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SUBJECT – INDEX

है या वादी को नया वाद संस्थित करने की मंजूरी देने के लिये पर्याप्त आधार हैं, तब सिविल प्रक्रिया संहिता के आदेश 23 नियम 1(3) के अंतर्गत प्रदत्त शक्ति का प्रयोग न्यायालय द्वारा किया जा सकता है भले ही सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अंतर्गत आवेदन लंबित हो।

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CONSTITUTION OF INDIA

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CRIMINAL PROCEDURE CODE, 1973

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8(i) & (ii) 15

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9 18

Section 357 – (i) Reduction of sentence – Once the conviction is affirmed and sentence is imposed, the Appellate Court cannot further dilute the order of sentence by directing the accused persons to pay compensation.

(ii) Victim compensation – The sole factor for deciding compensation is the victim's loss or injury as a result of offence and the convict's capacity to pay compensation.

धारा 357 – (i) दण्ड की मात्रा में कमी – पीड़ित प्रतिकर राशि का भुगतान दण्डादेश को कम करने का आधार नहीं बन सकता क्योंकि यह दण्डात्मक उपाय नहीं है, बल्कि केवल पुर्नस्थापनात्मक प्रकृति का उपाय है।

(ii) पीड़ित प्रतिकर – प्रतिकर तय करने का एकमात्र कारक अपराध के परिणामस्वरूप पीड़ित को कारित हुई क्षति या चोट और अपराधी की प्रतिकर अदा करने की क्षमता।

10 19

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HINDU MARRIAGE ACT, 1955
हिन्दु विवाह अधिनियम, 1955

Section 13B – Dissolution of marriage – Parties requested to waive off 6 months cooling off period on the ground that they were staying in different stations for work and are facing difficulty in attending the case – No ground.

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धारा 13ख(2) – पारस्परिक सम्मति से विवाह विच्छेद – 6 माह की प्रतीक्षा अवधि के अधित्यजन के लिये धारा 13ख(2) में कोई उपबंध नहीं है – पारस्परिक सम्मति से विवाह विच्छेद की डिक्री पारित करने की न्यायालय की अधिकारिता सीमित है।

18 **32**

INDIAN PENAL CODE, 1860
भारतीय दण्ड संहिता, 1860

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धाराएं 120ख, 420, 467, 468, 471 एवं 477क – छल का अपराध – कथित षड़यंत्र की प्रकृति और विस्तार, अभियुक्तगण की संलिप्तता और राजकोश को हुई वास्तविक क्षति का न्यायसम्मत परीक्षण विचारण के दौरान किया जाना चाहिए।

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(ii) क्षतिपूर्ति का आंकलन – मृतक की आयु 40 से 50 वर्ष के बीच मानते हुए और एक निश्चित वेतन होने के तथ्य को ध्यान में रखते हुए भविष्य की संभावना में 25 प्रतिशत आय को जोड़ा गया – दूसरी अनुसूची के अनुसार 15 का गुणांक लागू किया गया और अधिनिर्णय में तद्नुसार संशोधन किया गया। **34** **65**

Sections 166 and 169 – (i) Territorial jurisdiction of Claims Tribunal – Finding recorded by Tribunal that mere fact that the Insurance Company got an office within the jurisdictional limits of the Tribunal at Nainital, could not confer jurisdiction on it and accordingly, dismissed the claim application – Not found correct.

(ii) Claims Tribunal – Obliged to decide the question of jurisdiction at the threshold.

धाराएं 166 एवं 169 – (i) दावा अधिकरण का प्रादेशिक क्षेत्राधिकार – अधिकरण द्वारा अंकित निष्कर्ष कि मात्र इस तथ्य के आधार पर कि बीमा कंपनी का कार्यालय नैनीताल में अधिकरण के क्षेत्राधिकार की सीमा के भीतर स्थित है, उसे क्षेत्राधिकार प्राप्त नहीं होगा और तदनुसार दावा आवेदन निरस्त कर दिया – सही नहीं पाया गया।

(ii) दावा अधिकरण – आरम्भ में ही क्षेत्राधिकार के प्रश्न को निराकृत करने के लिए बाध्य हैं। **35** **67**

Sections 168 and 174 – Disbursement of award – Tribunal has no power to direct the owner of offending vehicle to furnish bank guarantee for the sum deposited by insurance company and to refuse to disburse the award amount to claimants till such security is furnished.

धाराएं 168 एवं 174 – अवार्ड राशि का वितरण – अधिकरण को आक्षेपित वाहन के स्वामी को बीमा कंपनी द्वारा जमा की गई अवार्ड राशि के लिए बैंक गारंटी प्रस्तुत करने का निर्देश देने और ऐसी प्रतिभूति प्रस्तुत किए जाने तक दावेदारों को अर्वाड राशि वितरित करने से इन्कार करने का अधिकार नहीं है **36** **71**

Section 173 – Defence of owner of the vehicle – Burden of proof was on the appellant to prove that there was no fault of appellant in the accident.

धारा 173 – वाहन स्वामी की प्रतिरक्षा – सबूत का भार अपीलार्थी पर था कि वह प्रमाणित करे कि उसका दुर्घटना में कोई दोष नहीं था **37** **73**

Sections 185, 203, 204 and 205 – (i) Liability of Insurance Company – Insurance company is not liable to pay compensation as terms and conditions of policy were breached.

(ii) Driving by drunken person – The amount and extent of consumption of alcohol in blood need not be established for determining liability.

(iii) Nature of evidence – Proceedings initiated u/s 166 is civil in nature and has to be decided on the basis of preponderance of probabilities.

धाराएं 185, 203, 204 एवं 205 – (i) बीमा कम्पनी का दायित्व – बीमा कम्पनी प्रतिकर देने हेतु दायित्वाधीन नहीं क्योंकि पॉलिसी के निबंधनों एवं शर्तो का भंग हुआ था।

(ii) मदिरा सेवन किये हुए व्यक्ति द्वारा वाहन चलाना – दायित्व निर्धारण हेतु रक्त में मदिरा की मात्रा एवं सेवन की सीमा को स्थापित करना आवश्यक नहीं है।

(iii) साक्ष्य की प्रकृति – धारा 166 के अंतर्गत संस्थित की गई कार्यवाही सिविल प्रकृति की है एवं इसे संभाव्यता की प्रबलता के आधार पर विनिश्चित करना होगा। ***38**

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NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985
स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985

Sections 8(c), 21, 29, 42, 50 and 67 – (i) Search and seizure of contraband substance –Evidence of independent punch witness is found reliable – Sampling of contraband and transmission of sample to chemical analyst process was found free from any doubt.

(ii) Plea of non-compliance of section 42 – Section 42 of the Act governs searches and seizures in buildings, conveyances and enclosed places – When search and seizure is conducted at a public place, section 43 of the Act applies and not section 42(2).

(iii) Non-compliance of section 50 – Seizure was not effected during personal search of accused – There was no requirement for the seizing officer to act under the provision of section 50.

(iv) No recovery from possession of co-accused, effect.

धाराएं 8(ग), 21, 29, 42, 50 एवं 67 – (i) प्रतिषिद्ध पदार्थ की तलाशी और जब्ती – तलाशी और जब्ती की प्रक्रिया समस्त संदेहों से मुक्त थी – प्रतिषिद्ध पदार्थ का नमूना लेना और रासायनिक विश्लेषक को नमूना भेजने की प्रक्रिया किसी भी संदेह से मुक्त पाई गई।

(ii) धारा 42 के अपालन का अभिवाक् – अधिनियम की धारा 42 भवनों, प्रवहण और परिवेष्टित स्थानों में तलाशी और जब्ती को शासित करती है – जब सार्वजनिक स्थान पर तलाशी और जब्ती की जाती है, तो अधिनियम की धारा 43 लागू होती है न कि धारा 42(2)।

(iii) धारा 50 का अपालन – जब्ती अभियुक्त की व्यक्तिगत तलाशी के दौरान नहीं की गई – जब्ती अधिकारी के लिए धारा 50 के प्रावधान के अंतर्गत कार्य करने की कोई आवश्यकता नहीं थी।

(iv) सह–अभियुक्त के आधिपत्य से कोई जब्ती नहीं, प्रभाव। **39** **76**

NEGOTIABLE INSTRUMENTS ACT, 1881
परक्राम्य लिखत अधिनियम, 1881

Section 138 – Dishonor of cheque – No averments in the complaint that respondent was sole proprietor – Firm was not arrayed as a respondent also – Complaint was held to be not maintainable.

धारा 138 – चैक का अनादरण – परिवाद में कोई अभिकथन नहीं कि प्रत्यर्थी फर्म का एकमात्र स्वामी था – फर्म को प्रत्यर्थी के रूप में संयोजित भी नहीं किया गया – परिवाद पोषणीय नहीं माना गया। ***40** **79**

Sections 138 and 142 – Dishonour of cheque – Amendment in pleadings – Permissibility.

धाराएं 138 एवं 142 – चैक का अनादरण – अभिवचनों में संशोधन – अनुज्ञेयता । **41** **80**

NOTARIES ACT, 1952
नोटरी अधिनियम, 1952

Section 8 – (i) Proof of due execution of notarized Will – Appreciation.

(ii) Proof of notarized document – A notarized document is not presumed to be proved without examining the notary.

धारा 8 – (i) नोटरीकृत वसीयत के सम्यक् निष्पादन का सबूत – मूल्यांकन।

(ii) नोटरीकृत दस्तावेज का प्रमाणन – नोटरी का परीक्षण किये बिना नोटरीकृत दस्तावेज के प्रमाणित होने की उपधारणा नहीं की जाती। **42** **81**

NOTARIES RULES, 1956

नोटरी नियम, 1956

Rule 11(2) and 11(8) – See section 8 of the Notaries Act, 1952.

नियम 11(2) एवं 11(8) – देखें नोटरी अधिनियम, 1952 की धारा 8।

42 **81**

PREVENTION OF CURRUPTION ACT, 1988

भ्रष्टाचार निवारण अधिनियम, 1988

Sections 7 and 13 – (i) Proof of demand – Mere possession and recovery of currency notes from the accused without any proof of demand would not establish offence u/s 7 or 13(1)(d) of the Act.

(ii) 'Accept', 'receipt' and 'obtain' – Explained.

धाराएं 7 एंव 13 – (i) माँग का प्रमाण – मांग के किसी प्रमाण के बिना अभियुक्त का करेंसी नोटों पर मात्र कब्जा एवं उससे जब्ती अधिनियम की धारा 7 अथवा 13(1)(घ) के अंतर्गत अपराध को स्थापित नहीं करेगा।

(ii) 'प्रतिगृहीत करना', 'प्राप्ति' एवं 'अभिप्राप्त करना' – समझाए गए।

***43** **84**

PREVENTION OF MONEY LAUNDERING ACT, 2002

धन–शोधन निवारण अधिनियम, 2002

Sections 2(1)(y), 3 and 44 (1)(b) – Complaint for the offence punishable under PMLA – In the absence of the scheduled offence, there cannot be any proceeds of crime and if there are no proceeds of crime, the offence u/s 3 of PMLA is not made out.

धाराएं 2(1)(म), 3 एवं 44 (1)(ख) – धन–शोधन निवारण अधिनियम के अंतर्गत दण्डनीय अपराध हेतु परिवाद – अनुसूचित अपराध की अनुपस्थिति में, अपराध का आगम नहीं हो सकता है और यदि अपराध का आगम नहीं है, तो धन–शोधन निवारण अधिनियम की धारा 3 के तहत अपराध गठित नहीं होता है। **44** **87**

SPECIFIC RELIEF ACT, 1963
विनिर्दिष्ट अनुतोष अधिनियम, 1963

Sections 5, 34, 38 and 40 – Suit for declaration of title, possession and mandatory injunction – Plaintiff was held entitled to receive full amount payable in respect of acquisition of suit property.

धाराएं 5, 34, 38 एवं 40 – स्वत्व की घोषणा, आधिपत्य और आज्ञापक निषेधाज्ञा का वाद – वादी को विवादित संपत्ति के अधिग्रहण के संबंध में भुगतान योग्य सम्पूर्ण राशि प्राप्त करने का अधिकारी होना निर्धारित किया गया। **45** **88**

Section 28 – (i) Application u/s 28 of the Specific Relief Act – Whether the execution Court has jurisdiction to deal with the application(s) for recession of contract or for extension of time to deposit the balance sale consideration?

(ii) Application u/s 28 of Specific Relief Act for recession of contract or for extension of time – Parameters for deciding such application explained.

(iii) Application u/s 28 (1) of Specific Relief Act – Such application must be decided as an application in the original suit wherein the decree was passed even though the suit has been disposed of.

धारा 28 – (i) विनिर्दिष्ट अनुतोष अधिनियम की धारा 28 के अंतर्गत आवेदन – क्या निष्पादन न्यायालय को संविदा विखंडित करने या शेष विक्रय प्रतिफल जमा करने के लिए समय का विस्तार करने हेतु प्रस्तुत आवेदन की सुनवाई का क्षेत्राधिकार है?

(ii) संविदा के विखण्डन या समय के विस्तार के लिए विनिर्दिष्ट अनुतोष अधिनियम की धारा 28 के अंतर्गत आवेदन – ऐसे आवेदन को निराकृत करने हेतु मापदण्ड समझाए गए।

(iii) विनिर्दिष्ट अनुतोष अधिनियम की धारा 28 (1) के अंतर्गत आवेदन – ऐसे आवेदन को ऐसे मूल वाद जिसमें डिक्री पारित की जा चुकी है, में प्रस्तुत आवेदन के रूप में निराकृत किया जाना चाहिए भले ही मूल वाद निराकृत हो चुका हो।

46 **89**

Sections 31, 34 and 38 – (i) Suit for cancellation of sale deed – Burden of proof

(ii) Effect of delay in registration of sale deed – In case of deficiency in stamp duty, document will remain in custody of registration authorities until remaining stamp duty and penalty is paid.

(iii) Presumption – Registered Sale deed.

(iv) Effect of minority of plaintiff at the time of execution of sale deed – Minority of plaintiff would not affect the validity of sale deed.

धाराएं 31, 34 एवं 38 – (i) विक्रय विलेख के रद्दकरण के लिए दावा – प्रमाण का भार (ii) विक्रय विलेख के पंजीकरण में विलम्ब का प्रभाव – स्टाम्प ड्यूटी में कमी होने की दशा में दस्तावेज पंजीकरण प्राधिकारी के आधिपत्य में रहता है जब तक कि शेष स्टाम्प ड्यूटी और शास्ति का भुगतान नहीं कर दिया जाता।

(iii) उपधारणा – पंजीकृत विक्रय विलेख।

(iv) विक्रय विलेख के निष्पादन के समय वादी की अवयस्कता का प्रभाव – वादी की अवयस्कता विक्रय विलेख की वैधता को प्रभावित नहीं करेगी ।**47** **92**

Sections 31, 34 and 38 – Suit for declaration and injunction – Undivided property –Purchaser can be restrained by decree of injunction acting in derogation of the property rights of co-owners until and unless partition takes place.

