन्मोचित

नहीं होगी। परंतु ई–गाड़ी, ई–रिक्शा एवं खतरनाक या परिसंकटमय प्रकृति के माल को ले जाने वाले परिवहन यान को चलाने के लिये अनुज्ञप्ति धारक को अतिरिक्त अनुमोदन या पृष्ठांकन कराया जाना आवश्यक है।

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प्रश्न 2. राजस्व दस्तावेजों में नामांतरण या उनकी प्रविष्टियों में संशोधन के दौरान उत्पन्न होने वाले विवादों के निराकरण की तहसीलदार की अधिकारिता किस सीमा तक होती है? क्या तहसीलदार वसीयत के आधार पर नामांतरण कर सकता है?

उत्तर :– माननीय मध्यप्रदेश उच्च न्यायालय के कई न्याय दृष्टांतों में वसीयत के आधार पर तहसीलदार की नामान्तरण की अधिकारिता को तब तक के लिए अमान्य किया गया था जब तक कि ऐसी वसीयत को सिविल वाद, प्रोबेट/प्रशासन पत्र की कार्यवाही में साबित नहीं किया जाता। इसके विपरीत कुछ मामलों में तहसीलदार को वसीयत के आधार पर नामान्तरण करने के लिऐ सक्षम माना गया है। इन विरोधाभाषी अभिमतों के चलते इस इस प्रश्न को दिनांक 07.10.2023 को माननीय मध्यप्रदेश उच्च न्यायालय की वृहद–पीठ को रेफर किया गया था । हाल ही में माननीय मध्यप्रदेश उच्च न्यायालय की वृहद खण्डपीठ द्वारा न्याय दृष्टांत ***आनंद चौधरी विरूद्ध मध्यप्रदेश राज्य, 2025 SCC OnLine MP 977*** में उपरोक्त विरोधाभास के संबंध में माननीय उच्चतम न्यायालय के न्याय दृष्टांत ***जितेन्द्र सिंह वि. मध्यप्रदेश राज्य, (2021) एससीसी आनलाइन एससी 802*** एवं **मध्यप्रदेश भूराजस्व संहिता (भू अभिलेखों में नामांतरण) नियम, 2018** के नियमों को विचार में लेते हुए उक्त बिंदुओं के संबंध में सारतः निम्नवत विधिक स्थिति स्पष्ट की गई हैः–

1. वसीयत के आधार पर नामांतरण का आवेदन प्रस्तुत होने पर तहसीलदार ऐसे आवेदन को सतही तौर पर निरस्त नहीं कर सकता है । ऐसे आवेदन प्रचलन योग्य हैं किंतु मृतक के वैध वारिसों के संबंध में पूछताछ करना और उन्हें सूचना देना उसके लिये अनिवार्य है। तदोपरांत तहसीलदार द्वारा प्रायवेट पक्षकारों के मध्य अधिकार या स्वत्व का विवाद प्रकट होने पर पक्षकारों को सिविल न्यायालय से ऐसे विवाद को निराकृत कराने के लिये निर्दिष्ट करते हुए अवसर प्रदान किया जाएगा और कलेक्टर को संसूचित करते हुए ऐसे प्रकरण को निराकृत या लंबित रखा जाएगा । यह तहसीलदार की केवल प्रशासनिक अधिकारिता है, वह न्यायिक या अर्धन्यायिक कार्य संपादित नहीं करता इसीलिये ऐसी कार्यवाही में उसकी साक्ष्य लेने की अधिकारिता नहीं है।
2. यदि विवाद के निराकरण के लिये पक्षकार सिविल न्यायालय नहीं जाते हैं या जाने के बाद भी उन्हें निषेधाज्ञा प्राप्त नहीं होती है तब तहसीलदार द्वारा विवादित वसीयत को नजरअंदाज करते हुए उत्तराधिकारिता के आधार पर नामांतरण किया जाएगा।
3. वहीं वसीयत से भिन्न पंजीकृत दस्तावेज के आधार पर प्रस्तुत नामांतरण के प्रकरण में ऐसे दस्तावेज को ही प्रभावी किया जाएगा।

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PART – II

NOTES ON IMPORTANT JUDGMENTS

51 ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34(3) and 43(1)
LIMITATION ACT, 1963 – Sections 4 and 29 (2)
GENERAL CLAUSES ACT, 1897 – Section 10
Arbitral Award – Application for setting aside the arbitral award u/s 34 of the Act – Limitation – Application filed beyond the prescribed period of 3 months plus 30 days condonable period – Extended 30 days period of limitation was expired during court vacation – Court reopened after vacation – Application filed on the re-opening day – Applicability of section 4 of the Limitation Act was pleaded – Section 4 applies only when the prescribed 3-month period of limitation expires on a holiday, not during the additional 30-day condonable period – Section 10 of the General Clauses Act, 1897 not applicable when the Limitation Act applies – High Court's order dismissing the application on the ground of limitation upheld.

माध्यस्थम और सुलह अधिनियम, 1996 – धाराएं 34(3) एवं 43(1)
परिसीमा अधिनियम, 1963 – धाराएं 4 एवं 29 (2)
साधारण खण्ड अधिनियम, 1897 – धारा 10
माध्यस्थम पंचाट – अधिनियम की धारा 34 के अंतर्गत माध्यस्थम पंचाट को अपास्त करने हेतु आवेदन – परिसीमा – आवेदन 3 माह और 30 दिवस की क्षमा योग्य विहित अवधि के पश्चात प्रस्तुत किया गया – न्यायालय के अवकाश के दौरान 30 दिवस की विस्तारित अवधि की सीमा समाप्त हो गई – अवकाश पश्चात न्यायालय पुनः खुला – न्यायालय पुनः खुलने के दिन आवेदन प्रस्तुत किया गया – परिसीमा अधिनियम की धारा 4 की प्रयोज्यता का तर्क दिया गया – धारा 4 केवल तभी प्रयोज्य होती है जब निर्धारित 3 माह की परिसीमा अवधि अवकाश के दिन समाप्त होती है न कि अतिरिक्त 30 दिन की क्षमा योग्य अवधि के दौरान – जब परिसीमा अधिनियम लागू होता है तब सामान्य खण्ड अधिनियम, 1897 की धारा 10, लागू नहीं होती है – परिसीमा के आधार पर आवेदन को निरस्त करने के उच्च न्यायालय के आदेश को यथावत रखा गया।

My Preferred Transformation and Hospitality Pvt. Ltd. and anr. v. M/s. Faridabad Implements Pvt. Ltd.
Judgment dated 10.01.2025 passed by the Supreme Court in Civil Appeal No. 336 of 2025, reported in AIR 2025 SC 657

Relevant extracts from the judgment:

The application preferred by the appellant u/s 34 of the ACA stands dismissed as it was filed beyond the condonable period of 30 days, which conclusively and absolutely expired on 28.06.2022.

The prescribed period of time for filing a petition u/s 34 of the A & C Act is 3 months from the date on which the party, filing the petition, had received the arbitral award or if a request had been made u/s 33 of the A & C Act, from the date on which the request has been disposed of by the Arbitral Tribunal. Here, we are not concerned with the second part of Sub-Section (3) of Section 34 of the A & C Act but only with the first part of it which provides for a limitation of 3 months from the date on which the party, filing the petition, had received the arbitral award. Since the appellants in the present case received the arbitral award on 14.02.2022, the 3 months period prescribed for filing a petition as per sub-Section (3) of Section 34 expired on 14.05.2022. By operation of this Court's order dated 10.01.2022 on account of COVID-19 pandemic, the said period of limitation stood extended up to 29.05.2022.

The day on which the limitation expired for filing a petition u/s 34 of the A & C Act after giving the benefit of the COVID-19 pandemic i.e., 29.05.2022, as mentioned above, happened to be a working day. However, the appellants filed the petition u/s 34 of the A & C Act, not on the last day of limitation i.e. 29.05.2022 but on 04.07.2022 when the Courts re-opened after the summer vacation which were notified between 04.06.2022 and 03.07.2022. The petition filed by the appellants u/s 34 of the A & C Act was accompanied by an application for condonation of delay.

The period of limitation prescribed for filing a petition u/s 34 of the A & C Act is 3 months i.e., 90 days. In the present case, the said period of limitation prescribed by extending the benefit of COVID-19, expired on 29.05.2022 when the courts were working. Therefore, the appellants were not entitled to the benefit of Section 4 of the Limitation Act to permit them to prefer the petition on the re-opening of the court as the period of limitation prescribed had not expired on the day when the court was closed.

As the period of limitation prescribed for filing a petition u/s 34 of the A & C Act expired on a working day and not on a day on which the court was closed, the appellants were not entitled to file it on the re-opening of the court after the summer vacation and as such the petition so filed was patently barred by limitation.

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52. BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 35, 179 and 195

Service of notice under CrPC/BNSS – Appellant challenged the use of electronic modes for serving notices u/s 41-A of CrPC/Section 35 of BNSS – Supreme Court held that notices must be served in person as per statutory requirements, not through WhatsApp or other electronic modes – Directed all States/UTs to issue standing orders for compliance – Appeal allowed.

भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 35, 179 एवं 195

द.प्र.सं./बीएनएसएस के अंतर्गत नोटिस का निर्वाह – अपीलकर्ता ने दं.प्र.सं. की धारा 41–क/बीएनएसएस की धारा 35 के अंतर्गत नोटिस का निर्वाह कराए जाने हेतु इलेक्ट्रॉनिक माध्यम के उपयोग को चुनौती दी – उच्चतम न्यायालय ने अभिनिर्धारित किया कि विधिक अपेक्षाओं के अनुसार नोटिस का निर्वाह व्यक्तिगत रूप से किया जाना चाहिए, न कि व्हाट्सएप या अन्य इलेक्ट्रॉनिक माध्यम से – सभी राज्यों/केंद्र शासित प्रदेशों को अनुपालन के लिए स्थायी आदेश जारी करने का निर्देश दिया – अपील स्वीकार की गई।

Satender Kumar Antil v. Central Bureau of Investigation and anr.

Judgment dated 21.01.2025 passed by the Supreme Court in Miscellaneous Application No. 2034 of 2022, reported in AIR 2025 SC 1023

Relevant extracts from the judgment:

Having heard the parties and having deliberated upon the submissions, this Court in furtherance of Paras. 100.2, 100.8 and 100.9 of ***Satender Kumar Antil v. CBI & anr., (2022) 10 SCC 51,*** and its previous directions contained in earlier orders, deems it necessary to issue the following directions:

a) All the States/UTs must issue a Standing Order to their respective Police machinery to issue notices under Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023. It is made amply clear that service of notice through WhatsApp or other electronic modes cannot be considered or recognised as an alternative or substitute to the mode of service recognised and prescribed under the CrPC, 1973/BNSS, 2023.

b) All the States/UTs while issuing Standing Orders to their respective Police machinery relating to Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 must be issued strictly in accordance with the guidelines issued by the Delhi High Court in ***Rakesh Kumar v. Vijayanta Arya (DCP) & ors.,***

2021 SCC Online Del 5629 and ***Amandeep Singh Johar v. State (NCT Delhi), 2018 SCC Online Del 13448***, both of which were upheld by this Court in ***Satender Kumar*** (supra).

c) All the States/UTs must issue an additional Standing Order to their respective Police machinery to issue notices u/s 160 of CrPC, 1973/Section 179 of BNSS, 2023 and Section 175 of CrPC, 1973/Section 195 of BNSS, 2023 to the accused persons or otherwise, only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023.

d) All the High Courts must hold meetings of their respective Committees for "Ensuring the Implementations of the Decisions of the Apex Court" on a monthly basis, in order to ensure compliance of both the past and future directions issued by this Court at all levels, and to also ensure that monthly compliance reports are being submitted by the concerned authorities.

e) We have taken note of the fact that the State of Mizoram has filed its Compliance Affidavit way beyond the deadline given by this Court and the UT of Lakshadweep has merely refiled its earlier Compliance Affidavit dated 21.05.2023. Hence, the UT of Lakshadweep must ensure compliance of the earlier directions issued by this court and file a fresh Compliance Affidavit within a period of 2 weeks from today.

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53. BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 483
NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 2(xvii)(a), 8, 18(c) and 37

Offence of cultivation of opium plants – Bail – Seized opium plants found covered by definition of "Opium Poppy" – Section 37 of the Act is not attracted as notification specifying small and commercial quantity in NDPS Act has entries in respect of "opium" only, not in respect of "Opium Poppy" and therefore, cultivation of opium plants is covered u/s 18 (c) of the Act – Bail application allowed.

भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 483
स्वापक औषधि एवं मनः प्रभावी पदार्थ अधिनियम, 1985 – धाराएं 2(xvii)(क), 8, 18(ग) एवं 37

अफीम के पौधों की खेती करने का अपराध – जमानत – जब्त किए गए अफीम के पौधे "अफीम पोस्त" की परिभाषा के अंतर्गत आना पाये गए – अधिनियम की धारा 37 लागू नहीं होती क्योंकि एनडीपीएस अधिनियम में सूक्ष्म एवं

वाणिज्यिक मात्रा को निर्दिष्ट करने वाली अधिसूचना में केवल ''अफीम'' के संबंध में प्रविष्टियां है, ''अफीम पोस्त'' के संबंध में नहीं और इसलिए अफीम के पौधों की खेती धारा 18 (ग) के अंतर्गत आती है – जमानत आवेदन स्वीकार किया गया।

Vishram v. State of M.P.

Order dated 14.08.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 27835 of 2024, reported in ILR (2024) MP 2650

Relevant extracts from the order:

It is clear that plant of the species Papaver somniferum L is covered by definition of Opium poppy. Opium plants which are seized by police will fall within definition of Opium poppy. As per section 18 of the Act, if contravention is in relation to cultivation of opium poppy of small quantity then penalty prescribed is R.I for a term of one year with fine. If contravention involves commercial quantity then penalty is not less than 10 years and fine and in other cases penalty prescribed is R.I upto 10 years. Notification is given in NDPS Act specifying small and commercial quantity. Entry 92, 93 and 110 is in respect of Opium. No entry is made in respect of Opium poppy. Commercial and small quantity is not prescribed in said table. Since small and commercial quantity is not prescribed for Opium poppy and cultivation of Opium plants is covered under Section 18(c), therefore, Section 37 of NDPS Act will not be attracted in the case.

In view of aforesaid, bail application filed by applicant is allowed.

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54. CIVIL PROCEDURE CODE, 1908 – Section 21

Objection regarding lack of pecuniary jurisdiction – Plaintiff instituted suit for specific performance of contract in the Court of Civil Judge, Senior Division – Suit was transferred by District Judge to the Court of Civil Judge, Junior Division – Suit was decreed *ex parte* – In execution proceedings, judgment-debtor filed an objection u/s 47 CPC regarding executability of decree on the ground of lack of pecuniary jurisdiction of Trial Court – No such objection was raised during trial – No appeal has been preferred against the said decree – In execution proceedings, only for the reason that decree passed by the Trial Court was lacking pecuniary jurisdiction, cannot be held to be a nullity and at best can be said to be voidable – No objection to its executability on the ground of

lack of pecuniary jurisdiction of the Trial Court is not permissible to be raised in execution proceedings – Executing Court has not committed any error in rejecting the objection preferred by the judgment-debtor.

सिविल प्रक्रिया संहिता, 1908 – धारा 21

आर्थिक क्षेत्राधिकार न होने के संबंध में आक्षेप – वादी ने सिविल न्यायाधीश, वरिष्ठ खण्ड के न्यायालय में संविदा के विनिर्दिष्ट अनुपालन के लिए वाद प्रस्तुत किया – जिला न्यायाधीश द्वारा वाद सिविल न्यायाधीश, कनिष्ठ खण्ड के न्यायालय में अंतरित कर दिया गया – वाद में एकपक्षीय डिक्री पारित हुई – निष्पादन कार्यवाही में निर्णीत – ऋणी ने विचारण न्यायालय के आर्थिक क्षेत्राधिकार न होने के संबंध में धारा 47 सि.प्र.सं. के अंतर्गत आपत्ति प्रस्तुत की – विचारण के दौरान ऐसी कोई आपत्ति नहीं उठाई गई थी – उक्त डिक्री के विरुद्ध कोई अपील प्रस्तुत नहीं की गई – निष्पादन कार्यवाही में केवल इस कारण से कि विचारण न्यायालय द्वारा पारित डिक्री में आर्थिक क्षेत्राधिकारिता का अभाव था, उसे अमान्य नहीं माना जा सकता और अधिक से अधिक यह कहा जा सकता है कि वह शून्यकरणीय है – विचारण न्यायालय को आर्थिक क्षेत्राधिकार न होने के आधार पर डिक्री के निष्पादन योग्य न होने संबंधी आपत्ति उठाने की अनुमति निष्पादन कार्यवाही में नहीं दी जा सकती – निष्पादन न्यायालय ने निर्णीत–ऋणी द्वारा प्रस्तुत आपत्ति को निरस्त करने में कोई त्रुटि नहीं की है।

Mradula Sisodiya v. Ganesh Malakar and ors.

Order dated 14.10.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 3198 of 2024, reported in 2025 (1) MPLJ 287

Relevant extracts from the order:

It has been held by the Apex Court that principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed without any authority. Any order passed by a Court without jurisdiction would be coram non judice and being a nullity, the same ordinarily should not be given effect to. In this regard see ***Managing Director, Army Welfare Housing Organisation v. Sumangal Services (P) Ltd., 2004 (9) SCC 619, Harshad Chiman Lal Modi v. DLF Universal Ltd., 2005 (7) SCC 791*** and ***Hasham Abbas Sayyad v. Usman Abbas Sayyad and ors., 2007 (2) SCC 355.***

In ***Harpal Singh v. Ashok Kumar and anr., (2018)11 SCC 113***, it has been held by the Apex Court that the validity of a decree can be challenged before an executing Court only on the ground of inherent lack of jurisdiction which renders the decree a nullity. It was held as under:

> "The validity of a decree can be challenged before an executing court only on the ground of an inherent lack of jurisdiction which renders the decree a nullity. In ***Hira Lal Patni v. Kali Nath, AIR 1962 SC 199*** this Court held thus:
>
> "… The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it. …"

In ***Harshad Chiman Lal Modi*** (supra), it was held by the Apex Court that jurisdiction of the Court may be classified into several categories. The important categories are territorial or local jurisdiction, pecuniary jurisdiction and jurisdiction over the subject matter. So far as pecuniary jurisdiction is concerned objection to said jurisdiction has to be taken up at the earliest possible opportunity and in any case at or before settlement of issues. If the same is not taken, it cannot be allowed to be taken at a subsequent stage.

In ***Hasham Abbas Sayyad*** (supra), it was laid down that distinction must be made between a decree passed by a Court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the CPC and a decree passed by a Court having no jurisdiction in regard to the subject matter of the suit. In the former case, the Appellate Court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.

In ***Subhash Mahadevasa Habib v. Nemasa Ambasa Dharmadas (Dead) by LRs. and ors., (2007) 13 SCC 650*** the effect of lack of pecuniary jurisdiction was considered in detail and it was eventually held as under:-

> "What is relevant in this context is the legal effect of the so-called finding in OS No. 4 of 1972 that the decree in OS No. 61 of 1971 was passed by a court which had no pecuniary jurisdiction to pass

that decree. The Code of Civil Procedure has made a distinction between lack of inherent jurisdiction and objection to territorial jurisdiction and pecuniary jurisdiction. Whereas an inherent lack of jurisdiction may make a decree passed by that court one without jurisdiction or void in law, a decree passed by a court lacking territorial jurisdiction or pecuniary jurisdiction does not automatically become void. At best it is voidable in the sense that it could be challenged in appeal therefrom provided the conditions of Section 21 of the Code of Civil Procedure are satisfied.

It may be noted that Section 21 provided that no objection as to place of the suing can be allowed by even an appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and unless there has been a consequent failure of justice. In 1976, the existing section was numbered as sub- section (1) and sub-section (2) was added relating to pecuniary jurisdiction by providing that no objection as to competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or revisional court unless such objection had been taken in the first instance at the earliest possible opportunity and unless there had been a consequent failure of justice.

Though Section 21-A of the Code speaks of a suit not being maintainable for challenging the validity of a prior decree between the same parties on a ground based on an objection as to "the place of suing", there is no reason to restrict its operation only to an objection based on territorial jurisdiction and excluding from its purview a defect based on pecuniary jurisdiction. In the sense in which the expression "place of suing" has been used in the Code it could be understood as taking within it both territorial jurisdiction and pecuniary jurisdiction.

Section 15 of the Code deals with pecuniary jurisdiction and, Sections 15 to 20 of the Code deal with "place of suing". The heading "place of suing" covers Section 15 also. This Court in ***Bahrein Petroleum Co. Ltd. v. P.J. Pappu, AIR 1966 SC 634*** made no distinction between Section 15 on the one hand and Sections 16 to 20 on the other, in the context of Section 21 of the Code. Even otherwise, considering the interpretation placed by this Court on Section 11 of the Suits Valuation Act and treating it as equivalent in effect to Section 21 of the Code of Civil

Procedure as it existed prior to the amendment in 1976, it is possible to say, especially in the context of the amendment brought about in Section 21 of the Code by Amendment Act 104 of 1976, that Section 21- A was intended to cover a challenge to a prior decree as regards lack of jurisdiction, both territorial and pecuniary, with reference to the place of suing, meaning thereby the court in which the suit was instituted.

As can be seen, Amendment Act 104 of 1976 introduced sub-section (2) relating to pecuniary jurisdiction and put it on a par with the objection to territorial jurisdiction and the competence to raise an objection in that regard even in an appeal from the very decree. This was obviously done in the light of the interpretation placed on Section 21 of the Code as it existed and Section 11 of the Suits Valuation Act by this Court in ***Kiran Singh v. Chaman Paswan, AIR 1954 SC 340*** followed by ***Hiralal Patni v. Kali Nath, AIR 1962 SC 199*** and ***Bahrein Petroleum*** (supra). Therefore, there is no justification in understanding the expression "objection as to place of suing" occurring in Section 21-A as being confined to an objection only in the territorial sense and not in the pecuniary sense. Both could be understood, especially in the context of the amendment to Section 21 brought about by the Amendment Act, as objection to place of suing.

40. The entire question was considered by this Court in ***Kiran Singh*** (supra). Since in the present case, the objection is based on the valuation of the suit or the pecuniary jurisdiction, we think it proper to refer to that part of the judgment dealing with Section 11 of the Suits Valuation Act. Their Lordships held:

> "It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it. With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation

Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits."

In the light of the above, it is clear that no objection to the pecuniary jurisdiction of the court which tried OS No. 61 of 1971 could be raised successfully even in an appeal against that very decree unless it had been raised at the earliest opportunity and a failure of justice or prejudice was shown. Obviously therefore, it could not be collaterally challenged. That too not by the plaintiffs therein, but by a defendant whose alienation was unsuccessfully challenged by the plaintiffs in that suit."

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55. CIVIL PROCEDURE CODE, 1908 – Order 2 Rule 2 and Order 7 Rule 11

(i) Suit to include whole claim – Bar of subsequent suit – Mandate of Order 2 Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit – It does not provide that all the different causes of action arising from the same transaction must be included in a single suit – Similarly, when it was not possible for the plaintiff to obtain a particular relief in the first suit and such relief becomes available to him on the happening of a subsequent event, then provision under Order 2 Rule 2 would not bar the subsequent suit for claiming those reliefs – Law explained and clarified.

(ii) Bar to subsequent suit – Applicability – Plaintiff entered into an agreement to purchase the suit land and after making payment of the whole amount of sale consideration has also taken over the possession of the said land – When vendor refused to honour the agreement, plaintiff filed a suit for permanent injunction restraining vendor and third party from interfering in his peaceful possession – At the time when the said suit was filed,

Government order was in force which imposed absolute prohibition on transferring the said land – After the said ban was lifted, plaintiff filed subsequent suit for specific performance of contract and cancellation of sale-deed executed by vendor in favour of third party – Lifting of ban resulted in new cause of action distinct from the earlier suit – Held, bar under Order 2 Rule 2 would not be applicable.

सिविल प्रक्रिया संहिता, 1908 – आदेश 2 नियम 2 एवं आदेश 7 नियम 11

(i) वाद के अंतर्गत संपूर्ण दावा होगा – पश्चातवर्ती वाद का वर्जन – आदेश 2 नियम 2 की आज्ञा है कि एक वाद कारण से उत्पन्न होने वाले संपूर्ण दावे को एक ही वाद में सम्मिलित होना चाहिए – ऐसा प्रावधानिक नहीं है कि एक संव्यवहार से उत्पन्न सभी भिन्न वाद–कारणों को एक ही वाद में सम्मिलित किया जावेगा – इसी प्रकार जब वादी के लिए प्रथम वाद में कोई विशेष अनुतोष प्राप्त करना संभव नहीं था और ऐसा अनुतोष उसे किसी पश्चातवर्ती घटना के घटित होने पर उपलब्ध होता है तब आदेश 2 नियम 2 का प्रावधान उन अनुतोष को प्राप्त करने हेतु पश्चातवर्ती वाद का वर्जन नहीं करेगा – व्याख्या कर विधि स्पष्ट की गई।

(ii) पश्चातवर्ती वाद का वर्जन – प्रयोज्यता – वादी ने वादग्रस्त भूमि क्रय करने का करार किया और विक्रय प्रतिफल की संपूर्ण राशि का भुगतान करने के बाद उक्त भूमि का आधिपत्य भी प्राप्त कर लिया – जब विक्रेता ने करार को मानने से इंकार किया तब वादी ने विक्रेता और तृतीय पक्ष को उसके शांतिपूर्ण आधिपत्य में हस्तक्षेप करने से रोकने के लिए स्थायी निषेधाज्ञा का वाद प्रस्तुत किया – जिस समय उक्त वाद प्रस्तुत किया गया था, उस समय शासकीय आदेश प्रभाव में था, जो उक्त भूमि के अंतरण पर पूर्ण प्रतिबंध लगाता था – उक्त प्रतिबंध हटने के बाद, वादी ने अनुबंध का विनिर्दिष्ट अनुपालन कराए जाने और तृतीय पक्ष के हित में विक्रेता द्वारा निष्पादित विक्रय–विलेख के रद्द कराने के लिए पश्चातवर्ती वाद प्रस्तुत किया – प्रतिबंध हटने के परिणामस्वरूप पूर्ण वाद से पृथक नवीन वाद कारण उत्पन्न हुआ – अभिनिर्धारित, आदेश 2 नियम 2 के अंतर्गत वर्जन लागू नहीं होगा।

Cuddalore Powergen Corporation Ltd. v. M/s. Chemplast Cuddalore Vinyls Limited and anr.

Judgment dated 15.01.2025 passed by the Supreme Court in Civil Appeal No. 372 of 2025, reported in AIR 2025 SC 849

Relevant extracts from the judgment:

On a conspectus of the discussion, what follows is that:

i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.

ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.

iii. Several definitions have been given to the phrase "cause of action" and it can safely be said to mean – "every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court". Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.

v. The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

vi. The defendant must also have produced the earlier plaint in evidence in order to establish that there is an identity in the causes of action

between both the suits and that there was a deliberate relinquishment of a larger relief on the part of the plaintiff.

vii. Since the plea is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning.

A careful perusal of Order II Rule 2 would indicate that it does not impose any restriction on the applicability of the principles therein based on the stage or status of the first suit. In other words, there is no clear requirement that the first suit either be pending or disposed of in order to make a plea of bar under Order II Rule 2 as regards the second or subsequent suit. It is conspicuous by the absence of such a stipulation that the law makers thought fit that the bar under this provision would apply if there is an identity in the causes of action of both suits and irrespective of whether the first suit is disposed or not.

Furthermore, the laudable object behind this provision is to prevent the multiplicity of suits and the splitting of claims. If it is held that it is a necessary condition for the first suit to be disposed of, for a plea under Order II Rule 2 to be maintainable, parties would still be able to file multiple suits with the excuse that the first suit is pending. Declaring so would not serve to further the object of Order II Rule 2 in any manner whatsoever. On the contrary, this would run counter to the objective behind the enactment of the provision and only serve to continuously vex the defendants. Therefore, reading such a qualification into the rule which is clearly absent in the letter of the provision would be unjustified.

It is re-affirmed that the stage at which the first suit is, would not be a material consideration in deciding the applicability of the bar under Order II Rule 2. What needs to be looked into is whether the cause of action in both suits is one and the same in substance, and whether the plaintiff is agitating the second suit for claiming a relief which was very well available to him at the time of filing the first suit. Therefore, the fact that the first suit is still pending before the concerned court would have no material impact in deciding whether the subsequent suit filed as O.S. No. 122 of 2008 is barred by the principles under Order II Rule 2.

III. The plaints have to be read as a whole to determine the applicability of the bar under Order II Rule 2 CPC for the purpose of rejection of plaint under Order VII Rule 11(d) CPC.

The G.O. Ms. No. 1986 dated 08.08.1986 issued by the Government of Tamil Nadu read with the notification dated 23.10.2006 issued by the TNEB imposed an absolute prohibition which restrained any individual land owner in the two villages of Thiyagavalli and Kudikkadu from transferring their lands either by way of sale

or by any other mode to any third party other than to "M/s. Cuddalore Power Company Limited" who is the appellant herein. On the strength of this G.O., the revenue authorities refused to register the sale deeds pertaining to several extents of land, belonging to several individuals. Only sale deeds executed in favour of the appellant herein was being registered by the authorities. The Madras High Court while delivering its decision dated 05.03.2008 in the public interest litigation remarked that they were at a loss to understand as to how and under what provision of law such a prohibition could have been imposed and stated that any such ban would directly infringe the constitutional right of any land owner to his right to property.

During the institution of the first suit for permanent injunction by the respondent no.1 on 16.02.2008, the proceedings in the public interest litigation which challenged the G.O. dated 08.08.1986 was still pending before the High Court and the respondent no. 1 himself had also filed a separate writ petition challenging the actions of the registrar. Until the High Court quashed the G.O. dated 08.08.1986 vide order dated 05.03.2008 passed in the public interest litigation, the respondent no. 1 could not have registered a sale deed in his favour or sought for the relief of specific performance. It must be highlighted that the factual situation herein is slightly different from one where there is a statutory requirement under any law which mandates that a permission/sanction from certain competent authorities must be obtained before registering a sale deed. In such a situation, the court would be empowered to grant a conditional decree of specific performance subject to such permission/sanction being obtained by the appropriate party and a suit for specific performance would be maintainable. However, in the present peculiar facts, there was an absolute ban and not a conditional restriction to execute the sale deeds. Therefore, a suit for specific performance could not have been instituted by the respondent no.1 since it would have been nothing but a futile attempt.

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56. CIVIL PROCEDURE CODE, 1908 – Order 3 Rules 1 and 2
POWER OF ATTORNEY ACT, 1882 – Section 2
EVIDENCE ACT, 1872 – Section 118
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 124
Evidence of power of attorney holder – Registered power of attorney holder is having right to conduct the proceedings of trial but cannot enter into the witness box on behalf of the principal – Power of attorney holder can appear as a witness in his personal capacity only.

सिविल प्रक्रिया संहिता, 1908 – आदेश 3 नियम 1 व 2
मुख्तारनामा अधिनियम, 1882 – धारा 2
साक्ष्य अधिनियम, 1872 – धारा 118
भारतीय साक्ष्य अधिनियम, 2023 – धारा 124
मुख्तारनामा धारक की साक्ष्य – पंजीकृत मुख्तारनामा धारक को वाद की कार्यवाही संचालित करने का अधिकार है परन्तु वह नियुक्तकर्ता की ओर से साक्षी के कठघरे में प्रवेश नहीं कर सकता – मुख्तारनामा धारक केवल स्वयं की व्यक्तिगत हैसियत में ही साक्षी के रूप में उपस्थित हो सकता है।

Munni Devi v. Goverdhan and ors.