धाराएं 31, 34 एवं 38 – घोषणा और निषेधाज्ञा का वाद – अविभाजित संपत्ति – ऐसे क्रेता को निषेधाज्ञा की डिक्री के माध्यम से विभाजन होने तक सह–स्वामियों के संपत्ति अधिकारों का हनन करने से रोका जा सकता है। **48** **96**

Section 34 – Power of attorney – Revocation of.

धारा 34 – मुख्तारनामा – प्रतिसंहरण। **49(ii)** **97**

Section 34 – (i) Priority of rights – Two sale deeds were executed with respect to the same land – In such a clash, the previous sale deed shall prevail over the latter sale deed.

(ii) Limitation – Limitation for cancellation of sale deed is 3 years but no suit for such cancellation is required as sale deed is void in itself.

धारा 34 – (i) अधिकारों की वरीयता – एक ही भूमि के संबंध में दो विक्रय विलेख निष्पादित किये गये – ऐसे विरोध की स्थिति में पूर्ववर्ती विक्रय विलेख पश्चात्वर्ती विक्रय विलेख पर अभिभावी होगा।

(ii) परिसीमा – विक्रय विलेख के रद्दकरण के लिए समय सीमा 3 वर्ष है परन्तु रद्दकरण हेतु वाद की आवश्यकता ही नहीं है क्योंकि विक्रय विलेख अपने आप में शून्य है। **50** **101**

SUCCESSION ACT, 1925
उत्तराधिकार अधिनियम, 1925

Section 67 – See section 68 of the Evidence Act, 1872 and section 67 of the Bharatiya Shakshya Adhiniyam, 2023.

धारा 67 – देखें साक्ष्य अधिनियम, 1872 की धारा 68 एवं भारतीय साक्ष्य अधिनियम, 2023 की धारा 67। **14** **28**

Part-IIA
(GUIDELINES)

EDITORIAL

Esteemed readers,

This year, the JOTI Journal has entered its glorious 31 years of publication. I am proud to present the first edition of the Year 2025 by making mention of one of the most key programmes of the Academy; the Conference of the Principal District & Sessions Judges held on 18th and 19th January, 2025 in the Academy. This prestigious two day Conference was inaugurated by Hon'ble Shri Justice Abhay S. Oka, Judge, Supreme Court of India. My Lord graced the Conference and addressed the participants on the subject – Dynamic Role of District Judiciary as Custodian of Fundamental Rights.

I would like to mention that Justice Oka's address serves as a clarion call for all stakeholders in the legal system; Judges, lawyers, scholars, and policymakers, to work collectively towards a more just and equitable society. His emphasis on judicial accountability, inclusivity and ethical governance reinforces the idea that the judiciary must evolve in tandem with society while remaining the ultimate guardian of constitutional principles. As we navigate the complexities of the modern legal landscape, his words remind us of the indispensable role of justice in shaping a fair and progressive nation.

In this Conference, we have also inaugurated the public viewing of the e-JOTI Journal. The Academy has been increasingly receiving e-mails and requests for broader access to this valuable resource of knowledge. Taking stride of the same, our Governing Council under the aegis of Hon'ble the Chief Justice decided to open the Journal for public viewing which was until now, an in-house Publication, exclusive to the Judges of Madhya Pradesh. We are confident that with this initiative, the Academy shall enhance the legal knowledge of all its stakeholders. This Conference was also presided over by Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice, High Court for Madhya Pradesh, Hon'ble Shri Justice Sushrut Arvind Dharmadhikari, Chairman of the Academy and other Hon'ble Judges of High Court of Madhya Pradesh.

In another news, the Academy also conducted Refresher Courses for the District Judges (on completion of 5 years of service) and Civil Judges (on

completion of 5 years of service). The Academy also conducted online sessions on Key issues – relating to cases under the Protection of Women from Domestic Violence Act and also Awareness Programme on Sentencing Policy, Presumption under different laws and importance of accused statement.

Apart this, Academy also conducted Special Workshop for Advocates at Principal Seat Jabalpur and also Bench at Indore. It is worth mentioning that the Academy has also been conducting the ECT programmes for various stakeholders under the aegis of the e-committee of Supreme Court of India.

At this juncture, it is fitting to acknowledge the spirit of Republic Day, which we have recently celebrated. It is a day that reminds us of our constitutional commitments and democratic ideals. Republic Day is a celebration of the principles that define India's governance, including justice, liberty, equality and fraternity. It is a day to reaffirm our collective responsibility to uphold these ideals and the judiciary plays an indispensable role in ensuring that these values are not only preserved but also strengthened. Justice Oka's vision aligns with the spirit of this National Day, reinforcing the need for an independent judiciary that serves as the guardian of constitutional morality and social justice.

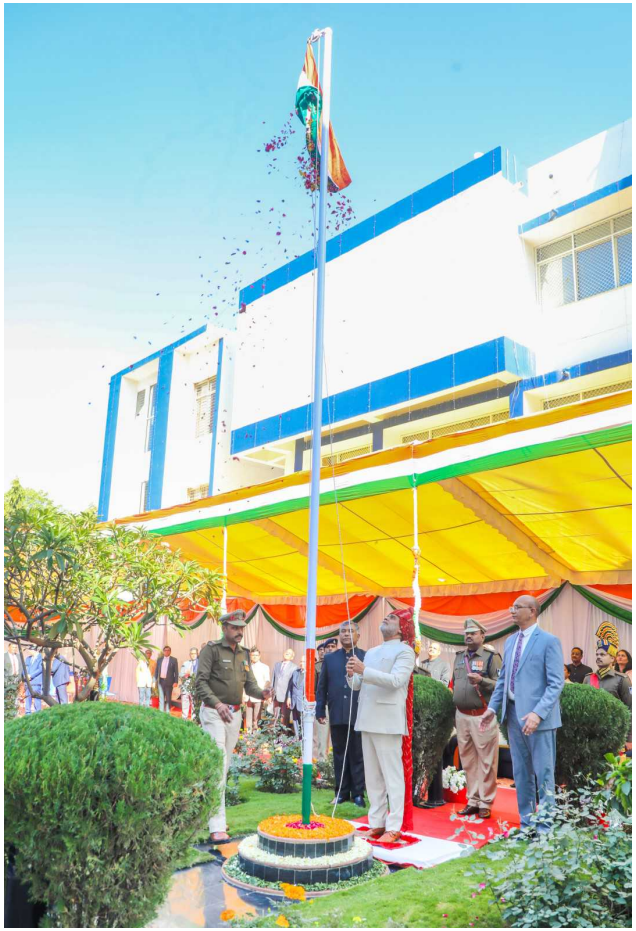
In this edition, we are publishing the guidelines related to termination of pregnancy as issued by the Hon'ble High Court ***In Reference (Suo Motu) v. The State of Madhya Pradesh and ors.,*** dated 20.02.2025. Furthermore, the larger bench of High Court of Madhya Pradesh has settled the law pertaining to mutation by the revenue authorities on the basis of Will in an order passed on 14.02.2025 in ***Anand and ors. v. State of Madhya Pradesh***. I implore our readers to equip themselves with this settled position.

As I close, I would like to request all our readers to kindly send your legal queries, articles and suggestions. I look forward to your contribution.

Best Wishes,

Krishnamurty Mishra
Director

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR
Glimpses of Republic Day Celebration

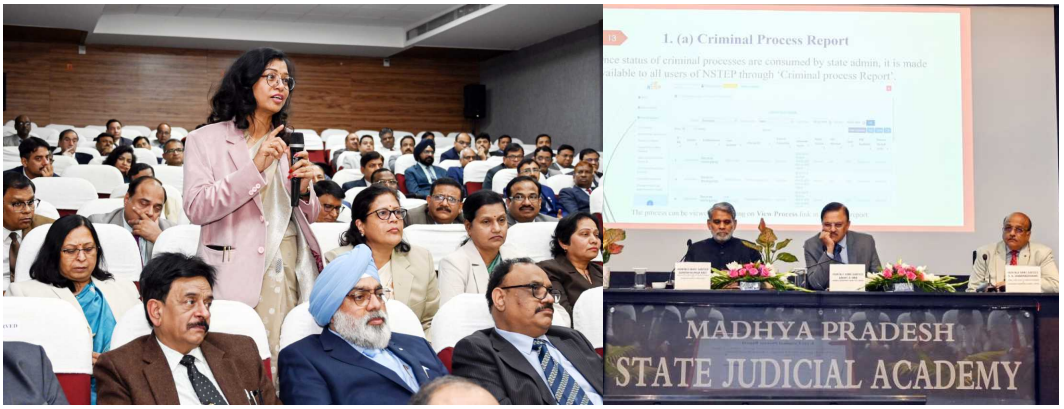


Hon'ble the Chief Justice Shri Suresh Kumar Kait unfurling the National Flag on 26.01.2025

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Glimpses of Conference for Principal District & Sessions Judges
(18.01.2025 & 19.01.2025)

Hon'ble Shri Justice Abhay S. Oka, Judge, Supreme Court of India addressing the august gathering at the inaugural event of the Conference



Hon'ble Shri Justice Abhay S. Oka, Judge, Supreme Court of India alongwith Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice of Madhya Pradesh and Hon'ble Shri Justice S.A. Dharmadhikari, Chairman, Governing Council interacting with the participants during the Conference

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Refresher Course for the District Judges
(on completion of 5 years of Judicial Service) (Group - I)
(27.01.2025 to 01.02.2025)

Refresher Course for Civil Judges
(on completion of 5 years of Judicial Service) (Group - I)
(10.02.2025 to 15.02.2025)

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Refresher Course for Civil Judges
(on completion of 5 years of Judicial Service) (Group - II)
(17.02.2025 to 22.02.2025)

Programme for Technical staff of District Courts of all the Districts
(zone-wise) (ECT_11_2024)
under e-Committee Special Drive Training and Outreach Programme
(16.02.2025 at Gwalior)

APPOINTMENT OF HON'BLE SHRI JUSTICE ASHISH SHROTI AS JUDGE IN THE HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Ashish Shroti was administered oath of office on 17th February, 2025 as Judge of the High Court of Madhya Pradesh by Hon'ble the Chief Justice Shri Suresh Kumar Kait in a brief Swearing-in-Ceremony held in the Conference Hall of South Block of High Court of Madhya Pradesh at Jabalpur.

His Lordship was born on 16th November, 1976 at Pachmarhi, Tehsil Sohagpur, District Hoshangabad. His Lordship's father Shri Uma Shanker Shroti retired as Joint Director, Agriculture Department, Government of Madhya Pradesh. After obtaining degrees of B.Sc. (Electronics) from St. Aloysius College, Jabalpur during 1994-97 and LL.B. from the University Teaching Department, Rani Durgawati University, Jabalpur during 1997 -2000, joined the law profession on 12th August, 2000 under the able guidance of Shri V.S. Shroti, Senior Advocate, practising at High Court, Principal Bench, Jabalpur.

His Lordship was Government Advocate from July 2010 to July 2011. His Lordship practiced in Civil, Constitutional & Industrial Law and was Counsel for High Court of M.P., State Legal Services Authority, Indian Council for Medical Research, Bhopal Memorial Hospital & Research Centre, State Bank of India, Bank of India, Madhya Pradesh Gramin Bank and M.P. Human Rights Commission.

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

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HON'BLE SMT. JUSTICE SUNITA YADAV DEMITS OFFICE

Hon'ble Smt. Justice Sunita Yadav demitted office on Her Ladyship's attaining superannuation.

Her Ladyship was born on 13th January, 1963. After obtaining degrees of B.Sc. and LL.B. from Ravishankar University, Raipur in 1986, joined M.P. State Judicial Services as Civil Judge Class-II on 7th September, 1987 at Raipur (then part of M.P). Her Ladyship was promoted to Higher Judicial Services on 27th July, 2000. Granted Selection Grade Scale w.e.f 1st August, 2008 and Super Time Scale w.e.f 1st October, 2016.

Her Ladyship, as Judge of District Judiciary worked in different capacities at various places like Raipur (now in Chhattisgarh), Satna, Dabra (Gwalior), Bhopal, Chhatarpur, Gwalior and Morena. Also served as Principal District Judge (formerly known as District & Sessions Judge) Ashoknagar and Datia. Also held the posts of Deputy Welfare Commissioner at Bhopal Gas Victims, Bhopal and Executive Director (Law), Delhi Electricity Regulatory Commission, New Delhi. Was Principal District Judge, Datia from 3rd July, 2017 till elevation.

Her Ladyship took oath as Judge, High Court of Madhya Pradesh on 25th June, 2021.

During Her Ladyship's tenure in the High Court of Madhya Pradesh, rendered invaluable services as Judge and Member of various Administrative Committees of the High Court including Governing Council of MPSJA.

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

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PART – I

OUR LEGENDS

HON'BLE SHRI JUSTICE S.K. JHA
13TH CHIEF JUSTICE, HIGH COURT OF MADHYA PRADESH

In this edition, OUR LEGEND is Hon'ble Shri Justice Sushil Kumar Jha, the esteemed Chief Justice of Patna High Court, who was appointed as the 13th Chief Justice of the Madhya Pradesh High Court.

Born on 15th December, 1931, Justice Jha embarked on his legal career with dedication and determination. He was enrolled as an Advocate of the Patna High Court on 14th August, 1955. With a sharp legal mind and a deep understanding of civil and writ matters, he quickly made a name for himself in the legal profession. His expertise and hard work led to his appointment as Government Pleader on 12th April, 1971.

Justice Jha's journey in the judiciary began when he was appointed as an Additional Judge of the Patna High Court on 12th April, 1973. His tenure was marked by keen legal insight and fair judgments, earning him the position of a Permanent Judge of the Patna High Court on 31st January, 1975. His capabilities did not go unnoticed and he was entrusted with greater responsibilities, serving as the Acting Chief Justice of the Patna High Court from 2nd January, 1988 to 30th April, 1988. Following this, Shri Justice Dipak Kumar Sen was appointed as the Chief Justice of the Patna High Court.

On 19th October, 1989 Justice Jha was appointed as the Chief Justice of the Patna High Court. His tenure in this esteemed position was brief, as he was soon called to serve as the Chief Justice of the Madhya Pradesh High Court. He took his oath of office on 27th October, 1989 marking the beginning of a new chapter in his distinguished career.

Justice Jha's appointment as Chief Justice of the Madhya Pradesh High Court was a moment of pride and celebration. He was felicitated in a grand ovation held on 7th November, 1989. During the event, Senior Judge of the Madhya Pradesh High Court, Shri Justice B.C. Varma, extended a warm welcome, highlighting the rich traditions and cultural diversity of the State. Justice Varma acknowledged the significant role played by Chief Justices and different High Courts in shaping the

judicial landscape of Madhya Pradesh. He expressed confidence that Justice Jha's leadership would further strengthen the judiciary and bring lasting contributions to the legal system.

Justice Jha took over his new role at a time when society was undergoing rapid transformations and the judiciary was expected to uphold stability and the rule of law. He recognized the immense responsibility that came with his position, stating:

> "The confidence of the people in the judiciary has to be maintained at all costs, as it is this confidence which goes a long way in accelerating the progress of the State."

His words resonated with the legal community, as he emphasized the indispensable relationship between the Bench and the Bar. Justice Jha firmly believed that the judiciary could not function effectively without the cooperation of the legal fraternity. In his ovation reply, he stated:

> "The two wings of the judiciary are equally important – the Bench and the Bar. But for the co-operation of the Bar, the Bench cannot function smoothly and without the courtesy being extended to the Bar, the Bench is bound to collapse."

Justice Sushil Kumar Jha's journey from a young Advocate to the Chief Justice of two esteemed High Courts is a testament to his dedication, legal brilliance and unwavering commitment to justice. His career was shaped by integrity, fairness and an unrelenting pursuit of legal excellence. He carried forward the legacy of his father, Late Shri Laxmikant Jha, who had also served as the Chief Justice of Patna High Court.

In his concluding remarks at the ovation, Justice Jha humbly stated:

> "I shall discharge my duties without ambition, envy or revenge, with no desire for self-aggrandizement. For the time being, I shall rest at that, leaving it to you all to judge my performance in due course."

Justice Jha's remarkable journey serves as an inspiration to the legal fraternity. His contributions to the judiciary, his commitment to justice and his emphasis on cordial relationships between the Bench and the Bar will always be remembered as a guiding light for future generations of legal professionals. His Lordship passed away on 16th December, 1993, leaving behind a legacy of fairness and judicial excellence that continues to inspire the legal community.

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DYNAMIC ROLE OF DISTRICT JUDICIARY AS CUSTODIAN OF FUNDAMENTAL RIGHTS

Good morning and Namaskar,

It's a great privilege to be here again. As the convenor of the programme mentioned, I was here in 2021.

Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice of the High Court of Madhya Pradesh, Hon'ble Justice Dharmadhikari, Chairman of the Governing Council of this Academy, Sisters and Brothers of the Madhya Pradesh High Court, Director of Judicial Academy, District Judges and Civil Judges, who are physically present, as well as those who have joined online.

Since 2004, I have been a regular visitor to various Judicial Academies. I remember that in 2004, I addressed not exactly a Judicial Academy, but in those days, Maharashtra had a Judicial Officers Training Institute in Nagpur. When I was posted at the Nagpur Bench, I had my first opportunity to interact with Judicial officers of the State and addressed them on a particular topic. Thereafter, I have regularly visited Judicial Academies in Maharashtra, Karnataka, some other States and the National Judicial Academy.

I started my practice in the District Court in 1983. My father was a District Court practitioner. After two years, I shifted to the High Court and therefore, I have witnessed the transformation of the Judiciary over the years. The Judiciary has undergone a significant transition. 1983 was a long time ago – more than 42 years back. There are two major transitions that I have noticed, which I must share with you.

The first transition is that the Judiciary has become more inclusive. Young Lawyers from all castes and religions have started joining the Judiciary. One very important change I have observed is the increasing number of women judges. When we initiate the process of appointing Civil Judges, almost all States now, have more than 50% women among Civil Judges. This is a remarkable change. Two years ago, I addressed 300 Judicial Officers at the Bihar State Judicial Academy and about 60% of them were women.

[1] Text of the address delivered by Hon'ble Shri Justice Abhay S. Oka, Judge, Supreme Court of India, in the Academy on the subject, "Dynamic Role of District Judiciary as Custodians of fundamental rights" at the inaugural event of the Conference of Principal District & Sessions Judges on 18th January, 2025.

The second transition is that Judges now receive a much better pay scale and perks. I remember that when I started practicing, even a District Judge could not afford to buy a two-wheeler. Today, things have changed completely for the Judiciary.

A few days ago, I was in a meeting with senior IAS officers and Secretaries of the Government of India for the selection of Tribunal Members. After our work was over, we were having tea and one of the senior Secretaries of the Government of India raised an issue. He said, "sir, I want to raise one point." I asked, "what is the issue?" He said, "A young lawyer who enters the Judiciary at the age of 26 or 27 receives a take-home salary of around Rs.93,000 or Rs.94,000 after deducting income tax, in addition to perks such as a driver's allowance, education allowance for children, free accommodation, petrol reimbursement and medical reimbursement. Meanwhile, a newly joined IAS or IPS officer has a pay package of only Rs.79,000 to Rs. 80,000 despite undergoing rigorous training and facing tough civil service examinations. Why this disparity?"

My response was that Judges play a completely different role. You cannot compare the role of a Judge with that of a civil servant. This change is for the better.

As Chief Justice of the Karnataka High Court, I used to receive requests from Judicial officers seeking permission to acquire vehicles. I was astonished. Of course, in Karnataka, Judicial officers have access to a credit society that provides vehicle loans at very low interest rates. I was happy to see applications from Civil Judges and senior Civil Judges requesting permission to buy cars. This is a significant transition.

In 1983, when I entered the Judiciary, no one was in a position to buy a two-wheeler. Today, this has changed for the better. With better pay scales and improved perks, a greater responsibility is placed upon us. Since we no longer have complaints about our salaries and facilities, we are expected to deliver better quality justice. That is the minimum expectation from us.

Today's topic is an interesting one: ***The Dynamic Role of the District Judiciary as Custodians of Fundamental Rights.***

Recently, we celebrated a significant event; the acceptance of the final draft of the Constitution 75 years ago, on November 26, 1949. I was invited to address law students and Judicial Officers on this topic.

When I became a Judge of the Bombay High Court, I realized that the real Judiciary in our country is our trial and District Judiciary. As I grew older as a Judge, I felt that we were neglecting our District Judiciary.

For those who follow judgments of the Bombay High Court, you may remember that Chief Justice Mohit Shah constituted a Special Bench, which I presided over for five years. That Bench dealt with infrastructure in trial and district courts. We passed several orders, including directions for providing security to judges, among others. These orders ran into hundreds of pages.

In 2006, I presided over regular second appeals under Section 100 of CPC. With the help of an organization and one of the Registrars, we conducted a study on how civil suits travel through the Judicial system. The study, though broad and conducted without modern digital tools, revealed that:

- After a judgment is passed by the District Court in an appeal u/s 96, only 70% of litigants proceedes to the High Court by way of a second appeal.
- After the second appeal is decided, only 60% of litigants take their case to the Supreme Court.

In other words, 30% of litigants accepted the District Court's decision as final. They may have done so due to financial constraints or other reasons, but the fact remains that, even then, a significant percentage of litigants did not pursue their cases further.

When I was posted in Karnataka as Chief Justice, I took my oath during the vacation. My first administrative order was that in the Karnataka Judiciary, no court should be referred to as a "lower court" or "subordinate court."

Although Chapter 6 of Part VI of the Constitution is titled "Subordinate Courts", I issued an order stating that in Karnataka:

- No judge should be referred to as a "Lower Court" Judge.
- Instead of "Lower Court Record (LCR)", we should use "Trial Court Record."
- Instead of "Subordinate Courts", we should use "Trial Courts" or "District Courts."

This is important because every court, from the Supreme Court to the civil court, exists because of the Constitution of India.

It is incorrect to label only the Supreme Court and High Courts as "Constitutional Courts." The Constitution provides the foundation for Civil Courts, District Courts and Sessions Courts.

I have emphasized in many Judicial Academies that District Courts are also Constitutional Courts because they derive their authority from the Constitution, effective from 26th January, 1950.

Even in the Supreme Court, I passed a Judicial Order to discontinue the term LCR (Lower Court Record) and replace it with TCR (Trial Court Record).

A crucial question we must ask ourselves is:

Have we fulfilled the expectations of the common man from the judiciary in independent India?

My personal view, which I have shared on various platforms, is that we have not.

I have stated on various platforms that we have not been able to fulfill the expectations of the common man from the Judiciary in Independent India. The Judiciary, established under the Constitution, has not always addressed the concerns of the common people effectively. One of the mistakes we committed, this is my personal view and may not be correct, is that when discussing the Judiciary or Justice Delivery System, we primarily focused on High Courts and the Supreme Court. We never seriously discussed our Trial and District Judiciary, which was a significant oversight. Consequently, over the past 75 years, our Trial and District Judiciary have faced neglect. As the Chief Justice rightly pointed out, these are the courts of the common man. The common man has to approach these courts for justice.

I often cite an example under the Indian Succession Act, which provides for the grant of a succession certificate. A common person, such as a woman who has lost her husband, may need access to her deceased husband's pension or bank account. To do so, she must approach a Civil Court to obtain a succession certificate. This is a type of litigation where there is no alternative but to seek Judicial intervention. Several similar instances highlight the significance of Trial and District Courts in delivering justice to the common man. Therefore, the common man has great expectations from our Civil Courts and District & Sessions Courts, believing they will provide justice.

In the context of the Constitution and Fundamental Rights, all of us, especially Judges, must understand the ethos of our Constitution. Article 51A, a newly introduced provision, explicitly states that it is the duty of every citizen of India to respect not only the Constitution but also its ideals. The scheme of the Constitution mandates that we not only respect but also follow these ideals. To comprehend these ideals, one need not read the entire Constitution; the Preamble itself is sufficient. It encapsulates four fundamental ideals: justice, liberty, equality and fraternity. Additionally, two significant terms appear in the Preamble — Socialist and Democratic Republic. Later, the word "secular" was added, making socialism and secularism two of the most critical principles in our Constitution. While secularism is a part of the Constitution's basic structure, all these ideals;

secularism, socialism, justice, liberty, equality and fraternity form the foundation of our legal framework.

When we speak of liberty and justice, we must also consider Fundamental Rights. Today, the right to justice can be considered an implicit part of Article 21, which guarantees the right to life with dignity. The right to justice is not limited to cases involving offences; even victims have the right to justice. Therefore, these constitutional ideals must be respected and implemented by Judges in their role as custodians of justice.

We are currently in an era where technology plays a crucial role in the Judicial system. The National Judicial Data Grid is one of the best developments in this regard. It provides real-time access to Judicial data, reminding us daily of the challenges ahead. This morning, I reviewed the National Judicial Data Grid for District Judiciary cases in Madhya Pradesh. The total pendency stands at approximately 20,32,854 cases, with around 49,000 civil cases and 16 lakh criminal cases, four times the number of civil cases. A concerning aspect is that about 133% of cases are undated, which I will discuss later. Additionally, 18% of cases are more than five years old. However, this percentage is much lower in Madhya Pradesh compared to States like Maharashtra and Uttar Pradesh, where the backlog of cases older than five years is significantly higher.

Examining these figures from the National Judicial Data Grid, clarifies the challenges we face. As custodians of fundamental rights, our foremost duty arises from Article 14, which ensures equality before the law. One realization I have had during my 21 years as a Judge of a constitutional court and 20 years as a lawyer is that we have not been able to set our priorities correctly. Should priority be given to commercial cases, arbitration cases or cases concerning the common man, such as those before Judicial Magistrates or Civil Judges? We have failed to establish a clear framework for prioritizing cases. I must take responsibility for not enabling our trial and district judiciary to set their priorities effectively.

As Judges of the Constitutional Courts, we often order lower courts to decide cases within a specific timeframe – six months, nine months or a year – without fully understanding the backlog they face. For instance, while rejecting a bail application in the Bombay High Court, we would sometimes direct the Sessions Court to decide the case within six months, even though charges had not yet been framed. Later, when I examined the case data, I realized that while higher courts prioritized newly filed cases, older cases remained unresolved, leading to a skewed perception of justice.

This practice has contributed to the public's belief that those who can afford to approach higher courts receive preferential treatment. Fortunately, I had the

opportunity to contribute to a Constitution Bench judgment where I explicitly addressed this issue. It is imperative that we, as Judges, set our priorities right and ensure that the common man's access to justice is not compromised.

I have stated that prioritization of cases should be done only in exceptional and very rare cases. When there is a long queue of litigants waiting for justice, we cannot arbitrarily pick one case just because the litigant has approached the Supreme Court, engaged a successful lawyer and obtained an order. Recognizing this concern, the Supreme Court has put an end to such practices, primarily based on Article 14, which mandates that every litigant must be treated equally. We cannot prioritize cases simply because they involve commercial disputes. I have my own reservations about prioritizing commercial cases in a country like India, where the poor have a greater need for justice. I have voiced this concern in several judicial orders during my tenure in the Bombay High Court and Karnataka High Court.

It is essential to set our priorities correctly. The fundamental rule should be that seniority is respected – older cases must be given priority. This approach aligns with Article 14, which protects citizens from arbitrary decision-making. However, within this framework, we must also categorize cases that require urgent attention. Some Statutes, such as the Negotiable Instruments Act, impose an outer limit for resolving complaints. Similarly, matrimonial legislations like the Hindu Marriage Act prescribe time limits that courts must adhere to. Apart from these statutory obligations, we must identify priority areas based on their broader impact on the judicial system and society.

One such category that has significantly burdened the Judiciary is the rise of matrimonial disputes. Sitting in the Supreme Court, I have handled numerous transfer petitions and I have observed a disturbing trend – one matrimonial dispute often gives rise to four or five additional cases at the grassroots level. These include proceedings for divorce or restitution of conjugal rights (sometimes both), complaints u/s 498A of the IPC, claims for maintenance u/s 125 of the CrPC, cases u/s 12 of the Domestic Violence Act and even prosecutions under the Information Technology Act based on exchanged WhatsApp messages. The impact of a single matrimonial dispute is extensive, leading to multiple revisions, appeals, writ petitions u/s 482 and 227 of the CrPC and ultimately, a series of cases reaching the Supreme Court or High Courts. This category of litigation has the potential to overwhelm the Judiciary.

Given its wide-ranging consequences, matrimonial litigation should be treated as a priority area. A single dispute can affect three families – the husband and wife (along with their child, if any), the wife's family and the husband's family.

The worst sufferer is often the child. Therefore, courts should not only prioritize these cases but also make every effort to resolve them at the earliest stage. In my experience, the best time to settle a matrimonial dispute is at the initial stage, when a fresh case is filed – whether u/s 498A, a maintenance petition, or domestic violence proceedings. If Judges intervene early, refer the case to mediation or attempt reconciliation, it can prevent prolonged litigation. However, as time passes, emotions harden and the dispute becomes a battle of revenge, making settlement difficult. In the Supreme Court, we have the advantage that litigants recognize they have reached the final forum, which often compels them to compromise. Nevertheless, early intervention at the trial court level remains the most effective approach.

Another critical priority area is criminal litigation, particularly cases where the accused is in jail. It is well established that bail matters and Criminal Trials involving under trials require immediate attention. Additionally, statutory timelines u/s 12 of the Domestic Violence Act and Section 138 of the Negotiable Instruments Act must be strictly adhered to. I have communicated to the Chairperson of the Law Commission that an amendment to the Negotiable Instruments Act has significantly burdened the Judiciary. In any metropolitan city, Magistrates' courts handle a caseload where nearly 50% of cases fall under the Negotiable Instruments Act. A fundamentally civil wrong, cheque dishonor, has been converted into a criminal offence, imposing an enormous workload on criminal courts. The legislative intent behind this amendment was likely to protect commerce, ensuring that dishonoured cheques do not disrupt business transactions. However, these cases also present substantial opportunities for settlement, which Judicial Magistrates should actively encourage rather than merely conducting trials.