Order dated 02.01.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 2242 of 2023, reported in 2025 (1) MPLJ 432

Relevant extracts from the order:

In the present case, it is not disputed that the suit has been filed for declaration and permanent injunction with respect to the property in question. It is not a case where the suit itself was filed by a Power of Attorney holder. During the pendency of the suit, a registered Power of Attorney was executed by the respondent No.1/plaintiff in favour of his nephew stating therein that he is known to the case and can depose on his behalf before the learned Trial Court and will also conduct the proceedings of the Civil Suit thereupon. As far as conducting the proceedings before the learned Trial Court is concerned, the same is always permissible and the proceedings of the Civil Suit can be conducted by the Power of Attorney on behalf of the principal, but as far as deposition or entering into the witness box is concerned, the same is not permissible in view of the law laid down by the Hon'ble Supreme Court in the matter of ***Janki Vashdeo Bhojwani & anr. v. Indusind Bank Ltd. & ors., 2005(1) MPLJ 421*** wherein, the Hon'ble Apex Court has held that the Power of Attorney holder can appear as a witness in his personal capacity only and not on behalf of the principal. The Hon'ble Supreme Court has considered various orders passed by the Courts and has held that the judgment passed by the Rajasthan High Court in the matters of ***Shambhu Dutt Shastri v. State of Rajasthan, 1986 (2) WLL 713*** and ***Ram Prasad v. Hari Narain and ors., AIR 1998 Raj. 185*** were the correct laws and the judgment passed by the Bombay High Court in the case of ***Humberto Luis & anr. v. Floriano Armando Luis & anr., 2000 (1) Mh.L.J. 690*** was not a good law and thus, was overruled. The Hon'ble Supreme Court while considering the aforesaid has observed as under:

"Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

Having regard to the directions in the order of remand by which this Court placed the burden of proving on the appellants that they have a share in the property, it was obligatory on the part of the appellants to have entered the box and discharged the burden. Instead, they allowed Mr. Bhojwani to represent them and the Tribunal erred in allowing the power of attorney holder to enter the box and depose instead of the appellants. Thus, the appellants have failed to establish that they have any independent source of income and they had contributed for the purchase of the property from their own independent income. We accordingly hold that the Tribunal has erred in holding that they have a share and are co-owners of the property in question. The finding recorded by the Tribunal in this respect is set aside.

Apart from what has been stated, this Court in the case of ***Vidhyadhar v. Manikrao and anr., (1999) 3 SCC 573*** observed at page 583 SCC that "where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct".

In civil dispute the conduct of the parties is material. The appellants have not approached the Court with clean hands. From the conduct of the parties it is apparent that it was a ploy to salvage the property from sale in the execution of Decree.

On the question of power of attorney, the High Courts have divergent views. In the case of ***Shambhu Dutt Shastri v. State of Rajasthan, 1986 2 WLL 713*** it was held that a general power of

attorney holder can appear, plead and act on behalf of the party buthe cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

The aforesaid judgment was quoted with the approval in the case of ***Ram Prasad v. Hari Narain & ors, AIR 1998 Raj. 185***. It was held that the word "acts" used in Rule 2 of Order III of the CPC does not include the act of power of attorney holder to appear as a witness on behalf of a party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but be cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of the CPC.

In the case of ***Dr. Pradeep Mohanbay v. Minguel Carlos Dias, 2000 Vol.102 (1) Bom LR 908***, the Goa Bench of the Bombay High Court held that a power of attorney can file a complaint under Section 138 but cannot depose on behalf of the complainant. He can only appear as a witness.

However, in the case of ***Humberto Luis & anr. v. Floriano Armando Luis & anr., 2002 (2) Bom CR 754*** on which the reliance has been placed by the Tribunal in the present case, the High Court took a dissenting view and held that the provisions contained in order III Rule2 of CPC cannot be construed to disentitle the power of attorney holder to depose on behalf of his principal. The High Court further held that the word "act" appearing in order III Rule 2 of CPC takes within its sweep "depose". We are unable to agree with thisview taken by the Bombay High Court in ***Floriano Armando*** (supra).

We hold that the view taken by the Rajasthan High Court in the case of ***Shambhu Dutt Shastri*** (supra) followed and reiterated in the case of ***Ram Prasad*** (supra) is the correct view. The view taken in the case of ***Floriano Armando Luis*** (supra) cannot be said to have laid down a correct law and is accordingly overruled.

It is clear from the perusal of the aforesaid enunciation that the Power of Attorney holder can appear in the witness box in his personal capacity and not on behalf of the principal. It is the principal who has to depose and to be cross-examined before the trial Court and if he is not in a position to appear before the trial Court a commission for recording his evidence may be issued under the relevant provisions of the CPC. The Coordinate Bench of this Court in the matter of ***Jethanand and Company v. Mohan and Company, (2007) 3 MPLJ 584*** has considered the similar question and while placing reliance upon the judgment in the case of ***Janki Vasudev Bhojwani*** (supra) and other judgments of the Supreme Court in the matter of ***Chandradhar Goswami and ors. v. Gauhati Bank Ltd., AIR 1967 SC 1058*** and ***Central Bureau of Investigation v. V.C. Shukla and ors., AIR 1998 SC 1406*** has held as under:

> "By inviting my attention to the evidence of Vishnu Kumar Jaiswal (P.W. 1), it has been argued that as per this witness he was not having any personal knowledge about the transaction that the goods were sold to defendant and the plaintiff-firm did not examine any of its partner having personal knowledge about the transaction and delivery of goods to the defendant and its non-payment and, therefore, an adverse inference should have been drawn against the plaintiff. By placing reliance on the decision of Supreme Court ***Janki Vashdeo Bhojwani and anr. v. Indusind Bank Ltd. and ors. 2005(1) MPLJ 421***, it has been submitted that Vishnu Kumar Jaiswal is only the power of attorney holder of plaintiff- firm, but he cannot appear as a witness on behalf of the party in the capacity of that party. By inviting the attention of this Court to Section 34 of the Evidence Act, it has been contended that plaintiff-firm was obliged to produce and prove the accounts but the accounts are not filed and proved, therefore, the suit of plaintiff cannot be decreed. In support of his contention, learned Counsel has placed reliance on two decisions of the Supreme Court, they are ***Chandradhar Goswami and ors. v. Gauhati Bank Ltd., MR 1967 SC 1058*** and ***Central Bureau of Investigation v. V.C. Shukla and ors.*** (supra). On these premised submissions, it has been argued that since the plaintiff has failed to prove its case, the suit be dismissed.
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> The Supreme Court in the case of ***Chandradhar Goswami*** (supra), has specifically held that no person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of

business. The Supreme Court has further laid down the law that there has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accepts the correctness of the books of account and does not challenge them. In the present case, the cash book has not all been proved nor there is any evidence thatentries in books of account are regularly kept in the course of business. In order to attract Section 34 of the Evidence Act it should come in the evidence that entries in the books of account are regularly kept in the course of business. This has not at all been stated by said Vishnu Kumar Jaiswal in his evidence nor the cash book has been proved and marked as exhibit in the Trial Court by providing opportunity of cross-examination to the defendant. I may further add that such entries cannot by itself be sufficient for fastening liability on any person. P.W. 1-Vishnu Kumar Jaiswal, the sole witness, is not having any personal knowledge about the transaction embodied in the ledgers. The account books are not in themselves proved the liability and the liability was required to be proved by other evidence also. The entries in books of account regularly kept in the course of business though relevant are corroborative evidence and mere production and proof of these entries is not by itself sufficient to charge any one with liability and there must be some other independent evidence to prove the transaction, therefore, no reliance could be placed on these entries. Since there is no corroborative evidence and the entries are also not proved by examining the person who is acquainted or under whose handwriting such entries were made, I am of the view that plaintiff's suit cannot be decreed."

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57. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17

Suit for partition – Application for amendment filed after commencement of trial – Plaintiff sought to add list of movable properties and also questioned genuineness of Will executed in favour of the defendant – Said application was rejected on the ground of delay, want of due diligence and that it was not based on subsequent events – Held, without determining the question of Will and its genuineness, the partition of the suit property would not be possible – Object of Order 6 Rule 17 CPC is aimed at preventing multiplicity or multiple avenues of

litigations subsumed under the umbrella of one dispute – Liberal approach is to be adopted in consideration of such applications. (*Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. and anr., AIR 2022 SC 4256* followed.)

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17

विभाजन हेतु वाद – संशोधन का आवेदन विचारण प्रारम्भ होने के पश्चात् प्रस्तुत किया गया – वादी द्वारा चल संपत्तियों की सूची जोड़ने और प्रतिवादी के पक्ष में निष्पादित वसीयत की प्रमाणिकता को भी प्रश्नगत किया जाना चाहा गया – उक्त आवेदन विलंब, सम्यक तत्परता की कमी और पश्चातवर्ती घटनाओं पर आधारित नहीं होने के आधार पर निरस्त किया गया – अभिनिर्धारित, वसीयत और उसकी प्रामाणिकता के प्रश्न को निर्धारित किए बगैर, वादग्रस्त संपत्ति का विभाजन संभव नहीं होगा – आदेश 6 नियम 17 सीपीसी का उद्देश्य एक विवाद के अंतर्गत आने वाली वाद बाहुल्यता या मुकदमेबाजी के विभिन्न मार्गों को रोकना है – ऐसे आवेदन पत्रों पर विचार करते समय उदार.दृष्टिकोण अपनाया जाना चाहिए। (*भारतीय जीवन बीमा निगम वि. संजीव बिल्डर्स प्राइवेट लिमिटेड और अन्य, एआईआर 2022 एससी 4256* का अनुसरण किया गया।)

Dinesh Goyal alias Pappu v. Suman Agarwal (Bindal) and ors.

Judgment dated 24.09.2024 passed by the Supreme Court in Civil Appeal No. 10812 of 2024, reported in AIR 2024 SC 4779

Relevant extracts from the judgment:

By way of the amendment, what is sought to be done is, to question the validity of the Will, on the basis of which, the defendant sought to have the suit dismissed, while also expanding the scope of adjudication of the suit to include movable property. It has to be then, demonstrated that – (a) determination of the genuineness of the Will is the necessary course of action in determining the issues inter se the parties; and (b) given the finding of the court below that the application was presented post the commencement of the trial, it could not have been, despite due diligence, presented prior to such commencement.

Be that as it may, the overarching Rule is that a liberal approach is to be adopted in consideration of such applications.

Any and all delays in judicial processes should be avoided and minimised to the largest extent possible, and should generally be, and are rightly frowned upon. However, not in all cases can delay determine the fate of a Suit. The defendant submits that the time gap between submitting the written statement to the Suit and the presentation of the application seeking leave to amend is unexplained.

If this argument of the defendant is accepted, the question of Will shall remain undecided or at best will be decided with great delay. The trial which has admittedly already commenced, would be stalled by way of a challenge to the framing of issues which, in turn, would not be in consonance with the object of Order VI Rule 17 of CPC which is aimed at preventing multiplicity or multiple avenues of litigation, subsumed under the umbrella of one dispute.

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58. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11
COURT FEES ACT, 1870 – Section 7(iv)(c)
Valuation of suit and court fees – Suit filed for declaring a sale deed to be null and void and recovery of possession of suit property – Court fees paid on the basis of consideration mentioned in the sale deed and twenty times of land revenue – Trial Court found the valuation improper and therefore, directed the plaintiff to value the suit properly and to pay *ad-valoram* court fees – Plaintiff moved an application proposing amendment in the plaint relating to valuation and court fees – Trial Court rejected the said application – Without determining the value of suit and amount of requisite court fees payable, the Trial Court dismissed the suit and also for want of proper valuation – Held, Trial Court has no jurisdiction to dismiss the suit on such ground without determining the valuation of suit and court fees.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11
न्यायालय शुल्क अधिनियम, 1870 – धारा 7(iv)(ग)
वाद का मूल्यांकन एवं न्यायालय शुल्क – वाद विक्रय विलेख के अकृत एवं शून्य होने की घोषणा तथा वादग्रस्त संपत्ति का आधिपत्य प्राप्ति हेतु प्रस्तुत किया गया – विक्रय विलेख में वर्णित प्रतिफल एवं भू–राजस्व के बीस गुना के आधार पर न्यायालय शुल्क का भुगतान किया गया – विचारण न्यायालय ने मूल्यांकन अनुचित पाया और इसलिए वादी को निर्देशित किया कि वह वाद का उचित मूल्यांकन कर मूल्यानुसार न्यायालय शुल्क अदा करे – वादी ने आवेदन प्रस्तुत कर मूल्यांकन एवं न्यायालय शुल्क के संबंध में वादपत्र में संशोधन किया जाना प्रस्तावित किया – विचारण न्यायालय ने उक्त आवेदन निरस्त किया वाद का मूल्यांकन एवं देय अपेक्षित न्यायालय शुल्क की राशि का निर्धारण किए बगैर विचारण न्यायालय ने उचित मूल्यांकन न होने के आधार पर वाद भी निरस्त कर दिया – अभिनिर्धारित, विचारण न्यायालय को वाद का मूल्यांकन एवं न्यायालय शुल्क का निर्धारण किये बगैर ऐसे आधार पर वाद निरस्त करने का क्षेत्राधिकार नहीं है।

Suresh Chand v. Shiv Vishal through LRs. and ors.

Judgment dated 18.07.2024 passed by the High Court of Madhya Pradesh in First Appeal No. 730 of 2000, reported in ILR (2024) MP 2617

Relevant extracts from the judgment:

The plaintiff Suresh Kumar instituted a suit for declaring the sale deed dated 24.07.1971 to be null and void and recovery of possession of the suit property on basis of twenty times of land revenue,the plaintiff valued the suit for the relief(s) claimed in the plaint and paid requisite court fee.

Trial Court proceeded to decide issue no.11 as preliminary issue and after hearing arguments of the parties, decided the same against the plaintiff, vide order dated 30.10.1999 by holding that the plaintiff has not paid requisite court fee on the valuation of Rs. 22,000/- and for other relief(s) and directed the plaintiff to amend the plaint putting valuation on the basis of market value and then to pay court fee thereon,however trial Court did not determine any valuationor court fee payable by the plaintiff.

Perusal of order dated 30.10.1999 shows that although trial Court has found that valuationput by the plaintiff is not proper and consequentlyit directed the plaintiff to value the suit as per market value and then to pay court fee by proposing amendment in the plaint and also directed to pay advalorem court fee on the amount of Rs. 22,000/-, but trial court has notspecified any valuation and amount of court fee payable by the plaintiff.

Apparently, as per direction contained in paragraph 17 of order dated 30.10.1999, the plaintiff moved an application for amendment clarifying the existing valuationof plaint and court fee, but this application was dismissed on 04.10.2000 and even at that time, trial Court did not direct the plaintiff to value the suit for specific amount and to pay specific amount of court fee, meaning thereby, trial Court neither determined the valuation of suit nor court fee. Hence, in my considered opinion, in absence of determination of valuation of suit and court fee, trial Court had no jurisdiction to dismiss the suit, for want of proper valuation and payment of court fee.

It is also apparent from the record that trial Court after framing issues proceeded further to record evidence in the suit, but in the light of order passed by this Court in C.R. No.669/1998 proceeded to decide the issue no.11 as preliminary issue. In my considered opinion, the issue no.11 required evidence, hence ought to

have been decided along with other issues, which is also the intention of provision contained in Order 14 Rule 2 CPC as well as of decision given by Hon'ble Supreme Court in the case of ***M/s. Commercial Aviation and Travel Company and ors. v. Mrs. Vimla Pannalal, AIR 1988 SC 1636***.

In view of the aforesaid discussion and in my considered opinion, impugned order dismissing the civil suit does not appear to be sustainable, resultantly by setting aside the impugned orders dated 12.07.2000 & 30.10.1999, case is remanded to trial Court for decision of civil suit afresh in accordance with law after restoring it to its original number.

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59. CIVIL PROCEDURE CODE, 1908 – Order 37 Rule 3(5)

Summary suit – Leave to defend – Grant of – While granting leave to defend, Trial Court ordered the defendant to furnish solvent surety for the entire amount as claimed by the plaintiff – Where Court has already formed an opinion that the defendants have made out a triable case, in such circumstances, the Civil Court was not justified in imposing such condition of furnishing solvent surety – Impugned order so far as it relates to furnishing of solvent surety, set aside.

सिविल प्रक्रिया संहिता, 1908 – आदेश 37 नियम 3(5)

संक्षिप्त वाद – प्रतिरक्षा की इजाजत – मंजूर किया जाना – प्रतिरक्षा की अनुमति प्रदान करते समय विचारण न्यायालय ने प्रतिवादी को वादी द्वारा दावा की गई सम्पूर्ण राशि के लिए ऋणशोधक्षम प्रतिभूति प्रस्तुत करने का आदेश दिया – जहाँ न्यायालय ने पहले ही यह राय बना ली है कि प्रतिवादियों का मामला विचारण योग्य है तब ऐसी परिस्थितियों में, सिविल न्यायालय द्वारा ऋणशोधक्षम प्रतिभूति प्रस्तुत करने की शर्त लगाना न्यायोचित नहीं था – आक्षेपित आदेश, जहां तक उसका संबंध ऋणशोधक्षम प्रतिभूति प्रस्तुत करने से है, अपास्त किया गया।

J.K. Brothers, Indore and ors. v. Ranchood Kashap

Order dated 15.04.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 5665 of 2023, reported in 2025 (1) MPLJ 114

Relevant extracts from the order:

It clearly reveals that the Court has already formed an opinion that the defendants have made out a triable case, and in such circumstances, the civil Court was not justified in imposing such condition of furnishing the solvent surety as

aforesaid. This Court in the case of ***Kamla Maithil v. Ajay Sharma, 2023 (3) MPLJ 383*** has held as under:

> "So far as the requirement of conditions, to be imposed on the defendant to defend his case is concerned, the Supreme Court in the case of ***IDBI Trusteeship Services Limited v. Hubtown Limited, (2017) 1 SCC 568*** has held as under:
>
> In ***Defiance Knitting Industries (P) Ltd. v. Jay Arts, (2006) 8 SCC 25***, this Court, after setting out the amended Order 37 and after referring to Mechelec case, laid down the following principles:
>
> "While giving leave to defend the suit the court shall observe the following principles:
>
> (a) If the court is of the opinion that the case raises a triable issue then leave to defend should ordinarily be granted unconditionally. See ***Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698***. The question whether the defence raises a triable issue or not has to be ascertained by the court from the pleadings before it and the affidavits of parties.
>
> (b) If the court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious it may refuse leave to defend altogether. ***Kiranmoyee Dassi v. Dr. J. Chatterjee, AIR 1949 Cal 479*** (noted and approved in ***Mechelec case***).
>
> (c) In cases where the court entertains a genuine doubt on the question as to whether the defence is genuine or sham or whether it raises a triable issue or not, the court may impose conditions in granting leave to defend.
>
> If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit;
>
> If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not apositively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend."

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60. CIVIL PROCEDURE CODE, 1908 – Order 39 Rule 2(1) r/w/s 151 and Order 43 Rule 1(r)

CONSTITUTION OF INDIA – Article 19(1)(a) and 21

(i) Interim injunction in suit for defamation – Publication of journalistic article – Test for grant of injunction – "Bonnard standard" – This standard laid down by the Court of Appeal (*England and Wales)* has acquired the status of a common law principle for grant of interim injunctions in defamation suits.

(ii) Interim injunction – Relevant considerations for grant – Journalistic article – Court has to balance freedom of speech with reputation and privacy – Fair comment in public interest and for public participation cannot be restrained – Injunction warranted only in exceptional cases where the article is malicious, palpably false or where defence is bound to fail in trial.

(iii) Grant of *ex parte* ad interim injunction – Exercise of discretionary power – Duty of Court – The threefold test of establishing: (i) *prima facie* case, (ii) balance of convenience, and (iii) irreparable loss or harm, is equally applicable to grant of interim injunction in defamation suits – However, this threefold test must not be applied mechanically to the detriment of the other party and in case of injunction against journalistic pieces, often to the detriment of the public – While granting interim relief, the court must provide detailed reasons and analyse how the threefold test is satisfied.

सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 2(1) सहपठित धारा 151 एवं आदेश 43 नियम 1(द)

भारत का संविधान – अनुच्छेद 19(1)(क) एवं 21

(i) मानहानि के वाद में अंतरिम निषेधाज्ञा – पत्रकारिता लेख का प्रकाशन – निषेधाज्ञा प्रदान करने के लिए परीक्षण – ''बोनार्ड मानक'' – अपील न्यायालय (*इंग्लैंड और वेल्स)* द्वारा निर्धारित इस मानक ने मानहानि के दावे में अंतरिम निषेधाज्ञा प्रदान करने के लिए कॉमन लॉ सिद्धांत का दर्जा अर्जित कर लिया है।

(ii) अंतरिम निषेधाज्ञा – प्रदान करने के लिए सुसंगत कारक – पत्रकारिता लेख – न्यायालय को वाक् स्वतंत्रता का प्रतिष्ठा एवं निजता के साथ संतुलन बनाना होगा – लोक हित में और सार्वजनिक भागीदारी के लिए निष्पक्ष टिप्पणी पर रोक नहीं लगाई जा सकती – निषेधाज्ञा केवल आपवादिक मामलों में ही अनुमत होगी जहां लेख दुर्भावनापूर्ण, स्पष्ट रूप से मिथ्या हो या जहां विचारण में बचाव का विफल होना निश्चित हो।

(iii) एकपक्षीय अंतरिम निषेधाज्ञा प्रदान किया जाना – विवेकाधीन शक्ति का प्रयोग करना – न्यायालय का कर्तव्य – स्थापित करने का त्रिस्तरीय परीक्षण : (i) प्रथम दृष्टया मामला, (ii) सुविधा का संतुलन, और (iii) अपूर्णीय क्षति या नुकसान, मानहानि के वाद में अंतरिम निषेधाज्ञा प्रदान करने के लिए समान रूप से लागू होता है – परन्तु इस त्रिस्तरीय परीक्षण को दूसरे पक्ष की हानि के लिए और पत्रकारिता लेख के विरूद्ध निषेधाज्ञा के मामले में, बहुधा जनता के नुकसान के लिए यंत्रवत् लागू नहीं किया जाना चाहिए – अंतरिम अनुतोष प्रदान करते समय, न्यायालय को विस्तृत कारण देना चाहिए और विश्लेषण करना चाहिए कि त्रिस्तरीय परीक्षण की कैसे संतुष्टि होती है।

Bloomberg Television Production Services India Private Limited and ors. v. Zee Entertainment Enterprises Limited

Judgment dated 22.03.2024 passed by the Supreme Court in Civil Appeal No. 4602 of 2024, reported in (2025) 1 SCC 741 (3 Judge Bench)

Relevant extracts from the judgment:

There are additional factors, which must weigh with courts while granting an *ex parte ad* interim injunction. Some of these factors were elucidated by a three-Judge Bench of this Court in ***Morgan Stanley Mutual Fund v. Kartick Das, (1994) 4 SCC 225***, in the following terms:

> "As a principle, *ex parte* injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of *ex parte* injunction are:
>
> (*a*) whether irreparable or serious mischief will ensue to the plaintiff;
>
> (*b*) whether the refusal of *ex parte* injunction would involve greater injustice than the grant of it would involve;
>
> (*c*) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
>
> (*d*) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant *ex parte* injunction;
>
> (*e*) the court would expect a party applying for *ex parte* injunction to show utmost good faith in making the application.

(*f*) even if granted, the *ex parte* injunction would be for a limited period of time.

(*g*) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court."

Significantly, in suits concerning defamation by media platforms and/or journalists, an additional consideration of balancing the fundamental right to free speech with the right to reputation and privacy must be borne in mind [***R. Rajagopal v. State of T.N., (1994) 6 SCC 632***] . The constitutional mandate of protecting journalistic expression cannot be understated, and courts must tread cautiously while granting pre-trial interim injunctions. The standard to be followed may be borrowed from the decision in ***Bonnard v. Perryman, (1891) 2 Ch 269 (CA)***. This standard, christened the "Bonnard standard", laid down by the Court of Appeal (England and Wales), has acquired the status of a common law principle for the grant of interim injunctions in defamation suits [***Holley v. Smyth, 1998 QB 726 (CA)***]. The Court of Appeal in ***Bonnard*** (supra) held as follows :

> "… But it is obvious that the subject-matter of an action for defamation is so special as to require exceptional caution in exercising the jurisdiction to interfere by injunction before the trial of an action to prevent an anticipated wrong. The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed; but, on the contrary, often a very wholesome act is performed in the publication and repetition of an alleged libel. Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions."

In ***Fraser v. Evans, (1969) 1 QB 349***, the Court of Appeal followed the Bonnard principle and held as follows:

> "… insofar as the article will be defamatory of Mr Fraser, it is clear he cannot get an injunction. The Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest. That has been established for many years ever since (***Bonnard v. Perryman, (1891) 2 Ch 269 (CA***)).

> The reason some times given is that the defences of justification and fair comment are for the jury, which is the constitutional tribunal, and not for a Judge. But a better reason is the importance in the public interest that the truth should out. …"

In essence, the grant of a pre-trial injunction against the publication of an article may have severe ramifications on the right to freedom of speech of the author and the public's right to know. An injunction, particularly *ex parte*, should not be granted without establishing that the content sought to be restricted is "malicious" or "palpably false". Granting interim injunctions, before the trial commences, in a cavalier manner results in the stifling of public debate. In other words, courts should not grant *ex parte* injunctions except in exceptional cases where the defence advanced by the respondent would undoubtedly fail at trial. In all other cases, injunctions against the publication of material should be granted only after a full-fledged trial is conducted or in exceptional cases, after the respondent is given a chance to make their submissions.

Increasingly, across various jurisdictions, the concept of "SLAPP suits" has been recognised either by statute or by courts. The term "SLAPP" stands for "Strategic Litigation against Public Participation" and is an umbrella term used to refer to litigation predominantly initiated by entities that wield immense economic power against members of the media or civil society, to prevent the public from knowing about or participating in important affairs in the public interest [Donson, F.J.L., *Legal Intimidation : A SLAPP in the Face of Democracy* (London, New York : Free Association Books, 2000).] . We must be cognizant of the realities of prolonged trials. The grant of an interim injunction, before the trial commences, often acts as a "death sentence" to the material sought to be published, well before the allegations have been proven. While granting ad interim injunctions in defamation suits, the potential of using prolonged litigation to prevent free speech and public participation must also be kept in mind by courts.

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61. CRIMINAL PROCEDURE CODE, 1973 – Sections 54, 167, 200, 202, 437 and 438 r/w/s 156 and 173
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 53, 187, 223, 225, 480 and 482 r/w/s 175 and 193
CONSTITUTION OF INDIA – Articles 20 and 21

(i) Interim anticipatory bail – Granted with direction to cooperate with the investigation – Non-cooperation by the accused is one matter and the accused refusing to confess the crime is another one

– There would be no obligation upon the accused that on being interrogated, he must confess to the crime and only thereafter, would the investigating officer be satisfied that the accused has cooperated with the investigation.

(ii) Confession recorded during investigation – Any confession made by the accused before a police officer is inadmissible in evidence and cannot even form part of the record.

(iii) Police remand – Whether can be sought to find out the criminal antecedents of the accused? Held, No – With digitisation of records, the criminal antecedents/ records of accused would be readily available on CCTNS (Crime and Criminal Tracking Network System) and therefore, police custody remand cannot be sought in order to find out his criminal antecedents.

(iv) Application for police remand – Before exercising the power to grant police custody remand, the Courts must apply judicial mind to the facts of the case in order to arrive at a satisfaction as to whether police custody remand of the accused is genuinely required – The Courts are not expected to act as messengers of the investigating agencies and the remand applications should not be allowed in a routine manner.

(v) Custodial violence – Medical examination – Police remand granted by ACJM – After completion of period of remand, accused made complaint of custodial violence – ACJM made a note on the complaint that she did not find any injury – As per the mandate of section 54 CrPC, law requires that the moment the accused makes a complaint of torture in police custody, it was incumbent upon the Magistrate concerned to have got the accused subjected to medical examination.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 54, 167, 200, 202, 437 एवं 438 सहपठित धाराएं 156 व 173

भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 53, 187, 223, 225, 480 एवं 482 सहपठित धाराएं 175 व 193

भारत का संविधान – अनुच्छेद 20 एवं 21

(i) अंतरिम अग्रिम जमानत – अनुसंधान में सहयोग करने के निर्देश के साथ स्वीकार की गई – अभियुक्त द्वारा अनुसंधान में असहयोग करना एक बात है और अभियुक्त द्वारा अपराध की संस्वीकृति करने से इंकार करना अलग

बात है – अभियुक्त पर कोई बाध्यता नहीं होगी कि पूछताछ किए जाने पर उसे अपराध स्वीकार करना होगा और उसके बाद ही अनुसंधान अधिकारी संतुष्ट होगा कि अभियुक्त ने अनुसंधान में सहयोग किया है।

(ii) अनुसंधान के दौरान अभिलिखित संस्वीकृति – पुलिस अधिकारी के समक्ष अभियुक्त द्वारा की गई कोई भी संस्वीकृति साक्ष्य में अग्राह्य है और यह अभिलेख का भाग भी नहीं बन सकती।

(iii) पुलिस रिमाण्ड – क्या अभियुक्त के आपराधिक अतीत का पता लगाने के लिए पुलिस रिमाण्ड मांगी जा सकती है? अभिनिर्धारित, नहीं – अभिलेखों का डिजिटलीकरण हो जाने से, अभियुक्त के आपराधिक अतीत/रिकॉर्ड सीसीटीएनएस (अपराध और आपराधिक ट्रैकिंग नेटवर्क सिस्टम) पर आसानी से उपलब्ध होंगे और इसलिए उसके आपराधिक अतीत का पता लगाने के लिए पुलिस रिमाण्ड नहीं मांगी जा सकती।

(iv) पुलिस रिमाण्ड के लिए आवेदन – पुलिस रिमाण्ड देने की शक्ति का प्रयोग करने के पूर्व, न्यायालयों को प्रकरण के तथ्यों पर न्यायिक विवेक का प्रयोग करना चाहिए जिससे इस संतुष्टि पर पहुँचा जा सके कि क्या अभियुक्त की पुलिस रिमाण्ड वास्तव में आवश्यक है – न्यायालयों से यह अपेक्षा नहीं की जाती है कि वे अनुसंधान एजेंसियों के संदेशवाहक के रूप में कार्य करें और रिमाण्ड आवेदनों को सामान्य रूप से स्वीकार नहीं किया जाना चाहिए।

(v) अभिरक्षा में हिंसा – चिकित्सीय परीक्षण – एसीजेएम द्वारा पुलिस रिमाण्ड स्वीकार – रिमाण्ड अवधि पूर्ण होने के बाद, अभियुक्त ने अभिरक्षा में हिंसा की शिकायत की – एसीजेएम ने शिकायत पर टीप अंकित की कि उन्होंने कोई उपहति नहीं पाई – दं.प्र.सं. की धारा **54** की आज्ञा अनुसार, विधि की यह अपेक्षा है कि जिस क्षण अभियुक्त पुलिस अभिरक्षा में प्रताड़ना की शिकायत करे, संबंधित मजिस्ट्रेट के लिए यह आवश्यक है कि वह अभियुक्त का चिकित्सीय परीक्षण करवाए।

Tusharbhai Rajnikantbhai Shah v. Kamal Dayani and ors.

Judgment dated 07.08.2024 passed by the Supreme Court in Contempt Petition (C) No. …….. of 2024, reported in (2025) 1 SCC 753

Relevant extracts from the judgment:

This Court has placed the individual freedom and right to liberty at the highest pedestal in numerous decisions. Reference in this regard may be to the decision of this Court in ***Rekha v. State of T.N., (2011) 5 SCC 244*** wherein it was held as under:

> "Article 21 is the most important of the fundamental rights guaranteed by the Constitution of India. Liberty of a citizen is a most important right won by our forefathers after long, historical and arduous struggles. Our Founding Fathers realised its value because they had seen during the freedom struggle civil liberties of our countrymen being trampled upon by foreigners, and that is why they were determined that the right to individual liberty would be placed on the highest pedestal along with the right to life as the basic right of the people of India."

As a matter of fact, the application seeking police custody remand of the petitioner could not have been entertained without seeking permission of this Court as observed in ***Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1***.

In this regard, we are benefitted by the judgment of this Court in ***Ashok Kumar v. State (UT of Chandigarh), (2024) 12 SCC 199*** wherein, it has been held that a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial investigation is required would not be sufficient. The State would have to show or indicate more than *prima facie* case as to why custodial investigation of the accused is required for the purpose of investigation.

The relevant excerpts in this regard from the Constitution Bench judgment of this Court in ***Sushila Aggarwal*** (supra) are reproduced below for the sake of ready reference:

> "Section 438 CrPC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While weighing and considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The necessity to impose other restrictive conditions, would have to be weighed on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of

anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

It is open to the police or the investigating agency to move the court concerned, which granted anticipatory bail, in the first instance, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. The court, in this context, is the court which grants anticipatory bail, in the first instance, according to prevailing authorities."