Another pressing concern is the backlog of criminal trials and bail applications. During my tenure in the Bombay High Court, I presided over numerous criminal appeals and bail matters. After moving to the Supreme Court, I continue to deal with criminal cases, which constitute nearly 50% of my caseload. One particularly troubling issue is the acquittal of individuals who have already spent long years in jail. I recall a session in the Bombay High Court where, in a single sitting, we granted acquittals in 11 or 12 cases where the accused had spent 12 to 15 years in prison. In these cases, there was no evidence – these were not even cases of "benefit of doubt." This problem persists in the Supreme Court as well. In one case, the High Court had reduced a death sentence to life imprisonment, but on review, the Supreme Court had to acquit the accused entirely due to a complete lack of evidence.

Such instances are deeply concerning. If an innocent person has spent 12 to 15 years in jail due to wrongful conviction, what recourse does he have? His entire life is ruined, his family suffers and he faces social stigma that affects even the marriage prospects of his children. The legal principle in India, except in special Statutes, is that there is a presumption of innocence until proven guilty. If wrongful convictions continue at this scale, a day may come when litigants demand compensation from the State for wrongful incarceration. As a Judiciary, we must be mindful of this possibility and ensure that justice is swift, fair and does not result in such irreversible damage to individuals' lives.

The other day, I visited a Judicial Academy for an interactive session with a batch of directly appointed District Judges. During our discussion on handling criminal cases, I posed a question to a newly appointed Judicial Officer, a graduate from one of the National Law Schools, with an impressive academic record. I asked him what his primary role would be when presiding over a criminal trial as a Sessions Judge. His immediate response was that his duty was to decide whether the accused before him had committed the offence. He used the phrase, "I am called upon to decide." I pointed out that this approach needed to change.

When sitting in criminal jurisdiction, our role as Judges is not to determine, based on our perceptions, whether the accused has committed an offence. That is not our function. Instead, our duty is to examine the evidence on record, assess its credibility and decide whether the prosecution has established the guilt of the accused beyond a reasonable doubt. We do not engage in hypothetical reasoning about whether the accused might have committed the crime. Our judgments must be based purely on legal evidence, assessed within the framework of the law. If the evidence proves guilt beyond a reasonable doubt, we must convict and impose an appropriate sentence. However, if we start speculating – thinking, for instance, that witnesses have turned hostile but the accused must have committed the crime – we risk engaging in what I call "moral conviction." In one of my judgments, I categorically stated that moral convictions are impermissible in Judicial proceedings. Judges must confine themselves strictly to the legal parameters of determining guilt and nothing beyond that.

During the same session, I discussed bail jurisprudence with the Judges by presenting hypothetical cases. A short note was prepared and circulated in advance. One of the younger Sessions Judges remarked that he would deny bail in a particular case. When I asked for his reasoning, he responded, "this man is very influential and I am sure that all the witnesses will turn hostile. At the very least, I will ensure that he remains in jail for a few years before he eventually gets out." I immediately pointed out that this approach was entirely incorrect. Judges must

understand why undertrials are detained in prison. The law on bail is well-settled with clear parameters laid down by the Supreme Court and High Courts, beginning with the famous verdict of Justice Krishna Iyer.

When dealing with bail applications, extraneous considerations must not influence decisions. If, based on legal principles, a person is entitled to bail, it is the Judge's duty to grant it. Denying bail for irrelevant reasons amounts to a violation of the fundamental right under Article 21. There is a misconception that some Judges are "liberal" in granting bail, but I strongly disapprove of this characterization. There is no such thing as a liberal approach to bail – there is only a legal approach. The correct perspective should be that a judge strictly follows the law laid down by the Supreme Court and High Courts when adjudicating bail matters.

Today, particularly in a vast State like Madhya Pradesh, the pendency of cases before Judicial Magistrates is overwhelming. Magistrates do not only handle criminal trials but also cases u/s 125 CrPC (maintenance), Domestic Violence Act cases and many other categories of litigation. As a result, we have a situation where charge sheets are filed for offences triable by Magistrates, involving 25 to 35 witnesses and yet accused persons are unable to secure bail even from the High Court. They are forced to approach the Supreme Court.

When discussing constitutional obligations, we must not assume that enforcing Article 21 is solely the responsibility of Supreme Court and High Court Judges. The enforcement of fundamental rights begins at the level of Magistrates and Sessions Judges. Trial Court Judges have the primary responsibility of ensuring that fundamental rights are upheld. They conduct trials and must do so in a fair manner – ensuring that the prosecution has a full opportunity to present its evidence, while also safeguarding the rights of the defense. Conducting a trial in a fair manner is an implicit requirement under Article 21. It is in Trial Courts – the courts of Magistrates and District Judges – that the most valuable constitutional rights are given effect.

I always encourage young Judicial Officers to read the debates of the Constituent Assembly, particularly the discussions on fundamental rights. These debates provide insight into why fundamental rights were considered essential. Dr. Ambedkar, in particular, made a compelling case for their necessity. Judges must internalize this understanding to appreciate the weight of their responsibility in enforcing these rights.

Our country has a proud tradition of conducting fair trials, even in the most serious cases. A striking example is the trial of Ajmal Kasab, where the Bombay High Court appointed a highly competent criminal lawyer as an *amicus curiae* to

ensure that he received a fair trial. This commitment to fairness distinguishes our legal system from those of other countries. While some nations are praised for their efficiency in disposing of commercial and arbitration matters, their criminal justice systems lack the fundamental principles of a fair trial. In some jurisdictions, a police allegation is virtually accepted as gospel truth by the courts. India, however, upholds a higher standard – one that ensures justice is not only done but is seen to be done. This is a principle we must continue to uphold.

Our country upholds the principle of a fair trial, which is a constitutional concept. It is essential to remember that a fair trial must be fair not only to the accused but also to the prosecution. When we sit in Court, we are dealing with an offence that has been committed, meaning there is a victim or in cases of murder, legal representatives of the victim. Our duty as Judges is to enforce the law, ensuring justice is done not just for the accused but also for society. If there is no evidence, it is our duty to acquit the accused, but if legally permissible evidence proves guilt, we must ensure the accused is adequately punished. The rights of society are also involved, and therefore, we must exercise caution while conducting trials.

One critical area I have emphasized in Judicial Academies is the recording of Statements u/s 313 of the CrPC. I have observed numerous cases in High Courts and the Supreme Court where judges commit errors in this regard. The purpose of Section 313 statement is to ensure that every circumstance appearing in evidence against the accused is put before him in a language he understands. Many accused individuals may not comprehend the language of the court, particularly if they come from another State. This step is one of the most important aspects of a trial and cannot be neglected. I have seen cases where, after 20 years, while sitting in the Supreme Court or High Court, we find that key aspects of a witness's testimony – on which the conviction was based – were never put to the accused. At that stage, this defect, although it goes to the root of the matter, becomes difficult to remedy. After such a long period, we cannot simply remand the case and ask the accused to answer circumstances related to an incident that happened 25 years ago. Such inadvertent mistakes, often committed due to pressure, lead to acquittals and undermine justice. Victims have a fundamental right to ensure justice is done, just as the accused has the fundamental right to a fair trial.

Another important function of Principal District Judges (PDJs) is conducting jail visits. Effective jail visits provide invaluable learning experiences. As Chairperson of the Maharashtra Legal Services Authority, I made it a point to visit all central prisons. Initially, I announced my visits a few days or a week in advance. However, I soon realized this was a mistake because authorities had time to prepare

and conceal irregularities. To address this, I adopted a different approach – conducting surprise visits with only two to three hours notice. This led to eye-opening experiences. In one prominent jail, where many freedom fighters, including Mahatma Gandhi, had been detained, the inmates operated a radio station. During my visit, they invited me for an interview, which I accepted. As I toured the facility, a life convict – who had interviewed me earlier – began following me despite repeated warnings from jail officers to stay back. Realizing he had something important to say, I asked the jail superintendent to bring him forward. To my surprise, he made a single statement: "Sir, the jail officer walking with you on your right is the most corrupt officer here." Upon making discreet inquiries, I found his claim to be true. Such revelations highlight the significance of jail visits.

Lawyers assigned to visit jails for legal aid are responsible for filing bail applications and providing legal assistance to inmates. However, the effectiveness of this legal aid can only be gauged through direct observation. A recent judicial Bench, headed by Justice G.W., rightly observed that while providing legal aid to the poor is our duty, the legal aid itself should not be poor in quality. I have expressed the same sentiment differently, stating that if there is a Constitutional Right to legal aid, it must be quality legal aid. Today, we face a scenario where lawyers, particularly in legal aid cases, often do not cross-examine witnesses at all. Therefore, I urge PDJs to actively participate in legal aid oversight. They should take their District Legal Services Authority officials on surprise visits to jails to assess the effectiveness of legal aid. Only through such initiatives we can ensure that inmates receive the legal support they are entitled to under the Constitution.

Moving to the broader role of PDJs, I particularly enjoy addressing newly appointed Civil Judges. Judicial Academies in Maharashtra and Karnataka have standing instructions to inform me when a new batch arrives so that I can interact with them. One common grievance among Junior Judges is that their PDJs do not treat them well, refuse to give them appointments and fail to treat them with dignity. My response to them is always different. I tell them that I have spent 21 years in the Judiciary and throughout my career, I have learned not only from great Judges but also from observing negative examples – how one should not behave. I advise young Judges, particularly those in their mid-20s, to remember how they were treated by their PDJs so that when they eventually become PDJs themselves, they do not repeat those mistakes.

It is crucial to understand that all Judges, whether of civil courts, district courts or Constitutional Courts, belong to the same Judicial System. No Judge should be addressed as a Judge of a "lower" or “subordinate” court. The only

difference between a PDJ and a newly appointed Civil Judge is seniority. A PDJ has gained experience over time, but he is not a "superior officer." Instead, he is the head of a Judicial family. A PDJ should foster open dialogue with junior Judges, acting as their guide and mentor. He is the eyes and ears of the High Court, as complaints against civil or Sessions Judges ultimately rely on his assessments. Therefore, it is crucial that the PDJ functions as a true head of the Judicial family, maintaining cordial relationships with all Judges in his district. If this happens, Judicial performance will improve significantly and there will be no reason for junior Judges to feel mistreated.

I recall advice from a retired and highly respected Judge of the Bombay High Court, whom I approached for guidance after I was appointed a Judge. Transitioning from a lawyer to a Judge is challenging and his counsel stayed with me. He emphasized that in different States, Judges responsible for administrative oversight are known as Guardian Judges or Administrative Judges, but their duties remain the same. His advice was simple yet profound – whenever visiting a District or Taluka Court, if the PDJ or any Senior Judge invites you for tea or breakfast at his home, never refuse. This gesture holds immense value. Firstly, for the hosting Judge, it is a great honour to receive a sitting High Court Judge. Secondly, such visits allow one to observe the lifestyle, culture and circumstances of fellow Judges. This knowledge can be invaluable in identifying whether any intervention or counseling is needed.

I extend this advice to PDJs; when visiting Taluka Courts, never hesitate to accept invitations from Judicial Officers, whether they are District Judges, Senior Civil Judges or Civil Judges. Visiting their homes fosters a bond of mutual respect and camaraderie. It also allows PDJs to understand the personal and professional environment of the Judges under their jurisdiction. Such interactions create a sense of unity, ensuring that Judicial Officers feel supported and valued within the system. A strong, supportive Judicial network ultimately enhances the efficiency and integrity of the Judiciary.

One more word of caution – now that more than 50% of our Civil Judges are women, it is our responsibility to ensure that they are treated with the utmost respect. We must recognize the unique challenges they face. For example, when I was a Member of the Governing Council of the Maharashtra Judicial Academy, we observed that nearly half of the new Civil Judges were women. As a result, we amended our rules to allow a woman officer with a young child to have her mother or mother-in-law stay with her in the Judicial Academy to assist with childcare. While women Judicial Officers are equal in every sense, we must acknowledge that

societal expectations often place additional burdens on them, requiring them to manage both their professional duties and household responsibilities. This reality must be kept in mind to create a more supportive working environment.

Another critical function of Principal District Judges (PDJs) is their role as Chairpersons of the District Legal Services Authority. One of the most neglected areas in our legal system is legal literacy. During my tenure as Chairperson of the Maharashtra Legal Services Authority, I organized three legal awareness campaigns in some of the most backward regions – one in the Naxal-dominated area of Chandrapur district, one in a remote location in Marathwada and another in the Konkan region. My experience as a lawyer working with an NGO, which had adopted villages in a remote part of Maharashtra dominated by Scheduled Tribe populations, showed me the urgent need for legal awareness.

When we discuss the misuse of laws, such as Section 498A of the IPC or the SC/ST (Prevention of Atrocities) Act, we must recognize that our greatest challenge is not just handling false cases but addressing the silent suffering of those who genuinely need justice. Even 75 years after the Constitution came into force, a significant section of our society continues to suffer injustice in silence due to social and economic backwardness. Legal awareness campaigns are necessary because many victims do not even know that they have legal remedies available. For example, in my early years as a lawyer in the late 1980s and early 1990s, I visited villages every Sunday as part of an NGO initiative and found that many tribal individuals were subjected to crimes under the SC/ST Act but were unaware that such offences were punishable under the law. This gap in awareness is a significant drawback in our legal system. While we discuss the problem of docket exclusion, the only way to bridge this gap is for Legal Services Authorities to actively conduct legal literacy campaigns.

Laws like the Domestic Violence Act were enacted primarily for women in villages who live in oppressive conditions. However, if they are unaware of their rights or lack access to legal aid, these laws serve little purpose. This is where PDJs, along with all of us in the Judiciary, must focus our efforts. Legal literacy is an essential aspect of the Legal Services Authorities' mandate and must be treated with the seriousness it deserves.

Another crucial issue is the Supreme Court's Action Plan for disposing of old cases, which we are actively monitoring. The objective is to clear cases that have been pending for 20 to 25 years. PDJs are responsible for implementing this action plan and we receive regular reports for monitoring. However, it is important to emphasize that this plan is not meant to encourage hurried trials or unjust denials

of adjournments. The goal is to prioritize older cases while ensuring that they are disposed of in accordance with the law. It should not be misunderstood as a directive to deny reasonable requests for adjournments.

During a recent visit to a State Judicial Academy, I interacted with Judges who shared instances where adjournments were denied, even in cases where a party was genuinely unwell, simply because of the Supreme Court's Action Plan. This is not the intended outcome. Judges should not fear penalties for minor deviations from the Plan. The ultimate aim is to enhance the public image of our Judiciary by demonstrating that we are committed to delivering justice in long-pending cases. We must be mindful that many litigants in these decade-old cases have been waiting with great hope for justice. Our efforts should be directed toward ensuring that these cases are resolved fairly and efficiently.

Before concluding, I want to share my perspective on how we can improve the Judiciary's image. As Chief Justice of the Karnataka High Court, I visited almost every district and engaged in direct interactions with Judicial Officers. My approach was simple – I ensured that the Registrar General and PDJ waited outside while I had one-on-one discussions with Judicial Officers alongside the Administrative Judge of the District. Similarly, during my tenure as Chairperson of the Legal Services Authority, I attended events organized by various NGOs. These experiences reaffirmed my belief that despite our best efforts, we have not been able to fully meet the expectations of the common man.

The common citizen still holds the Judiciary in high regard, but over the past 75 years, we have struggled to bridge the gap between expectations and reality. This is the greatest challenge before us – ensuring that every citizen has confidence that our legal system will provide quality justice to all and will assist those in need. Unfortunately, we have not been able to create this assurance on a large scale and addressing this issue must be our collective priority.

I would like to thank Chief Justice Suresh Kumar Kait for giving me this opportunity, along with the officers and members of the Judicial Academy. Although I have rarely met your Chief Justice, I can say that he must be a very disciplined man because regardless of extreme summer or winter conditions, he never misses his morning walk for an hour. That is where we used to meet, and that discipline has always stood out to me. Perhaps that is why I claim to be a disciplined man myself – just saying in a lighter vein. I sincerely appreciate the opportunity to address you all, and I thank you once again.

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VARIOUS LEGAL ASPECTS OF MAINTENANCE U/S 144 BNSS

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Introduction

The recent times have witnessed increased litigation with respect to maintenance proceedings. It is noteworthy that the Hon'ble Supreme Court in the case of ***Rajnesh v. Neha, (2021) 2 SCC 324*** has issued comprehensive guidelines to further streamline the proceedings by incorporating provisions as to disclosure of assets in the form of affidavits and addressing the issues of overlapping jurisdictions. It has further highlighted the need to set off the amounts passed in varied maintenance proceedings. This article attempts to discuss the various aspects related to maintenance proceedings u/s 144 of BNSS and related issues.

Difference between BNSS and CrPC

With the advent of New Criminal Laws, it is imperative to highlight the differences between the erstwhile maintenance section i.e. 125 which stands as section 144 Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS"). The major differences are highlighted below:

- 'Grandparents' were a category of applicants u/s 125 Criminal Procedure Code, 1973 (herein after referred as CrPC) which was inserted by a Madhya Pradesh State Amendment i.e. M.P. Act No. 10 of 1998 dated 30.05.1998. However, the same do not find mention in the main provision. As of today, there is no State Amendment to Section 144 BNSS hence, they cannot claim maintenance u/s 144 BNSS. After the enforcement of Bharatiya Nagarik Suraksha Sanhita, 2023 on 1st July, 2024, if an application for maintenance is moved by the grand parents then, it shall not be maintainable. Howsoever, they can take recourse under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
- One of the intents of New Criminal Laws is to use progressive terminologies which are respectful and sensitive. Hence, keeping in view of the same, 'Minor' has been replaced with the word 'Child'.
- Section 126 CrPC had not made specific jurisdictional arrangements for parents. Hence, if parents had to file a maintenance petition they could only file it where "he", i.e. the son resided. This was the position until 07.07.2022 when Madhya Pradesh introduced an amendment *vide* M.P. Act No. 13 of

2022 and added a clause (d) *via* which parents could file application from their place of residence. This was the State Amendment howsoever, the same has been incorporated in Section 145 of BNSS. Now, a new clause (d) has been added as "where his father or mother resides".

Definition of "Legally wedded wife"

One of the crucial considerations in maintenance applications is the definition of "wife". Frequently, an objection is raised that the term "wife" includes legally wedded wife only and what is the status of an applicant claiming to be a "wife", who has not undergone the accepted rituals of marriage.

In this context, it is pertinent to mention the case of ***Chanmuniya v. Virendra Kumar Singh Kushwaha & anr., 2011 CriLJ 96 (SC)*** which raised significant legal questions regarding the presumption of marriage and the entitlement to maintenance u/s 125 CrPC. A two-Judge Bench requested the Chief Justice of India to refer key questions to a larger Bench, including:

- Whether prolonged cohabitation as husband and wife establishes a presumption of valid marriage?
- Whether strict proof of marriage is necessary for maintenance claims? and
- Whether customary marriages not fulfilling statutory requirements can entitle a woman to maintenance u/s 125 CrPC?

The reference remains undecided till date.

Howsoever, the Hon'ble Supreme Court in ***Kamala & ors. v. M.R. Mohan Kumar, (2019) 11 SCC 491,*** has reiterated that strict proof of marriage is not a pre-requisite for claiming maintenance u/s 125 CrPC. The Court observed that when a man and woman cohabit as husband and wife, a presumption of legal marriage arises u/s 114 of the Evidence Act, 1872. The Court, while considering the evidence and material on record, upheld the presumption of a valid marriage and held that maintenance cannot be denied solely on the ground of lack of strict proof of marriage.

The judgment also referenced to the case of ***Dwarika Prasad Satpathy v. Bidyut Prava Dixit, (1999) 7 SCC 675***, where it was held that the standard of proof of marriage in proceedings u/s 125 CrPC is lower than that required for an offence u/s 494 IPC. It was noted that Section 125 CrPC does not adjudicate on matrimonial rights but provides a summary remedy for neglected wives to secure maintenance.

Additionally, the Supreme Court emphasized a broad and inclusive interpretation of the term "wife" stating that it should extend to cases where a man and woman have cohabited as husband and wife for a significant period.

It is equally pertinent to make mention of a leading case of ***Badshah v. Urmila Badshah Godse and anr., (2014) 1 SCC 188,*** wherein the Supreme Court held that a second wife could claim maintenance u/s 125 CrPC if the husband had concealed the subsistence of his first marriage. Hence, it can be deciphered that although the reference in ***Chanmuniya*** (Supra) remains unanswered but subsequent aforementioned judgments indicate that maintenance provisions serve a social purpose and should be interpreted in a manner that fulfills their intent.

Effect of decree of Conjugal Rights

One of the defences taken by the non-applicants in maintenance proceedings is that the 'applicant wife' has no sufficient reason to live separately and often, in support of this contention, the non-applicant husband produces a decree of restitution of conjugal rights. This poses a question as to how to appreciate such decree?

The recent landmark judgment of Hon'ble the Supreme Court in ***Rina Kumari @ Rina Devi @ Reena v. Dinesh Kumar Mahto @ Dinesh Kumar Mahato, (2025) SCR 462,*** has provided crucial clarity on the complex relationship between a decree for restitution of conjugal rights and a wife's right to maintenance u/s 125 of CrPC. This case addresses a pivotal legal question; Does a husband's success in obtaining a decree for restitution of conjugal rights automatically bar a wife from claiming maintenance if she refuses to return to the matrimonial home?

The Supreme Court held that a decree for restitution of conjugal rights does not automatically disqualify a wife from claiming maintenance. The Court emphasized several important aspects:

1. Independence of Maintenance Proceedings – The Court reaffirmed that proceedings u/s 125 CrPC and a decree for restitution of conjugal rights are independent of each other. The Supreme Court held:

> "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."

2. Judicial Scrutiny of Refusal – The Court clarified that a wife's refusal to return to the matrimonial home cannot be presumed to be without sufficient cause. The Hon'ble Supreme Court emphasized:

> "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."

3. Consideration of Marital Conduct – The case highlights that evidence of cruelty, neglect and failure by the husband to fulfill marital obligations may provide sufficient justification for the wife's refusal to return, thereby not affecting her right to maintenance. It was held:

> "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 under Section 125(4) CrPC".

4. Purpose of Maintenance Laws – The Court underscored that Section 125 CrPC is a welfare provision intended to prevent vagrancy and destitution. A husband cannot use a restitution decree as a tool to deny his wife maintenance if she has valid reasons to stay away.

5. Legal Interpretation of 'Refusal' – The Supreme Court elaborated:

> "Refusal" u/s 125(4) CrPC has a specific legal meaning and is not the same as simple failure to return to the matrimonial home."

A wife's decision to live separately, due to mistreatment, abandonment or other legitimate concerns, does not automatically disentitle her from maintenance.

The Supreme Court also elaborated on the standard of proof in maintenance proceedings *vis-à-vis* civil proceedings. It stated:

- In civil proceedings, the standard of proof is a preponderance of probabilities.
- In criminal prosecutions, proof beyond a reasonable doubt is required.
- However, the Supreme Court clarified, "We do not think the said principle can be applied *per se* to proceedings for maintenance under 125 CrPC by relying upon a judgment passed by a Civil Court on an application for restitution of conjugal rights."

This case establishes that while a decree for restitution of conjugal rights may be persuasive, it is not conclusive in determining a wife's right to maintenance. The Court categorically held:

> "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."

Hence, it can be inferred in the light of ***Rina Kumari*** (supra) that each case must be assessed on its own merits, considering the factual matrix and the justification for the wife's refusal to return. This judgment also stresses upon the protective intent of Section 125 CrPC and that wives are not unfairly deprived of financial support due to procedural civil decrees.

Muslim Women:

In the recent landmark case of ***Mohd. Abdul Samadv. State of Telangana & anr., (2025) 2 SCC 49,*** Hon'ble the Supreme Court has held that Section 125 CrPC is applicable to all married women including Muslim women. Clarifying the position of divorced Muslim women in light of the 2019 Act, it has been held that,

"c) Insofar as divorced Muslim women are concerned:

(i) Section 125 of the CrPC applies to all such Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act.

(ii) If Muslim women are married and divorced under Muslim law then Section 125 of the CrPC as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125 of the CrPC but in addition to the said provision.

(iii) If Section 125 of the CrPC is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of 1986 Act shall be taken into consideration under Section 127(3)(b) of the CrPC.

(d) The 1986 Act could be resorted to by a divorced Muslim woman, as defined under the said Act, by filing an application thereunder which could be disposed of in accordance with the said enactment.

(e) In case of an illegal divorce as per the provisions of the 2019 Act then,

(i) relief u/s 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy u/s 125 of the CrPC could also be availed.

(ii) If during the pendency of a petition filed u/s 125 of the CrPC, a Muslim woman is 'divorced' then she can take recourse u/s 125 of the CrPC or file a petition under the 2019 Act.

(iii) The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125 of the CrPC."

Hence, with the advent of the Muslim Women(Protection of Right on Marriage) Act, 2019 the dilemma posed with regard to the illegely divorced Muslim women has also been put to rest by clarifying the inclusivity of the divorced Muslim women u/s 144 BNSS.

Limitation period

As far as Section 125 (3) CrPC is concerned, the Hon'ble Supreme Court in ***Shantha v. B.G. Shiva Nanjappa, (2005) 4 SCC 468*** therein that the limitation period of one year provided in the proviso to section 125(3) CrPC is applicable only with regard to the first execution petition.

With regard to filing successive applications, Hon'ble the High Court of Madhya Pradesh in the case of ***Ajab Rao v. Rekha Bai, 2005 (4) MPLJ 579*** has held:

> "When the amount of maintenance was not paid during the pendency of the application under section 125(3) it was not necessary for the non-applicants to make an application every month. When the Court was satisfied that after filing of petition the amount has not been paid and it was not the case that the applicant had paid the amount and is paying regularly, Court had jurisdiction to order recovery of amount which had fallen due during the pendency of recovery proceedings.
>
> Once the machinery of law was set in motion for recovery of arrears for the amount falling due in future till termination, the Court can always order recovery of the same. A person who is entitled to maintenance cannot be asked to file fresh application every month for recovery of maintenance allowance. Where the applicant persistently evaded payment of maintenance, the action of Magistrate sentencing him for delay in non-payment of maintenance after issuing distress warrant is justified. As the provision u/s 125 of the

> Code is a social legislation obstacles have to be overcome and technicalities ignored in order to implement it. In the case of arrears of maintenance for several months, Magistrate had jurisdiction to sentence the applicant to imprisonment."

Hence, in light of the above, it is not required that for each subsequent claim falling due, during the pendency of maintenance execution petition, a separate successive application is required to be filed by the applicant. In addition, the Court is not to compute the limitation period of the claims falling due oving to delay in recovery proceedings caused by the non-applicant.

Requirement of filing affidavits in terms of the law laid down in *Rajnesh v. Neha*.

In the recent case of ***Aditi v Jitendra Sharma***, ***2024 CriLJ 769 (SC)***, Hon'ble the Supreme Court has observed:

> "Even after pronouncement of ***Rajnesh v. Neha,***(supra), this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance."

In this context, it is proper to mention that the affidavits as mentioned in ***Rajnesh*** (supra) in the form of Enclosures I, II and III are to be submitted in the maintenance proceedings. Questions pertaining to stage of submission, non-compliance etc. are often posed. To initiate the discussion, it is essential to refer to ***Circular No. B/1641/II-2-3/74 dated 03.03.2023*** issued by the Hon'ble High Court of Madhya Pradesh, which outlines various procedural aspects related to the submission process. This circular provides clarity on multiple dimensions, including the stage at which affidavits must be submitted.

Regarding the submission of affidavits, the circular specifies:

- The applicant seeking maintenance must file a concise application accompanied by an affidavit disclosing assets and liabilities, as per the prescribed format in Annexures-I and II, as applicable.
- The non-applicant is required to submit a reply along with an affidavit of disclosure in the prescribed format within a maximum period of four weeks.

Concerning non-compliance, the circular states:

- If the affidavit of disclosure of assets and liabilities is not submitted within the stipulated timeframe, the Court may proceed to decide the application for maintenance based on the available record.

A QR code is provided herein, which, when scanned, will direct readers to the full text of the aforementioned circular.

Quantum of maintenance

Although quantum of maintenance strictly varies from case to case and heavily relies on the factual matrix of a case but it is noteworthy that the Supreme Court has in the case of ***Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy, (2017) 14 SCC 200*** has held that 25% of the husband's net salary would be just and proper as maintenance to wife.

The Supreme Court also made reference to the case of ***Dr..Kulbhushan v. Raj Kumari & anr., AIR 1971 SC 234,*** wherein similar position was reiterated. Some of the remarkable observations made by the Court in the case were:

- That the amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance.
- That maintenance is always dependant on the factual situation of the case and the Court would be justified in finding the claim for maintenance passed on various factors.

Apart this, reference can also be made to ***Rajnesh*** (supra) and ***Bharat Hedge v. Smt. Saroj Hegde, AIR 2007 Del 197*** in which the Delhi High Court has enumerated various factors to be taken into consideration while deciding the quantum of maintenance.

Inter-play of permanent alimony u/s 25 of the Hindu Marriage Act, 1955 and Section 125 of the Criminal Procedure Code

The Hon'ble Supreme Court has in the case of ***Rakesh Malhotra v. Krishna Malhotra, (2020) 14 SCC 150***, addressed the query that "whether after grant of permanent alimony u/s 25 of the Act, a prayer can be made before the Magistrate u/s 125 of the Code for maintenance over and above what has been granted by the Court while exercising power u/s 25 of the Hindu Marriage Act, 1955.