The ratio of ***Sushila Aggarwal*** (supra) makes it clear that Section 438 CrPC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. The necessity to impose restrictive conditions other than those spelt out in Section 437(3) CrPC would have to be weighed on a case-by-case basis and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the factual context of the case warrants but should not be imposed in a routine manner and the Court would have to act with circumspection depending on the particular facts of each case before endeavouring to impose such conditions.

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62. CRIMINAL PROCEDURE CODE, 1973 – Section 125(4)
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 144(4)
Maintenance to wife – Effect of decree of restitution of conjugal rights – Mere passing of such decree is not sufficient to attract disqualification u/s 125 (4) of the Code – It depends on the facts of the case whether the wife had valid and sufficient reason to refuse to live with her husband – Proceedings u/s 125 CrPC and restitution of conjugal rights are two different proceedings having different standing – Order rejecting maintenance petition was set aside – Appeal allowed.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125(4)
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 144(4)
पत्नी को भरण–पोषण – दाम्पत्य अधिकारों के प्रत्यास्थापन की डिक्री का प्रभाव – ऐसी डिक्री का पारित होना मात्र संहिता की धारा 125(4) के अंतर्गत अयोग्यता को आकर्षित करने हेतु पर्याप्त नहीं है – यह मामले के तथ्यों पर निर्भर करता

है कि क्या पत्नी के पास अपने पति के साथ रहने से इंकार करने का वैध और पर्याप्त कारण था – दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत कार्यवाही और दाम्पत्य अधिकारों का प्रत्यास्थापन दो अलग–अलग कार्यवाहियां हैं, जिनका अलग–अलग आधार है – भरण–पोषण याचिका अस्वीकार करने का आदेश अपास्त किया गया – अपील स्वीकार की गई।

Rina Kumari alias Reena Devi alias Reena v. Dinesh Kumar Mahto alias Dinesh Kumar Mahato and anr.

Judgment dated 10.01.2025 passed by the Supreme Court in Criminal Appeal No. 161 of 2025, reported in AIR 2025 SC 644

Relevant extracts from the judgment:

The preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance u/s 125 CrPC and the mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification u/s 125(4) CrPC It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree. There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification u/s 125(4) CrPC.

Further, the judgment, order or decree passed in previous civil proceeding, if relevant, as provided u/s 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. … Hence, in each and every case, the first question which would require consideration is – whether judgment, order or decree is relevant, if relevant – its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

Decisions of this Court manifest that judgments passed on merits in civil proceedings have been accepted as sufficient cause to discharge or acquit a person facing prosecution on the same grounds. This dictum is applied especially in cases where civil adjudication proceedings, like in tax cases, lead to initiation of

prosecution by the authorities. Such cases are, however, different as there is a direct connect between the civil proceedings and the prosecution which is launched. The facts and allegations leading to the prosecution directly arise as a result of the civil proceedings. Moreover, the standard of proof in civil proceedings is a preponderance of probabilities whereas, in criminal prosecution, conviction requires proof beyond reasonable doubt. We do not think the said principle can be applied per se to proceedings for maintenance u/s 125 CrPC by relying upon a judgment passed by a Civil Court on an application for restitution of conjugal rights. Further, the two proceedings are altogether independent and are not directly or even indirectly connected, in the sense that proceedings u/s 125 CrPC do not arise from proceedings for restitution of conjugal rights.

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63. CRIMINAL PROCEDURE CODE, 1973 – Section 156(3)
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 174(3)

(i) Registration of FIR – Direction by Magistrate u/s 156(3) – Complainant preferred an application before the Magistrate praying that the police authorities be directed to register FIR against the non-applicants for the offences punishable u/s 323, 294, 504 and 506 of IPC – From the material available on record, no case was made out to put the non-applicant/appellants to trial – Magistrate passed the order mechanically without applying his judicial mind – He is not expected to mechanically direct investigation by police without first examining whether in the facts and circumstances of the case, investigation by the police is really required – He is not supposed to act merely as a post office and needs to adopt judicial approach while considering an application seeking investigation by the police.

(ii) Police investigation – Powers of Magistrates to issue directions – Changes brought by BNSS discussed.

दण्ड प्रक्रिया संहिता, 1973 – धारा 156(3)
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 174(3)

(i) प्रथम सूचना रिपोर्ट दर्ज किया जाना – धारा 156(3) के अंतर्गत मजिस्ट्रेट द्वारा निर्देश – परिवादी ने मजिस्ट्रेट के समक्ष आवेदन प्रस्तुत किया जिसमें प्रार्थना की गई कि पुलिस अधिकारियों को भा.दं.सं. की धारा 323, 294, 504 और 506 के अंतर्गत दंडनीय अपराधों के लिए अनावेदकगण के

विरूद्ध प्रथम सूचना रिपोर्ट दर्ज करने का निर्देश दें – अभिलेख पर उपलब्ध सामग्री से अनावेदक/अपीलार्थीगण का विचारण करने का कोई मामला नहीं बनता – मजिस्ट्रेट ने अपने न्यायिक विवेक का उपयोग किए बिना यंत्रवत आदेश पारित किया – मजिस्ट्रेट से यह अपेक्षित नहीं है कि वह मामले के तथ्य और परिस्थितियों में, पुलिस अनुसंधान की वास्तविक आवश्यकता का पूर्व परीक्षण किये बगैर यांत्रिक रूप से पुलिस अनुसंधान का निर्देश दे – उसे केवल एक डाकघर के रूप में कार्य नहीं करना चाहिए और पुलिस से अनुसंधान कराए जाने की मांग करने वाले आवेदन पर विचार करते समय न्यायिक दृष्टिकोण अपनाने की जरूरत है।

(ii) पुलिस अन्वेषण – निर्देश जारी करने की मजिस्ट्रेट की शक्तियां – बीएनएसएस द्वारा किये गए परिवर्तन पर चर्चा की गई।

Om Prakash Ambadkar v. State of Maharashtra and ors.

Judgment dated 16.01.2025 passed by the Supreme Court in Criminal Appeal No. 352 of 2020, reported in AIR 2025 SC 970

Relevant extracts from the judgment:

There are prerequisites to be followed by the complainant before approaching the Magistrate u/s 156(3) of the CrPC which is a discretionary remedy as the provision proceeds with the word 'may'. The Magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about the necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is, thus, not necessary that in every case where a complaint has been filed u/s 200 of the CrPC the Magistrate should direct the Police to investigate the crime merely because an application has also been filed u/s 156(3) of the CrPC even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.

In fact, the Magistrate ought to direct investigation by the police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further

in the matter, instead of passing the buck to the Police u/s 156(3) of the CrPC Of course, if the allegations made in the complaint require complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the police authorities. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.

A comparison of Section 175(3) of the BNSS with Section 156(3) of the CrPC indicates three prominent changes that have been introduced by the enactment of BNSS as follows:

a. First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the FIR has been made mandatory, and the applicant making an application u/s 175(3) is required to furnish a copy of the application made to the Superintendent of Police u/s 173(4), supported by an affidavit, while making the application to the Magistrate u/s 175(3).
b. Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR.
c. Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an FIR before issuing any directions u/s 175(3).

In light of the judicial interpretation and evolution of Section 156(3) of the CrPC by various decisions of this Court as discussed above, it becomes clear that the changes introduced by Section 175(3) of the BNSS to the existing scheme of Section 156(3) merely codify the procedural practices and safeguards which have been introduced by judicial decisions aimed at curbing the misuse of invocation of powers of a Magistrate by unscrupulous litigants for achieving ulterior motives.

Further, by requiring the Magistrate to consider the submissions made by the concerned police officer before proceeding to issue directions u/s 175(3), BNSS has affixed greater accountability on the police officer responsible for registering FIRs u/s 173. Mandating the Magistrate to consider the submissions of the concerned police officer also ensures that the Magistrate applies his mind judicially while considering both the complaint and the submissions of the police officer thereby ensuring that the requirement of passing reasoned orders is complied with in a more effective and comprehensive manner.

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64. CRIMINAL PROCEDURE CODE, 1973 – Sections 190 and 195
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 210 and 215
INDIAN PENAL CODE, 1860 – Sections 186 and 353
BHARATIYA NYAYA SANHITA, 2023 – Sections 221 and 132

(i) Cognizance of offence – Legality – Offence of obstructing public servant from discharging his duty – Cognizance can be taken only upon a written complaint made by a public servant as contemplated u/s 195(1) of CrPC – No written complaint was made by the public servant – Complaint was made in the form of one letter but that was addressed to the Executive Magistrate and not to the Judicial Magistrate – Since requirement of section 195(1) of CrPC was not fulfilled, taking of cognizance of the offence u/s 186 of IPC by the Chief Judicial Magistrate was found to be illegal.

(ii) Offence of assault or criminal force to deter public servant from discharging his duty – *Prima facie* case – There was no allegation in the FIR that appellant had assaulted or used criminal force to deter public servant – Only allegation was that at the time when the public servants were discharging their duties, the appellant and his party had created disturbance – Unless there are specific allegations with specific acts, mere allegation of "creating disturbance" cannot mean use of "criminal force" or "assault" within the scope of section 353 of IPC – Offence not made out.

दण्ड प्रक्रिया संहिता,1973 – धाराएं 190 एवं 195
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 210 एवं 215
भारतीय दण्ड संहिता, 1860 – धाराएं 186 एवं 353
भारतीय न्याय संहिता, 2023 – धाराएं 221 एवं 132

(i) अपराध का संज्ञान – वैद्यता – लोक कार्यों के निर्वहन में लोक सेवक को बाधा डालने का अपराध – संज्ञान केवल लोक सेवक द्वारा की गई लिखित शिकायत पर लिया जा सकता है जैसा कि दं.प्र.सं. की धारा 195(1) के अंतर्गत परिकल्पित है – लोक सेवक द्वारा कोई लिखित शिकायत नहीं की गई थी – शिकायत एक पत्र के रूप में की गई थी लेकिन वह कार्यपालिक मजिस्ट्रेट को संबोधित थी, न्यायिक मजिस्ट्रेट को नहीं – चूंकि दं.प्र.सं. की धारा 195(1) की आवश्यकताऐं पूरी नहीं हुई थी, इसलिए मुख्य न्यायिक मजिस्ट्रेट द्वारा भा.द.सं. की धारा 186 के अंतर्गत लिया गया अपराध का संज्ञान, अवैधानिक पाया गया।

(ii) लोक सेवक को उसके कर्तव्य के निर्वहन से रोकने के लिए हमला या आपराधिक बल का अपराध – प्रथम दृष्टया मामला – प्रथम सूचना रिपोर्ट में ऐसा कोई आरोप नहीं था कि अपीलार्थी ने लोक सेवक को रोकने के लिए हमला किया था या आपराधिक बल का प्रयोग किया था – आरोप केवल यह था कि जिस समय लोक सेवक अपने कर्तव्यों का निर्वहन कर रहे थे, अपीलार्थी और उनके समूह ने व्यवधान पैदा किया – जब तक विशिष्ट कृत्यों के साथ विशिष्ट आरोप न हों, केवल 'व्यवधान पैदा करने' के आरोप का आशय भा.दं.सं. की धारा 353 की परिधि में 'आपराधिक बल' या 'हमला' का प्रयोग नहीं हो सकता – अपराध गठित नहीं।

B. N. John v. State of U.P. and anr.

Judgment dated 02.01.2025 passed by the Supreme Court in Criminal Appeal No. 50 of 2025, reported in AIR 2025 SC 759

Relevant extracts from the judgment:

A bare perusal of Section 195 (1) of the CrPC clearly indicates that there is a bar on the court to take cognizance of any offence punishable u/s 172 to 188 (both inclusive) of the IPC except on a complaint in writing made by the concerned public servant to the court. Therefore, if it is found as contended by the appellant that in respect of the offence u/s 186 of the IPC against him, no such complaint was filed by the concerned public servant as contemplated u/s 195 (1)(a) CrPC, the CJM could not have taken cognizance of the offence u/s 186 of the IPC.

In this regard, the appellant has specifically pleaded to which there is no rebuttal from the State that no such complaint was made in writing by a public servant as required u/s 195(1) of the CrPC relating to the commission of offence by the appellant u/s 186 of the IPC.

For a prohibited act to come within the scope of the offence u/s 353 of the IPC, such an act must qualify either as an assault or criminal force meant to deter public servant from discharge of his duty. Obviously, such an act cannot be a mere act of obstruction which is an offence u/s 186 of the IPC. The offence contemplated u/s 353 of the IPC is of a more serious nature involving criminal force, or assault which attracts more stringent punishment that may extend to two years. On the other hand, the offence of obstruction covered u/s 186 of the IPC is punishable by imprisonment, which may extend to three months at the maximum.

A close examination of Section 353 of the IPC would indicate that to invoke the aforesaid offence, there must be use of criminal force or assault on any public servant in the execution of his official duty or with the intent to prevent or deter

such public servant from discharging his duty. It would be clear from a reading of the provisions of Section 186 as well as Section 353 of the IPC that Section 353 of the IPC is the aggravated form of offence where criminal force or assault is involved. Unlike in the case of Section 186 of the IPC where voluntarily obstructing any public servant in discharge of his official function is sufficient to invoke the said section, in the case of offence u/s 353 of the IPC as mentioned above, not only obstruction but actual use of criminal force or assault on the public servant is necessary.

If "disturbance" has to be construed as "assault" or "criminal force" without there being specific acts attributed to make such "disturbance" as "assault" or "criminal face" within the scope of Section 353 of the IPC, it would amount to abuse of the process of law. While "disturbance" could also be caused by use of criminal force or assault, unless there are specific allegations with specific acts to that effect, mere allegation of "creating disturbance" cannot mean use of "criminal force" or "assault" within the scope of Section 353 of the IPC.

As discussed above, the offence allegedly committed by the appellant as disclosed in the FIR can, at best, be that of a non-cognizable offence under Section 186 of the IPC, though Section 186 of the IPC is not even mentioned in the FIR. It is evident that Section 186 of the IPC was added subsequently, of which the CJM took cognizance later. The FIR does indicate that a letter was written by the District Probation Officer to the City Magistrate, but the said letter pertains to the filing of the FIR under Section 353 of the IPC and not for offence under Section 186 of the IPC. Further, the said letter dated 03.06.2015 was not addressed to the CJM, Varanasi, before whom such a written complaint was supposed to be made to enable the Court to take cognizance of the offence under Section 186 of the IPC.

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65. CRIMINAL PROCEDURE CODE, 1973 – Section 227
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 250
Discharge – Accused was charged for the offence punishable u/s 27(b) of the NDPS Act for consuming a narcotic drug at a resort – He was made accused only on the basis of confessional statement of co-accused – No direct evidence against him nor recovery of contraband from the possession of accused is made – No medical evidence regarding consumption of drugs – Only on the basis of confessional statement of a co-accused which is otherwise inadmissible in evidence, accused cannot be charged – Rejection of application for discharge was found erroneous.

दण्ड प्रक्रिया संहिता, 1973 – धारा 227
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 250
उन्मोचन – अभियुक्त पर एन.डी.पी.एस. अधिनियम की धारा 27(ख) के अंतर्गत एक होटल में मादक पदार्थ का सेवन करने के लिए दंडनीय अपराध का आरोप था – उसे केवल सह–अभियुक्त के संस्वीकृति कथन के आधार पर अभियुक्त बनाया गया था – उसके विरूद्ध कोई प्रत्यक्ष साक्ष्य नहीं थी और न ही अभियुक्त के आधिपत्य से प्रतिषिद्ध पदार्थ की बरामदगी की गई है – मादक द्रव्य के सेवन के संबंध में कोई चिकित्सीय साक्ष्य नहीं – केवल सह–अभियुक्त के संस्वीकृति कथन जो साक्ष्य में अन्यथा ग्राह्य नहीं है, के आधार पर अभियुक्त को आरोपित नहीं किया जा सकता – उन्मोचित करने के आवेदन को अस्वीकार करना गलत पाया गया।

Karan Talwar v. State of Tamil Nadu

Judgment dated 19.12.2024 passed by the Supreme Court in Criminal Appeal No. 5484 of 2024, reported in AIR 2025 SC 225

Relevant extracts from the judgment:

As is evident from Section 27 of the NDPS Act, the alleged offence is consumption of narcotic drug or psychotropic substance other than those specified in or under clause (a) of Section 27, NDPS Act, and therefore, the question is whether any material is available to charge the appellant thereunder. The contention of the appellant is that he has been arraigned as accused No.13 based on the confession statement of co-accused viz., accused No.1. Certainly, in the absence of any other material on record to connect the appellant with the crime, the confession statement of the co-accused by itself cannot be the reason for his implication in the crime. This view has been fortified by the law laid down in Suresh ***Budharmal Kalani v. State of Maharashtra, AIR 1998 SC 3258*** wherein it was stated that a co-accused's confession containing incriminating matter against a person would not by itself suffice to frame charge against him. The materials on record would reveal that the investigating agency had not subjected him to medical examination and instead, going by complaint Witness No.23, he smelt the accused. The less said the better and we do not think it necessary to comment upon adoption of such a course. We need only to say that even if he tendered such evidence, it would not help the prosecution in anyway. There is absolutely no case that any recovery of contraband was recovered from the appellant. As regards the confession statement of the appellant in view of Section 25 of the Indian Evidence Act, 1872 there can be no doubt with respect to the fact that it is inadmissible in evidence. In this context it is

worthy to refer to the decision of this Court in ***Ram Singh v. Central Bureau of Narcotics, AIR 2011 SC 2490***. In the said decision, this Court held that Section 25 of the Indian Evidence Act would make confessional statement of accused before police inadmissible in evidence and it could not be brought on record by prosecution to obtain conviction. Shortly stated, except the confessional statement of co-accused No.1 there is absolutely no material available on record against the appellant.

When this be the position, the question is whether the two Courts were justified in holding that there is prima facie case against the appellant to proceed against him. In this contextual situation, it is relevant to refer to the decision of this Court in ***Dipakbhai Jagadishchandra Patel v. State of Gujarat and anr., AIR 2019 SC 3363*** Paragraphs 23 and 24 of the said decision are relevant for the purpose of this case and they read thus:-

> "23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a fullfledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.
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> 24. Undoubtedly, this Court has in ***Suresh Budharmal Kalani*** [***Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337***], taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note

that the Court has relied upon the judgment of this Court in ***Kashmira Singh v. State of M.P.*** [***Kashmira Singh v. State of M.P., (1952) 1 SCC 275***]. We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in ***Suresh Budharmal Kalani*** [***Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337***], the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge."

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66. CRIMINAL PROCEDURE CODE, 1973 – Section 227
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 250
INDIAN PENAL CODE, 1860 – Section 120B
BHARATIYA NYAYA SANHITA, 2023 – Section 61(2)
PREVENTION OF CORRUPTION ACT, 1988 – Sections 7, 12 and 13(2) r/w/s 13(1)(d)

Discharge of accused – Accused was prosecuted along with other accused persons for having committed the offence punishable u/s 120B of IPC and sections 7, 12 and 13(2) r/w/s 13(1)(d) of PC Act – Allegation against the accused was that he in conspiracy with co-accused persons abetted the offence of bribery – Details of conspiracy not given in the charge sheet – His name did not appear in the FIR – Charge sheet contains no evidence to connect him with the alleged payment of illegal gratification – Even if the material contained in the charge sheet is taken as true, no *prima facie* case of involvement of accused in the offence is made out – Order of discharge found proper.

दण्ड प्रक्रिया संहिता, 1973 – धारा 227
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 250
भारतीय दण्ड संहिता, 1860 – धारा 120ख
भारतीय न्याय संहिता, 2023 – धारा 61(2)
भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 7, 12 एवं 13(2) सहपठित धारा 13(1)(घ)

अभियुक्त का उन्मोचन – अभियुक्त को अन्य सह अभियुक्तगण के साथ भारतीय दण्ड संहिता की धारा 120ख और भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(घ)

सहपठित धारा 7, 12 और 13(2) के अंतर्गत दंडनीय अपराध कारित करने के लिए अभियोजित किया गया – अभियुक्त के विरूद्ध आरोप यह था कि उसने सह–अभियुक्तों के साथ षड़यंत्र कर रिश्वत के अपराध का दुष्प्रेरण किया – षड़यंत्र का विवरण अभियोग पत्र में नहीं दिया गया – उसका नाम प्रथम सूचना रिपोर्ट में नहीं था – अभियोग पत्र में उसे कथित रूप से अवैध रिश्वत की अदायगी से जोड़ने के लिए कोई साक्ष्य नहीं – अभियोग पत्र में निहित सामग्री को यदि सत्य भी मान लिया जाए तब भी अभियुक्त की अपराध में प्रथम दृष्टया संलिप्तता दर्शित करने योग्य मामला बनना नहीं पाया गया – उन्मोचन का आदेश उचित दर्शित पाया गया।

Central Bureau of Investigation v. Dilip Mulani and anr.

Judgment dated 20.09.2024 passed by the Supreme Court in Criminal Appeal No. 3863 of 2024, reported in AIR 2024 SC 4806

Relevant extracts from the judgment:

We have perused the charge sheet and other material on record. A perusal of the charge sheet shows that the allegation is about payment of illegal gratification of Rs. 58,000/-, Rs. 3,50,000/- and Rs. 1,50,000/- respectively, on behalf of the said company to officials of the customs department to procure benefits to its customers. As regards the allegation regarding the payment of Rs. 58,000/-, the case is that accused no.1- Mehul Jhaveri paid the said amount to another accused, Chandubhai Kalal. The charge sheet contains no allegation against the respondent to connect him with the payment. The allegations of being part of a criminal conspiracy are made against the respondent. As regards payment of illegal gratification of Rs. 3,50,000/- and Rs. 1,50,000/- respectively paid to Anand Singh Mall, in the charge sheet, the allegation against the respondent is that the respondent in conspiracy with Mehul Jhaveri abetted the offence of bribery and arranged for payment of illegal gratification of Rs. 3,50,000/- to Anand Singh Mall at Delhi through one Kishan Rajwar, who happens to be the respondent's nephew. Further allegation is that Mehul Jhaveri, in conspiracy with the respondent and one Dushyant Mulani, arranged to deliver illegal gratification of Rs. 1,50,000/- to Anand Singh Mall in Mumbai.

The prosecution is not relying upon any telephonic conversation between the respondent and any of the co-accused or the person to whom illegal gratification was allegedly paid.

Except for the bald allegation of participation in the alleged conspiracy without giving any details of the conspiracy, the respondent has been roped in the

charge sheet. His name did not appear in the First Information Report. Taking the material forming part of the charge sheet as true, it cannot be said that a *prima facie* case of involvement of the respondent was made out. In the circumstances, we find no error in the view taken by the High Court when it discharged the respondent.

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67. CRIMINAL PROCEDURE CODE, 1973 – Section 228
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 251
INDIAN PENAL CODE, 1860 – Section 307
BHARATIYA NYAYA SANHITA, 2023 – Section 109

Offence of attempt to murder – Discharge – Complainant was abused and beaten up by the accused to the point of unconsciousness – Minor nature of injury is not sufficient reason for not framing charge u/s 307 of IPC – The question of intention to kill or the knowledge of death is a question of fact which requires determination at the trial.

दण्ड प्रक्रिया संहिता, 1973 – धारा 228
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 251
भारतीय दण्ड संहिता, 1860 – धारा 307
भारतीय न्याय संहिता, 2023 – धारा 109

हत्या के प्रयत्न का अपराध – उन्मोचन – अभियुक्त द्वारा परिवादी के साथ दुर्व्यवहार करते हुए उसे बेहोश हो जाने तक पीटा गया – उपहति की प्रकृति मामूली होना भारतीय दंड संहिता की धारा–307 के अंतर्गत आरोप निर्मित न करने के लिए पर्याप्त आधार नहीं है – हत्या कारित करने का आशय या मृत्यु के ज्ञान का प्रश्न, तथ्य का प्रश्न है जिसका निर्धारण विचारण के दौरान किया जाना अपेक्षित है।

Shoyeb Raja v. State of Madhya Pradesh and ors.

Judgment dated 25.09.2024 passed by the Supreme Court in Criminal Appeal No. 3327 of 2024, reported in AIR 2024 SC 4819

Relevant extracts from the judgment:

Hari Mohan Mandal v. State of Jharkhand, (2004) 12 SCC 220 holds that the nature or extent of injury suffered, are irrelevant factors for the conviction under this section, so long as the injury is inflicted with animus. It has been held:

> " …To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the

> intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.
>
> It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

It is well recognized that intention may not always be proved by hard evidence and instead may be required to be inferred from the facts and circumstances of the case. If the doctor who conducted the examination posits the possibility of throttling, then under what circumstances, without rigorous cross-examination, could it be concluded that the injuries sustained were simple? That apart, even if the injuries were taken as simple, the extent of the injuries, as observed in ***Hari Mohan*** (supra) are not relevant, if the intent is present. We are not in agreement with the learned Courts below that intent was absent, as the Doctor's report itself records throttling to be reasonably suspected.

The third criterion as in ***State of Maharashtra v. Kashirao, (2003) 10 SCC 4345*** could also arguably be met. Whether or not it is met, is a matter of determination at trial. The question of intention to kill or the knowledge of death in terms of Section 307, IPC is a question of fact and not one of law.

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68 CRIMINAL PROCEDURE CODE, 1973 – Section 311
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 348
EVIDENCE ACT, 1872 – Section 165
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 168

Recall of witness – Trial Court closed the right of the prosecution to adduce evidence – The said order was never challenged before higher Courts – Application filed by prosecution u/s 311 of CrPC for examination/cross-examination of witnesses was also dismissed – Thereafter, prosecution filed an application u/s 165 of Evidence Act which was allowed by the trial court – Held, application for prosecution u/s 311 of CrPC or Section 165 of Evidence Act could not have been allowed to give chance to adduce evidence, which will otherwise amount to review of the Order, especially when Judge has only power to put question to witnesses and to direct for production of any document or thing u/s 165 of Evidence Act.

दण्ड प्रक्रिया संहिता, 1973 – धारा 311
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 348
साक्ष्य अधिनियम, 1872 – धारा 165
भारतीय साक्ष्य अधिनियम, 2023 – धारा 168

साक्षी को पुनः आहूत करना – विचारण न्यायालय ने अभियोजन के साक्ष्य प्रस्तुति के अधिकार को समाप्त किया – उक्त आदेश को वरिष्ठ न्यायालयों के समक्ष कभी चुनौती नहीं दी गई – साक्षियों के परीक्षण/प्रतिपरीक्षण के लिए अभियोजन द्वारा धारा 311 दंड प्रकिया संहिता के अंतर्गत प्रस्तुत आवेदन भी निरस्त कर दिया गया – तदुपरांत अभियोजन द्वारा धारा 165 साक्ष्य अधिनियम के अंतर्गत आवेदन प्रस्तुत किया गया, जिसे विचारण न्यायालय ने स्वीकार किया – अभिनिर्धारित, अभियोजन के आवेदन अंतर्गत धारा 311 दण्ड प्रक्रिया संहिता अथवा धारा 165 साक्ष्य अधिनियम, साक्ष्य प्रस्तुत करने का अवसर प्रदान करने के लिए स्वीकार नहीं किए जा सकते, जो अन्यथा आदेश का पुनर्विलोकन होगा, विशेषतः तब जब न्यायाधीश धारा 165 साक्ष्य अधिनियम के अंतर्गत केवल साक्षियों से प्रश्न पूछने एवं किसी दस्तावेज अथवा वस्तु की प्रकटीकरण का निर्देश देने की शक्ति रखता है।

Mukesh Pandey & ors v. State of M.P. & ors.

Order dated 25.07.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 4401 of 2022, reported in ILR (2024) MP 2641

Relevant extracts from the order:

Trial Court has closed prosecution evidence vide order dated 09.04.2021. Thereafter, application was filed under Section 311 CrPC for examination/cross examination of witnesses. Said application was dismissed vide order dated 12.08.2021. Thereafter, prosecution has filed an application under Section 165 of the Evidence Act. Said application was allowed vide order dated 16.12.2021. Order dated 16.12.2021 is under challenge before this Court.

Ongoing through the facts of the case, it is found that right of prosecution to adduce evidence has been closed by the Court on 09.04.2021. Said order has never been challenged before Higher Courts. Since right of prosecution to adduce evidence has been closed by the trial Court consciously and, therefore, further application which is filed by the complainant/prosecution under Section 311 of the CrPC or under Section 165 of the Evidence Act could not have been allowed. Allowing said application will amount to review earlier order dated 09.04.2021 by which right of prosecution to adduce evidence has been closed. Trial Court in the interest of justice and seeing gravity of offence has allowed application under Section 165 of the Evidence Act, but said application could not have been allowed as Court has closed the right of prosecution to adduce evidence. Judge has power to put questions to witnesses and may order for production of any document or thing. In this case no occasion arises for putting questions to witnesses has right to give evidence by prosecution has already been closed on 09.04.2021. Said order has not been challenged Court 4 MCRC-4401-2022 cannot exercise under Section 165 of the Evidence Act when right to adduce evidence by prosecution has been closed. Permitting same will amount to review of the order dated 09.04.2021 under garb of exercising power under Section 165 of the Evidence Act.

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69. CRIMINAL PROCEDURE CODE, 1973 – Sections 437, 438, 439, 441 and 446

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 480, 482, 483, 485 and 491

(i) Bail – Conditions which may be imposed – Direction by the Court granting bail to the accused to provide local surety, is not justified – Imposing excessive and onerous conditions virtually rendered the bail order ineffective and could defeat the purpose of granting bail – However what is excessive, will depend on the facts and circumstances of each case.

(ii) Bail – Approach – Need to adopt a proportional approach protecting the fundamental rights of the accused while ensuring their presence during the trial – Held, sureties executed and furnished by the accused in one case, can be treated as holding good for the other bail orders passed in favour of accused from Courts of different States, when an accused is unable to find sureties as ordered in multiple cases of same nature.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437, 438, 439, 441 एवं 446
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 480, 482, 483, 485 एवं 491

(i) जमानत – शर्तें जो अधिरोपित की जा सकती हैं – जमानत प्रदान करने वाले न्यायालय द्वारा अभियुक्त को स्थानीय प्रतिभूति प्रस्तुत करने का निर्देश, न्यायानुमत नहीं – अत्यधिक एवं दुर्भर शर्तें अधिरोपित करने से वास्तव में जमानत आदेश अप्रभावी हो जाता है एवं जमानत प्रदान करने का उद्देश्य विफल हो जाएगा – किन्तु अत्यधिक क्या है, अभिनिर्धारित किया गया कि वह प्रत्येक मामले के तथ्यों एवं परिस्थितियों पर निर्भर करेगा।

(ii) जमानत – दृष्टिकोण – विचारण के दौरान अभियुक्त की उपस्थिति सुनिश्चित कराते समय उसके मूल अधिकारों को संरक्षित करने के संबंध में संतुलित दृष्टिकोण को अपनाए जाने की आवश्यकता है – अभिनिर्धारित, एक मामले में अभियुक्त द्वारा निष्पादित एवं प्रस्तुत प्रतिभूतियां विभिन्न राज्यों के न्यायालय द्वारा अभियुक्त के पक्ष में पारित अन्य जमानत आदेश के लिए वैद्य मानी जा सकेगी, जब अभियुक्त समान प्रकृति के अनेक मामलों में यथा आदेशित प्रतिभूतियां प्रस्तुत करने में असमर्थ रहता है।

Girish Gandhi v. State of Uttar Pradesh and ors.

Judgment dated 22.08.2024 passed by the Supreme Court in Writ Petition (Crl.) No. 149 of 2024, reported in (2024) 10 SCC 674

Relevant extracts from the judgment:

From time immemorial, the principle has been that the excessive bail is no bail. To grant bail and thereafter to impose excessive and onerous conditions, is to take away with the left hand, what is given with the right. As to what is excessive will depend on the facts and circumstances of each case.

The same set of sureties is permitted to stand as surety in all the States. We feel that this direction will meet the ends of justice and will be proportionate and reasonable.