The relevant extract says that:

> "Section 25(1) of the Act empowers the Court, while passing any decree, to consider the status of the parties and whether any arrangement needs to be made in favour of the wife or the husband; and by way of permanent alimony, an order granting maintenance can also be passed by the Court…..
>
> Since the Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the concerned party seeking modification, the logical sequittor would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a Competent Court either under the Act or similar such enactments. But the reverse cannot be the accepted norm."

In ***Sudeep Chaudhary v. Radha Chaudhary, (1997) 11 SCC 286***, the Court upheld a wife's right to seek maintenance u/s 25 of the Hindu Marriage Act despite receiving it u/s 125 CrPC. However, in ***Rakesh Malhotra*** (supra), since permanent alimony/maintenance u/s 25 was already granted, Section 125 petition was inferred to be redundant. Having settled this position, it is pertinent to mention that ***Rajnesh v. Neha*** (supra) provides for setting-off the amount of maintenance given under different Maintenance Laws.

Applicability of res judicata on Section 125 CrPC applications

The Hon'ble Delhi High Court in the case of ***Sunita v. Vijay Pal, 2022 SCC Online Del 2478*** has addressed the question, where once a favorable order has already been passed on merits u/s 125 CrPC, can a subsequent petition be filed u/s 125 CrPC?

The Hon'ble Court held that a petition u/s 125 CrPC will be covered by the principle of *res judicata* due to its universal applicability, as proceedings u/s 125 CrPC are quasi-criminal in nature. Once the petition has been adjudicated u/s 125 CrPC favorably by a Court of competent jurisdiction on merits, a subsequent petition cannot be preferred which arises from the same dispute having similar

situations, circumstances and grounds as the previously adjudicated issues in the earlier petition filed u/s 125 CrPC.

As regards to the available remedy when the main petition has been decided on merits, it has been held:

> "The question regarding the recourse available to a person in case of changed circumstances and alteration sought after an order granting maintenance u/s 125 CrPC has been passed by a Court of competent jurisdiction, lies answered under provisions of Section 127 CrPC. In order to avoid re-adjudication of the same issue, the legislature has enacted Section 127 CrPC to deal with change in circumstances after passing of an order granting maintenance."

It can be inferred from this case that once Section 125 CrPC petition is decided on merits then if subsequently, change of circumstances takes place, recourse can be made to section 127 CrPC.

Conclusion:

The Hon'ble Supreme Court in the case of ***Smt. Usha Rani v. Moodudula Srinivas, 2025 SCC Online SC 225,*** reaffirmed that the right to maintenance u/s 125 CrPC is not a mere benefit granted to a wife but a legal and moral duty owed by the husband. This underscores the fundamental principle that maintenance laws are designed to prevent destitution and ensure the dignity of those who are financially dependent. Also, the Supreme Court has clarified in the case of ***Rina*** (supra) that procedural technicalities or civil decrees should not be weaponized to deny legitimate claims for maintenance. The judgments discussed above indicate that maintenance laws must be interpreted with the objective of securing financial stability for those entitled to it, ensuring that they are not left without recourse due to rigid interpretations of legal provisions. This judicial perspective upholds the essential purpose of Section 125 CrPC as a welfare measure aimed at social justice and economic security.

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PART – II

NOTES ON IMPORTANT JUDGMENTS

1. CIVIL PROCEDURE CODE, 1908 – Section 114 and Order 47 Rule 1 Review – In exercise of review jurisdiction, the Court cannot reappreciate the evidence to arrive at a different conclusion even if two views are possible – Parties cannot be permitted to reopen the old arguments for reaching the conclusions under the garb of a review application – Law pertaining to review explained.

सिविल प्रक्रिया संहिता, 1908 – धारा 114 एवं आदेश 47 नियम 1 पुनर्विलोकन – पुनर्विलोकन के क्षेत्राधिकार का प्रयोग करते समय किसी भिन्न मत पर पहुँचनें के लिए न्यायालय साक्ष्य की पुनर्विवेचना नहीं कर सकता भले ही दो मत संभाव्य हो – पक्षकारों को पुनर्विलोकन आवेदन के परिप्रेक्ष्य में पुनः तर्क करने की अनुमति नहीं दी जा सकती है – पुनर्विलोकन से संबंधित विधि की व्याख्या की गई।

Govind Khandelwal v. Suresh Khandelwal and ors.

Order dated 16.04.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Review Petition No. 255 of 2024, reported in 2024 (4) MPLJ 244 (DB)

Relevant extracts from the order:

It is also settled law that in exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in a matter.

After discussing a series of decisions on review jurisdiction in ***Kamlesh Verma v. Mayawati and ors, (2013) 8 SCC 320,*** the Apex Court observed that review proceedings have to be strictly confined to the scope and ambit of Order XLVII Rule 1, CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarized in the captioned case as below:

> "Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
> When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in ***Chajju Ram v. Neki Ram, AIR 1922 PC 112*** and approved by this Court in ***Moran Mar Basselios Catholicos. v. Most Rev. Mar Poulose Athanasius, 1955 SCR 520*** to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in ***Union of India v. Sandur Manganese & Iron Ores Ltd. & ors., (2013) 8 SCC 337***.

When the review will not be maintainable: -

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

In our considered opinion, none of the grounds available for successfully seeking review as recognized by Order 47 Rule 1 CPC are made out in the present case. The Apex Court in the case of ***S. Bhagirathi Amaal v. Palani Roman, (2009) 10 SCC 464*** has held that in order to seek review, it has to be demonstrated that the order suffers from an error contemplated under Order 47 Rule 1 CPC which is apparent on the face of record and not an error which is to be fished out and searched. A decision or order cannot be reviewed merely because it is erroneous.

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2. CIVIL PROCEDURE CODE, 1908 – Section 152 and Order 2 Rule 2 Correction in Judgment/Order – Suit filed for partition and possession by mentioning khasra No. 265 whereas actual khasra No. was 165 – Khasra No. 265 was wrongly mentioned – There was no dispute with regard to identity of the land/property – Documents produced in the suit also mentions khasra No.165 – Correction of khasra No. can be effected u/s 152 CPC – Impugned order of Trial Court rejecting application u/s 152 CPC set aside – Revision allowed.

सिविल प्रक्रिया संहिता, 1908 – धारा 152 एवं आदेश 2 नियम 2 निर्णय/आदेश में सुधार – खसरा क्रमांक 265 दर्शाते हुए विभाजन और आधिपत्य हेतु वाद दायर किया गया जबकि वास्तविक खसरा क्रमांक 165 था – खसरा क्रमांक 265 त्रुटिपूर्वक दर्शाया गया – भूमि/संपत्ति की पहचान के संबंध में कोई विवाद नहीं था – वाद में प्रस्तुत किये गये दस्तावेज भी खसरा क्रमांक 165 का उल्लेख करते हैं – सिविल प्रक्रिया संहिता की धारा 152 के अंतर्गत खसरा क्रमांक में सुधार किया जा सकता है – विचारण न्यायालय द्वारा सिविल प्रक्रिया संहिता की धारा 152 के अंतर्गत प्रस्तुत आवेदन निरस्त करने का आक्षेपित आदेश अपास्त किया गया – पुनरीक्षण याचिका स्वीकार की गई ।

Butto Bai and anr. v. Dumri and ors.

Order dated 07.02.2024 passed by the High Court of Madhya Pradesh in Civil Revision No. 256 of 2023, reported in ILR 2024 MP 1888

Relevant extracts from the order:

In the present case, the suit was filed for partition and possession by the applicants/plaintiffs before the trial Court by mentioning the Khasra No.265 area 0.30 hectares. It is stated that Khasra No.265 was wrongly mentioned, as the actual Khasra number is 165. From perusal of record of the Trial Court, document Exhibit-P/3 reflects that Khasra No.165 is mentioned. There is no mention of Khasra No.265. According to Exhibit-P/4 which is P-II Khasra Form there is also mention of Khasra No.165 but no mention of Khasra No.265. Further, from perusal of paragraph 18 of judgment of trial Court thereis mention of Khasra No.165. In paragraph 28 also there is mention that plaintiffs Butto Bai, Pyari Bai and son-Dumari are entitled in equal shares of Khasra No.188, 165 and 198. The first appellate Court also mentioned in paragraph 08 that the land being Khasra No.165 in place of 265. So, considering the documents it is clear that Khasra No. 265 area 0.30 has wrongly been mentioned in place of Khasra No. 165. Therefore, in view

of above discussion it is clear that there is no dispute of identity of the disputed land. As per case laws referred to above the Apex Court has held that it can be rectified under the provision of section 152 or even in under section 151 CPC, if there is no dispute with regard to identity of disputed land.

Thus, in the considered opinion of this Court in present case due to mistake occurred on account of accidental slip it has been mentioned in plaint as Khasra No. 265 in place of Khasra No. 165 and the same was not even taken note of by the defendants while contesting the suit. In fact, there was no dispute with regard to identity of land. It has been established in various decisions referred to above that if there is not dispute of identity of land, then correction of Khasra number can be effected. Therefore, it is required that necessary correction be made in the plaint, judgments and decrees of the Trial Court as also of lower appellate Court under section 152 of CPC.

Consequently, the trial Court committed error of law in not allowing the application of applicants under section 152 of CPC. Hence, the impugned order of the Trial Court dated 11.03.2023 is set aside. Let necessary amendment be carried in the plaint and judgements & decrees of both the courts below.

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

Proper/Necessary party – Agreement to sale – Mere agreement to sale does not confer any title on the person in whose favour the agreement has been executed – It gives right only to file the suit for specific performance and any other relief for which he is entitled – On the basis of agreement to sale, respondent has not acquired any right in the suit property – The suit was pending between the co-owners of the property for partition and separate possession and therefore, in that suit respondent cannot be said to be necessary or proper party.

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 10

उचित/आवश्यक पक्षकार – विक्रय अनुबंध – मात्र विक्रय अनुबन्ध उस व्यक्ति को कोई स्वत्व प्रदत्त नहीं करता जिसके पक्ष में अनुबंध निष्पादित किया गया है – यह केवल विनिर्दिष्ट अनुपालन का वाद एवं कोई अन्य अनुतोष, जिसके लिए वह हकदार है, के लिए वाद प्रस्तुत करने का अधिकार प्रदान करता है – विक्रय अनुबंध के आधार पर प्रत्यर्थी ने वाद सम्पत्ति में कोई अधिकार अर्जित नहीं किया है – सह स्वामियों के मध्य विभाजन एवं पृथक आधिपत्य हेतु वाद लंबित था अतः ऐसे वाद में प्रत्यर्थी को आवश्यक अथवा उचित पक्षकार नहीं कहा जा सकता।

Laxman More (Dead) through LRs. v. Smt. Rani and ors. Order dated 05.02.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 2350 of 2019, reported in ILR 2024 MP 1569

Relevant extracts from the order:

As has been admitted by the learned counsel for the respondent 13 no suit for specific performance and for consequential relief(s) on the basis of said two unregistered agreements or on the basis of another unregistered agreement alleged to have been executed on 10.02.2021 by Smt. Rani, Rahul, Rohit, Krishna and Sachin in favour of respondent 13, has been filed so far. It is well settled that mere agreement of sale does not confer any title on the person in whose favour the agreement has been executed and it gives right only for filing the suit for specific performance and for any other relief for which he is entitled.

In the case of ***Rajbala Ghiloria v. Ashok Kumar Sethi and anr., 2021 SCC OnLine Del 4801*** it has been held as under:-

> "Accordingly, given the fact that the Agreement to Sell was entered into by the Petitioner herein on 21st March, 2018, post the judgment in Suraj Lamp (Supra), where in the Supreme Court clearly held that an unregistered Agreement to Sell cannot be the basis of claiming ownership, the said Agreement to Sell cannot, in law, be a ground or the basis forthe impleadment of the Petitioner in a partition suit.
>
> A suit for partition has to be adjudicated between the co-owners of the property. Since the rights of the Petitioner, if any, are yet to be determined in the suit for specific performance which is pending before the Trial Court, the petitioner cannot claim a right to be impleaded, in the suit for partition. Thus, the Trial Court is not at fault, in holding that the suit for partition would have to be adjudicated only between the co-owners."

In view of the aforesaid, as the respondent 13 has not acquired any right in the suit property on the basis of the said agreements, therefore, in the present suit filed by plaintiff/petitioners for partition and separate possession, the respondent 13 cannot be said to be necessary or proper party. However, the respondent 13 is at liberty to file the suit for specific performance and consequential relief(s), if any, subject to law of limitation or to avail any other remedy available under the law.

Resultantly, the miscellaneous petition succeeds and is allowed and impugned order being not sustainable is hereby set aside and the application of the respondent 13 filed under Order 1 Rule 10 of CPC stands dismissed.

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4. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11 and Order 23 Rule 1(3)

(i) Withdrawal of suit – Application under Order 7 Rule 11 was pending – Plaintiff sought withdrawal of the suit with liberty to file a fresh suit – If it is found that suit is likely to fail on account of some formal defect or there are sufficient grounds for allowing plaintiff to institute a fresh suit, power conferred under Order 23 Rule 1(3) CPC can be exercised by the court even if application under Order 7 Rule 11 CPC is pending.

(ii) Rejection of plaint – Stage – Application under Order 7 Rule 11 CPC can be decided at any stage of the suit even prior to registration of plaint or even after issuing summons to defendant and at any time before conclusion of trial.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11 एवं आदेश 23 नियम 1(3)

(i) वाद का वापिस लिया जाना – आदेश 7 नियम 11 के अंतर्गत आवेदन लंबित था – वादी नया वाद दायर करने की स्वतंत्रता के साथ वाद वापिस लेना चाहता है – यदि यह पाया जाता है कि किसी औपचारिक दोष के कारण वाद के असफल होने की संभावना है या वादी को नया वाद संस्थित करने की मंजूरी देने के लिये पर्याप्त आधार हैं, तब सिविल प्रक्रिया संहिता के आदेश 23 नियम 1(3) के अंतर्गत प्रदत्त शक्ति का प्रयोग न्यायालय द्वारा किया जा सकता है भले ही सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अंतर्गत आवेदन लंबित हो।

(ii) वाद नामंजूर किया जाना – प्रक्रम – सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अंतर्गत आवेदन वाद के किसी भी प्रक्रम पर विनिश्चित किया जा सकता है, वादपत्र के रजिस्ट्रीकरण के पूर्व भी या प्रतिवादीगण को समन जारी करने के पश्चात भी और विचारण के समापन से पूर्व किसी भी समय।

Bhuribai (Smt.) v. Ramratan

Order dated 21.05.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 3556 of 2022, reported in ILR 2024 MP 1814

Relevant extracts from the order:

In ***Saleem Bhai and ors. v. State of Maharashtra, (2003) 1 SCC 557*** it was held by the Apex Court that an application under Order VII Rule 11 CPC can be decided at any stage of the suit and that while deciding the same it is the averments as contained in the plaint which would be germane. The power can be exercised evenprior to registration of the plaint or even after issuing summons to the

defendants and at any time before conclusion of the trial. However, it was not held that if an application under Order VII Rule 11 CPC is filed then the Court ceases to have jurisdiction to decide any other application till decision of that application. In ***Rajpal Singh v. Sunderlal, WP No. 14349 of 2014*** decided on ***30.03.2016,*** it was held by this Court that if an application under Order VII Rule 11 CPC is pending then application for temporary injunction ought not to be considered prior to decision of that application since the same goes to the very root of maintainability of the proceedings. This judgment was in respect of decision of an application for issuance of temporary injunction and it was held that firstly maintainability of the suit ought to be considered since *prima facie* case also includes *prima facie* maintainability of the suit. However, it was not held that if application under Order VII Rule 11 CPC is filed then application for withdrawal of the suit cannot be considered.

No provision or judgment has been shown by the learned counsel for the defendant to substantiate his contention that if an application under Order VII Rule 11 CPC is preferred then an application such as one under Order XXIII Rule 1(3) CPC cannot be considered and decided till decision of application under Order VII Rule 11 CPC and the suit cannot be permitted to be withdrawn with liberty to file a fresh suit. If upon filing of the suit any objection is taken by the defendant and it is submitted that the plaint ought to be rejected and the plaintiff then seeks withdrawal of the suit with liberty to file a fresh suit even in view of the objection raised by the defendant, I do not see any prohibition contained any where in the Code of Civil Procedure for the plaintiff to adopt such acourse. If plaintiff wishes to withdraw the suit and rectify the mistakes therein and institute a fresh duly constituted suit then there is no reason why he cannot be permitted to do so and instead of permitting withdrawal of the suit, the plaint should be rejected.

The application under Order XXIII Rule 1(3) CPC has to be considered only in the light of provisions contained therein and if it is found that the suit is likely to fail on account of some formal defect or there are sufficient grounds for allowing him to institute a fresh suit the power there under can very well be exercised by the Court which power would not be arrested or denuded from the Court merely because of pendency of an application under Order VII Rule 11 CPC. It would be totally permissible for the trial Court to consider the application for withdrawal filed by the plaintiff within the four corners of the provisions of Order XXIII Rule 1(3) of CPC.

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5. CRIMINAL PROCEDURE CODE, 1973 – Section 125(4)
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 144
FAMILY COURTS ACT, 1984 – Section 14

Maintenance – Adultery – Proof – Adultery u/s 125(4) CrPC has to be continuous and liability to prove the same is upon the husband – Wife can be denied maintenance only when she is actually 'living in adultery' at or around the time of filing of application u/s 125 CrPC – No specific pleading of petitioner/husband in respect of adulterous life of the respondent/wife –Evidence adduced by the petitioner in this respect is also lacking – Only on the basis of photographs filed by petititioner, it cannot be assumed that respondent/wife is living in adultery – Respondent cannot be barred from claiming maintenance on the ground of adultery u/s 125(4) CrPC.

दण्ड प्रक्रिया संहिता, 1973 – धारा 125(4)
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 144
कुटुम्ब न्यायालय अधिनियम, 1984 – धारा 14
भरणपोषण – जारकर्म – सबूत – दण्ड प्रक्रिया संहिता की धारा 125(4) के अंतर्गत जारकर्म निरंतर होना चाहिए और इसे साबित करने का भार पति पर है – पत्नी को भरणपोषण से केवल तब वंचित किया जा सकता है जब वह दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत प्रस्तुत आवेदन के समय या उसके आसपास वास्तव में 'जारता का जीवन व्यतीत कर रही हो' – प्रत्यर्थी/पत्नि के जारता के जीवन के संबंध में याचिकाकर्ता/पति का कोई विनिर्दिष्ट अभिवचन नहीं है – पति द्वारा इस संबंध में प्रस्तुत साक्ष्य में भी कमी है – केवल याचिकाकर्ता द्वारा प्रस्तुत फोटोग्राफ के आधार पर यह अवधारणा नहीं की जा सकती कि पत्नी जारता का जीवन व्यतीत कर रही है – प्रत्यर्थी को दण्ड प्रक्रिया संहिता की धारा 125(4) के अंतर्गत जारता के आधार पर भरणपोषण का दावा करने से रोका नहीं जा सकता।

Ravi Kiran Arigela v. D. Asha

Order dated 12.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 8 of 2023, reported in ILR 2024 MP 1697

Relevant extracts from the order:

According to explanation (b) of sub-section (1) of Section 125 of CrPC, term "wife" includes a woman, who has been divorced by her husband and has not remarried. From the analysis of the provision and case laws discussed above, it is

apparent that the adultery u/s 125(4) of CrPC has to be continuous and the liability to prove the same is upon the husband in order to debar wife from getting maintenance. The wife can be debarred from getting maintenance on the ground of "adultery" only whenshe is actually "living in adultery" at or around the time of application for maintenance u/s 125 of CrPC.

In the instant case, though the petitioner/husband pleaded that the respondent/wife used to have obscene talk with a man named Chetan Pathak at night hours on her mobile phone. She was indulged in adultery with Chetan Pathak and she wanted to reside with him. At current as well, she is residing with him at Bhopal, but the petitioner Ravi Kiran (DW-1) has not stated anything in his statement that the respondent is living in adulterous life with Chetan Pathak continuously. Petitioner even could not dare to ask about the same in the cross-examination of the respondent/wife (PW-1). It is established law that mere pleading cannot take place of proof without evidence. Therefore, in absence of evidence, it is not proved that the respondent/wife is living in adultery with Chetan Pathak.

On perusal of paragraph 21 of the impugned judgment, it appears that the respondent has stated that the photographs are not real and on digital platform by means of Photoshop and other means, photographs can be edited. It has not been explained by the petitioner that by which mobile phone, by whom and when the photographs were clicked. Thereafter, evenon being required by the Learned Trial Court to furnish a certificate u/s 65 B of the Evidence Act, the petitioner failed to do so. It appears from the exhibits photograph (Ex. D-2 – D-15) that the photographs were sent by Rashmi Pathak but the petitioner has not examined Rashmi Pathak in his support. Therefore, on the basis of aforementioned photographs, it cannot be concluded that the respondent is living in adultery with Chetan Pathak.

Though, on considering section 14 of Act, 1984, to prove aforementioned photographs, compliance of certification as required u/s 65-B of the Evidence Act is not mandatory but in the present case, there is no specific pleading of the petitioner in respect of adulterous life of the respondent as well as there is lack of evidence adduced by the petitioner in this respect. Only on the basis of aforementioned photographs, it cannot be assumed that the respondent is living in adultery with Chetan Pathak. Therefore, the respondent/wife cannot be barred from claiming maintenance on the ground of adultery as provided u/s 125(4) of CrPC.

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6. CRIMINAL PROCEDURE CODE, 1973 – Sections 209 and 227
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 232 and 250

(i) Framing of charge – Relevant considerations – Strong suspicion is sufficient in order to frame a charge and should be based on the material brought on record by the prosecution – It should not be based on supposition, suspicions and conjectures.

(ii) Application for discharge – Duty of Court – At the stage of deciding such application, defence case or material, if produced at all by the accused, cannot be looked into – Only the probative value of the material has to be looked into and the Court is not expected to go deep into the matter to hold a mini trial – Court has to proceed with an assumption that materials brought on record by prosecution are true.

(iii) Criminal conspiracy – Ingredients – *Sine qua non* for offence of criminal conspiracy is an agreement to commit offence – Conspiracy is hatched in privacy and not in secrecy – It would rarely be possible to establish it by direct evidence – To constitute it, there must be accusation of meeting of minds of two or more persons for doing illegal act or an act which is not illegal by itself, by illegal means.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 209 एवं 227
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 232 एवं 250

(i) आरोप की विरचना – सुसंगत विचारणीय बिंदु – आरोप विरचित करने के लिए मजबूत संदेह अभियोजन द्वारा अभिलेख पर लाई गई सामग्री पर आधारित होना चाहिए – यह अनुमान, संदेह और अटकलों पर आधारित नहीं होना चाहिए।

(ii) उन्मोचन के लिए आवेदन – न्यायालय का कर्तव्य – ऐसे आवेदन के निराकरण के समय अभियुक्त द्वारा प्रस्तुत प्रतिरक्षा या सामग्री, यदि कोई प्रस्तुत की जाती है तो उसे बिल्कुल भी नहीं देखा जा सकता – केवल अभियोजन सामग्री के संभावित मूल्य पर विचार किया जाना अपेक्षित है, न्यायालय से यह अपेक्षा नहीं की जाती कि वह मामले की गहराई में जाकर लघु विचारण करे – न्यायालय को यह उपधारणा करते हुए आगे बढ़ना होगा कि अभियोजन द्वारा अभिलेख पर लाई गई सामग्री सत्य है।

(iii) आपराधिक षड़यंत्र – आवश्यक तत्व – अपराध कारित करने के लिये सहमत होना आपराधिक षड़यंत्र के अपराध के गठन के लिए अनिवार्य शर्त

है – षड़यंत्र निजता में रचा जाता है, न कि गोपनीयता में – इसे प्रत्यक्ष साक्ष्य के माध्यम से स्थापित करना शायद ही कभी संभव होगा – इसे गठित करने के लिए, अवैध कार्य करने अथवा ऐसा कार्य जो अवैध नहीं है, अवैध साधनों द्वारा किये जाने के लिए, दो या दो से अधिक व्यक्तियों के मस्तिष्कों के मिलन का आक्षेप होना चाहिए ।

Ram Prakash Chadha v. The State of Uttar Pradesh

Judgment dated 15.07.2024 passed by the Supreme Court in Criminal Appeal No. 2395 of 2023, reported in 2024 (3) Crimes 210 (SC)

Relevant extracts from the judgment:

We think it absolutely appropriate to refer to a decision of the Madhya Pradesh High Court in ***Kaushalya Devi v. State of M.P., 2003 SCC Online MP 672***. It was held in the said case that if there is no legal evidence, then framing of charge would be groundless and compelling the accused to face the trial is contrary to the procedure offending Article 21 of the Constitution of India. While agreeing with the view, we make it clear that the expression 'legal evidence' has to be construed only as evidence disclosing *prima facie* case, 'the record of the case and the documents submitted therewith'.

The stage of section 227 CrPC is equally crucial and determinative to both the prosecution and the accused, we will dilate the issue further. In this context, certain other aspects also require consideration. It cannot be said that Section 227 CrPC is couched in negative terminology without a purpose. Charge sheet is a misnomer for the final report filed under Section 173 (2), CrPC, which is not a negative report and one that carries an accusation against the accused concerned of having committed the offence(s) mentioned therein.

In cases, where it appears that the said offence(s) is one triable exclusively by the Court of Session, the Magistrate shall have to commit the case to the Court of Session concerned following the prescribed procedures under CrPC In such cases, though it carries an accusation as aforementioned still legislature thought it appropriate to provide an inviolable right as a precious safeguard for the accused, a pre-battle protection under Section 227 CrPC Though, this provision is couched in negative it obligated the court concerned to unfailingly consider the record of the case and document submitted therewith and also to hear the submissions of the accused and the prosecution in that behalf to arrive at a conclusion as to whether or

not sufficient ground for proceeding against the accused is available thereunder. Certainly, if the answer of such consideration is in the negative, the court is bound to discharge the accused and to record reasons therefor. The corollary is that the question of framing the charge would arise only in a case where the court upon such exercise satisfies itself about the *prima facie* case revealing from "the record of the case and the documents submitted therewith" against the accused concerned. In short, it can be said in that view of the matter that the intention embedded is to ensure that an accused will be made to stand the ordeal of trial only if 'the record of the case and the documents submitted therewith' discloses ground for proceeding against him. When that be so, in a case where an application is filed for discharge under Section 227 CrPC it is an irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf. To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court. We are not oblivious of the fact that normally, the Court is to record his reasons only for discharging an accused at the stage of Section 227 CrPC However, when an application for discharge is filed under Section 227 CrPC the Court concerned is bound to disclose the reason(s), though, not in detail, for finding sufficient ground for rejecting the application or in other words, for finding prima facie case, as it will enable the superior Court to examine the challenge against the order of rejection.

This Court in ***R. Venkatakrishnan v. CBI, (2009) 11 SCC 737***, held that criminal conspiracy, in terms of Section 120B IPC is an independent offence and its ingredients are:

(i) an agreement between two or more persons;
(ii) the agreement must relate to doing or causing to be done either –
(a) an illegal act;
(b) an act which is not illegal in itself but is also done by illegal means.

An important facet of law of conspiracy is that apart from it being a distinct offence, all conspirators are liable for the acts of each other of the crime or crimes which have been committed as a result of conspiracy. A careful scanning of the provisions under Sections 120A and 120B, IPC, would reveal that the *sine qua non*

for an offence of criminal conspiracy is an agreement to commit an offence. It consists of agreement between two or more persons to commit the criminal offence, irrespective of the further consideration whether or not the offence is actually committed as the very fact of conspiracy constitutes the offence [See the decision in ***K.S. Narayanan & ors. v. G. Gopinathan, 1982 CriLJ 1611 (Madras)***].

There can be no doubt that conspiracy is hatched in privacy and not in secrecy, and such it would rarely be possible to establish conspiracy by direct evidence. A few bits here and a few bits there, on which the prosecution may rely, are not sufficient to connect an accused with the commission of the crime of conspiracy. To constitute even an accusation of criminal conspiracy, first and foremost, there must at least be an accusation of meeting of minds of two or more persons for doing an illegal act or an act, which is not illegal in itself, by illegal means.

In ***Ajay Aggarwal v. Union of India & ors., (1993) 3 SCC 609*** this Court characterized the offence of criminal conspiracy as an agreement between two or more persons to do an illegal act or a legal through illegal means. Furthermore, it was held that commission of the offence would be complete as soon as, there is consensus ad idem and it would be immaterial whether or not the offence is actually committed. It is also held therein that necessarily there must be agreement between the conspirators on the design or object of the conspiracy. As held in ***R. Venkatakrishnan case*** (supra), the quintessential ingredient to attract the offence of criminal conspiracy is agreement between two or more persons.