Sureties are essential to ensure the presence of the accused, released on bail. At the same time, where the court is faced with the situation where the accused enlarged on bail is unable to find sureties, as ordered, in multiple cases, there is also a need to balance the requirement of furnishing the sureties with his or her fundamental rights under Article 21 of the Constitution of India. An order which would protect the person's fundamental right under Article 21 and at the same time guarantee the presence would be reasonable and proportionate. As to what such an order should be, will again depend on the facts and circumstances of each case.

In the bail order in FIR No. 190/2020 registered at P.S. Savina, Udaipur, Rajasthan, there is an order for providing a local surety. The petitioner herein hails from Haryana and to secure a local surety will be an arduous task for him. This condition has virtually rendered ineffective the order for bail. We need to do nothing more than to recall the memorable words of Justice Krishna Iyer in ***Moti Ram and ors. v. State of Madhya Pradesh, (1978) 4 SCC 47***:-

> "To add insult to injury, the magistrate has demanded sureties from his own district! (we assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua Indians, within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff."

In view of the above, we propose to relieve the petitioner from the direction to produce a local surety.

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70. CRIMINAL PROCEDURE CODE, 1973 – Section 438
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 482
Application for anticipatory bail by a person who is in custody in connection with a different offence – Maintainability – Bail application by accused who is already in judicial custody in a different case is maintainable, only till accused is arrested by investigating officer on the strength of PT warrant obtained from jurisdictional Magistrate – Mere formal arrest (on-paper arrest) would not extinguish his right to apply for anticipatory bail.

दण्ड प्रक्रिया संहिता, 1973 – धारा 438
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 482
अग्रिम जमानत के लिए आवेदन – ऐसे व्यक्ति द्वारा जो भिन्न अपराध के संबंध में अभिरक्षा में है – पोषणीयता – पूर्व से अन्य अपराध में न्यायिक अभिरक्षा में होने वाले अभियुक्त का जमानत आवेदन केवल तब तक पोषणीय है, जब तक क्षेत्राधिकार रखने वाले मजिस्ट्रेट से प्राप्त गिरफ्तारी वारंट के आधार पर अन्वेषण अधिकारी, अभियुक्त को गिरफ्तार न कर ले – केवल औपचारिक गिरफ्तारी (कागजी गिरफ्तारी) अग्रिम जमानत आवेदन प्रस्तुत करने के उसके अधिकार को समाप्त नहीं करेगी।

Dhanraj Aswani v. Amar S. Mulchandani and anr.

Judgment dated 09.09.2024 passed by the Supreme Court in Criminal Appeal No. 2501 of 2024, reported in (2024) 10 SCC 336 (3-Judge Bench)

Relevant extracts from the judgment:

Once such formal arrest has been made, the police officer has to make an application under Section 267 of the CrPC before the Jurisdictional Magistrate for the issuance of a P.T. Warrant without delay. If, based on the requirements prescribed under Section 267 of the CrPC, a P.T. Warrant is issued by the jurisdictional Magistrate, then the accused has to be produced before such Magistrate on the date and time mentioned in the warrant, subject to Sections 268 and 269 respectively of the CrPC. Upon production before the jurisdictional Magistrate, the accused can be remanded to police or judicial custody or be enlarged on bail, if applied for and allowed.

It was submitted on behalf of the appellant that a person already in judicial custody in relation to an offence, cannot have a "reason to believe" that he may be arrested on the accusation of having committed a different offence. However, we do not find any merit in the aforesaid submission. There are two ways by which a person, who is already in custody, may be arrested –

a. First, no sooner than he is released from custody in connection with the first case, the police officer can arrest and take him into custody in relation to a different case; and

b. Secondly, even before he is set free from the custody in the first case, the police officer investigating the other offence can formally arrest him and thereafter obtain a Prisoner Transit Warrant ("P.T. Warrant") under Section 267 of the CrPC from the jurisdictional magistrate for the other offence, and thereafter, on production before the magistrate, pray for remand;

OR

Instead of effecting formal arrest, the investigating officer can make an application before the jurisdictional magistrate seeking a P.T. Warrant for the production of the accused from prison. If the conditions required under 267 of the CrPC are satisfied, the jurisdictional magistrate shall issue a P.T. Warrant for the production of the accused in court. When the accused is so produced before the court in pursuance of the P.T. Warrant, the investigating officer will be at liberty to make a request for remanding the accused, either to police custody or judicial custody, as provided in Section 167(1) of the CrPC. At that time, the jurisdictional magistrate shall consider the request of the investigating officer, peruse the case diary and the representation of the accused and then, pass an appropriate order, either remanding the accused or declining to remand the accused.

Our examination of the matter has led us to the following conclusions:

(i) An accused is entitled to seek anticipatory bail in connection with an offence so long as he is not arrested in relation to that offence. Once he is arrested, the only remedy available to him is to apply for regular bail either under Section 437 or Section 439 of the CrPC, as the case may be. This is evident from para 39 of ***Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565***

(ii) There is no express or implied restriction in the CrPC or in any other statute that prohibits the Court of Session or the

High Court from entertaining and deciding an anticipatory bail application in relation to an offence, while the applicant is in custody in relation to a different offence. No restriction can be read into Section 438 of the CrPC to preclude an accused from applying for anticipatory bail in relation to an offence while he is in custody in a different offence, as that would be against the purport of the provision and the intent of the legislature. The only restriction on the power of the court to grant anticipatory bail under Section 438 of the CrPC is the one prescribed under sub-section (4) of Section 438 of the CrPC, and in other statutes like the Act, 1989, etc.

(iii) While a person already in custody in connection with a particular offence apprehends arrest in a different offence, then, the subsequent offence is a separate offence for all practical purposes. This would necessarily imply that all rights conferred by the statute on the accused as well as the investigating agency in relation to the subsequent offence are independently protected.

(iv) The investigating agency, if it deems necessary for the purpose of interrogation/investigation in an offence, can seek remand of the accused whilst he is in custody in connection with a previous offence so long as no order granting anticipatory bail has been passed in relation to the subsequent offence. However, if an order granting anticipatory bail in relation to the subsequent offence is obtained by the accused, it shall no longer be open to the investigating agency to seek remand of the accused in relation to the subsequent offence. Similarly, if an order of police remand is passed before the accused is able to obtain anticipatory bail, it would thereafter not be open to the accused to seek anticipatory bail and the only option available to him would be to seek regular bail.

(v) We are at one with Mr. Dave that the right of an accused to protect his personal liberty within the contours of Article 21 of the Constitution of India with the aid of the provision of anticipatory bail as enshrined under Section 438 of the CrPC cannot be defeated or thwarted without a valid procedure established by law. He is right in his submission that such procedure should also pass the test of fairness, reasonableness and manifest non-arbitrariness on the anvil of Article 14 of the Constitution of India.

(vi) Under Section 438 of the CrPC, the pre-condition for a person to apply for pre-arrest bail is a "reason to believe that he may be arrested on an accusation of having committed a non-bailable offence". Therefore, the only pre-condition for exercising the said right is the apprehension of the accused that he is likely to be arrested. In view of the discussion in the preceding paragraphs, custody in one case does not have the effect of taking away the apprehension of arrest in a different case.

(vii) If the interpretation, as sought to be put forward by Mr. Luthra is to be accepted, the same would not only defeat the right of a person to apply for pre-arrest bail under Section 438 of the CrPC but may also lead to absurd situations in its practical application.

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71. DIVORCE ACT, 1869 – Section 36

Interim maintenance – Appellant wife and respondent husband have been married since 2008 according to Christian customs – There were no issues from the marriage – In the year 2019, the husband filed a petition for divorce, alleging cruelty by citing various incidents – Following an assessment of the parties assets, income, status and standard of living, the Family Court granted the wife interim maintenance of Rs.1,75,000 per month – On appeal, the High Court reduced the amount to Rs.80,000 per month – The husband was a renowned cardiologist and receives a monthly salary of Rs.1,25,000 per month from the hospital in addition to rental income – Respondent is the sole legitimate heir of his father and possesses several valuable properties – Respondent also receives certain money from his mother's properties – Only the rental income from one property was considered by the High Court and the remaining properties owned by the respondent were not taken into consideration – School, which is in possession of the husband, is also not running at a loss – Wife is not working, as she has sacrificed her employment after marriage – The wife was accustomed to a certain standard of living in her matrimonial home and is entitled to enjoy the same amenities of life during the pendency of divorce petition as she would have been entitled to in her matrimonial home – Reduction of the amount of maintenance by the High Court was not found proper and therefore, order of Family Court is restored.

विवाह–विच्छेद अधिनियम, 1869 – धारा 36

अंतरिम भरण–पोषण – अपीलार्थी पत्नी और प्रत्यर्थी पति का विवाह ईसाई रीति–रिवाजों के अनुसार वर्ष 2008 में हुआ – विवाह से कोई संतान नहीं थी – वर्ष 2019 में, पति ने विभिन्न घटनाओं का उल्लेख कर क्रूरता का आरोप लगाते हुए विवाह विच्छेद के लिए आवेदन प्रस्तुत किया – पक्षकारों की संपत्ति, आय, हैसियत और जीवन स्तर का मूल्यांकन कर, कुटुम्ब न्यायालय ने पत्नी को प्रति माह रु.1,75,000 अंतरिम भरण–पोषण राशि प्रदान की – उच्च न्यायालय ने अपील में राशि को घटाकर रु. 80,000 प्रति माह कर दिया – पति एक प्रसिद्ध हृदय रोग विशेषज्ञ था और उसे किराये की आय के अतिरिक्त अस्पताल से प्रति माह रु. 1,25,000 का मासिक वेतन मिलता है – प्रत्यर्थी अपने पिता का एकमात्र वैध उत्तराधिकारी है और वह कई मूल्यवान संपत्तियां धारित करता हैं – प्रत्यर्थी अपनी मां की संपत्तियों से भी धनराशि प्राप्त करता है – उच्च न्यायालय द्वारा केवल एक संपत्ति से प्राप्त किराये की आय पर विचार किया गया और प्रत्यर्थी के स्वामित्व की शेष संपत्तियों की आय को विचार में नहीं लिया किया – स्कूल, जो पति के आधिपत्य में है, वह भी घाटे में नहीं चल रहा है – पत्नी कोई काम नहीं कर रही है क्योंकि उसने शादी के बाद अपने रोजगार का त्याग कर दिया है – पत्नी अपने वैवाहिक घर में एक निश्चित स्तर का जीवन जीने की अभ्यस्त थी और विवाह विच्छेद की याचिका के लंबित रहने के दौरान उसे जीवन की उन्हीं सुविधाओं का आनंद लेने का अधिकार है जो उसे अपने वैवाहिक घर में प्राप्त होती – उच्च न्यायालय द्वारा भरण–पोषण की राशि में कमी किया जाना उचित नहीं पाया गया और इसलिए कुटुम्ब न्यायालय के आदेश को बहाल किया गया।

Dr. Rajiv Verghese v. Rose Chakkrammankkil Francis

Judgment dated 19.11.2024 passed by the Supreme Court in Civil Appeal No. 12546 of 2024, reported in AIR 2025 SC 30

Relevant extracts from the judgment:

The Family Court also noted that the respondent specifically stated that when the parties were residing together, he engaged two maids on 24x7 basis to aid them in their domestic work and maintenance and the appellant is accustomed to these comforts. The Family Court therefore compared the status, standard of life, income source, properties, its possession, rights and liabilities of the respondent and found that the appellant cannot be denied to enjoy the privileges as enjoyed by the respondent. Upon this consideration, the Family Court found it reasonable to award a sum of Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand only) as interim maintenance to be paid to the appellant by the respondent per month from

the date of the petition being 03.07.2019 till the disposal of the main divorce petition being OP 1284 of 2019.

The High Court held that the respondent, being a Cardiologist, earned a monthly income of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) is established and that he and his mother received a rent of Rs.2,73,301/- (Rupees Two Lakh Seventy Three Thousand and Three Hundred One only) per month, of which he received only half amount. Based on these two considerations, the High Court concluded that the appellant wife established the respondent's income to at least Rs.2,50,000/- (Rupees Two Lakh and Fifty Thousand only) per month. The High Court took note of the fact that the appellant sacrificed her employment after the marriage and determined that the reasonable amount of interim maintenance to be one third of the respondent's income which was Rs.80,000/- (Rupees Eighty Thousand only) per month.

We find that the High Court has erred in reducing the quantum of maintenance to Rs.80,000/- (Rupees Eighty Thousand only) per month. The High Court has considered only two sources of income for the respondent. Firstly, the sum of Rs.1,25,000/- (Rupees One Lakh and Twenty-Five Thousand only) that he earns from working as a Cardiologist at the Hospital. Secondly, the rent amount he and his mother receive from a property, of which the High Court has stated that he receives half the amount only. However, the High Court has not dealt with the findings of the Family Court wherein the respondent is said to own a number of worthful properties and the fact that he is the only legal heir of his father. The Family Court found that the respondent is accruing all the incomes from the properties owned by his mother. The High Court has not dealt with the aspect of the number of properties owned by the respondent and looked at the rental income from one property. The Family Court also noted that the respondent was found to be in possession of a school and could not substantiate his claim that the school was running in losses. Therefore, the High Court has overlooked certain aspects relating to the income of the respondent which were looked at by the Family Court. Further, it is also on record that the appellant is not working as she sacrificed her employment after the marriage. The appellant was accustomed to a certain standard of living in her matrimonial home and therefore, during the pendency of the divorce petition, is also entitled to enjoy the same amenities of life as she would have been entitled to in her matrimonial home.

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72. FAMILY COURTS ACT, 1984 – Sections 7(1) Expln. (d) and 19
DISSOLUTION OF MUSLIM MARRIAGE ACT, 1939 – Section 2
FAMILY COURT RULES, 1988 (M.P.) – Rule 9
Application for dissolution of marriage by Muslim male – Maintainability – Family Court dismissed application for divorce preferred by husband on the ground of maintainability – Held, Muslim male does not have any remedy to seek decree for dissolution of marriage under the Act of 1939 – However, Muslim male can prefer a suit or proceeding for dissolution of marriage u/s 7(1) (d) of the Act of 1984 and Rule 9 of 1988 Rules on the grounds as available to him – He can approach Family Court for divorce – Family Court's order was set aside and matter was remanded back.

कुटुम्ब न्यायालय अधिनियम, 1984 – धाराएं 7(1) स्पष्टीकरण (घ) एवं 19
मुस्लिम विवाह विघटन अधिनियम, 1939 – धारा 2
कुटुम्ब न्यायालय नियम, 1988 (म.प्र.) – नियम 9
मुस्लिम पुरुष द्वारा विवाह विच्छेद हेतु आवेदन – पोषणीयता – कुटुम्ब न्यायालय ने पति द्वारा प्रस्तुत विवाह विच्छेद के आवेदन को पोषणीयता के आधार पर निरस्त कर दिया – अभिनिर्धारित, मुस्लिम पुरुष के पास अधिनियम, 1939 के अंतर्गत विवाह विच्छेद की डिक्री का अनुतोष प्राप्त करने का कोई उपचार उपलब्ध नहीं है – परन्तु मुस्लिम पुरुष, अधिनियम, 1984 की धारा 7(1)(घ) एवं 1988 के नियम 9 के अंतर्गत स्वयं को उपलब्ध आधारों पर विवाह विच्छेद के लिए वाद या कार्यवाही कर सकता है – वह विवाह विच्छेद के लिए कुटुम्ब न्यायालय जा सकता है – कुटुम्ब न्यायालय के आदेश को अपास्त कर प्रकरण को प्रतिप्रेषित किया गया।

Mohammad Shah v. Chandani Begum

Judgment dated 07.01.2025 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 1199 of 2022, reported in 2025 (1) MPLJ 402 (DB)

Relevant extracts from the judgment:

Earlier the Division Bench of this Court in the case of ***Aqeel Ahmed (Khan) v. Smt. Farzana Khatun*** in First Appeal No. 1017 of 2022 vide order dated 14.10.2022 considered this aspect and relying upon the order dated 30.03.2021 passed by the Division Bench of Madras High Court in ***Settu v. Reshma Sulthana, C.M.A. No. 2192 of 2017*** considered the question of maintainability as well as settlement reached between the parties and allowed the appeal preferred by the parties on the

basis of settlement reached between them. Therefore, it can be held that parties have additional forum of this Court also to get the decree for divorce/dissolution of marriage.

Even the Constitutional Morality and its Spirit also mandates that no person can be rendered remediless. If the reasoning of trial Court would have been accepted then a muslim male would have been denied the valuable right to access justice or judicial forum to ventilate his grievances. This could never have been the Constitutional spirit, morality and Constitutional Vision of Justice.

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73. HINDU MARRIAGE ACT, 1955 – Sections 11 and 25

Permanent alimony – Entitlement to spouse where marriage has been declared void u/s 11 of the Act – Issue referred to a three-judge bench due to conflicting judgments on the applicability of sections 24 and 25 – Held, that a spouse from a void marriage is entitled to seek permanent alimony u/s 25, as the provision covers all types of decrees including nullity – Maintenance u/s 24 can also be granted pending final disposal – Relief under both sections is discretionary and depends on the facts and conduct of the parties – Judgment of the High Court dismissing the plea for alimony was set aside – Appeal allowed.

हिन्दु विवाह अधिनियम, 1955 – धाराएं 11 एवं 25

स्थायी निर्वाहिका – जहां अधिनियम की धारा 11 के अंतर्गत विवाह शून्य घोषित किया गया है, वहां पति या पत्नी की पात्रता – धारा 24 और 25 की प्रयोज्यता पर परस्पर विरोधी निर्णयों के कारण मामला तीन न्यायाधीशों की पीठ को संदर्भित किया गया – अभिनिर्धारित, शून्य विवाह के पति या पत्नी धारा 25 के अंतर्गत स्थायी निर्वाहिका पाने के हकदार है क्योंकि यह प्रावधान अकृतता सहित सभी प्रकार की डिक्री को आकृत करता है – अंतिम निराकरण लंबित रहने तक धारा 24 के अंतर्गत भी भरण–पोषण प्रदान किया जा सकता है – दोनों धाराओं के अंतर्गत अनुतोष विवेकाधीन है और तथ्यों एवं पक्षकारों के आचरण पर निर्भर करता है – निर्वाहिका की प्रार्थना को निरस्त करने वाले उच्च न्यायालय के निर्णय को अपास्त किया गया – अपील स्वीकार की गई।

Sukhdev Singh v. Sukhbir Kaur

Judgment dated 12.02.2025 passed by the Supreme Court in Civil Appeal No. 2536 of 2019, reported in AIR 2025 SC 951 (3-Judge Bench)

Relevant extracts from the judgment:

An order of dismissal of a suit will be a decree, provided the conditions in Section 2(2) of the Code of Civil Procedure, 1908 are satisfied. However, a decree in proceedings contemplated by Section 23 of the 1955 Act is a narrower concept. It can only be a decree granting one of the reliefs u/s 9 to 13 of the 1955 Act. The decree referred to in Section 25 of the 1955 Act is the decree as contemplated by Section 23, which has the title 'decree in proceedings'. On plain reading thereof, the decree contemplated by Section 23 is a decree granting relief under the 1955 Act. Section 23 deals with only the decrees granting reliefs under Sections 9 to 13 of the 1955 Act. Considering the language employed in Section 23, the 'decrees in proceedings' will not include the decisions dismissing the petitions seeking reliefs u/s 9 to 13. The decrees passed u/s 11 to 13 bring about a change of status of the parties to the marriage. Even a decree of restitution of conjugal rights brings about a change of status of the parties in case there is no restitution of conjugal rights within one year of a decree. That is a ground for passing a decree of divorce u/s 13(1A) (ii). Even a decree of judicial separation u/s 10 brings about a change of status in the sense that a spouse who has got such a decree is no longer under an obligation to cohabit with his or her spouse. If the separation from the date of the decree continues for a period of one year, it becomes a ground for passing a decree of divorce by invoking Section 13(1A)(i).

While enacting Section 25(1), the legislature has made no distinction between a decree of divorce and a decree declaring marriage as a nullity. Therefore, on a plain reading of Section 25(1), it will not be possible to exclude a decree of nullity u/s 11 from the purview of Section 25(1) of the 1955 Act.

The remedy u/s 25 of the 1955 Act is completely different from the remedy u/s 125 of the CrPC. It confers rights on the spouses of the marriage declared as void u/s 11 of the 1955 Act to claim maintenance from the other spouse. The remedy is available to both husband and wife. The principles which apply to Section 125 of the CrPC cannot be applied to Section 25 of the 1955 Act. The relief u/s 125 of the CrPC can be granted to wife or child and not to husband.

Accordingly, we answer the questions as follows:

a. A spouse whose marriage has been declared void u/s 11 of the 1955 Act is entitled to seek permanent alimony or maintenance from the other spouse by invoking Section 25 of the 1955 Act. Whether such a relief of permanent alimony can be granted or not always depends on the facts of each

case and the conduct of the parties. The grant of relief under Section 25 is always discretionary; and

b. Even if a court comes to a prima facie conclusion that the marriage between the parties is void or voidable, pending the final disposal of the proceeding under the 1955 Act, the court is not precluded from granting maintenance *pendente lite* provided the conditions mentioned in Section 24 are satisfied. While deciding the prayer for interim relief under Section 24, the Court will always take into consideration the conduct of the party seeking the relief, as the grant of relief under Section 24 is always discretionary.

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74 HINDU MARRIAGE ACT, 1955 – Sections 13, 13-B, 24 and 25
CONSTITUTION OF INDIA – Article 142
Permanent alimony – Quantum – Factors to be considered while granting permanent alimony, explained – Permanent alimony granted by Court should not penalize husband but it should ensure decent living of wife.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 13, 13–ख, 24 एवं 25
भारत का संविधान – अनुच्छेद 142
स्थायी निर्वाहिका – मात्रा – स्थायी निर्वाहिका प्रदान करते समय विचार किए जाने वाले कारक समझाये गये – न्यायालय द्वारा प्रदान स्थायी निर्वाहिका से पति दंडित नहीं होना चाहिए वरन् इससे पत्नी का गरिमापूर्ण जीवन सुनिश्चित होना चाहिए।

Parvin Kumar Jain v. Anju Jain

Judgment dated 10.12.2024 passed by the Supreme Court in Civil Appeal No. 14277 of 2024, reported in (2025) 2 SCC 227

Relevant extracts from the judgment:

The main issue between the parties all these years, since separation, is the quantum of maintenance to be paid by the appellant to the respondent. The issue of maintenance pendente lite is now infructuous with the dissolution of marriage, but the financial interest of the wife still needs to be protected through grant of permanent alimony. The learned Senior Counsel for the parties have made submissions at length regarding the financial condition of both the parties. In order to establish the correct financial position of both the parties, they have filed their respective affidavits of income and assets as ordered by this Court.

Before going into the details of the financial position of the parties, it is imperative that we highlight the position of law with regard to determination of permanent alimony. This Court, in a catena of judgments, has laid down the factors that needs to be considered in order to arrive at a just, fair and reasonable amount of permanent alimony.

There cannot be strict guidelines or a fixed formula for fixing the amount of permanent maintenance. The quantum of maintenance is subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependants; the quality of life enjoyed by the wife during the subsistence of the marriage; and such other similar factors. This position was laid down by this Court in ***Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112*** and ***Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288***.

This Court in ***Rajnesh v. Neha, (2021) 2 SCC 324***, provided a comprehensive criterion and a list of factors to be looked into while deciding the question of permanent alimony. This judgment lays down an elaborate and comprehensive framework necessary for deciding the amount of maintenance in all matrimonial proceedings, with specific emphasis on permanent alimony. The same has been reiterated by this Court in ***Kiran Jyot Maini v. Anish Pramod Patel, (2024) 13 SCC 66***. The primary objective of granting permanent alimony is to ensure that the dependant spouse is not left without any support and means after the dissolution of the marriage. It aims at protecting the interests of the dependant spouse and does not provide for penalising the other spouse in the process. The Court in these two judgments laid down the following factors to be looked into:

- Status of the parties, social and financial.
- Reasonable needs of the wife and the dependant children.
- Parties' individual qualifications and employment statuses.
- Independent income or assets owned by the applicant.
- Standard of life enjoyed by the wife in the matrimonial home.
- Any employment sacrifices made for the family responsibilities.
- Reasonable litigation costs for a non-working wife.
- Financial capacity of the husband, his income, maintenance obligations, and liabilities.

These are only guidelines and not a straitjacket rubric. These among such other similar factors become relevant. This Court in ***Kiran Jyot Maini v. Anish Pramod Patel, (2024) 13 SCC 66***, while discussing the husband's obligation to maintain the wife and the importance of his financial capacity in deciding the quantum, observed that :

> "Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependant spouse can live with reasonable comfort post-separation."

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75. HINDU MARRIAGE ACT, 1955 – Sections 13(1)(ia) and 13(1)(ib) Divorce – Mental cruelty and desertion – Wife did not live with her husband for more than three months after solemnization of marriage – Since 2011, both the parties have been living apart, indicating that love has faded and feelings between them have dried up – Application for the restoration of conjugal rights u/s 9 of the Act was rejected by the Family Court on the ground that the wife had not proved that the husband has withdrawn himself from her company without any reason – False accusations were made against the husband of not accepting the daughter and of having doubts about her character – False allegations are sufficient to cause mental cruelty to a husband – Wife filed a complaint under the Domestic Violence Act against the husband and his family members, but it was also rejected – Grounds of cruelty and desertion are established therefore, husband is entitled to a degree of divorce.

हिन्दू विवाह अधिनियम, 1955 – धाराएं 13(1)(ik) एवं 13(1)(ix)
विवाह–विच्छेद – मानसिक क्रूरता और अधित्यजन – पत्नी विवाह अनुष्ठान के बाद तीन माह से अधिक समय तक अपने पति के साथ नहीं रही – वर्ष 2011 से दोनों पक्ष पृथक निवास कर रहे हैं, जो यह दर्शाता है कि उनके मध्य प्रेम समाप्त हो गया है और भावनाएं खत्म हो गई हैं – अधिनियम की धारा 9 के अंतर्गत दाम्पत्य अधिकारों के प्रत्यास्थापन हेतु प्रस्तुत आवेदन को कुटुम्ब न्यायालय ने इस आधार पर निरस्त कर दिया था कि पत्नी ने यह प्रमाणित नहीं किया कि पति ने बगैर किसी कारण के स्वयं को पत्नी के साहचर्य से पृथक कर लिया है – पति के विरूद्ध, पुत्री को स्वीकार नहीं करने और उसके चरित्र के बारे में संदेह करने के झूठे आरोप लगाए गए थे – झूठे आरोप लगाना पति के प्रति मानसिक क्रूरता कारित करने के लिए पर्याप्त है – पत्नी ने पति और उसके परिवार के सदस्यों के विरूद्ध घरेलू हिंसा अधिनियम के अंतर्गत शिकायत प्रस्तुत की परन्तु इसे भी निरस्त कर दिया गया – क्रूरता और अधित्यजन के आधार स्थापित हैं अतः पति विवाह–विच्छेद की डिक्री प्राप्त करने का हकदार है।

Rajesh v. Neha

Order dated 19.11.2024 passed by the High Court of Madhya Pradesh in First Appeal No. 1082 of 2016, reported in AIR 2025 MP 3 (DB)

Relevant extracts from the order:

The allegations in her petition under Section 9 of the Act, 1955 against the husband that he is suspecting her character and not accepting the daughter as his daughter has also not been found reliable by the learned Court below. Wife-Neha in her cross examination in paragraph 30 admitted giving statement in Ex.P-19 in Ratlam Court wherein it is not mentioned that the husband Rajesh tried to strangulate her daughter Divyanshi questioning her paternity which in itself falsifies allegation of wife in this regard. These false allegations are sufficient enough to cause mental cruelty to the husband.

It is undisputed that appellant and respondent are living separately since 13.07.2011 which in itself manifests the love is lost and emotions have dried up between the parties. Even though wife, appellant in appeal F.A.No.920/2024 filed this petition under Section 9 of the Act, 1955 for restitution of conjugal rights, but the same has been dismissed with as specific finding that she has failed to prove that husband has withdrawn himself from her Company without sufficient reasons. In the impugned judgment dated 01.03.2024 passed in HMA Case No.20-A/2017

and also otherwise from the evidence on record, it is undisputedly proved that respondent/wife herself after solemnization of marriage did not live with her husband for more than three months in total which in itself proves that the proceedings filed under Section 9 of the Act, 1955 are eye wash.

Learned Principal Judge, Family Court has failed to appreciate the ground of desertion which is well proved from the evidence on record. It is also proved that by leveling false allegations of cruelty against the husband and towards his family members by way of petition under domestic violence Act has also been found false which in itself gives ground of mental cruelty sufficient to grant decree of divorce.

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76. INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103

Offence of murder – Appreciation of evidence – Appellant convicted for murdering his live-in partner – Conviction based on circumstantial evidence and extra-judicial confession made before some witnesses – Confession made while appellant was in a confused state of mind – High Court affirmed the conviction and sentence of life imprisonment – Supreme Court found extra-judicial confession unreliable due to inconsistencies and lack of corroborative evidence – Statements of witnesses in the court were at variance with their statements recorded by police – No bloodstains were found on clothes of accused – Conduct of accused in confessing to the landlord and brother of the deceased rather than police or authority, was found strange – Held, suspicion cannot replace proof – Conviction and sentence set aside – Appeal allowed.

भारतीय दण्ड संहिता, 1860 — धारा 302
भारतीय न्याय संहिता, 2023 — धारा 103

हत्या का अपराध — साक्ष्य का मूल्यांकन — अपीलार्थी को अपने लिव–इन पार्टनर की हत्या के लिए दोषसिद्ध किया गया — दोषसिद्धि परिस्थितिजन्य साक्ष्य और कुछ साक्षियों के समक्ष की गई न्यायिकेत्तर संस्वीकृति पर आधारित थी — अपीलार्थी की भ्रमित मनोदशा की स्थिति में संस्वीकृति की गई थी — उच्च न्यायालय ने दोषसिद्धि और आजीवन कारावास की सजा की पुष्टि की — सर्वोच्च न्यायालय ने असंगतता और पुष्टिकारी साक्ष्य के अभाव में न्यायिकेत्तर संस्वीकृति को अविश्वसनीय पाया — न्यायालय में हुए साक्षियों के कथन पुलिस द्वारा लेख उनके कथनों से भिन्न थे — अभियुक्त के कपड़ों पर खून के धब्बे नहीं पाए गए — पुलिस या प्राधिकारी की अपेक्षा

मकान मालिक और मृतक के भाई के समक्ष अपराध संस्वीकृति संबंधी अभियुक्त का व्यवहार असामान्य पाया गया – अभिनिर्धारित, संदेह सबूत का स्थान नहीं ले सकता – दोषसिद्धि और दण्डादेश को अपास्त किया गया – अपील स्वीकार की गई।

Ramu Appa Mahapatar v. State of Maharashtra

Judgment dated 04.02.2025 passed by the Supreme Court in Criminal Appeal No. 608 of 2013, reported in AIR 2025 SC 961

Relevant extracts from the judgment:

Having surveyed the principles governing the acceptability and evidentiary value of an extra-judicial confession, we may now advert to such confession made by the accused before PW-1, PW-3, PW-4 and PW-6. It is on record that PW-3 in his cross- examination was quite categorical in deposing that he found the accused to be in a confused state of mind. This factum has also come on record in the testimony of the other witnesses before whom such confession was made. In other words, the accused was not in a fit state of mind when he made the extra-judicial confession before PW-3. That apart, there were no blood stains on the clothes worn by the accused; not to speak of any such blood samples matching with the blood of the deceased. While various articles were seized from the place of occurrence, there was no recovery of any blood-stained clothes. There is no evidence on record that the grinding stone was recovered or that there were any blood stains on the recovered stick, not to speak of such blood stains matching the blood of the deceased. Moreover, we find the conduct of the accused to be quite strange; instead of confessing his guilt before the police or any other authority, he first goes to PW-1, the landlord, and tells him about the death of Manda; further telling him that he was on his way to the residence of the brother of Manda (PW-3) to inform him about the development. He goes to the residence of PW-3 alongwith his son in a rickshaw and tells PW-3 about the death of Manda following assault on her by him. This he stated to PW-3 before PW-4 and PW-6. What is more strange is the reaction or non-reaction of PW-3 when the accused confessed before him that he had killed his sister Manda. This is not at all a normal behaviour of a brother. He would have certainly reacted strongly when he heard the accused saying that he had killed his sister. Instead of any such reaction, as per the prosecution case, PW-3 accompanied the accused back to his residence. Further, PW-4 stated in her cross-examination that she did not talk with the accused directly but came to know about the incident. This clearly puts her testimony under a cloud.

There is one more aspect which we would like to flag off. From the evidence on record, we find that there is a clear material omission in the cross-examination of PW-3. According to the testimony of PW-3, he had stated before the police that the accused had told him that he had assaulted Manda with a grinding stone and had killed her but the same was not recorded by the police in his statement u/s 161 of the Code of Criminal Procedure, 1973. Similarly, PW-6 in his deposition stated that he had told the police that the accused had told Bhagwan (PW-3) in his presence that he had a quarrel with Manda in the night but the police did not record in his statement u/s 161 CrPC.

From the above, it is evident that not only the extra- judicial confession of the accused lacks credibility as PW-3 is clearly on record stating that the accused was in a confused state of mind when he confessed before him, the testimonies of PW-3 and PW-6 suffer from material omission. Their statements made u/s 161 CrPC are at variance with their evidence in court regarding the confession made by the accused before PW-3. This Court in ***Alauddin v. State of Assam, AIR 2024 SC 2238*** explained the context in which an omission occurs and when such an omission amounts to a contradiction. In the light of the Explanation to Section 162 of the CrPC, this Court held as follows:

> "When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the court which is inconsistent with what he has stated in his statement recorded by the police, there is a contradiction. When a prosecution witness whose statement u/s 161(1) or Section 164 of CrPC has been recorded states factual aspects before the court which he has not stated in his prior statement recorded u/s 161(1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the police, which he states before the court in his evidence. The Explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the Explanation u/s 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination."

As observed above, the testimony of the prosecution witnesses suffers from serious lack of credibility and also hit by contradictions which strike at the very root of the prosecution case. No corroborating circumstances have been brought on record by the prosecution.

No doubt there is a strong suspicion against the appellant and the needle of suspicion qua the death of Manda points towards him but as is the settled jurisprudence of this country, suspicion howsoever strong cannot take the place of hard evidence. The evidence on the basis of which the prosecution seeks conviction of the accused i.e. extra-judicial confession made before the above witnesses lack credibility and hence cannot be relied upon. Besides, the evidence suffers from material contradiction. Therefore, it would be wholly unsafe to sustain the conviction of the appellant based on such weak circumstantial evidence which on the top of it lack credibility.

For the aforesaid reasons, we are of the view that the appellant must get the benefit of doubt. In view of the above, the conviction and sentence of the appellant vide the judgment and order dated 15.10.2004 passed by the Sessions Judge in Sessions Case No. 52 of 2004 as affirmed by the High Court vide the judgment and order dated 02.12.2010 passed in Criminal Appeal No. 252 of 2005, are hereby *set aside* and *quased.* Since the appellant is in detention, he shall be released from custody forthwith if not required in any other case.

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77. INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)
EVIDENCE ACT, 1872 – Sections 3, 8 and 106
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2(1)(j), 6 and 109

(i) Murder – Circumstantial evidence – Proof of 'Motive' – Accused persons had allegedly committed murder of the deceased with the intention to usurp her properties – Witness has made omnibus allegations that accused persons used to quarrel with the deceased relating to property – Evidence did not point to an immediate altercation on the day of the incident – During her lifetime, the accused person had already received half of the house from the deceased's husband – The deceased person's alleged complaint against the accused regarding the property dispute was not included in the charge sheet or supported by the prosecution's evidence – The prosecution failed to prove motive.

(ii) Circumstantial evidence – Last seen theory – As per prosecution case deceased was lastly seen in the company of accused persons but the said fact was not proved by the testimony of witnesses – Prosecution has failed to produce material witnesses and offered no explanation for their non-examination – No evidence to establish exclusive presence of accused persons in the house of the deceased at any time before incident – Burden of proof cannot be shifted on the accused persons by invoking section 106 of Evidence Act – Evidence of last seen together not found proved beyond reasonable doubt – Conviction set-aside, accused persons acquitted.

भारतीय दण्ड संहिता, 1860 – धारा 302
भारतीय न्याय संहिता, 2023 – धारा 103(1)
साक्ष्य अधिनियम, 1872 – धाराएं 3, 8 एवं 106
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2(1)(ञ), 6 एवं 109

(i) हत्या – परिस्थितिजन्य साक्ष्य – 'हेतु' का प्रमाणित होना – अभियुक्त व्यक्तियों ने कथित रूप से मृतक की संपत्ति हड़पने के इरादे से उसकी हत्या की थी – साक्षी ने सामान्य आरोप लगाए थे कि अभियुक्तगण संपत्ति को लेकर मृतक से झगड़ा करते थे – साक्ष्य, घटना के दिन तत्काल विवाद होने की ओर इंगित नहीं करती – अभियुक्त ने मृतिका के पति से उसके जीवनकाल में ही मकान का आधा हिस्सा प्राप्त कर लिया था – संपत्ति विवाद के संबंध में अभियुक्त के विरूद्ध मृतक व्यक्ति की कथित शिकायत अभियोग पत्र में सम्मिलित नहीं थी एवं अभियोजन साक्ष्य से समर्थित नहीं थी – अभियोजन 'हेतु' साबित करने में विफल रहा।

(ii) परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखे जाने का सिद्धांत – अभियोजन मामले के अनुसार मृतक को अंतिम बार अभियुक्त व्यक्तियों के साथ देखा गया था किन्तु उक्त तथ्य गवाहों की साक्ष्य से प्रमाणित नहीं हुआ – अभियोजन महत्वपूर्ण साक्षियों को प्रस्तुत करने में विफल रहा और उनका परीक्षण न कराने का कोई स्पष्टीकरण भी नहीं दिया – घटना के पूर्व किसी भी समय मृतक के घर में अभियुक्त व्यक्तियों की अनन्य रूप से उपस्थिति स्थापित करने के लिए कोई साक्ष्य नहीं – धारा 106 साक्ष्य अधिनियम का उपयोग कर सबूत का भार अभियुक्त व्यक्तियों पर अंतरित नहीं किया जा सकता – अंतिम बार साथ देखे जाने की साक्ष्य युक्तियुक्त संदेह से परे प्रमाणित नहीं – दोषसिद्धि अपास्त की गई, अभियुक्तगण को दोषमुक्त किया गया।

Nusrat Parween v. State of Jharkhand

Judgment dated 10.12.2024 passed by the Supreme Court in Criminal Appeal No. 458 of 2012, reported in AIR 2025 SC 105

Relevant extracts from the judgment:

Ongoing squabbles between close relatives residing under one roof are nothing out of usual and may give rise to an inference that all was not well within the family. However, in our opinion, merely because such quarrels were going on between the accused persons and Hamida Parween (deceased), that by itself could not be a ground to impute motive to the accused-appellants for murder of Hamida Parween (deceased).

Immediate cause of the incident as per the prosecution was a quarrel which allegedly took place between the accused-appellants and Hamida Parween (deceased) on the morning of 11th March, 1997 just before her children i.e. Md. Sahid Khan (PW3) and Md. Javed Khan left for school. However, upon a close scrutiny of the depositions of Md. Sahid Khan (PW3) and the immediate neighbours, namely, Chand Mohammad (PW1), Matiur Rahman (PW2), Md. Sagir Ahmad Ansari (PW5), Fazal Khan (PW6) and Ragho Sharma (PW7), we do not find anything in their evidence which can even remotely suggest that there had been any quarrel between the accused- appellants and Hamida Parween (deceased) on the day of the incident. Hence, there is a total lack of evidence to convince the Court that there was any immediate strife on the fateful day which could have fuelled the accused-appellants with such rage that they were impelled to murder Hamida Parween.

The Investigating Officer, Jitender Kumar (PW12) stated in his evidence that Md. Yunush (PW8) [the father of Hamida Parween (deceased)] had informed him that his son-in-law i.e. Abdul Hamid Khan [the husband of Hamida Parween] had already given half a share of the house to Ahmad Khan/appellant No. 2 and Abdul Rahman Khan/accused No. 3 during his lifetime. Thus, the theory of motive attributed to the accused-appellants i.e., that they wanted to usurp Holding No. 13 could not be established by unimpeachable evidence.

The complaint under Section 107 read with Section 116(3) of the CrPC allegedly lodged by Hamida Parween (deceased) against the accused persons could have provided an important corroborative link in the chain of incriminating circumstances. However, on a threadbare scrutiny of the record, and after going through the statements of the material prosecution witnesses, we notice that the said complaint never saw the light of the day inasmuch as, neither it was placed on record with the charge-sheet nor did any of the prosecution witnesses bother to prove the same during the evidence. Hence, the most important document, in the form of a complaint filed by Hamida Parween (deceased), under Section 107 read

with Section 116(3) of the CrPC on which the prosecution heavily relied upon in support of the theory of motive, was never proved as per law.

Thus, we have no hesitation in holding that the evidence led by the prosecution to prove the theory of motive for commission of the crime as attributed to the accused-appellants is far from convincing and a vital link in the chain of incriminating circumstances is snapped. In view of the above finding, unquestionably, the trial Court as well as the High Court erred in holding that the prosecution has been able to prove the motive for the murder against the accused-appellants beyond all manner of doubt.

On a minute perusal of the deposition of Md. Sahid Khan (PW3), we find nothing in his testimony which could even remotely suggest that any or all of the three accused persons were present in the house or that they had quarrelled with his mother when he left for school along with his brother Md. Javed Khan.

In addition thereto, none of the neighbours i.e., Chand Mohammad (PW1), Matiur Rahman (PW2), Md. Sagir Ahmad Ansari (PW5), Fazal Khan (P6) and Ragho Sharma (PW7) made any such assertion in their testimonies that they had seen the accused present with Hamida Parween (deceased) or that they were seen fleeing away from Holding No. 13 on the fateful morning.

From the evidence of Md. Yunush (PW8) [the father of Hamida Parween (deceased)], it also transpires that Hamida Parween (deceased) had 3 children i.e. two sons, Md. Sahid Khan (PW3) and Md. Javed Khan, and a daughter, namely, Kahkasan Anujam. However, the prosecution has not explained as to where the girl child was on the date of the incident. Nothing is available on record to throw light regarding the age of the girl child, or to infer that she was incapable of testifying or was not present with her mother on the fateful day. Likewise, the prosecution has also failed to provide any explanation whatsoever as to why the other son, Md. Javed Khan was not examined in evidence. The prosecution failed to show that Md. Javed Khan and Kahkasan Anujam were incapable of giving evidence and hence, failure to examine them in evidence calls for drawing of adverse inference thereby, further denting the credibility of the prosecution case.

There is no credible evidence on record of the case to establish the exclusive presence of the accused-appellants with Hamida Parween (deceased) in the house in question at any time before the incident, justifying the shifting of the burden of proof on to the accused-appellants by invocation of Section 106 of the Evidence Act. Thus, the theory of last seen together attributed by the prosecution could not be proved beyond all manner of doubt.

There is another doubtful feature which cast a grave doubt on the truthfulness of the prosecution case. The first informant, Md. Firoj (PW4) alleged that he had gone to the police station on 11th March, 1997 to inform about the disappearance of his sister, Hamida Parween. However, the Investigating Officer, Jitender Kumar (PW12) emphatically denied that Md. Firoj (PW4) or any other relative of Hamida Parween (deceased) had visited the police station on 11th March, 1997 for lodging a report regarding disappearance of Hamida Parween (deceased). As per the Investigating Officer, Jitender Kumar (PW12), Md. Firoj (PW4) [the brother of Hamida Parween (deceased) had come to the police station only on the morning of 12th March, 1997 for the first time and made a complaint regarding the disappearance of his sister upon which an entry was made in the station diary at Serial No. 517. However, the said station diary entry was not brought on record which is yet another circumstance which persuades us to draw an adverse inference against the prosecution.

The maternal family relatives of Hamida Parween (deceased) have come out with a categoric assertion that after the death of Hamida Parween's husband, the accused persons were continuously quarreling with her for usurping the entire Holding No. 13. The first informant, Md. Firoj (PW4) also alleged in the FIR that the accused persons had quarreled with Hamida Parween (deceased) in the morning of the incident and were seen fleeing away together in the tempo. Had there been an iota of truth in these allegations, the immediate and natural reaction of the maternal family members after being informed about the missing of Hamida Parween (deceased) and noticing the lock on the door of the house would have been to break open the lock and take a stock of the situation inside. The utter indifference of the family members in taking any such measures makes the entire prosecution story doubtful.

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78. INDIAN PENAL CODE, 1860 – Sections 120 B, 302 and 307
BHARATIYA NYAYA SANHITA, 2023 – Sections 103(1), 109 and 61(2)
CRIMINAL PROCEDURE CODE, 1973 – Section 161
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 180
EVIDENCE ACT, 1872 – Section 154
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 157

(i) Offence of Murder – Appreciation of evidence – Eye witneses – Testimony of eyewitness having criminal background, cannot be discarded as untruthful or uncreditworthy without considering the

facts and circumstances of the case – It is the duty of the Court to appreciate the evidence with caution, to apply the crucial test as to whether the witness is truly an eyewitness and whether his testimony is credible, as the doctrine *'falsus in uno, falsus in omnibus'* is not a sound rule to apply in the Indian context.

(ii) Hostile witness – Testimony of such a witness is subjected to close scrutiny, which may be discarded as a matter of prudence, when Court finds the witness wholly discredited warranting the exclusion of the evidence in toto.

(iii) Minor discrepancies, when not fatal – Discrepancies regarding the place and time of recording the police statement of witnesses or as to who reached the hospital at an earlier point of time, is not material, when testimony was recorded 4-6 years after the date of incidence.

भारतीय दण्ड संहिता, 1860 – धाराएं 302, 307 एवं 120ख
भारतीय न्याय संहिता, 2023 – धाराएं 103(1), 109 एवं 61(2)
दण्ड प्रक्रिया संहिता, 1973 – धारा 161
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 180
साक्ष्य अधिनियम, 1872 – धारा 154
भारतीय साक्ष्य अधिनियम, 2023 – धारा 157

(i) हत्या का अपराध – साक्ष्य का मूल्यांकन – चक्षुदर्शी साक्षी – मामले के तथ्यों एवं परिस्थितियों पर विचार किये बिना, आपराधिक पृष्ठभूमि वाले चक्षुदर्शी साक्षी की साक्ष्य को असत्य एवं अविश्वास योग्य मानते हुए अस्वीकार नहीं किया जा सकता – न्यायालय का यह कर्तव्य है कि वह साक्ष्य का सतर्कता पूर्वक मूल्यांकन कर, यह निर्णायक परीक्षण करे कि क्या उक्त साक्षी वास्तव में चक्षुदर्शी साक्षी है एवं क्या उसकी साक्ष्य विश्वसनीय है क्योंकि 'एक बात में असत्य, सभी बातों में असत्य' का सिद्धांत भारतीय संदर्भ में लागू करना उचित नहीं है।

(ii) पक्षद्रोही साक्षी – ऐसे साक्षी की साक्ष्य सूक्ष्म परीक्षण के अधीन होती है जिसे विवेक पूर्वक त्यागा जा सकता है जब न्यायालय ऐसे साक्षी को पूर्णतः अविश्वसनीय पाते हुए उसकी संपूर्ण साक्ष्य को पृथक किये जाने योग्य पाता है।

(iii) सूक्ष्म विसंगतियां, कब घातक नहीं – साक्षियों के पुलिस कथन लेख करने के समय एवं स्थान अथवा समयानुसार पहले कौन चिकित्सालय पहुंचा, के संबंध में विसंगति सारवान नहीं है, जब उनकी साक्ष्य घटना के 4–6 वर्ष उपरान्त अंकित की गई थी।

Rama Devi v. State of Bihar and ors.

Judgment dated 03.10.2024 passed by the Supreme Court in Criminal Appeal No. 2623 of 2014, reported in (2024) 10 SCC 462 (3 Judge Bench)

Relevant extracts from the judgment:

Indian law does not recognise the doctrine – *falsus in uno, falsus in omnibus*. In ***Deep Chand and ors. v. State of Haryana, (1969) 3 SCC 890***, this Court had observed that the maxim falsus in uno, falsus in omnibus is not a sound rule to apply in the conditions of this country. This maxim does not occupy the status of rule of law. It is merely a rule of caution which involves the question of the weight of evidence that a court may apply in the given set of circumstances.

In cases where a witness is found to have given unreliable evidence, it is the duty of the court to carefully scrutinise the rest of the evidence, sifting the grain from the chaff. The reliable evidence can be relied upon especially when the substratum of the prosecution case remains intact. The court must be diligent in separating truth from falsehood. Only in exceptional circumstances, when truth and falsehood are so inextricably connected as to make it indistinguishable, should the entire body of evidence be discarded.

The criminal background of a witness necessitates that the courts approach their evidence with caution. The testimony of a witness with a chequered past cannot be dismissed as untruthful or uncreditworthy without considering the surrounding facts and circumstances of the case, including their presence at the scene of the offence. In cases involving conflicts between rival gangs or groups, the testimony of members from either side is admissible and relevant. If the court is convinced of the veracity and truthfulness of such testimony, it may be considered. Courts typically assess the broader context to determine if there is sufficient corroboration, as long as there are no valid reasons to discredit the evidence. The crucial test is whether the witness is truly an eyewitness and whether their testimony is credible. If their presence at the scene is established beyond doubt, their account of the incident can be relied upon. Such evidence cannot be discarded merely on the grounds of criminal background.

In a catena of judgments, this Court has observed that the evidence of a hostile witness is not to be completely rejected, so as to exclude versions that support the prosecution. Rather, the testimony of the hostile witness is to be subjected to close scrutiny, thus enabling the court to separate truth from falsehood, exaggerations

and improvements. Only reliable evidence should be taken into consideration. The court is not denuded of its power to make an appropriate assessment.

The entire testimony of a hostile witness is discarded only when the judge, as a matter of prudence, finds the witness wholly discredited, warranting the exclusion of the evidence in toto. The creditworthy portions of the testimony should be considered for the purpose of evidence in the case.

The High Court, in its reasoning, takes an exception on the minor discrepancies regarding the place and time of recording the statement under Section 161 CrPC of Mahanth Ashwani Das (PW-25). Considering the efflux of time of more than 4-6 years between the date of occurrence and recording of court testimony, these issues are at best superficial and peripheral and would not warrant disregarding the prosecution case. The questions posed to the witnesses were more in the nature of a memory test rather than questions posed to test the truthfulness and credibility of their core testimony.

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79 INDIAN PENAL CODE, 1860 – Section 302/34
BHARATIYA NYAYA SANHITA, 2023 – Section 103/3(5)
Murder – Common intention – Head Constable Jagdish Singh alongwith appellants intercepted a car on suspicion of smuggling illegal liquor and when the driver failed to stop the car, Head Constable fired a shot from his revolver hitting the co-passenger seated in the front seat of the car, resulting in her death – Trial Court convicted the main accused for the offence u/s 302 and acquitted the appellants for the offence punishable u/s 302/34 – State preferred an appeal against their acquittal – It was found that main accused was senior to appellants and they were under his command – Appellants were present in the vehicle alongwith main accused but their mere presence was not enough to convict them – Appellants were not named in the FIR either – Nothing on record to show that appellants had common intention with the main accused to commit murder – Order of setting aside of acquittal by the High Court was found erroneous.

भारतीय दण्ड संहिता, 1860 – धारा 302/34
भारतीय न्याय संहिता, 2023 – धारा 103/3(5)
हत्या – सामान्य आशय – हेड कांस्टेबल जगदीश सिंह ने अपीलार्थीगण के साथ अवैध शराब की तस्करी के संदेह में एक कार को रोका और जब चालक

कार रोकने में विफल रहा तो हेड कांस्टेबल ने अपनी रिवॉल्वर से एक गोली चलाई जो कार की अगली सीट पर बैठी सह–यात्री को लगी जिसके परिणामस्वरूप उसकी मृत्यु हो गई – विचारण न्यायालय ने मुख्य आरोपी को धारा 302 के अंतर्गत अपराध के लिए दोषी ठहराया और अपीलार्थीगण को धारा 302/34 के अंतर्गत दण्डनीय अपराध से दोषमुक्त कर दिया – राज्य ने उनकी दोषमुक्ति के विरूद्ध अपील की – यह पाया गया कि मुख्य अभियुक्त अपीलार्थीगण से वरिष्ठ था और वे उसके अधीन थे – अपीलार्थी मुख्य अभियुक्त के साथ वाहन में उपस्थित थे किन्तु मात्र उनकी उपस्थिति उन्हें दोषी ठहराने हेतु पर्याप्त नहीं थी – अपीलार्थीगण का नाम प्रथम सूचना रिपोर्ट में भी नहीं था – अभिलेख में ऐसा कुछ भी नहीं है जो यह दर्शित करे कि अपीलार्थीगण का मुख्य अभियुक्त के साथ हत्या करने का सामान्य आशय था।

Constable 907 Surendra Singh and anr. v. State of Uttarakhand

Judgment dated 28.01.2025 passed by the Supreme Court in Criminal Appeal No. 355 of 2013, reported in AIR 2025 SC 998

Relevant extracts from the judgment:

In the instant case, the learned trial judge on the basis of ocular testimony of the eyewitnesses has held that the accused No.1-Jagdish Singh is guilty of the offence punishable u/s 302/34 IPC as well as u/s 27(1) of the Arms Act. Since the appeal of the said accused No.1-Jadgish Singh is disposed of as abated, we did not go into the findings against the said accused.

The learned trial judge while recording the finding of acquittal insofar as the present appellants are concerned, has come to the following conclusions:

(i) That these three accused (appellants herein) were in the car and the accused No.1-Jagdish Singh was senior to them, and that they were under the command of their senior officer;

(ii) Accused Ashad Singh had admitted this aspect and had stated that he was driving the car under the orders of his superior officer;

(iii) The remaining two accused had raised a plea of alibi, which was based on certain entries in the General Diary (G.D.)

(iv) That accused Nos. 2, 3 and 4 (the appellants herein) were not named in the report;

(v) From the evidence of Rajendra Singh Nagarkoti, P.W.9 as well as identification memo Exhibit Ka-13 prepared by the Executive Magistrate Bishan Singh Bisht, it was clear that only one accused, namely, Ashad Singh could be identified and that too only by one witness i.e. by P.W.1;

(vi) That the identification of the accused by only one witness was not sufficient to come to a conclusion of guilt against the accused.

Upon consideration of these factors, the learned trial judge came to a conclusion that even if it was assumed that the remaining three accused had accompanied accused No.1- Jagdish Singh, there was no evidence to come to a conclusion that accused Nos. 2, 3 and 4 (the appellants herein) who were in car with accused No.1-Jagdish Singh had shared a common intention with him to fire upon or to kill the deceased.

The learned trial judge, therefore, found that the prosecution had failed to prove the mental involvement of accused Nos. 2, 3 and 4 (the appellants herein) with accused No.1-Jagdish Singh beyond the shadow of reasonable doubt.

However, this well-reasoned finding of the learned trial court has been upset by the High Court on the ground that the remaining three accused were sitting in the same vehicle along with accused No.1-Jagdish Kumar was sufficient to convict them with the aid of Section 34 of the IPC.

By now it is a settled principle of law that for convicting the accused with the aid of Section 34 of the IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had preplanned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused. Reliance in support of the aforesaid proposition could be placed on the following judgments of this Court in the cases of:

(i) ***Ezajhussain Sabdarhussain and anr. v. State of Gujarat, AIR 2019 SC 1525***

(ii) ***Jasdeep Singh alias Jassu v. State of Punjab, AIR 2022 SC 805***

(iii) ***Gadadhar Chandra v. State of West Bengal, (2022) 6 SCC 576***

(iv) ***Madhusudan and ors. v. State of Madhya Pradesh, AIR online 2024 SC 953***

In the present case, as observed by the learned trial judge, the prosecution has failed to place on record any evidence to show that the accused Nos. 2, 3 and 4 (the appellants herein) had common intention with accused No.1-Jagdish Singh prior to the accused No.1-Jagdish Singh's shooting at the deceased resulting in her death.

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80. INDIAN PENAL CODE, 1860 – Sections 302 and 376
BHARATIYA NYAYA SANHITA, 2023 – Sections 103 and 64
Rape and murder – Appellant convicted u/s 302 and 376 IPC for committing rape and murder of victim aged 9 years – Victim was last seen going to the house of accused in search of his friend – Death sentence awarded by Trial Court and upheld by the High Court – Challenged on the grounds of circumstantial evidence, inconsistencies in forensic reports and improper examination of witnesses – Supreme Court dismissed the appeal, holding that the chain of circumstantial evidence was complete and consistent with the guilt of the accused – Principles that Court must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence, reiterated.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 376
भारतीय न्याय संहिता, 2023 – धाराएं 103 एवं 64
बलात्संग और हत्या – अपीलार्थी को 9 वर्ष की पीड़िता के साथ बलात्संग एवं हत्या करने के लिए भारतीय दण्ड संहिता की धारा 302 और 376 के अंतर्गत दोषी ठहराया गया – पीड़िता को अंतिम बार अपने मित्र की तलाश करते हुए अभियुक्त के घर जाते हुए देखा गया था – विचारण न्यायालय द्वारा मृत्युदंड का दण्डादेश दिया गया और उच्च न्यायालय ने इसे यथावत रखा – परिस्थितिजन्य साक्ष्य, फोरेंसिक रिपोर्ट में असंगतता और साक्षियों के अनुचित परीक्षण के आधार पर चुनौती दी गई – सर्वोच्च न्यायालय ने यह मानते हुए कि परिस्थितिजन्य साक्ष्य की श्रृंखला पूर्ण थी और अभियुक्त की दोषिता से संगत थी, अपील को निरस्त कर दिया – परिस्थितिजन्य साक्ष्य के आधार पर मामलों में साक्ष्य का विवेचन एवं मूल्यांकन करते समय न्यायालय को जिन सिद्धांतों का पालन करना चाहिए, उन्हें दोहराया गया।

Abdul Nassar v. State of Kerala and anr.

Judgment dated 07.01.2025 passed by the Supreme Court in Criminal Appeal No. 1122 of 2018, reported in AIR 2025 SC 691 (3 Judge Bench)

Relevant extracts from the judgment:

The following circumstances stand firmly established from a threadbare analysis of the evidence available on record, pointing towards the guilt of the accused appellant: -

(i) The child victim was a friend of the daughter of the accused, and they used to go to Madrassa together.

(ii) On the date of incident, the child victim was seen with the daughter of the accused. However, she never reached Madrassa.

(iii) When the child victim did not return home, an extensive search was conducted and since, the child victim was last seen with the daughter of the accused, the needle of suspicion pointed towards the house of the accused, more particularly because his house was situated close by the Madrassa.

(iv) Nazarudheen (PW-2) tried to repeatedly search the house of the accused along with neighbours and in the efforts to trace out the child victim, the witness found the house of the accused locked in his first and second attempts.

(v) During the third search attempt, the witness (PW-2) found the accused sitting in verandah of his house. Upon being asked for the permission to search his house, the accused stated that the keys of the house were with his wife, and he would bring it himself.

(vi) The witness Nazarudheen (PW-2) during the third attempt, searched the slopping shed and the bathroom adjacent to the house but to no avail whereafter, he went to search the pond near the house of the accused.

(vii) After searching the pond, the witness (PW-2) fixed the battery of the torch which he had called from his father, since it was dark and reached near the Madrassa.

(viii) In the fourth attempt, witnesses namely, Nazarudheen (PW-2), Shamsudheen (PW-8) and Unnikrishnan (PW-12) got suspicious of the accused's conduct and resumed the search of the house of the accused and even this time, the house of the accused was locked, and the accused was not present there. PW-12 inspected the bathroom by lighting his torch and found a heap of clothes, which was removed by PW-8 and the dead body of the child victim was discovered concealed thereunder.

(viii) Two stones of the septic tank inside the house of the accused were also found moved.

(ix) Blood-stained pink colour midiskirt (MO-7), petticoat (MO-8) and black miditop (MO-9) worn by the deceased child victim were identified by her mother (PW-9), recovered by the police officials from the house of the accused and were seized. An underwear (MO11) of the deceased was also found in the kitchen of the house of the accused.

(x) Blood stains were found on the cot and floor beneath it.

(xi) As per the postmortem report 26, a total of 37 ante mortem injuries were found on the child victim's body along with injuries on the

genitalia, suggestive of forcible penetrative sexual assault. The cause of death was opined to be manual compressive and ligature constrictive strangulation.

(xii) As per the FSL report 27, the midiskirt worn by child victim, the dhoti of the accused and cotton gauze collected from the scene of crime contained human spermatozoa and semen. The hair collected from the crime scene matched with the hair of the deceased child victim.

(xiii) The DNA report 28 clearly proved that the DNA profile of the semen stains found on the midiskirt (MO-7) matched with that of 26 Exhibit P-15 27 Exhibit P-13 28 Exhibit P-14 the accused. Further, the blood stains found on the cot and beneath it were that of the deceased child victim.

(xiv) The slippers, hard-board writing pad, plastic cover of the writing pad, grey coloured pen and light rose small plastic carry bag belonging to the deceased child victim, as identified by her mother (PW-9), were recovered in furtherance of the voluntary disclosure statement29 of the accused.

Based on the analysis of the evidence on the record, we are of the view that the chain of incriminating circumstances required to bring home the guilt of the accused is complete in all aspects. In the present case, we affirm that the prosecution has been able to prove the guilt of the accused appellant by fulfilling the five golden principles (Panchsheel) laid down by this Court in the case of ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*** and that the circumstances present before us, taken together establish conclusively only one hypothesis that being the guilt of the accused appellant.

In the wake of the discussion made hereinabove, there is no doubt in the mind of the Court that the prosecution has proved by leading clinching and convincing circumstantial evidence that the 29 Exhibit P-23 accused had committed forcible and violent sexual assault on the child victim and, thereafter, strangled and killed her.

We deem it essential to enunciate the principles that courts must adhere to while appreciating and evaluating evidence in cases based on circumstantial evidence, as follows:

(i) The testimony of each prosecution and defence witness must be meticulously discussed and analysed. Each witness's evidence should be assessed in its entirety to ensure no material aspect is overlooked.

(ii) Circumstantial evidence is evidence that relies on an inference to connect it to a conclusion of fact. Thus, the reasonable inferences that can be drawn from the testimony of each witness must be explicitly delineated.

(iii) Each of the links of incriminating circumstantial evidence should be meticulously examined so as to find out if each one of the circumstances is proved individually and whether collectively taken, they forge an unbroken chain consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

(iv) The judgment must comprehensively elucidate the rationale for accepting or rejecting specific pieces of evidence, demonstrating how the conclusion was logically derived from the evidence. It should explicitly articulate how each piece of evidence contributes to the overall narrative of guilt.

(v) The judgment must reflect that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.

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81. INDIAN PENAL CODE, 1860 – Sections 306 and 417
BHARATIYA NYAYA SANHITA, 2023 – Sections 343 and 457
EVIDENCE ACT, 1872 – Section 3
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 2(1)(j)
Abetment of suicide – Deceased committed suicide by consuming poison – As per prosecution, deceased and accused were in a relationship for the last 8 years and the accused promised to marry her before the Panchayat – It was alleged that accused when refused to marry her, she committed suicide – In the dying declaration, no allegation that the accused had any physical relationship or had sexual intercourse with the deceased under the pretext of marriage – Evidence showed that deceased was having one sided love affair with accused – Although it was alleged that both of them were talking to each other on phone but no call records were produced – Refusal to marry her by accused cannot be said to be a positive act on his part with any intention to abet suicide – No case of instigation, incitement or provocation of the deceased to commit suicide is made out – Conviction set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 306 एवं 417
भारतीय न्याय संहिता, 2023 – धाराएं 343 एवं 457
साक्ष्य अधिनियम, 1872 – धारा 3
भारतीय साक्ष्य अधिनियम, 2023 – धारा 2(1)(ञ)
आत्महत्या का दुष्प्रेरण – मृतिका ने विष सेवन कर आत्महत्या कर ली – अभियोजन के अनुसार मृतिका और आरोपी पिछले 8 वर्षों से रिश्ते में थे और अभियुक्त ने पंचायत के समक्ष उससे विवाह करने का वादा किया था – यह आरोप लगाया गया था कि जब अभियुक्त ने उससे विवाह करने से इंकार कर दिया तब उसने आत्महत्या कर ली – मृत्युकालिक कथन में ऐसा कोई आक्षेप नहीं है कि अभियुक्त के मृतिका के साथ शारीरिक संबंध थे या उसने मृतिका को विवाह करने का आश्वासन देकर यौन संबंध बनाए थे – साक्ष्य से दर्शित हुआ कि मृतिका का अभियुक्त के साथ एकतरफा प्रेम संबंध था – यद्यपि यह आक्षेप था कि वे दोनों फोन पर एक–दूसरे से बात करते थे परन्तु कोई कॉल रिकॉर्ड प्रस्तुत नहीं किये गये – अभियुक्त द्वारा मृतिका से विवाह करने से इंकार करना, उसकी ओर से आत्महत्या के साशय दुष्प्रेरण का सकारात्मक कृत्य नहीं कहा जा सकता – मृतिका को आत्महत्या करने के लिए उकसाने, उत्प्रेरित या प्रकोपित करने का कोई मामला नहीं बनता – दोषसिद्धि अपास्त की गई।

Kamaruddin Dastagir Sanadi v. State of Karnataka Through Sho Kakati Police

Judgment dated 29.11.2024 passed by the Supreme Court in Criminal Appeal No. 551 of 2012, reported in AIR 2025 SC 153

Relevant extracts from the judgment:

The dying declaration of the deceased reveals that there is no allegation of any physical relationship between the accused-appellant and the deceased or that the accused-appellant had ever entered into any physical relationship or had sexual intercourse with the deceased under the pretext of marriage. The dying declaration indicates that it was the deceased who was in love with the accused-appellant and wanted to marry him. When the accused-appellant had left the village, it was the deceased who made search about him and came to know that he was residing in Kakati. She herself traced him out at Kakati and went after him. She called him and when they met, he refused to marry her and thus, as her sentiments were hurt, she consumed poison leading to her death.

There is no allegation by her that the accused-appellant had instigated her to consume poison or to commit suicide. No other evidence in this regard has been adduced. Even the mother of the deceased (PW-1) in her statement revealed that it

was the deceased who was in love with the accused- appellant and that she wanted her mother to convince him to marry her. The said witness though may have stated that the deceased entered into physical relationship with her daughter but the same otherwise does not stand proved or corroborated, not even by the dying declarations. As regards the promise to marry alleged to have been made by the accused-appellant, it is said that the same was made before the village elders in context with which Najaruddin Mohammad Malik (PW-3) and Kashim Babalal Sankeshwar (PW-4) were examined. Both these witnesses have stated that they had provided a written document regarding the panchayath proceedings to the deceased and her mother but no such document was produced by PW-1 to prove that the accused-appellant had actually ever promised or agreed to marry her daughter. There is allegation but no evidence to prove that the accused-appellant was also in love with the deceased or that he was in touch with her in any manner. The allegation that both of them were talking to each other on phone is without any substance as no evidence was produced in the form of call records of either of them to establish that the accused-appellant used to call the deceased and talk to her and to establish that he was also in love with her. There is no evidence to even establish that the accused-appellant entered into any physical relationship with the deceased on the pretext of marrying her. So, the evidence fails to prove any physical relationship between the two, promise to marry on the part of the accused-appellant and that he was instrumental in instigating the deceased to consume poison or to commit suicide.

If we examine the instant case on the touch stone of the above principles of law, we find that the accused-appellant had simply refused to marry the deceased and thus, even assuming there was love between the parties, it is only a case of broken relationship which by itself would not amount to abetment to suicide. The accused-appellant had not provoked the deceased in any manner to kill herself; rather the deceased herself carried poison in a bottle from her village while going to Kakati, Karnataka with a predetermined mind to positively get an affirmation from the accused-appellant to marry her, failing which she would commit suicide. Therefore, in such a situation simply because the accused-appellant refused to marry her, would not be a case of instigating, inciting or provoking the deceased to commit suicide.

Even assuming, though there is no evidence that the accused-appellant promised to marry the deceased, that there was such a promise, it is again a simple

case of a broken relationship for which there is a different cause of action, but not prosecution or conviction for an offence under Section 306, specially in the facts and circumstances of the case where no guilty intention or *mens rea* on the part of the accused-appellant had been established.

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82. INDIAN PENAL CODE, 1860 – Sections 306 r/w/s 107, 114 and 498A
BHARATIYA NYAYA SANHITA, 2023 – Sections 108 r/w/s 45, 54 and 85

(i) Abetment of suicide – Necessary ingredients of offence – Prosecution must establish that the accused contributed to the act of suicide by the deceased – Such involvement of accused must satisfy one of the three conditions outlined in section 107 IPC – For a conviction u/s 306 IPC, the presence of clear *mens rea* (the intention to abet the act) is essential – Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide – Prosecution must demonstrate an active or direct action by the accused that led the deceased to commit suicide.

(ii) Offence of cruelty to married women – Prosecution must establish necessary ingredients of offence – Every kind of harassment would not amount to cruelty – Cruelty can either be mental or physical and it is to be seen on the facts of each case – "Cruelty" simpliciter is not enough to constitute the offence, rather it must be done either with the intention to cause grave injury or to drive her to commit suicide or with intention to coercing her or her relatives to meet unlawful demands.

भारतीय दण्ड संहिता, 1860 – धाराएं 306 सहपठित धारा 107, 114 एवं 498क

भारतीय न्याय संहिता, 2023 – धाराएं 108 सहपठित धारा 45, 54 एवं 85

(i) आत्महत्या का दुष्प्रेरण – अपराध के आवश्यक तत्व – अभियोजन को यह आवश्यक रूप से स्थापित करना होगा कि अभियुक्त का मृतक द्वारा की गई आत्महत्या के कृत्य में योगदान था – अभियुक्त की ऐसी संलिप्तता को भा.दं.सं. की धारा 107 में उल्लिखित तीन शर्तों में से एक को पूरा करना होगा – भा.दं.सं. की धारा 306 के अंतर्गत दोषसिद्धि के लिए स्पष्ट आपराधिक मनःस्थिति (कार्य के दुष्प्रेरण का आशय) की उपस्थिति आवश्यक है – केवल उत्पीड़न, अपने आप में, किसी अभियुक्त को आत्महत्या के दुष्प्रेरण का दोषी ठहराने के लिए पर्याप्त नहीं है – अभियोजन को आवश्यक

रूप से अभियुक्त का प्रत्यक्ष या सक्रिय कृत्य दर्शाना होगा जिसके कारण मृतिका आत्महत्या के लिए दुष्प्रेरित हुई।

(ii) विवाहित महिलाओं के प्रति क्रूरता का अपराध – अभियोजन को अपराध के आवश्यक तत्व स्थापित करने होंगे – प्रत्येक प्रकार का उत्पीड़न क्रूरता नहीं माना जाएगा – क्रूरता या तो मानसिक या शारीरिक हो सकती है और इसे प्रत्येक मामले के तथ्यों के आधार पर देखा जाना चाहिए – केवल ''क्रूरता'' ही अपराध गठित करने के लिए पर्याप्त नहीं है वरन् इसे या तो घोर उपहति पहुंचाने या उसे आत्महत्या के लिए मजबूर करने या उसे या उसके नातेदारों को विधि विरूद्ध मांगों को पूरा करने के लिए बाध्य करने के आशय से किया जाना चाहिए।

Jayedeepsinh Pravinsinh Chavda and ors. v. State of Gujarat

Judgment dated 10.12.2024 passed by the Supreme Court in Criminal Appeal No. 5175 of 2024, reported in (2025) 2 SCC 116

Relevant extracts from the judgment:

This Court in ***U. Suvetha v. State, (2009) 6 SCC 757***, laid down the following ingredients to constitute the offence under Section 498-A IPC:

(*i*) The woman must be married;

(*ii*) She must be subjected to cruelty or harassment; and

(*iii*) Such cruelty or harassment must have been done either by husband of the woman or by the relative of her husband.

This Court has also held in the judgment in ***State of A.P. v. M. Madhusudhan Rao, (2008) 15 SCC 582***, that not every kind of harassment would amount to "cruelty" within the meaning of the provision, to constitute the offence punishable therein. Every case has to be analysed on its individual facts to assess whether the act of the accused persons constitutes cruelty. Further, cruelty can either be mental or physical, and it is to be seen on the facts of each case.

For a conviction under Section 306 IPC, it is a well-established legal principle that the presence of clear *mens rea* – the intention to abet the act – is essential. Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide. The prosecution must demonstrate an active or direct action by the accused that led the deceased to take his/her own life. The element of mens rea cannot simply be presumed or inferred; it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law is not satisfied, underscoring the necessity of a deliberate and conspicuous intent to provoke or contribute to the act of suicide.

The same position was laid down by this Court in ***S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190***, wherein it was observed that:

> "Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

To bring a conviction under Section 306 IPC it is necessary to establish a clear mens rea to instigate or push the deceased to commit suicide. It requires certain such act, omission, creation of circumstances, or words which would incite or provoke another person to commit suicide. This Court in ***Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618***, defined the word "instigate" as under :

> "Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

The essential ingredients to be fulfilled in order to bring a case under Section 306 IPC are:

(*i*) the abetment;

(*ii*) the intention of the accused to aid or instigate or abet the deceased to commit suicide.

Thus, to bring a case under this provision, it is imperative that the accused intended by their act to instigate the deceased to commit suicide. Thus, in cases of death of a wife, the court must meticulously examine the facts and circumstances of the case, as well as assess the evidence presented. It is necessary to determine whether the cruelty or harassment inflicted on the victim left them with no other option but to end their life. In cases of alleged abetment of suicide, there must be concrete proof of either direct or indirect acts of incitement that led to the suicide. Mere allegations of harassment are insufficient to establish guilt. For a conviction, there must be evidence of a positive act by the accused, closely linked to the time of the incident, that compelled or drove the victim to commit suicide.

This Court in ***Ude Singh v. State of Haryana, (2019) 17 SCC 301***, held that to convict an accused under Section 306IPC, the intent or mental state to commit the specific crime must be evident when assessing culpability. It was observed as under:

> "In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the court would be looking for cogent and convincing proof of the act (s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.
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> For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of the accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of

abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four corners of Section 306IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased."

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83. INDIAN PENAL CODE, 1860 – Sections 376(2)(n) and 506
BHARATIYA NYAYA SANHITA, 2023 – Sections 69 and 351(2)
Offence of rape and criminal intimidation – Complainant has alleged that she and the accused had first met in the year 2017 and then again in a park in April, 2018 – In January 2019, the accused had a forceful sexual relationship with her and thereafter, he used to threaten her to have a sexual connection – The accused later denied marrying the complainant and refused to meet with her parents – In her statement u/s 164 CrPC, complainant also alleged that accused used to take her to his room in Chattarpur and had physical relationship with her – Complainant did not stop meeting the accused after the said incident, nor did she file a criminal complaint during that period – At one point, both parties had an intention to marry each other, though this plan did not materialize – Both are educated adults – The complainant, after lodging the FIR, got married in the year 2020 to some other person and the accused also married in the year 2019 – From the evidence, it cannot be concluded that the complainant engaged in a sexual relationship with accused solely on account of any assurance of marriage – A mere breakup of

relationship between a consenting couple cannot result in the initiation of criminal proceedings – What was a consensual relationship between the parties at the initial stage cannot be given a colour of criminality when that relationship does not fructify into a marital relationship – There was no evidence of any threat or coercion – As ingredients of the offence were absent, no *prima facie* case is made out against the accused – Continuation of prosecution would amount to a gross abuse of process of law and therefore, FIR was quashed.

भारतीय दण्ड संहिता, 1860 – धाराएं 376(2)(ढ) एवं 506
भारतीय न्याय संहिता, 2023 – धाराएं 69 एवं 351(2)

बलात्संग का अपराध और आपराधिक अभित्रास – शिकायतकर्ता ने आरोप लगाया कि वह और अभियुक्त पहली बार वर्ष 2017 में मिले थे और पुनः अप्रैल 2018 में एक पार्क में मिले थे – जनवरी 2019 में, अभियुक्त ने उसके साथ जबरदस्ती यौन संबंध बनाए और इसके बाद वह उसे यौन संबंध बनाने हेतु धमकी देता था – अभियुक्त ने बाद में शिकायतकर्ता से विवाह करने से इंकार कर दिया और उसके माता–पिता से मिलने से भी मना कर दिया – धारा 164 दंड प्रक्रिया संहिता के अंतर्गत कथन में शिकायतकर्ता ने यह भी आरोप लगाया कि अभियुक्त छतरपुर में उसे अपने कमरे में ले जाता था और उसके साथ शारीरिक संबंध बनाता था – शिकायतकर्ता ने उक्त घटना के बाद अभियुक्त से मिलना बंद नहीं किया न ही उस अवधि के दौरान कोई दाण्डिक परिवाद प्रस्तुत कि एक समय पर, दोनों पक्ष एक–दूसरे से विवाह करने का इरादा रखते यद्यपि उनकी यह योजना साकार नहीं हुई – दोनों शिक्षित वयस्क हैं – शिकायतकर्ता ने प्राथमिकी दर्ज करने के बाद वर्ष 2020 में किसी अन्य व्यक्ति से विवाह कर लिया और अभियुक्त ने भी वर्ष 2019 में विवाह कर लिया – साक्ष्य से यह निष्कर्ष नहीं निकाला जा सकता है कि विवाह करने का आश्वासन दिये जाने के एक मात्र कारण से शिकायतकर्ता ने अभियुक्त के साथ यौन संबंध बनाए थे – सहमत रहे युगल के मध्य मात्र संबंध विच्छेद हो जाने के परिणामस्वरूप आपराधिक कार्यवाही आरंभ नहीं हो सकती – प्रारंभिक अवस्था में पक्षकारों के मध्य जो सहमतिपूर्ण संबंध थे, उनके वैवाहिक संबंध के रूप में फलीभूत न होने पर उसे आपराधिकता का रंग नहीं दिया जा सकता – किसी भी धमकी या जबरदस्ती किये जाने का कोई साक्ष्य नहीं था – अपराध के तत्व अनुपस्थित थे अतः अभियुक्त के विरूद्ध प्रथम दृष्टया कोई मामला नहीं बनता – अभियोजन जारी रखना विधि की प्रक्रिया का घोर दुरुपयोग होगा और इसलिए प्राथमिकी को रद्द कर दिया गया।

Prashant v. State of NCT of Delhi

Judgment dated 20.11.2024 passed by the Supreme Court in Criminal Appeal No. 2793 of 2024, reported in AIR 2025 SC 33

Relevant extracts from the judgment:

It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself. It is also revealed that, at one point, both parties had an intention to marry each other, though this plan ultimately did not materialize. The appellant and the complainant were in a consensual relationship. They are both educated adults. The complainant, after filing the FIR against the appellant, got married in the year 2020 to some other person. Similarly, the appellant was also married in the year 2019. Possibly the marriage of the appellant in the year 2019 has led the complainant to file the FIR against him as they were in a consensual relationship till then.

In our view, taking the allegations in the FIR and the chargesheet as they stand, the crucial ingredients of the offence under Section 376 (2)(n) IPC are absent. A review of the FIR and the complainant's statement under Section 164 CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution.

The ingredients of criminal intimidation are threat to another person, inter alia, with any injury to his person, reputation with intent to cause alarm to that person or to cause that person to any act which he is not legally bound to do. In the instant case, as already noted, the relationship between the appellant and the complainant was consensual in nature. In fact, they wanted to fructify the relationship into marriage. It is in that context that they indulged in sexual activity. Therefore, there cannot be a case of criminal intimidation involved as against the

complainant. We do not find that there was any threat caused to the complainant by the appellant when all along there was cordiality between them and it was only when the appellant got married in the year 2019 that the complainant filed a complaint. In the circumstances, we do not think that the offence under Section 503 read with Section 506 of the IPC has been made out in the instant case.

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84. INDIAN PENAL CODE, 1860 – Sections 406, 415 and 420
BHARATIYA NYAYA SANHITA, 2023 – Sections 316(2) and 318(1) & (4)
CRIMINAL PROCEDURE CODE, 1973 – Sections 202 and 204
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 225 and 227

(i) Criminal breach of trust – Essential ingredient of an offence – Every act of breach of trust may not result in offence of criminal breach of trust, unless there is evidence of fraudulent misappropriation – Where act of breach of trust involves civil wrong, the remedy lies for damages in civil courts, whereas such an act with *mens rea* leads to criminal prosecution as well.

(ii) "Criminal breach of trust" and "cheating" – Distinction – For "cheating", criminal intention is necessary at the time of making a false or misleading representation i.e. since inception – In case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property, whereas mere proof of lawful entrustment of property and subsequent dishonest misappropriation is sufficient in case of criminal breach of trust – Both offences cannot co-exist simultaneously.

(iii) Issuance of process – Proceedings u/s 202 of CrPC – Right of accused – Accused is not entitled to be heard on the question whether the process should be issued against him or not – Law clarified.

भारतीय दण्ड संहिता, 1860 — धाराएं 406, 415 एवं 420
भारतीय न्याय संहिता, 2023 — धाराएं 316(2) एवं 318(1) व (4)
दण्ड प्रक्रिया संहिता, 1973 — धाराएं 202 एवं 204
भारतीय नागरिक सुरक्षा संहिता, 2023 — धाराएं 225 एवं 227

(i) आपराधिक न्यासभंग — अपराध के आवश्यक तत्व — न्यासभंग के प्रत्येक कृत्य का परिणाम आपराधिक न्यासभंग के अपराध के रूप में नहीं होगा

जब तक कि कपटपूर्ण दुर्विनियोग की साक्ष्य न हो – जहां न्यासभंग के कृत्य में सिविल दोष सम्मिलित है वहां नुकसानी का उपचार सिविल न्यायालय में उपलब्ध होगा जबकि आपराधिक मनःस्थिति के साथ उक्त कृत्य दांडिक अभियोजन की ओर भी ले जायेगा।

(ii) ''आपराधिक न्यासभंग'' एवं ''छल'' – भिन्नता – छल के लिए मिथ्या अथवा भ्रामक निरूपण करते समय अर्थात आरम्भ से दांडिक आशय आवश्यक होता है छल के मामले में, अभियुक्त कपटपूर्वक अथवा बेईमानी से एक व्यक्ति को किसी संपत्ति के परिदान हेतु प्रवंचना कर उत्प्रेरित करता है, जबकि आपराधिक न्यासभंग के मामले में केवल संपत्ति का विधिपूर्ण न्यस्त करना एवं पश्चातक्रम में बेईमानीपूर्ण दुर्विनियोग का प्रमाण पर्याप्त है – दोनों अपराध का एक साथ सह–अस्तित्व नहीं हो सकता।

(iii) आदेशिका जारी होना – धारा 202 दण्ड प्रक्रिया संहिता के अंतर्गत कार्यवाहियां – अभियुक्त का अधिकार – अभियुक्त को इस प्रश्न पर सुनवाई का अधिकार नहीं कि उसके विरूद्ध आदेशिका जारी की जाए अथवा नहीं – विधि स्पष्ट की गई।

Delhi Race Club (1940) Ltd. and ors v. State of Uttar Pradesh and ors.

Judgment dated 23.08.2024 passed by the Supreme Court in Criminal Appeal No. 3114 of 2024, reported in (2024) 10 SCC 690

Relevant extracts from the judgment:

In proceedings under Section 202 of the CrPC, the accused has got absolutely no *locus standi* and is not entitled to be heard on the question whether the process should be issued against him or not. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The discretion given to the Magistrate on this behalf has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in the conviction of the accused.

Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent

misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a *mens rea,* gives rise to a criminal prosecution as well.

To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

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85 INDIAN PENAL CODE, 1860 – Section 498A
BHARATIYA NYAYA SANHITA, 2023 – Section 85

(i) Cruelty to married women – On account of non-fulfillment of dowry demands – FIR lodged after receiving the notice of divorce petition filed by the husband – Whether FIR can be said to have been lodged by way of counter blast to the divorce petition? Held, No – Wife had maintained silence in order to save her marital life and it is only when she realized that all the chances of reconciliation have vanished on account of filing of divorce petition, she decided to lodge the FIR – In these circumstances, she cannot be blamed, as her silence for noble cause to save her marital life should not be considered against her.

(ii) *Stridhan* – When wife has taken her *stridhan*, then no one can make a complaint about it because only the wife is the owner of her *stridhan*.

(iii) Practice and procedure – Finding of Civil Court – Not have a binding effect on Criminal Courts and *vice-versa*, as standard of proof required in two proceedings is entirely different and there is no statutory provision or any legal principle that findings recorded in one proceeding may be treated as final or binding in the other – However, previous judgments are relevant in subsequent cases u/s 41 to 43 of the Evidence Act.

भारतीय दण्ड संहिता, 1860 – धारा 498क
भारतीय न्याय संहिता, 2023 – धारा 85

(i) विवाहित महिला के प्रति क्रूरता – दहेज मांग की पूर्ति न होने के कारण – पति द्वारा प्रस्तुत विवाह–विच्छेद याचिका का सूचना पत्र प्राप्त होने के उपरान्त प्रथम सूचना रिपोर्ट दर्ज करायी गयी – क्या यह कहा जा सकता है कि प्रथम सूचना रिपोर्ट, विवाह विच्छेद याचिका के प्रतिवाद स्वरूप दर्ज करायी गई? अभिनिर्धारित, नहीं – पत्नी ने उसके वैवाहिक जीवन को बचाने के लिए मौन धारण किया था एवं जब उसे यह एहसास हुआ कि विवाह–विच्छेद याचिका प्रस्तुत कर देने के कारण सुलह के सभी अवसर समाप्त हो गये है, केवल तभी उसने प्रथम सूचना रिपोर्ट दर्ज कराने का निर्णय लिया – ऐसी परिस्थितियों में उसे दोष नहीं दिया जा सकता क्योंकि वैवाहिक जीवन को बचाने के नेक कारण से उसके मौन को उसके विरूद्ध विचार में नहीं लिया जाना चाहिए।

(ii) स्त्रीधन – जब पत्नी ने स्वयं का स्त्रीधन ले लिया है, तब कोई भी इसके बारे में शिकायत नहीं कर सकता क्योंकि सिर्फ पत्नी ही स्वयं स्त्रीधन की स्वामी होती है।

(iii) प्रथा एवं प्रक्रिया – सिविल न्यायालय का निष्कर्ष – दांडिक न्यायालयों पर बाध्यकारी प्रभाव नहीं रखता एवं विपरीत क्रम में भी यही सिद्धांत है क्योकि दोनों कार्यवाहियों में प्रमाण का आवश्यक स्तर पूर्णतया भिन्न है एवं ऐसा कोई वैधानिक प्रावधान अथवा कोई विधिक सिद्धांत नहीं है कि एक कार्यवाही में अंकित निष्कर्ष अन्य कार्यवाही में अंतिम अथवा बाध्यकारी माना जा सकता है – परन्तु पूर्व निर्णय साक्ष्य अधिनियम की धारा 41 से 43 के अंतर्गत पश्चातवर्ती मामलों में सुसंगत होते है।

Neeraj Kumar Saraf & anr. v. State of M.P. & anr.

Order dated 07.05.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Appeal No. 12469 of 2024, reported in ILR (2024) MP 2630

Relevant extracts from the order:

It is well established principle of law that the findings of the Civil Court are not binding on the Criminal Court.

The Supreme Court in the case of ***Kishan Singh v. Gurpal Singh, (2010) 8 SCC 775***, has held as under:

> "The law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject- matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration."

If the wife had maintained silence in order to save her marital life and did not lodge the report, then her silence for the noble cause should not be considered against her by holding that the FIR was lodged by way of counter blast to the

divorce petition. Once, the wife had realized that all the chances of reconciliation have vanished on account of filing of divorce petition and if she decided to take action in accordance with law, then she cannot be blamed for the same. On the contrary, it can be said that earlier she tried to save her marital life and only after realizing that everything is over and if she decided to make a complaint about the cruelty meted out to her, then she cannot be non- suited for her good gestures of maintaining silence.

Furthermore, if the respondent No.2 has taken her *Stridhan* with her, then no one can make a complaint about that because only the wife is the owner of her *Stridhan*.

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86. INDIAN PENAL CODE, 1860 – Section 498A
BHARATIYA NYAYA SANHITA, 2023 – Section 85
DOWRY PROHIBITION ACT, 1961 – Sections 3 and 4

(i) Offence of cruelty and demand of dowry – *Prima facie* case – As per prosecution case, accused husband and his family members alleged to have harassed the respondent (wife) on account of non-fulfillment of demand of dowry – No specific details or description are provided relating to any instance of harassment – Date, time, place and the way alleged harassment has occurred are not mentioned – Earlier, the wife had left the matrimonial home after a quarrel with her husband and later came back after 10 days – She has lodged the FIR after her husband had sent a legal notice of divorce – Appellants no. 2 to 6 never resided with the couple and they have been living in different cities – No active involvement of relatives of the husband – Wife has an ulterior motive to settle personal scores and grudges against appellant no. 1 and his family members – No *prima facie* case made out.

(ii) Criminal case arising out of matrimonial dispute – There is often a tendency to implicate all the members of the husband's family when domestic dispute arise out of a matrimonial discord – Such generalised and sweeping accusations unsupported by concrete evidence cannot form the basis for criminal prosecution – Courts must exercise caution in such cases to prevent misuse of legal provisions and to avoid unnecessary harassment of innocent family members.

भारतीय दण्ड संहिता, 1860 – धारा 498क
भारतीय न्याय संहिता, 2023 – धारा 85
दहेज प्रतिषेध अधिनियम, 1961 – धाराएं 3 एवं 4

(i) क्रूरता एवं दहेज की मांग का अपराध – प्रथम दृष्टया मामला – अभियोजन मामले के अनुसार अभियुक्त पति और उसके परिवार के सदस्यों पर दहेज की मांग पूरी न होने के कारण प्रत्यर्थी (पत्नी) को प्रताड़ित करने का आक्षेप है – प्रताड़ना की किसी भी घटना के संबंध में कोई विशिष्ट ब्यौरा या विवरण नहीं दिया गया – तिथि, समय, स्थान और जिस तरह से कथित प्रताड़ना हुई, उसका उल्लेख नहीं – पूर्व में, पत्नी अपने पति के साथ हुए झगड़े के बाद वैवाहिक घर को छोड़कर चली गई थी और 10 दिन बाद वापस आ गई – पति द्वारा विवाह–विच्छेद का विधिक सूचना पत्र प्रेषित किये जाने के पश्चात् उसने प्रथम सूचना रिपोर्ट दर्ज कराई – अपीलार्थी क्रं. 2 से 6 ने कभी भी दंपत्ति के साथ निवास नहीं किया और वे अलग–अलग शहरों में निवास कर रहे हैं – पति के नातेदारों की कोई सक्रिय संलिप्तता नहीं – पत्नी का परोक्ष उद्देश्य अपीलार्थी क्रं. 1 एवं उसके नातेदारों के विरूद्ध व्यक्तिगत दुश्मनी निकालना है – प्रथम दृष्टया कोई मामला नहीं बनता।

(ii) वैवाहिक विवाद से उत्पन्न आपराधिक मामला – वैवाहिक कलह से घरेलू विवाद उत्पन्न होने पर बहुधा पति के परिवार के सभी सदस्यों को फंसाने की प्रवृत्ति होती है – ऐसे सामान्यीकृत और व्यापक आरोप जो ठोस साक्ष्य द्वारा समर्थित नहीं हैं, आपराधिक अभियोजन का आधार नहीं बन सकते – न्यायालय को ऐसे मामलों में कानूनी प्रावधानों के दुरुपयोग को रोकने और परिवार के निर्दोष सदस्यों को अनावश्यक प्रताड़ना से बचाने के लिए सावधानी बरतनी चाहिए।

Dara Lakshmi Narayana and ors. v. State of Telangana and anr.

Judgment dated 10.12.2024 passed by the Supreme Court in Criminal Appeal No. 16239 of 2024, reported in AIR 2025 SC 173

Relevant extracts from the judgment:

A bare perusal of the FIR shows that the allegations made by respondent No.2 are vague and omnibus. Other than claiming that appellant No.1 harassed her and that appellant Nos.2 to 6 instigated him to do so, respondent No.2 has not provided any specific details or described any particular instance of harassment. She has also not mentioned the time, date, place, or manner in which the alleged harassment occurred. Therefore, the FIR lacks concrete and precise allegations.

Given the facts of this case and in view of the timing and context of the FIR, we find that respondent No.2 left the matrimonial house on 03.10.2021 after quarrelling with appellant No.1 with respect to her interactions with a third person in their marriage. Later she came back to her matrimonial house assuring to have a cordial relationship with appellant No.1. However, she again left the matrimonial house. When appellant No.1 issued a legal notice seeking divorce on 13.12.2021, the present FIR came to be lodged on 01.02.2022 by respondent No.2. Therefore, we are of the opinion that the FIR filed by respondent No. 2 is not a genuine complaint rather it is a retaliatory measure intended to settle scores with appellant No. 1 and his family members.

Insofar as appellant Nos.2 to 6 are concerned, we find that they have no connection to the matter at hand and have been dragged into the web of crime without any rhyme or reason. A perusal of the FIR would indicate that no substantial and specific allegations have been made against appellant Nos.2 to 6 other than stating that they used to instigate appellant No.1 for demanding more dowry. It is also an admitted fact that they never resided with the couple namely appellant No.1 and respondent No.2 and their children. Appellant Nos.2 and 3 resided together at Guntakal, Andhra Pradesh. Appellant Nos. 4 to 6 live in Nellore, Bengaluru and Guntur respectively.

A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, appellant Nos.2 to 6, who are the members of the family of appellant No.1 have been living in different cities and have not resided in the matrimonial house of appellant No.1 and respondent No.2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the law in the absence of specific allegations made against each of them.

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87. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Section 9(2)

(i) Plea of juvenility – Appellant convicted for the offence of murder – He claimed juvenility during trial, stating he was 14 years old at the time of the incident – Trial Court, High Court and even the Supreme Court had dismissed the plea – School and medical records confirmed his age as 14 years at the time of the incident – Held, plea of juvenility could be raised at any stage, even after final disposal of the appeal by the Supreme Court – Merely because adjudication has taken place, it does not mean that a plea of juvenility cannot be raised subsequently – On the basis of uncontroverted facts, appellant was found to be juvenile – He was found entitled to the benefits of the Act – Therefore, maintaining his conviction, the sentence imposed in excess of upper limit prescribed under the Act was set aside – Juvenile Court is a species of a parent and a delinquent has to be protected and re-educated – State Legal Services Authority was directed to facilitate rehabilitation and reintegration of the appellant – Appellant ordered to be released forthwith.

(ii) Legal maxim – *Actus curiae neminem gravabit* – No one shall be prejudiced by an act of the Court – Explained.

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनिमय, 2015 – धारा 9(2)

(i) अप्राप्तवयता होने का अभिवाक् – अपीलार्थी को हत्या के अपराध में दोषसिद्ध किया गया – उसने विचारण के दौरान यह कहते हुए कि घटना के समय उसकी आयु 14 वर्ष थी, अप्राप्तवय होने का दावा किया – विचारण न्यायालय, उच्च न्यायालय और यहां तक कि उच्चतम न्यायालय ने भी इस अभिवाक् को अस्वीकार कर दिया था – विद्यालय और चिकित्सीय रिपोर्टो ने घटना के समय उसकी आयु 14 वर्ष होने की पुष्टि की – अभिनिर्धारित, अप्राप्तवय होने का अभिवाक् किसी भी स्तर पर लिया जा सकता है यहां तक कि, उच्चतम न्यायालय द्वारा अपील के अंतिम निर्णय के बाद भी – केवल इसलिए कि न्याय निर्णयन हो चुका है, इसका अर्थ यह नहीं है कि बाद में अप्राप्तवय होने का अभिवाक् नहीं उठाया जा सकता – अविवादित तथ्यों के आधार पर अपीलार्थी को अप्राप्तवय पाया गया – उसे अधिनियम के लाभों का हकदार पाया गया – अतः उसकी दोषसिद्धि को यथावत रखते हुए, अधिनियम के अंतर्गत निर्धारित उच्चतम

सीमा से अधिक के दण्डादेष को अपास्त कर दिया गया – किशोर न्यायालय अभिभावक की भांति है और उसके द्वारा एक अपचारी को संरक्षित और पुनः शिक्षित किया जाना चाहिए – राज्य विधिक सेवा प्राधिकरण को अपीलार्थी के पुनर्वास और पुनः एकीकरण की सुविधा प्रदान करने का निर्देश दिया गया – अपीलार्थी को तत्काल उन्मुक्त करने का आदेश दिया गया।

(ii) लीगल मेक्सिम – ***Actus curiae neminem gravabit*** – न्यायालय के किसी कार्य से किसी को भी पूर्वाग्रह नहीं होगा – व्याख्या की गई।

Om Prakash alias Israel alias Raju alias Raju Das v. Union of India and anr.

Judgment dated 08.01.2025 passed by the Supreme Court in Criminal Appeal No. 4229 of 2024, reported in AIR 2025 SC 787

Relevant extracts from the judgment:

We would only say that when the plea of juvenility was raised, it should have been dealt with under the existing laws at the relevant point of time, especially when there exists a tacit and clear admission as to the age of the Appellant. In fact, there is no need for such an inquiry in view of the aforesaid position. In our considered view, this Court could have dealt with the Writ Petition filed under Article 32 of the Constitution, as it raised an independent prayer for the enforcement of a right conferred under asocial welfare legislation.

In the subsequent Writ Petition filed before the High Court, two different prayers had been made, namely, the determination of the Appellant's plea of juvenility and consequent release, or alternatively, judicial review of the decision of the President or the Governor and consequent release. As the Executive cannot be construed to have undertaken an adjudication on the determination of the age of the accused, and with the first prayer being a distinct one invoking Section 9(2) of the 2015 Act, we feel that the High Court has committed an error in its reasoning. We would only state that this is a case where the Appellant has been suffering due to the error committed by the Courts. We have been informed that his conduct in the prison is normal, with no adverse report. He lost an opportunity to reintegrate into the society. The time which he has lost, for no fault of his, can never be restored.

As we find that the Appeal deserves to be allowed in view of the conclusion arrived at, we are inclined to set aside the sentence imposed in excess of the upper limit prescribed under the relevant Act, while maintaining the conviction rendered.

It cannot be construed that the Presidential Order is interfered with, as the issue that we are concerned with, is the failure of the Court in not applying the mandatory provisions of the 2015 Act with specific reference to the plea of juvenility. Therefore, it is not a review of the Presidential Order, but a case of giving the benefit of the provisions of the 2015 Act to a deserving person.

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88. LIMITATION ACT, 1963 – Section 5

Condonation of delay – Expression 'sufficient cause' is an elastic term and each day's delay need not be explained in strict sense – Longer the delay, the heavier is the burden on the party to prove that he was prevented by sufficient cause from approaching the Court – Ordinarily, Courts have to take liberal view but the party who fails to give plausible or convincing explanation for condonation of delay does not deserve any indulgence by Court – Only such delay should be condoned where the Court finds that there is absence of negligence or inaction on the part of the parties seeking condonation.

परिसीमा अधिनियम, 1963 – धारा 5

विलंब की माफी – 'पर्याप्त कारण' पद एक लचीला शब्द है एवं कठोरतापूर्वक प्रत्येक दिन के विलंब को स्पष्ट करने की आवश्यकता नहीं है – जितना लंबा विलंब होगा, पक्षकार पर यह प्रमाणित करने का अधिक भार होगा कि वह पर्याप्त कारण से न्यायालय पहुंचने से निवारित रहा था – सामान्यतः न्यायालय को उदार मत रखना चाहिए किन्तु वह पक्षकार जो विलंब माफी का संभाव्य अथवा विश्वासोत्पादक स्पष्टीकरण देने में असफल रहता है, वह न्यायालय से कोई अनुग्रह प्राप्त नहीं कर सकेगा – केवल ऐसा विलंब माफ किया जाना चाहिए जहां न्यायालय माफी की मांग करने वाले पक्षकार की उपेक्षा अथवा उसके निष्क्रिय होने का अभाव पाता है।

Mohd. Saleem v. Gopal Mawasi and ors.

Order dated 16.05.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 22 of 2024, reported in ILR (2024) MP 2613

Relevant extracts from the order:

The law is well settled that longer the delay, the heavier is the burden on the party to prove that he was prevented by sufficient cause from approaching the Court earlier. Though, ordinarily, the Courts have to take a liberal view while considering the applications for condonation of delay, the party, who fails to give plausible or

convincing explanation for condonation of delay does not deserve any indulgence by this Court.

The expression "sufficient cause" is elastic term and each day's delay need not be explained in strict sense. Also, it has been clearly held that the approach to be applied for condonation of delay would depend upon the cause shown and only when sufficient cause is shown, the relief sought can be granted.

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89. LIMITATION ACT, 1963 – Section 5

(i) Condonation of delay – "Sufficient cause" – Liberal or justice-oriented approach should be adopted to condone the delay where applicant is not at fault and the cause shown is sufficient – Where cause for delay falls within the four corners of "sufficient cause", irrespective of length of delay, same deserves to be condoned – However, where cause shown is insufficient, irrespective of period of delay, it would not be condoned.

(ii) Application for condonation of delay – While deciding such application, merits of the case should not be considered.

परिसीमा अधिनियम, 1963 – धारा 5

(i) विलम्ब की माफी – ''पर्याप्त कारण'' – जहां आवेदक की कोई गलती नहीं है और दर्शाया गया कारण पर्याप्त है, वहां विलम्ब माफ करने के लिए उदार या न्यायोन्मुखी दृष्टिकोण अपनाया जाना चाहिए – जहां विलम्ब का कारण ''पर्याप्त कारण'' की परिधि के भीतर आता है वहाँ विलम्ब की लंबी अवधि के बावजूद, इसे माफ किया जाना चाहिए – परन्तु जहाँ दर्शाया गया कारण अपर्याप्त है वहाँ विलम्ब की अवधि के बावजूद इसे क्षमा नहीं किया जाएगा।

(ii) विलम्ब माफी हेतु आवेदन – ऐसा आवेदन निराकृत करते समय प्रकरण के गुण–दोष पर विचार नहीं किया जाना चाहिए।

Mool Chandra v. Union of India and anr.

Judgment dated 05.08.2024 passed by the Supreme Court in Civil Appeal No. 8434 of 2024, reported in (2025) 1 SCC 625

Relevant extracts from the judgment:

This Court in ***Commr. v. Labour Commr., (2009) 3 SCC 525*** has taken a view that while deciding an application for condonation of delay the High Court ought not to have gone into the merits of the case. It has been further held :

> "While deciding an application for condonation of delay, it is well settled that the High Court ought not to have gone into the merits of the case and would have only seen whether sufficient cause had been shown by the appellant for condoning the delay in filing the appeal before it. We ourselves have also examined the application filed under Section 5 of the Limitation Act before the High Court and, in our opinion, the delay of 178 days has been properly explained by the appellant. That being the position, we set aside the impugned order of the High Court. Consequently, the appeal filed before the High Court is restored to its original file. The High Court is requested to decide the appeal on merit in accordance with law after giving hearing to the parties and after passing a reasoned order."

If negligence can be attributed to the appellant, then necessarily the delay which has not been condoned by the Tribunal and affirmed by the High Court deserves to be accepted. However, if no fault can be laid at the doors of the appellant and cause shown is sufficient then we are of the considered view that both the Tribunal and the High Court were in error in not adopting a liberal approach or justice-oriented approach to condone the delay. This Court in ***Municipal Council, Ahmednagar v. Shah Hyder Beig, (2000) 2 SCC 48*** has held:

> "Incidentally this point of delay and laches was also raised before the High Court and on this score the High Court relying upon the decision in ***N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574*** observed that it is not an inflexible rule that whenever there is delay, the Court must and necessarily refuse to entertain the petition filed after a period of three years or more which is the normal period of limitation for filing a suit. The Bombay High Court in ***Abhyankar case*** (supra) stated that the question is one of discretion to be followed in the facts and circumstances of each case and further stated:
>
> 'The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such but the test is whether by reason of delay, there is such negligence on the part of the petitioner, so as to infer that he has given up his claim or whether before the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay.' "

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***90. MOTOR VEHICLES ACT, 1988 – Section 168**

Motor accident claim – Reduction of compensation – Appellants' parents who were partners in a firm which runs a mill died in a road accident – Tribunal awarded compensation of Rs. 58,24,000 for father and Rs. 93,61,000 for mother with 7.5% interest – High Court reduced the compensation on the ground that income from the mill was not reduced as the appellants continued the business of the deceased parents – Held, mere continuation of the business by inexperienced appellants does not negate pecuniary loss – Tribunal's calculation of income and multiplier was justified – Award of Tribunal restored – Appeal allowed.

मोटर यान अधिनियम, 1988 – धारा 168

मोटरयान दुर्घटना दावा – प्रतिकर में कटौती – अपीलार्थी के माता–पिता जो एक मिल चलाने वाली फर्म में साझेदार थे की सड़क दुर्घटना में मृत्यु हो गई – अधिकरण ने पिता के लिए रु. 58,24,000 और माता के लिए रु. 93,61,000 का प्रतिकर 7.5 प्रतिशत ब्याज के साथ देने का अवार्ड किया – उच्च न्यायालय ने इस आधार पर प्रतिकर राशि कम कर दी कि मिल से होने वाली आय में कमी नहीं हुई क्योंकि अपीलार्थियों ने मृतक माता–पिता का व्यवसाय जारी रखा – अभिनिर्धारित, अनुभवहीन अपीलार्थीगण द्वारा व्यवसाय जारी रखने मात्र से आर्थिक नुकसान समाप्त नहीं होता – अधिकरण द्वारा की गई आय की गणना और गुणांक न्यायोचित था – अधिकरण का अवार्ड पुनर्स्थापित किया गया – अपील स्वीकार।

S. Vishnu Ganga and ors. v. M/s. Oriental Insurance Company Limited Rep. by its Divisional Manager and ors.

Judgment dated 29.01.2025 passed by the Supreme Court in Civil Appeal No. 1162 of 2025, reported in AIR 2025 SC 808

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91. MOTOR VEHICLE ACT, 1988 – Section 173

Motor accident claim – Cheque given for premium was dishonored and therefore, Insurance Company cancelled the policy – This fact was informed to the owner of the vehicle much before the date of accident – There was no valid insurance policy in force – Liability of Insurance Company – Held, Insurance company not liable for making payment of compensation, as liability cannot be enforced even for a third party which is not arising out of contract – Finding recorded by the Tribunal that Insurance Company is liable to make the payment of compensation

to injured claimant who is a third party, was set aside. ***(Dadappa & ors. v. Branch Manager, National Insurance Company Ltd., 2008 ACJ 581*** **followed*)***

मोटरयान अधिनियम, 1988 – धारा 173

मोटर दुर्घटना दावा – प्रीमियम के लिए दिया गया चेक अनादरित हो गया था और इसलिए बीमा कंपनी ने पॉलिसी निरस्त कर दी – यह तथ्य दुर्घटना दिनांक के बहुत पूर्व वाहन स्वामी को अवगत करा दिया गया था – कोई वैद्य बीमा पॉलिसी प्रभाव में नहीं थी – बीमा कंपनी का दायित्व – अभिनिर्धारित, बीमा कंपनी प्रतिकर भुगतान करने के लिए दायित्वाधीन नहीं, क्योंकि ऐसा दायित्व, जो संविदा से उत्पन्न नहीं हो रहा है, किसी तृतीय पक्ष के लिए भी प्रभावी नहीं किया जा सकता – अधिकरण द्वारा अंकित यह निष्कर्ष कि बीमा कंपनी आहत आवेदक जो तृतीय पक्ष है, को प्रतिकर का भुगतान करने के लिए दायित्वाधीन है, अपास्त किया गया। *(ददपा एवं अन्य विरूद्ध शाखा प्रबंधक, नेशनल इन्शोरेन्स कंपनी लि., 2008 एसीजे 581* अनुसरित*)*

United India Insurance Co.Ltd. v. Bulla & ors.

Order dated 26.09.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 3026 of 2005, reported in ILR (2024) MP 2621

Relevant extracts from the order:

On perusal of the record it is seen that officer for Insurance Company has made statement in the Tribunal wherein he has stated that cheque was dishonoured, therefore there is no valid insurance policy. He denied the fact that information of cancellation of insurance policy was not given to the owner/driver of the vehicle. He further submitted that vide Ex.D/2 information was given by the Bank on 26/12/2001 and it was received by the Insurance Company Officer on 31/12/2001. In the written statement filed by the Insurance Company on 27/02/2004 this plea has been specifically taken. Regarding the issue framed by the Tribunal in para-10, this issue has been considered. It is seen that accident has taken place on 19/05/2002 i.e. after cancellation of cheque.

Therefore, In the light of the case ***Daddappa and ors. v. Branch Manager, National Insurance Company Ltd., 2008 ACJ 581***, the finding given by the Tribunal cannot be sustained as in the said judgment, it has been clearly directed that even for a third party liability which is not arising out of contract liability cannot be enforced.

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92. PREVENTION OF MONEY LAUNDERING ACT, 2002 – Section 45
CRIMINAL PROCEDURE CODE, 1973 – Section 439
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 483

(i) Offence under Prevention of Money Laundering Act – Grant of bail – Restrictions imposed by section 45 – Whether absolute? Held, No – Twin conditions provided u/s 45 of the Act do not impose absolute restraint on the grant of bail and the principle that "Bail is the rule and jail is the exception" equally applies to PMLA cases – Rigours of section 45 may be suitably relaxed and conditional liberty may be granted in case of prolonged trial and long period of custody.

(ii) Bail – Scope of inquiry – "Reasonable grounds for believing" used in section 45 of the Act means that the Court need not delve deep into the merits of the case and the Court is only required to place its view based on probability on the basis of material collected during investigation – Court has to see whether there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.

धन–शोधन निवारण अधिनियम, 2002 – धारा 45
दण्ड प्रक्रिया संहिता, 1973 – धारा 439
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 483

(i) धन–शोधन निवारण अधिनियम के अंतर्गत अपराध – जमानत का प्रदान किया जाना – धारा 45 द्वारा अधिरोपित निर्बन्धन – क्या पूर्ण हैं ? अभिनिर्धारित, नहीं – अधिनियम की धारा 45 में उपबंधित दो शर्तें जमानत प्रदान किये जाने पर पूर्णतः रोक नहीं लगाती एवं यह सिद्धांत कि ''जमानत नियम है एवं जेल अपवाद है'' पीएमएलए मामलों पर भी समान रूप से लागू होता है – धारा 45 की कठोरता को उचित रूप से शिथिल किया जा सकता है एवं अत्यधिक लम्बे विचारण एवं अभिरक्षा की लम्बी अवधि के मामले में निर्बन्धनों सहित जमानत प्रदान की जा सकती है।

(ii) जमानत – जांच का विस्तार – अधिनियम की धारा 45 में प्रयुक्त ''विश्वास करने के युक्ति–युक्त आधारों'' से आशय है कि न्यायालय को मामले के गुण–दोष की गहराई में जाने की आवश्यकता नहीं है एवं न्यायालय से केवल यह अपेक्षित है कि वह अनुसंधान के दौरान एकत्रित सामग्री पर विचार कर संभाव्यता के आधार पर अपना मत बनाये – न्यायालय को देखना होगा कि क्या अभियुक्त के विरूद्ध वास्तविक मामला है एवं अभियोजन के लिए आवश्यक नहीं है कि वह आरोप को युक्ति–युक्त संदेह से परे प्रमाणित करे।

Prem Prakash v. Union of India through the Directorate of Enforcement

Judgment dated 28.08.2024 passed by the Supreme Court in Criminal Appeal No. 3572 of 2024, reported in (2024) 9 SCC 787

Relevant extracts from the judgment:

In ***Vijay Madanlal Choudhary and ors. v. Union of India and ors., (2022) SCC OnLine SC 929***, this Court categorically held that while Section 45 of PMLA restricts the right of the accused to grant of bail, it could not be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail.

All that Section 45 of PMLA mentions is that certain conditions are to be satisfied. The principle that, "bail is the rule and jail is the exception" is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 of PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied.

Where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of PMLA can be suitably relaxed to afford conditional liberty. Keeping persons behind the bars for unlimited periods of time in the hope of speedy completion of trial would deprive the fundamental right of persons under Article 21 of the Constitution of India and that prolonged incarceration before being pronounced guilty ought not to be permitted to become the punishment without trial.

Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under

the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act.

The Court while dealing with the application for grant of bail in PMLA need not delve deep into the merits of the case and only a view of the Court based on the available material available on record is required. It held that the Court is only required to place its view based on probability on the basis of reasonable material collected during investigation. The words used in Section 45 are "reasonable grounds for believing" which means that the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.

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93. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Sections 3 (1) (r) and 18
CRIMINAL PROCEDURE CODE, 1973 – Section 438
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 482

(i) Anticipatory bail – Offence under SC & ST (PA) Act – Bar created by Section 18 against grant of anticipatory bail – Applicability – Said bar would apply only to cases where *prima facie* materials exist pointing towards the commission of an offence under the Act of 1989 – If the necessary ingredients to constitute the offence are not disclosed then in such cases, the bar would not apply and the Courts would not be absolutely precluded from granting pre-arrest bail to the accused.

(ii) Offence of atrocity – Phrase "intent to humiliate" appearing in section 3 (1) (r) – Mere fact that the person subjected to insult or intimidation belongs to a SC & ST would not attract the offence – It has to be shown that the intention of the accused was to subject the concerned person to caste-based humiliation – Scope of the phrase – Explained.

अनुसूचित जाति और जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धाराएं 3(1)(द) एवं 18

दण्ड प्रक्रिया संहिता, 1973 – धारा 438

भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 482

(i) अग्रिम जमानत – अनुसूचित जाति/अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम के अंतर्गत अपराध – अग्रिम जमानत प्रदान किए जाने के विरूद्ध धारा 18 द्वारा सृजित वर्जन – प्रयोज्यता – उक्त वर्जन केवल उन मामलों में लागू होगा जहां उपलब्ध सामग्री प्रथम दृष्टया अधिनियम, 1989 के अंतर्गत अपराध कारित किए जाने की ओर इंगित करती है – यदि अपराध गठित करने के लिए आवश्यक तत्वों को प्रकट नहीं किया जाता है तो ऐसे मामलों में वर्जन लागू नहीं होगा और न्यायालय अभियुक्त को गिरफ्तारी पूर्व जमानत देने से पूर्णतः प्रतिबंधित नहीं होगा।

(ii) अत्याचार का अपराध – धारा 3(1)(द) में प्रयुक्त वाक्यांश "अपमानित करने का आशय" – केवल यह तथ्य कि अपमानित या अभित्रस्त व्यक्ति अनुसूचित जाति और अनुसूचित जनजाति से संबंधित है अपराध को आकर्षित नहीं करेगा – यह दर्शित किया जाना चाहिए कि अभियुक्त का आशय संबंधित व्यक्ति को जातिगत आधार पर अपमानित करने का था – वाक्यांश का विस्तार – समझाया गया।

Shajan Skaria v. State of Kerala and anr.

Judgment dated 23.08.2024 passed by the Supreme Court in Criminal Appeal No. 2622 of 2024, reported in AIR 2024 SC 4557

Relevant extracts from the judgment:

The discussion indicates that the term 'arrest' appearing in the text of Section 18 of the Act, 1989 should be construed and understood in the larger context of the powers of police to effect an arrest and the restrictions imposed by the statute and the courts on the exercise of such power. Seen thus, it can be said that the bar under Section 18 of the Act, 1989 would apply only to those cases where *prima facie* materials exist pointing towards the commission of an offence under the Act, 1989. We say so because it is only when a prima facie case is made out that the pre-arrest requirements as stipulated under Section 41 of CrPC could be said to be satisfied.

As a sequitur, if the necessary ingredients to constitute the offence under the Act, 1989 are not disclosed on the *prima facie* reading of the allegations leveled in the complaint or FIR, then in such circumstances, as per the consistent exposition by various decisions of this Court, the bar of Section 18 would not apply and the courts would not be absolutely precluded from granting pre-arrest bail to the accused persons.

In our opinion, the aforesaid is the only test that the court should apply, when an accused prays for anticipatory bail in connection with any offence alleged to have been committed under the provisions of the Act, 1989. In a given case, an accused may argue that although the allegations leveled in the FIR or the complaint do disclose the commission of an offence under the Act, 1989, yet the FIR or the complaint being palpably false on account of political or private vendetta, the court should consider the plea for grant of anticipatory bail despite the specific bar of Section 18 of the Act, 1989. However, if the accused puts forward the case of malicious prosecution on account of political or private vendetta then the same can be considered only by the High Court in exercise of its inherent powers under Section 482 of the Code or in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. However, powers under Section 438 of the CrPC cannot be exercised once the contents of the complaint/FIR disclose a *prima facie* case. In other words, if all the ingredients necessary for constituting the offence are borne out from the complaint, then the remedy of anticipatory bail becomes unavailable to the accused.

The dictum as laid aforesaid is that the offence under Section 3(1)(r) of the Act, 1989 is not established merely on the fact that the complainant is a member of a Scheduled Caste or a Scheduled Tribe, unless there is an intention to humiliate such a member for the reason that he belongs to such community. In other words, it is not the purport of the Act, 1989 that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe. We say so because the object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the SC/ST communities for the reason of their caste status.

a. Meaning of the expression "intent to humiliate" appearing in Section 3(1)(r) of the Act, 1989

The words "with intent to humiliate" as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation. Not every intentional insult

or intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the "upper castes" over the "lower castes/untouchables", the notions of 'purity' and 'pollution', etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989.

We would like to refer to the observations of this Court in ***State of Madhya Pradesh v. Ram Krishna Balothia, (1995) 3 SCC 221*** to further elaborate upon the idea of "humiliation" as it has been used under the Act, 1989. It was observed in the said case that the offences enumerated under the Act, 1989 belong to a separate category as they arise from the practice of 'untouchability' and thus the Parliament was competent to enact special laws treating such offences and offenders as belonging to a separate category. Referring to the Statements of Objects and Purposes of the Act, 1989 it was observed by this Court that the object behind the introduction of the Act, 1989 was to afford statutory protection to the Scheduled Castes and the Scheduled Tribes, who were terrorised and subjected to humiliation and indignations upon assertion of their civil rights and resistance to the practice of untouchability. For this reason, mere fact that the person subjected to insult or intimidation belongs to a Scheduled Caste or Scheduled Tribe would not attract the offence under Section 3(1)(r) unless it was the intention of the accused to subject the concerned person to caste-based humiliation.

At the cost of repetition, the words in Section 3(1)(r) of the Act, 1989 are altogether different. Mere knowledge of the fact that the victim is a member of the Scheduled Caste or Scheduled Tribe is not sufficient to attract Section 3(1)(r) of the Act, 1989. As discussed earlier, the offence must have been committed against the person on the ground or for the reason that such person is a member of Scheduled Caste or Scheduled Tribe. When we are considering whether *prima facie* materials exist, warranting arrest of the appellant, there is nothing to indicate that the allegations/statements alleged to have been made by the appellant were for the reason that the complainant is a member of a Scheduled Caste.

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94. SPECIFIC RELIEF ACT, 1963 – Section 20

(i) Specific performance of agreement for sale – Suit was filed by the buyer for the execution of an agreement dated 20th January, 2005 for the sale of disputed property – An advance of Rs. 10 lakh was paid by the buyers from the total consideration of 2.3 crore and the

remaining amount of sale consideration was agreed to be paid within four months from the date of agreement, i.e. 19th May, 2005 – Additionally, at the time of the agreement, the seller agreed to have the tenants vacated the property and give the buyer the vacant possession at the time of sale – Tenants vacated the property on 2nd February, 2006, therefore, the buyer had time till 1st June, 2006 to complete the deal – Further installments were paid by the buyer and a total sum of Rs. 25 lakh was paid till February 2006 – The seller cancelled the agreement vide letter dated 23rd February, 2006 stating that the amount was not paid in time – Whether time was the essence of the contract? Held, No – It was obligatory for the buyer to pay the balance price by 19th May, 2005 and got the sale deed executed; but this was on the assumption that the property would be made free of tenants by the seller by that time – Since the tenant vacated the property on 2nd February, 2006 the buyer had time till 1st June, 2006 to complete the deal – Although, the agreement stipulated that the specified time would be crucial, duration was not the determining factor.

(ii) Readiness and willingness – Despite being aware in February 2006 that the property having been vacated by all the tenants, the buyer did not come forward for execution of the sale deed – Although as per agreement, seller was not under obligation to provide encumbrance certificate yet the buyer insisted to share the same – In cross-examination, the buyer revealed her admission of not having enough funds in either of her bank accounts to pay the balance price – Demand draft given by the seller of the amount received, has been returned by the buyer on the last day of its validity – Such conduct of the buyer showed that there was no readiness and willingness on the part of the buyer to perform her part of contact – Held, buyer not entitled to the discretionary relief of specific performance.

(iii) Maintainability of suit – Failure to frame issue – Trial Court's failure or omission to raise a maintainability issue in a suit involving jurisdictional facts by itself cannot limit the authority of higher courts to determine whether jurisdictional facts existed for the grant of relief as claimed.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

(i) विक्रय अनुबंध का विनिर्दिष्ट अनुपालन – क्रेता ने वादग्रस्त संपत्ति के विक्रय अनुबंध दिनांक 20 जनवरी, 2005 के निष्पादन हेतु वाद प्रस्तुत किया – कुल प्रतिफल राशि 2.3 करोड़ में से 10 लाख रूपये की राशि अग्रिम के रूप में क्रेता द्वारा अदा की गई और शेष राशि अनुबंध दिनांक 19 मई, 2005 से चार माह के भीतर अदा किया जाना तय हुआ था – इसके अतिरिक्त अनुबंध के समय, विक्रेता ने यह तय किया था कि वह किरायदारों से संपत्ति खाली कराकर उसका रिक्त आधिपत्य विक्रय के समय क्रेता को प्रदान करेगा – किरायदारों ने 2 फरवरी, 2006 को संपत्ति रिक्त कर दी इसलिए क्रेता के पास 1 जून, 2006 तक सौदा पूरा करने का समय था – क्रेता द्वारा किश्तों का भुगतान फरवरी 2006 तक किया गया और कुल 25 लाख रुपये अदा किये गये – विक्रेता ने 23 फरवरी, 2006 के पत्र के माध्यम से यह कहते हुए अनुबंध को रद्द कर दिया कि राशि समय पर अदा नहीं की गई है – क्या समय संविदा का सार था? अभिनिर्धारित, नहीं – क्रेता के लिए 19 मई, 2005 तक शेष मूल्य अदा कर विक्रय विलेख निष्पादित कराना अनिवार्य था; परंतु यह इस धारणा पर था कि उस समय तक विक्रेता द्वारा संपत्ति को किरायदारों से मुक्त करा लिया जाएगा – चूँकि किरायदारों ने 2 फरवरी, 2006 को संपत्ति रिक्त की थी इसलिए विक्रेता के पास सौदा पूरा करने हेतु दिनांक 1 जून, 2006 तक का समय था – यद्यपि अनुबंध में प्रावधानित था कि निर्दिष्ट समय महत्वपूर्ण होगा, परंतु अवधि निर्धारक कारक नहीं थी।

(ii) तैयारी और रजामंदी – फरवरी, 2006 में यह जानने के बाद भी कि सभी किरायदारों द्वारा संपत्ति रिक्त कर दी गई है, क्रेता विक्रय विलेख के निष्पादन के लिए अग्रसर नहीं हुआ – यद्यपि अनुबंध के अनुसार विक्रेता विल्लंगम प्रमाण–पत्र प्रदान करने के लिए बाध्य नहीं था, फिर भी क्रेता ने इसे प्रदान किये जाने पर जोर दिया – प्रतिपरीक्षण में क्रेता ने यह स्वीकार किया कि उसके किसी भी बैंक खाते में शेष राशि का भुगतान करने के लिए पर्याप्त धन नहीं था – विक्रेता द्वारा, प्राप्त धन राशि को वापस करने हेतु दिये गये डिमांड ड्राफ्ट को, क्रेता ने इसकी वैधता अवधि के अंतिम दिन वापस किया – क्रेता का ऐसा आचरण दर्शित करता है कि उसकी ओर से अपने हिस्से की संविदा का पालन करने के लिए कोई तैयारी और रजामंदी नहीं थी – अभिनिर्धारित, क्रेता संविदा के विनिर्दिष्ट अनुपालन का विवेकीय अनुतोष प्राप्त करने का हकदार नहीं है।

(iii) वाद की पोषणीयता – विवाद्यक निर्मित करने में विफलता – ऐसे वाद में जहाँ क्षेत्राधिकार संबंधी तथ्य अंर्तग्रस्त हो विचारण न्यायालय की, पोषणीयता संबंधी विवाद्यक उठाने में विफलता या चूक स्वतः में वरिष्ठ

न्यायालय की यह विचारित करने की अधिकारिता को सीमित नहीं करेगी कि क्या वांछित अनुतोष प्रदान करने के लिए क्षेत्राधिकार विषयक तथ्य विद्यमान है।

R. Kandasamy (since dead) and ors. v. T.R.K. Sarawathy and anr.

Judgment dated 21.11.2024 passed by the Supreme Court in Civil Appeal No. 3015 of 2013, reported in AIR 2025 SC 44

Relevant extracts from the judgment:

On a bare reading of the clauses, we do not find that the latter clause destroys the effect of the former clause altogether so much so that it has to be discarded. On the contrary, in this case, both the clauses were such that the same had to be read together and given effect upon ascertaining the intention of the parties as disclosed by the Agreement as a whole. The latter clause could not have been read divorced from the former, having regard to the intent of the parties that is discernible. The latter qualified the former in the sense that although it was obligatory for the buyer to pay the balance price within 19th May, 2005 and "obtain the sale deed", this was on the assumption that the property would be made free of tenants by the sellers by that time. However, the situation therefor did not arise on 19th May, 2005 since the tenant, who vacated the property last, did so sometime on 2nd February, 2006. Going by the latter clause, the buyer had time till 1st June, 2006 to complete the deal (four months of vacating of the property by all the tenants to enable the sellers to hand over vacant possession to the buyer). In our understanding, the Trial Court and the High Court were right in concluding that time was not the essence though the Agreement provided that "time mentioned in this agreement shall be of the essence."

For tracing an answer, one would necessarily have to bear in mind sections 10, 16 and (unamended) section 20 of the Act. Scanning of the evidence on record unmistakably points to the conclusion that the buyer was not ready and willing to have the terms agreed by and between the parties to be performed.

Moving further, a perusal of the buyer's cross-examination reveals her admission of not having enough fund in either of her bank accounts to pay the balance sale price. This, in our opinion, is sufficient proof of her financial incapacity to perform her part of the contract. The husband of the buyer could be a wealthy man having sufficient balance in his bank account but having perused the credit and debit entries, we have significant doubts in respect thereof which we

need not dilate here in the absence of him being a party to the proceedings. Suffice is to observe, the transactions evident from the bank accounts of the buyer's husband do little to impress us that the buyer had demonstrated her financial capacity to make payment of the balance sale price and close the deal.

Imperative and interesting it is to note, the buyer sought to return the demand draft to the sellers on the last day of its validity. As discussed above, along with letter dated 23rd February 2006 of the sellers cancelling the Agreement, they returned the advance amount received from the buyer vide demand draft dated 11th February 2006. This draft was retained by the buyer and returned as late as 10th August, 2006 vide letter of even date (and not along with any of her previous letters). However, the demand draft dated 11th February, 2006 being valid only for a period of 6 (six) months, i.e., 10th August 2006, it has intrigued us as to why the buyer would hold on to the demand draft and not return it earlier if she was genuinely interested in purchasing the property.

Such conduct of the buyer, seen cumulatively, does not inspire confidence in granting her the discretionary relief of specific performance.

Borrowing wisdom from the aforesaid passage, our deduction is this. An issue of maintainability of a suit strikes at the root of the proceedings initiated by filing of the plaint as per requirements of Order VII Rule 1, CPC. If a suit is barred by law, the trial court has absolutely no jurisdiction to entertain and try it. However, even though a given case might not attract the bar envisaged by section 9, CPC, it is obligatory for a trial court seized of a suit to inquire and ascertain whether the jurisdictional fact does, in fact, exist to enable it (the trial court) to proceed to trial and consider granting relief to the plaintiff as claimed. No higher court, much less the Supreme Court, should feel constrained to interfere with a decree granting relief on the specious ground that the parties were not put specifically on notice in respect of a particular line of attack/defence on which success/failure of the suit depends, more particularly an issue touching the authority of the trial court to grant relief if the 'jurisdictional fact' imperative for granting relief had not been satisfied. It is fundamental, as held in ***Shrisht Dhawan (Smt) v. Shaw Bros. AIR 1992 SC 1555***, that assumption of jurisdiction/refusal to assume jurisdiction would depend on existence of the jurisdictional fact. Irrespective of whether the parties have raised the contention, it is for the trial court to satisfy itself that adequate evidence has been led and all facts including the jurisdictional fact stand proved for relief to be granted and the suit to succeed. This is a duty the trial court has to discharge in its pursuit for rendering substantive justice to the parties, irrespective of whether any

party to the lis has raised or not. If the jurisdictional fact does not exist, at the time of settling the issues, notice of the parties must be invited to the trial court's prima facie opinion of non-existent jurisdictional fact touching its jurisdiction. However, failure to determine the jurisdictional fact, or erroneously determining it leading to conferment of jurisdiction, would amount to wrongful assumption of jurisdiction and the resultant order liable to be branded as ultra vires and bad.

Should the trial court not satisfy itself that the jurisdictional fact for grant of relief does exist, nothing prevents the court higher in the hierarchy from so satisfying itself. It is true that the point of maintainability of a suit has to looked only through the prism of section 9, CPC, and the court can rule on such point either upon framing of an issue or even prior thereto if Order VII Rule 11 (d) thereof is applicable. In a fit and proper case, notwithstanding omission of the trial court to frame an issue touching jurisdictional fact, the higher court would be justified in pronouncing its verdict upon application of the test laid down in ***Shrisht Dhawan*** (supra).

However, we clarify that any failure or omission on the part of the trial court to frame an issue on maintainability of a suit touching jurisdictional fact by itself cannot trim the powers of the higher court to examine whether the jurisdictional fact did exist for grant of relief as claimed, provided no new facts were required to be pleaded and no new evidence led.

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95. SPECIFIC RELIEF ACT, 1963 – Section 20

(i) Suit for specific performance of contract – Discretion of court – The original owner of the property entered into an agreement with plaintiff to sell the suit property on 27th May, 2016 for a total consideration of Rs.17,50,000 – Earnest money of Rs. 4,00,000 was paid to the owner – Owner of the property died on 5th July, 2016 leaving behind his wife and son as his legal heirs who declined to execute the sale deed – Suit for specific performance of contract was filed by the plaintiff – Trial Court decreed the suit – In appeal, the High Court set aside the decree for specific performance and directed the defendant/legal heirs to refund the amount of earnest money – Discretionary relief was refused on the ground that except the suit land, defendants do not have any other property and if they had to part with the suit property that would cause lot of hardship to them – Whether High Court was justified in setting aside the

decree of specific performance on the ground that the same would cause hardship to the defendants? Held, No – There was nothing on record to show that there was a hardship of the kind which deceased owner did not foresee at the time he executed the agreement to sell or that the hardship which the defendants would face is the result of an act of the plaintiff – Appeal allowed and decree of Trial Court is restored.

(ii) Discretion as to decreeing specific performance – Under what circumstances 'hardship' as enumerated in section 20(2)(b) of the Act, can be taken into consideration in refusing specific performance? Law explained.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

(i) संविदा के विनिर्दिष्ट अनुपालन के लिए वाद – न्यायालय का विवेकाधिकार – संपत्ति के मूल स्वामी ने दिनांक 27 मई, 2016 को वादी के साथ वादग्रस्त संपत्ति कुल प्रतिफल राशि रु. 17,50,000/– में विक्रय करने का करार किया – अग्रिम धन राशि के रूप में स्वामी को रु. 4,00,000/– अदा किये गये – संपत्ति के स्वामी की दिनांक 5 जुलाई, 2016 को मृत्यु हुई और उसने अपने विधिक उत्तराधिकारी के रूप में पत्नी और पुत्र को छोड़ा जिन्होंने विक्रय विलेख निष्पादित करने से इंकार कर दिया – वादी द्वारा अनुबंध के विनिर्दिष्ट अनुपालन के लिए वाद प्रस्तुत किया गया – विचारण न्यायालय ने वाद डिक्री किया – अपील में उच्च न्यायालय ने विनिर्दिष्ट अनुपालन की डिक्री को अपास्त कर दिया और प्रतिवादी/विधिक उत्तराधिकारियों को अग्रिम धन राशि वापस करने का निर्देश दिया – वैवेकीय अनुतोष इस आधार पर अस्वीकार किया गया था कि वादग्रस्त भूमि के अतिरिक्त प्रतिवादीगण के पास अन्य कोई संपत्ति नहीं है और यदि उन्हें वादग्रस्त संपत्ति से पृथक किया गया तो उन्हें बहुत कठिनाई होगी – क्या उच्च न्यायालय द्वारा विनिर्दिष्ट अनुपालन की डिक्री को इस आधार पर कि प्रतिवादीगण को कठिनाई होगी, अपास्त करने को उचित ठहराया जा सकता है? अभिनिर्धारित, नहीं – अभिलेख पर यह दर्शित करने योग्य ऐसा कुछ नही था कि मृतक स्वामी को विक्रय अनुबंध पत्र निष्पादित करते समय इस प्रकार की कठिनाई का पूर्वानुमान नहीं था या जो कठिनाई प्रतिवादी को होगी वह वादी के किसी कृत्य का परिणाम है – अपील स्वीकार की गई एवं विचारण न्यायालय की डिक्री को पुनर्स्थापित किया गया।

(ii) विनिर्दिष्ट अनुपालन की डिक्री प्रदान करने का विवेकाधिकार – किन परिस्थितियों में अधिनियम की धारा 20(2)(ख) में उल्लेखित 'कठिनाई' को विनिर्दिष्ट अनुपालन से इंकार हेतु विचार में लिया जा सकता है? विधि समझाई गई।

Parswanath Saha v. Bandhana Modak (Das) and anr.

Judgment dated 20.12.2024 passed by the Supreme Court in Civil Appeal No. 14804 of 2024, reported in AIR 2025 SC 280

Relevant extracts from the judgment:

A perusal of Section 20 of the Specific Relief Act, 1963 as it then stood would go to show as to under what circumstances 'hardship' can be taken into consideration in refusing specific performance. It is not possible to enumerate the different circumstances which constitute a hardship. It will suffice if it is noted that the question of hardship will have to be adjudged in the facts and circumstances of the case. In this connection, the observations of the Privy Council in the decision in ***G.W. Davis v. Maung Shwe Go, 1911 SCC OnLine PC 25*** throw light on an important aspect of the matter. Among other things, it is observed in the said case as under:

> "In the absence of any evidence of fraud or misrepresentation on the part of the plaintiff which induced the defendant to enter into the contract, their Lordships see no reason to accede to the argument. The bargain is onerous, but there is nothing to show that it is unconscionable. The defendant knew all along that a lakh was the plaintiff's limit; it is in evidence that he had frequently urged the defendant's daughter to advise him to sell the land if he was getting a higher offer. It is difficult to say under the circumstances that he took an improper advantage of his position or the difficulties of the defendant."

Then again, it is necessary to remember that mere rise in price subsequent to the date of the contract or inadequacy of price is not to be treated as a hardship entailing refusal of specific performance of the contract. Further, the hardship involved should be one not foreseen by the party and should be collateral to the contract. In sum, it is not just one factor or two, that is relevant for consideration. But it is the some total on various factors which is required to enter into the judicial verdict.

The Trial Court had not framed any issue as regards hardship that may be caused to the defendants. It is also pertinent to note that the High Court concurred with the Trial Court on all other issues but thought fit to reverse the decree only on the ground that if the defendants are asked to execute the Sale Deed of the suit property, i.e., the residential house they would be rendered shelterless.

The High Court seems to have overlooked the fact that the question of hardship in terms of Section 20(2)(b) of the Act, 1963 read with explanation (2) bears reference to hardship, which the defendant did not foresee at the time of entering into the contract. In other words, the issue of hardship would come into play only if it is established by cogent evidence that Late Prabha Ranjan Das who executed the Agreement of Sale was unable to foresee the hardship at the time of entering into the contract.

There is nothing to indicate in the pleadings or evidence that there was a hardship of the kind which Late Prabha Ranjan Das did not foresee at the time he executed the Agreement of Sale or that the hardship which the defendants herein would face is the result of an act of the plaintiff based on his supervening acts.

This Court in ***K. Narendra v. Riviera Apartments (P) Ltd., (1999) 5 SCC 77*** in paras 29 and 30 held as under:

> "29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in ***Lourdu Mari David v. Louis Chinnaya Arogiaswamy, AIR 1996 SC 2814*** by stating that the decree for specific performance is in the discretion of the Court

but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.

It may not be out of place to state at this stage that in ***K. Narendra*** (supra) there is a reference with approval to Chitty on Contracts (27th Edn., 1994, Vol.1 at p.1296), where the passage quoted clearly indicates that one of the grounds for refusing specific performance, though they arise from circumstances post-contract, are factors which affect the person of the defendant rather than the subject-matter of the contract, and to which the plaintiff is in no way a contributory. It is these personal circumstances of the defendant, which this Court has alluded to in the earlier part of this judgment while dwelling upon the issue of hardship under Section 20(2)(b) of the Specific Relief Act, 1963. The discretion there being wide, it is certainly not limited to what is illustratively mentioned in the statute. At the cost of some repetition, it, therefore, deserves emphasis that circumstances of the plaintiff also are very relevant in the exercise of discretion to grant specific performance, based on the parameters of hardship to the defendant.

It appears from the evidence on record that Late Prabha Ranjan Das was not getting along well with his wife and son. His wife and son, i.e., the defendants were residing separately. It appears that they were residing at the parental home of the defendant No. 1. It is only when Prabha Ranjan Das passed away that the defendants tried to take over the suit property.

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96. SPECIFIC RELIEF ACT, 1963 – Section 28

(i) Suit for specific performance – Rescission of contract for sale – Scope – Trial Court decreed the suit on 16.08.1994 directing the plaintiff (decree holder) to deposit the balance amount of sale consideration within a period of 20 days and the defendant was directed to get the sale deed executed in favour of the plaintiff – On appeal being filed, the first Appellate Court reversed the decree and dismissed the suit – High Court allowed the second appeal filed by the plaintiff on 03.05.2018 and consequently, the decree passed by the Trial Court was restored – Before the executing court, the plaintiff was allowed to deposit the balance amount on 07.09.2018 – Application for recission of contract was also filed before the Executing Court by the defendant on the ground that the plaintiff

has failed to deposit the amount within stipulated time of 20 days from the date of decree of Trial Court/ from the date of decree passed by High Court – Executing Court rejected the said application – Whether rejection of the said application was justified? Held, Yes – When the High Court has allowed the second appeal there was merger of Trial Court's decree with High Court's decree and the High Court did not explicitly re-impose condition of depositing the balance amount within 20 days – Therefore, failure to deposit the amount does not lead to recission unless decree explicitly states so – Law clarified and defendant's appeal dismissed.

(ii) Doctrine of merger – Effect of – When trial court's decree merges with High Court's decree in second appeal? Doctrine of merger is based on the principle that there cannot be more than one operative decree on the same subject-matter – Once Appellate Court in second appeal affirmed trial court's decree, the latter ceased to have independent significance and the operative decree at any given time is of Appellate Court.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 28

(i) विनिर्दिष्ट अनुपालन हेतु वाद – विक्रय अनुबंध का विखण्डन – विस्तार – विचारण न्यायालय ने दिनांक 16.08.1994 को वाद डिक्री किया और वादी (डिक्री धारक) को 20 दिवस की अवधि के भीतर विक्रय प्रतिफल की शेष राशि जमा करने एवं प्रतिवादी को वादी के पक्ष में विक्रय–विलेख निष्पादित करने का निर्देश दिया – अपील प्रस्तुत किए जाने पर, प्रथम अपीलीय न्यायालय ने डिक्री को उलट दिया और वाद निरस्त कर दिया – उच्च न्यायालय ने वादी द्वारा प्रस्तुत द्वितीय अपील को दिनांक 03.05.2018 को स्वीकार किया जिसके परिणामस्वरूप विचारण न्यायालय द्वारा पारित डिक्री पुनर्स्थापित हो गई – निष्पादन न्यायालय के समक्ष, वादी को दिनांक 07.09.2018 को शेष राशि जमा करने की अनुमति दी गई – प्रतिवादी द्वारा निष्पादन न्यायालय के समक्ष अनुबंध के विखण्डन के लिए आवेदन भी इस आधार पर प्रस्तुत किया गया कि वादी विचारण न्यायालय के डिक्री की तिथि से/उच्च न्यायालय द्वारा पारित डिक्री की तिथि से 20 दिवस के निर्धारित समय के भीतर राशि जमा करने में असफल रहा है – निष्पादन न्यायालय ने उक्त आवेदन को अस्वीकार कर दिया – क्या उक्त आवेदन का अस्वीकार किया जाना न्यायोचित था? अभिनिर्धारित, हां – जब उच्च न्यायालय ने द्वितीय अपील को स्वीकार किया तब विचारण

न्यायालय की डिक्री का उच्च न्यायालय की डिक्री में विलय हो गया था और उच्च न्यायालय ने स्पष्ट रूप से 20 दिवस के भीतर शेष राशि जमा करने की शर्त पुनः अधिरोपित नहीं की थी – अतः राशि जमा करने में असफल रहने पर विखण्डन नहीं होगा जब तक कि डिक्री में ऐसा स्पष्ट रूप से न कहा गया हो – विधि स्पष्ट की गई और प्रतिवादी की अपील निरस्त कर दी गई।

(ii) विलय का सिद्धांत – प्रभाव – कब विचारण न्यायालय की डिक्री उच्च न्यायालय द्वारा द्वितीय अपील में पारित डिक्री में विलय होगी ? – विलय का सिद्धांत इस नियम पर आधारित है कि एक ही विषय–वस्तु के लिए एक से अधिक प्रवर्तनीय डिक्री नहीं हो सकती – एक बार जब अपीलीय न्यायालय ने द्वितीय अपील में विचारण न्यायालय की डिक्री की पुष्टि कर दी, तब उस डिक्री का स्वतंत्र महत्व समाप्त हो जाता है तथा किसी भी समय अपीलीय न्यायालय की डिक्री ही प्रभावी रहेगी।

Balbir Singh and anr. etc v. Baldev Singh (D) through LRs. and ors. etc.

Judgment dated 17.01.2025 passed by the Supreme Court in Civil Appeal No. 563 of 2025, reported in AIR 2025 SC 632

Relevant extracts from the judgment:

The decision of the High Court in the second appeals filed by the plaintiffs (decree holders) there was a merger of the judgment of the trial court with the decision which was rendered by the High Court in the second appeals. Consequent upon the passing of the decree of the second appellate court, the decree of the trial court merges with that of the same.

The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time. The doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court. The doctrine has been discussed and explained succinctly by this Court in ***Surinder Pal Soni v. Sohan Lal (Dead) through LRs., (2020) 15 SCC 771.***

Thus, once the High Court allowed the second appeals in favour of the plaintiffs, there was evidently a merger of the judgment of the trial court with the decision of the High Court. Once the High Court as an appellate court in second appeal renders its judgment it is a decree of the second appellate court which becomes executable hence, the entitlement of the decree holder to execute the decree of the second appellate court cannot be defeated.

In a given case the trial court while passing a conditional decree in a suit for specific performance may say so in so many words that if the plaintiff fails to deposit the balance sale consideration within a particular period of time stipulated by the court while allowing the suit, the failure to make such deposit within the time prescribed would have the effect of dismissal of suit. In other words, there could be a decree which may say that if the plaintiff fails to deposit the balance sale consideration within the stipulated time period, the suit shall automatically stand dismissed. If such is the nature of the decree then will the court concerned become "*functus officio*" and would have no jurisdiction to grant extension of time fixed by the decree for the purpose of deposit? This is one issue that the Supreme Court one day in an appropriate case may have to consider and decide. We say so because there are conflicting views of different High Courts, including to some extent of this Court. In the present case, it is not necessary for us to look into and decide this issue because the decree is not of such a nature.

The High Court while allowing the second appeal filed by the original plaintiff had not issued any specific direction as regards the deposit of the balance sale consideration within a particular period of time. It is incorrect on the part of the appellant herein to say that since the trial court had directed that the balance sale consideration shall be deposited within 20 days, the same direction would be applicable even after the judgment of the High Court in second appeal.

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97. STAMP ACT, 1899 – Section 36

Admissibility of document – Question as to admissibility of document being improperly stamped and unregistered is mandatorily required to be considered by the Trial Court even if objection in that regard had not been taken – Such objection may be raised even after the document was marked as exhibit during evidence or even in appeal or revision – Where a document has been inadvertently admitted by the Court without applying judicial mind on the question of its admissibility, Section 36 of the Act would not attract and objection was legally permissible to be raised at the time when the said document was sought to be proved.

स्टॉम्प अधिनियम, 1899 – धारा 36

दस्तावेज की ग्राह्यता – दस्तावेज अपर्याप्त रूप से स्टाम्पित होने एवं अपंजीकृत होने के आधार पर ग्राह्यता का प्रश्न विचारण न्यायालय द्वारा आज्ञापक रूप से विचार में लिया जाना होगा, भले ही इस संबंध में कोई आपत्ति न ली गई हो – ऐसी आपत्ति साक्ष्य के दौरान दस्तावेज प्रदर्श हो जाने के उपरान्त अथवा

अपील या पुनरीक्षण में भी उठाई जा सकती है – जहां न्यायालय द्वारा ग्राह्यता के प्रश्न पर न्यायिक विवेक का प्रयोग किए बिना दस्तावेज को असावधानी पूर्वक ग्राह्यय कर लिया गया, वहां अधिनियम की धारा 36 प्रयोज्य नहीं होगी एवं उक्त दस्तावेज को साबित करते समय भी आपत्ति को उठाया जाना विधि अनुसार अनुज्ञात होगा।

Bherulal v. Bhanwarlal & ors.

Order dated 12.08.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 1153 of 2024, reported in ILR (2024) MP 2609

Relevant extracts from the order:

In ***Ram Rattan (dead) by L.Rs. v. Bajrang Lal and ors., 1978 (3) SCC 236*** the Apex Court has held that if after applying mind to rival contentions, the trial Court admits a cannot be called in question at a later stage of the suit. Where a document has been inadvertently admitted without the Court applying its mind as to the question of its admissibility, the instrument could not be said to have been admitted in evidence with a view to attracting Section 36.

In *R.V.E.* ***Venkatachala Gounder v. Arulmigu Viswesaraswami and VP. Temple and anr., 2003 (8) SCC 752***, it has been further held by the Apex Court that the objection as to admissibility of a document on the ground that the same is inadmissible by itself can be raised even after the document has been marked as an exhibit or even in appeal or revision.

In the present case at the time of recording of evidence of plaintiff, the document dated 01.12.1997 was confronted with by defendant No.1 to him and questions in regard to the same were asked. The document was marked as Exhibit D/10 by the trial Court. However, from a perusal of the entire paragraph No.30 of deposition of plaintiff as PW/1, it does not appear that the trial Court applied its mind whatsoever to the admissibility of the said document. The document having been confronted with plaintiff was marked as an exhibit without considering its admissibility. The question of admissibility of the document on the ground of the same being deficiently stamped and being unregistered was mandatorily required to be considered by the trial Court even if objection in that regard had not been taken by the plaintiff at the time it was marked as an exhibit.

The trial Court did not apply its mind to admissibility of the document dated 01.12.1997 before marking the same as an exhibit. Section 36 of the Stamp Act would hence not come into play at all and the plaintiff would not be precluded from

raising objection as regards its admissibility. The said issue was legally permissible to be raised at the time when the said document was sought to be proved by defendant No.1 during his examination in chief. The trial Court has erred in rejecting the objection of the plaintiff only on the ground that no such objection was taken by him at the time of the document being marked as an exhibit.

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***98. TRANSFER OF PROPERTY ACT, 1882 – Section 41**

Transfer of property – By ostensible owner – When the buyer would be entitled to relief u/s 41? Beliram was the owner of disputed land – Tolaram is the nephew of Beliram – Beliram executed a registered Will in favour of Tolaram on 12.12.1988 – Defendant No. 1 Vikram Singh on the basis of another Will dated 16.05.1994 got his name mutated in revenue records and transferred the said land to defendant nos. 2, 4 & 5 – Plaintiff Tolaram instituted a suit for a decree of declaration and injunction – Trial Court dismissed the suit – First Appellate Court did not agree with the finding of trial court and it found the Will according to the decree executed in favour of plaintiff as genuine and accordingly, decreed the suit against defendants 1, 2, 4 & 5 – Defendants preferred Second appeal in the High Court – High Court although confirmed the finding of First Appellate Court however, held that purchaser/defendant nos. 2, 4 & 5 are entitled to benefit of section 41 of the Transfer of Property Act, 1882 – Held, section 41 of the TP Act requires that the transfer must be with the express or implied consent of the person interested in the property and that the transferees have to take reasonable care in ascertaining that the transferor had power to make the transfer and that they had acted in good faith – This would require specific pleading and evidence by the transferees – Defendants 2, 4 and 5, the purchasers from defendant 1, neither pleaded such facts nor entered in the witness box to prove such facts as required under the section – Thus, relief granted relying upon section 41 of the TP Act was found erroneous.

संपत्ति अंतरण अधिनियम, 1882 – धारा 41

संपत्ति का अंतरण – दृश्यमान स्वामी द्वारा – धारा 41 के अंतर्गत क्रेता कब अनुतोष पाने का हकदार होगा? – बेलीराम विवादित भूमि का स्वामी था – तोलाराम बेलीराम का भतीजा है – बेलीराम ने दिनांक 12.12.1988 को तोलाराम

के पक्ष में एक पंजीकृत वसीयत निष्पादित की – प्रतिवादी क्रमांक 1 विक्रम सिंह ने दिनांक 16.05.1994 की एक अन्य वसीयत के आधार पर राजस्व अभिलेखों में अपना नामान्तरण करवाया और उक्त भूमि प्रतिवादी क्रमांक 2, 4 और 5 को अंतरित कर दी – वादी तोलाराम ने घोषणा और निषेधाज्ञा की आज्ञप्ति के लिए एक वाद संस्थित किया – विचारण न्यायालय द्वारा वाद निरस्त किया गया – प्रथम अपीलीय न्यायालय विचारण न्यायालय के निष्कर्ष से सहमत नहीं था और उसने वादी के पक्ष में निष्पादित वसीयत को वास्तविक पाया और तदनुसार प्रतिवादी क्रमांक 1, 2, 4 व 5 के विरूद्ध वाद डिक्री किया – प्रतिवादीगण ने उच्च न्यायालय में द्वितीय अपील प्रस्तुत की – उच्च न्यायालय ने प्रथम अपील न्यायालय के निष्कर्ष को अनुमोदित किया एवं यह अभिनिर्धारित किया कि क्रेता/प्रतिवादी कमांक 2, 4 और 5 संपत्ति अंतरण अधिनियम, 1882 की धारा 41 का लाभ प्राप्त करने के हकदार हैं – अभिनिर्धारित, संपत्ति अंतरण अधिनियम की धारा 41 के अनुसार हस्तांतरण संपत्ति में हित रखने वाले व्यक्ति की स्पष्ट या निहित सहमति से अंतरण होना चाहिए और अंतरिती को यह सुनिश्चित करने में युक्तियुक्त सावधानी बरतनी होगी कि अंतरणकर्ता के पास अंतरण करने की शक्ति थी और उन्होंने सद्भावपूर्वक कार्य किया था – इसके लिए अंतरिती द्वारा विशिष्ट अभिवचन और साक्ष्य अपेक्षित होगी – प्रतिवादी 2, 4 और 5, ने न तो ऐसे तथ्यों के अभिवचन किये और न ही ऐसे तथ्यों को साबित करने के लिए साक्षी के कठघरे में प्रवेश किया, जैसा कि उक्त धारा के अंतर्गत अपेक्षित है – अतः संपत्ति अंतरण अधिनियम की धारा 41 पर निर्भरता व्यक्त करते हुए दिया गया अनुतोष अनुचित पाया गया।

Duni Chand v. Vikram Singh and ors.

Judgment dated 10.07.2024 passed by the Supreme Court in Civil Appeal No. 8187 of 2023, reported in (2025) 2 SCC 138

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99. TRANSFER OF PROPERTY ACT, 1882 – Section 52
CIVIL PROCEDURE CODE, 1908 – Sections 96, Order 1 Rule 10 and Order 22 Rule 4

(i) Appeal – By a person who is not a party to the proceedings – Permissibility – Where a judgment and decree prejudicially effects such a person, he can prefer an appeal with the leave of the Appellate Court – Law governing grant of leave to appeal, summarized.

(ii) Transferee *pendente lite* – Impleadment of – Principles summarized.

संपत्ति अंतरण अधिनियम, 1882 – धारा 52
सिविल प्रक्रिया संहिता, 1908 – धारा 96, आदेश 1 नियम 10 एवं आदेश 22 नियम 4

(i) अपील – ऐसे व्यक्ति द्वारा जो कार्यवाही में पक्षकार नहीं है – अनुज्ञेयता – जहां कोई निर्णय और डिक्री ऐसे व्यक्ति पर प्रतिकूल प्रभाव डालती है, वह अपीलीय न्यायालय की अनुमति से अपील कर सकता है – अपील की अनुमति प्रदान करने को शासित करने वाली विधि, संक्षेपित।

(ii) वाद कालीन अंतरिती – संयोजन – सिद्धांत सारांशित किये गये।

H. Anjanappa and ors. v. A. Prabhakar and ors.

Judgment dated 29.01.2025 passed by the Supreme Court in Civil Appeal No. 1180 of 2025, reported in AIR 2025 SC 924

Relevant extracts from the judgment:

The principles governing the grant of leave to appeal may be summarised as under:

i. Sections 96 and 100 of the CPC respectively provide for preferring an appeal from an original decree or decree in appeal respectively;

ii. The said provisions do not enumerate the categories of persons who can file an appeal;

iii. However, it a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the court that he falls within the category of an aggrieved person;

iv. It is only where a judgment and decree prejudicially affects a person who is not a party to the proceedings, he can prefer an appeal with the leave of the court;

v. A person aggrieved, to file an appeal, must be one whose right is affected by reason of the judgment and decree sought to be impugned;

vi. The expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury;

vii. It would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment; and

viii. Ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings.

In fact, the scope of Order I Rule 10 and Order XXII Rule 10 CPC is similar. Therefore, the principles applicable to Order XXII Rule 10 CPC, in order to bring a purchaser *pendente lite* on record, are applicable to Order I Rule 10 CPC. Under Order I Rule 10(2) CPC, the Court is required to record a finding that person sought to be impleaded as party in the suit is either necessary or proper party. While Section 146 and Order XXII Rule 10 CPC confers right upon the legal representative of a party to the suit to be impleaded with the leave of the Court and continue the litigation. While deciding an application u/s 146 and Order XXII Rule 10 CPC, the Court is not require to go in the controversy as to whether person sought to be impleaded as party in the suit is either necessary or proper party. If the person sought to be impleaded as party is legal representative of a party to the suit, it is sufficient for the Court to order impleadment/substitution of such person.

From a conspectus of all the aforesaid, touching upon the present aspect, broadly, the following would emerge:

i. First, for the purpose of impleading a transferee *pendente lite*, the facts and circumstances should be gone into and basing on the necessary facts, the Court can permit such a party to come on record, either under Order I Rule 10 CPC or under Order XXII Rule 10 CPC, as a general principle;

ii. Secondly, a transferee *pendente lite* is not entitled to come on record as a matter of right;

iii. Thirdly, there is no absolute rule that such a transferee *pendente lite*, with the leave of the Court should, in all cases, be allowed to come on record as a party;

iv. Fourthly, the impleadment of a transferee *pendente lite* would depend upon the nature of the suit and appreciation of the material available on record;

v. Fifthly, where a transferee *pendente lite* does not ask for leave to come on record, that would obviously be at his peril, and the suit may be improperly conducted by the plaintiff on record;

vi. Sixthly, merely because such transferee *pendente lite* does not come on record, the concept of him (transferee *pendente lite*) not being bound by the judgment does not arise and consequently he would be bound by the result of the litigation, though he remains unrepresented;

vii. Seventhly, the sale transaction *pendente lite* is hit by the provisions of Section 52 of the Transfer of Property Act; and,

viii. Eighthly, a transferee *pendente lite*, being an assignee of interest in the property, as envisaged under Order XXII Rule 10 CPC, can seek leave of the Court to come record on his own or at the instance of either party to the suit.

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100. UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 – Section 43-D (5) Proviso

CRIMINAL PROCEDURE CODE, 1973 – Section 439

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 483

Offence under UAPA – Grant of bail – Scope of enquiry and approach of Court considering stringent conditions u/s 43-D(5) of the Act – Court is not expected to do mini trial at the stage of bail – Court has to examine the materials forming part of the charge-sheet to decide whether there are reasonable grounds for believing that the accusations are *prima-facie* true – While doing so, the Court must take the chargesheet as it is – Court should not hesitate to grant bail only on the ground of seriousness of crime and should remember the governing principle, 'bail is the rule and jail is an exception'.

विधिविरूद्ध क्रिया–कलाप (निवारण) अधिनियम, 1967 – धारा 43 – घ(5) परन्तुक

दण्ड प्रक्रिया संहिता, 1973 – धारा 439

भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 483

यूएपीए के अंतर्गत अपराध – जमानत का प्रदान किया जाना – जांच का विस्तार एवं अधिनियम की धारा 43–घ(5) के अंतर्गत वर्णित कठोर शर्तो पर विचार करने का न्यायालय का दृष्टिकोण – न्यायालय से अपेक्षित नहीं कि वह जमानत के स्तर पर लघु विचारण करे – यह विनिश्चय करने के लिए कि आरोप प्रथम दृष्टया सही होने के युक्ति–युक्त आधार हैं, न्यायालय को अभियोगपत्र में सम्मिलित सामग्री का परीक्षण करना होगा – ऐसा करते समय, न्यायालय को अभियोगपत्र को उसी स्वरूप में यथावत लेना चाहिए – न्यायालय को केवल इस आधार पर जमानत प्रदान करने में संकोच नहीं करना चाहिए, कि अपराध गंभीर है एवं यह शासी सिद्धांत स्मरण रखना चाहिए कि ''जमानत नियम है एवं जेल अपवाद है''।

Jalaluddin Khan v. Union of India

Judgment dated 13.08.2024 passed by the Supreme Court in Criminal Appeal No. 3173 of 2024, reported in (2024) 10 SCC 574

Relevant extracts from the judgment:

The Court has to examine the material forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the court has to take the material in the charge-sheet as it is.

We must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law.

Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.

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The cause of all the miseries we have in the world is that men foolishly think pleasure to be the ideal to strive for. After a time, man finds that it is not happiness, but knowledge, towards which he is going, and that both pleasure and pain are great teachers, and that he learns as much from evil as from good.

– Swami Vivekananda

PART – IIA

GUIDELINES ISSUED BY HON'BLE SUPREME COURT TO BE FOLLOWED IN EXECUTION PROCEEDINGS

Hon'ble Supreme Court in ***Periyammal (dead) through LRs. & ors. v. V. Rajamani & anr. Etc., 2025 INSC 329,*** has reiterated the guidelines issued in ***Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418*** and has stressed upon the disposal of an execution petition within six months of its institution. The relevant extracts are reproduced herein:

It is worthwhile to revisit the observations in ***Rahul S. Shah*** (supra) wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:

> "All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:
>
> 42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.
>
> 42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.
>
> 42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.
>
> 42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "… in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other

person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law. 42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts."

The mandatory direction contained in Para 42.12 of ***Rahul S. Shah*** (supra) requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in ***Bhoj Raj Garg v. Goyal Education and Welfare Society & ors.***, Special Leave Petition (C) No. 19654 of 2022.

In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side.

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"Justice is nothing but a manifestation of the truth. It is the truth which transcends every other action. The primary duty of a Court is to make a single minded endeavour to unearth the truth hidden beneath the facts. Thus, the Court is a search engine of truth, with procedural and substantive laws as its tools."

— Justice M. M. Sundresh, in ***Om Prakash alias Israel alias Raju alias Raju Das v. Union of India and anr., AIR 2025 SC 787***

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