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7. CRIMINAL PROCEDURE CODE, 1973 – Sections 216, 227 and 397(2) BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Sections 239, 250 and 438

Revision – Maintainability – Application u/s 216 CrPC filed seeking alteration of charge by one of the accused after failing in first round of litigation to get himself discharged u/s 227 CrPC – Trial Court rejected the said application – Accused filed revision – Order rejecting application for alteration/modification of charge would be an interlocutory order and therefore, in view of the express bar created by sub-section (2) of section 397 CrPC, revision against the said order is not maintainable.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 216, 227 एवं 397(2)
भारतीय नागरिक सुरक्षा संहिता, 2023 – धाराएं 239, 250 एवं 438
पुनरीक्षण – पोषणीयता – द.प्र.सं. की धारा 227 के अंतर्गत स्वयं को उन्मोचित किए जाने हेतु पहले दौर की कार्यवाही में असफल होने के बाद एक अभियुक्त ने धारा 216 द.प्र.सं. के अंतर्गत आवेदन प्रस्तुत कर आरोप में परिवर्तन करने की मांग की – विचारण न्यायालय ने उक्त आवेदन को निरस्त कर दिया – अभियुक्त ने पुनरीक्षण याचिका दायर की – आरोप में परिवर्तन/संशोधन के लिए प्रस्तुत आवेदन को निरस्त करने का आदेश एक अंतवर्ती आदेश होगा अतः धारा 397 द.प्र.सं. की उप–धारा (2) द्वारा सृजित स्पष्ट प्रतिबंध को दृष्टिगत रखते हुए ऐसे आदेश के विरूद्ध पुनरीक्षण याचिका पोषणीय नहीं है।

K. Ravi v. State of Tamil Nadu and anr.

Judgment dated 29.08.2024 passed by the Supreme Court in Criminal Appeal No. 3598 of 2024, reported in AIR 2024 SC 4074

Relevant extracts from the judgment:

The Respondent No.2 after having failed to get himself discharged from the Sessions Court as well as from the High Court in the first round of litigation, filed another vexatious application before the Sessions Court under Section 216 of CrPC, after the framing of charge by the Sessions Court, for modification of the charge. The Sessions Court having dismissed the said application, the Respondent No.2 preferred the Revisional Application before the High Court under Section 397 and 401 of CrPC The High Court in its unusual impugned order, discharged the Respondent No.2 (A-2) from the charges levelled against him, though his earlier application seeking discharge was already dismissed by the Sessions Court and confirmed by the High Court and that position had attained finality. The High Court utterly failed to realise that the order impugned against it was the order passed by the Sessions Court rejecting the application of the Respondent No.2 seeking modification of the charge framed against him under Section 216 of CrPC, and the said order was an order of interlocutory in nature.

The scope of interference and exercise of jurisdiction under section 397 CrPC is extremely limited. Apart from the fact that subsection 2 of section 397 prohibits the Court from exercising the powers of Revision, even the powers under sub-section 1 thereof should be exercised very sparingly and only where the decision under challenge is grossly erroneous, or there is non-compliance of the provisions of law, or the finding recorded by the trial court is based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely by framing the charge. The Court exercising Revisional Jurisdiction under Section 397

should be extremely circumspect in interfering with the order framing the charge, and could not have interfered with the order passed by the Trial Court dismissing the application for modification of the charge under Section 216 CrPC, which order otherwise, would fall in the category of an interlocutory order.

It is trite to say that Section 216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alternation or addition to a charge is made, the court has to follow the procedure as contained therein. Section 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the Court, more particularly when his application seeking discharge under Section 227 has already been dismissed. Unfortunately, such applications are being filed in the Trial Courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings. Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher courts, and the whole criminal trial would get derailed. Suffice it to say that such practice is highly deplorable, and if followed, should be dealt with sternly by the courts.

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8. CRIMINAL PROCEDURE CODE, 1973 – Section 319
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 358
EVIDENCE ACT, 1872 – Section 132
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 137
CONSTITUTION OF INDIA – Article 20(3)
WORD AND PHRASES:

(i) Summoning of witness as additional accused – Whether proviso to Section 132 of the Evidence Act puts an absolute embargo on the Trial Court to initiate process u/s 319 CrPC against such witness? Held, No – Such person can be summoned as an additional accused if other material showing his complicity in offence, is available on record.

(ii) Statutory immunity against self incrimination to a witness – Scope of – A witness cannot be subjected to prosecution on the basis of his own statement – But if there is other substantial evidence or material against him proving his *prima facie* involvement in the offence, such witness can be summoned as an additional witness.

(iii) Maxim *nemo tenetur prodere seipsum*, meaning of – Explained.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 358
साक्ष्य अधिनियम, 1872 – धारा 132
भारतीय साक्ष्य अधिनियम, 2023 – धारा 137
भारत का संविधान – अनुच्छेद 20(3)
शब्द एवं वाक्यांशः

(i) साक्षी को अतिरिक्त अभियुक्त के रूप में बुलाना – क्या साक्ष्य अधिनियम की धारा 132 का परंतुक ऐसे साक्षी के विरूद्ध दं.प्र.सं. की धारा 319 के अंतर्गत कार्यवाही आरंभ करने के लिए विचारण न्यायालय पर पूर्ण प्रतिबंध लगाता है? अभिनिर्धारित, नहीं – ऐसे व्यक्ति को अतिरिक्त अभियुक्त के रूप में बुलाया जा सकता है यदि अपराध में उसकी संलिप्तता दर्शित करने वाली अन्य सामग्री अभिलेख पर उपलब्ध हो।

(ii) साक्षी को आत्मदोषी ठहराने के विरूद्ध विधिक प्रतिरक्षा – उसका विस्तार – एक साक्षी को उसके स्वयं के कथन के आधार पर अभियोजित नहीं किया जा सकता – किंतु यदि उसके विरूद्ध अपराध में उसकी प्रथम दृष्टया संलिप्तता साबित करने के लिए अन्य सारवान साक्ष्य या सामग्री है, तो ऐसे साक्षी को अतिरिक्त अभियुक्त के रूप में बुलाया जा सकता है।

(iii) मैक्सिम ***nemo tenetur prodere seipsum*** का अर्थ – समझाया गया।

Raghuveer Sharan v. District Sahakari Krishi Gramin Vikas Bank and anr.

Judgment dated 10.09.2024 passed by the Supreme Court in Criminal Appeal No. 2764 of 2024, reported in AIR 2024 SC 4390

Relevant extracts from the judgment:

There cannot be an absolute embargo on the Trial Court to initiate process under Section 319 CrPC, merely because a person, who though appears to be complicit has deposed as a witness. The finding to invoke Section 319 CrPC, must be based on the evidence that has come up during the course of Trial. There must be additional, cogent material before the Trial Court apart from the statement of the witness.

An order for initiation of process under Section 319 CrPC against a witness, who has deposed in the trial and has tendered evidence incriminating himself, would be tested on the anvil that whether only such incriminating statement has formed the basis of the order under Section 319 CrPC At the same time, mere reference to such statement would not vitiate the order. The test would be as to whether, even if the statement of witness is removed from consideration, whether on the basis of other incriminating material, the Court could have proceeded under Section 319 CrPC.

In the case at hand, the appellant has been summoned as an additional accused under Section 319 of the CrPC not only on the basis of his pre-summoning statement but on the basis of the statement of PW-1/Narendra Singh Parmar who was examined as a witness on 31.03.2022. Had the appellant been proposed as an additional accused on the basis of his statement, he would have been summoned immediately after his pre-summoning statement was recorded on 19.03.2016. Thus, the present is a case where the appellant has been summoned as an additional accused on the basis of the statement of PW1/Narendra Singh Parmar.

The proviso to Section 132 offers statutory immunity against self incrimination providing that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceedings except a prosecution for giving false evidence by such answer. Thus, the only protection available is, a witness cannot be subjected to prosecution on the basis of his own statement. It nowhere provides that there is complete and unfettered immunity to a person even if there is other substantial evidence or material against him proving his prima facie involvement. If this complete immunity is read under the proviso to Section 132 of the Act, an influential person with the help of a dishonest Investigating Officer will provide a legal shield to him by examining him as a witness even though his complicity in the offence is writ large on the basis of the material available in the case.

The proviso to Section 132 of the Act is based on the maxim *nemo tenetur prodere seipsum* i.e. no one is bound to criminate himself and to place himself in peril. In this regard the law in England, (with certain exceptions) is that a witness need not answer any question, the tendency of which is to expose the witness, or to feed hand of the witness, to any criminal charge, penalty or forfeiture [See ***Woodroffe & Amir Ali*, *Law of Evidence, Twenty-first edition, 2020 pp.4377 (Syn 132.1) R v. Gopal Dass, (1881) 3 Mad 271***]. The privilege is based on the principle of encouraging all persons to come forward with evidence, by protecting them, as far as possible, from injury or needless annoyance in consequence of so doing (***WM Best, A Treatise on the Principles of Evidence, 4th Edn, H Sweet, London, 1866, p 126***). This absolute privilege, in some cases tended to bring about a failure of justice, for the allowance of the excuse, particularly when the matter to which the question related was in the knowledge solely of the witness, deprived the court of the information which was essential to its arriving at a right decision.

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9. CRIMINAL PROCEDURE CODE, 1973 – Section 329
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 368
INDIAN PENAL CODE, 1860 – Section 302
BHARATIYA NYAYA SANHITA, 2023 – Section 103(1)

Plea of insanity – When can court start inquiry? The Court/Magistrate has to feel that accused is suffering from insanity – Word 'appears' is very significant – Only raising objection of 'unsoundness' will not suffice – If on examining the accused, it does not appear that accused is insane, it is not necessary to hold a further elaborate inquiry.

दण्ड प्रक्रिया संहिता, 1973 – धारा 329
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 368
भारतीय दण्ड संहिता, 1860 – धारा 302
भारतीय न्याय संहिता, 2023 – धारा 103(1)

विकृत चित्तता का बचाव – न्यायालय कब जांच प्रारम्भ कर सकता है? न्यायालय/मजिस्ट्रेट को यह महसूस करना होगा कि अभियुक्त विकृत चित्तता से ग्रसित है – शब्द 'प्रकट होता है' बहुत महत्वपूर्ण है – चित्त विकृति पर केवल प्रश्न उठाना पर्याप्त नहीं होगा – यदि अभियुक्त का परीक्षण करने पर यह प्रकट नहीं होता है कि अभियुक्त विकृत चित्त है, तो आगे विस्तृत जाँच करने की आवश्यकता नहीं है ।

Ashutosh Shrivastava v. State of M.P.

Order dated 11.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 5165 of 2023, reported in ILR 2024 MP 1902

Relevant extracts from the order:

Having gone through the provision of section 329(1) of CrPC, it reveals that when it appears to the Magistrate or Court that such person is of unsound mind and in capable of making his defence then the Magistrate or Court shall proceed in accordance with further procedure. Here, the word "appears" is very significant. Actually, it is the concerned Magistrate or the Trial Court which has to feel that the accused is suffering from unsoundness of mind or insanity. Only by raising objection or contention in this regard cannot be sufficed to satisfy the Trial Court in this regard. In this case, as per the order of the Learned Trial Court, the Learned Trial Court has examined the accused, but does not found anything by which the Court can assume that the petitioner is suffering from insanity or unsoundness of mind. Moreover, the Learned Trial Court has also called a report from Jail Superintendent and in that report, it has been mentioned that neither any medicine

regarding insomnia is used by the petitioner nor the petitioner kept with insane prisoners. it is also mentioned that as per the documentary record furnished by the AGP (for State), the accused has not made any dispute with other prisoners Mohit, Ritesh, Deepak etc. and his behaviour in the jail is as usual. He neither committed any unexpected things nor causing any violence in the jail. Considering that report, the Learned Trial Court has rejected the application of the petitioner.

On this aspect, the following excerpt of the Full Bench judgment of Hon'ble the Apex Court delivered in the case of ***I.B. Shivaswami v. State of Mysore, AIR 1971 SC 1638***, is condign to quote here as under:

> "It is true that the word "appears" in Section 465 imports a lesser degree of probability that when ever a Counsel raises a point before a Sessions Judge he has to straight away hold an elaborate enquiry in to the matter. If on examining the accused it does not appear to him that the accused is insane it is not necessary that he should go further and send for and examine medical witnesses and other relevant evidence. Of course if he has any serious doubt in the matter the Sessions Judge should have a proper enquiry."

The aforesaid proposition of law clearly ordains that only on the instruction of petitioner's advocate, the respective Sessions Judge is not required to start elaborate inquiry and after examining the accused, when it does not appear to him that the accused is "insane", he can reject the application filed under section 329 of CrPC outrightly.

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10. CRIMINAL PROCEDURE CODE, 1973 – Section 357
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 395

(i) Reduction of sentence – Permissibility – Upon conviction for the offence punishable u/s 325 of IPC, the Trial Court sentenced the accused persons to undergo 5 years RI – Appellate Court reduced the custodial sentence from 5 years to 4 years and further directed that if both the accused persons deposit a sum of Rs. 2.5 lakh each as compensation, to be paid to the victim then they are not required to undergo reduced sentence – Whether such order was justified? Held, No – Once the conviction is affirmed and sentence is imposed, the appellate Court cannot further dilute the order of sentence by directing the accused persons to pay compensation – Payment of victim compensation cannot be a ground for reducing the sentence as it is not a punitive measure but only restitutory in nature.

(ii) Victim compensation – Factors to be considered – The sole factor for deciding compensation is the victim's loss or injury as a result of offence and the convict's capacity to pay compensation – It has nothing to do with the sentence that has been imposed – Courts should not conflate sentence with compensation to victims – Both stand on completely different footing and either of them cannot vary the other.

दण्ड प्रक्रिया संहिता, 1973 – धारा 357

भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 395

(i) दण्ड में कमी – अनुज्ञेयता – भा.दं.सं. की धारा 325 के अंतर्गत दंडनीय अपराध के लिए दोषी ठहराए जाने पर, विचारण न्यायालय ने अभियुक्त को 5 वर्ष के सश्रम कारावास की सजा से दण्डित किया – अपीलीय न्यायालय द्वारा कारावासीय दण्डादेश को 5 वर्ष से घटाकर 4 वर्ष किया गया और यह भी निर्देशित किया गया कि यदि प्रत्येक अभियुक्त द्वारा 2.5 लाख रुपये की राशि बतौर क्षतिपूर्ति पीड़ित को भुगतान की जाती है तब उन्हें कम किये गये कारावासीय दण्डादेश भुगतने की आवश्यकता नहीं होगी – क्या ऐसा आदेश उचित था? अभिनिर्धारित नहीं – यदि एक बार दोषसिद्धि की पुष्टि करते हुए दण्डादेश अधिरोपित कर दिया गया हो तब अपीलीय न्यायालय अभियुक्त को क्षतिपूर्ति राशि का भुगतान करने का निर्देश देते हुए दण्डादेश में और कमी नहीं कर सकता – पीड़ित प्रतिकर राशि का भुगतान दण्डादेश को कम करने का आधार नहीं बन सकता क्योंकि यह दण्डात्मक उपाय नहीं है, बल्कि केवल पुर्नस्थापनात्मक प्रकृति का उपाय है।

(ii) पीड़ित प्रतिकर – विचारणीय तत्व – प्रतिकर तय करने का एकमात्र कारक अपराध के परिणामस्वरूप पीड़ित को कारित हुई हानि या क्षति और अपराधी की प्रतिकर अदा करने की क्षमता है – इसका उस दण्ड से कोई लेना-देना नहीं है जो अधिरोपित किया गया है – दण्डादेश को पीड़ित प्रतिकर के साथ न्यायालयों द्वारा एकीकृत नहीं किया जाना चाहिए – दोनों पूर्णतः पृथक स्तर पर रहते हैं और उनमें से कोई भी दूसरे का स्थान नहीं ले सकता।

Rajendra Bhagwanji Umraniya v. State of Gujarat

Order dated 09.05.2024 passed by the Supreme Court in Criminal Appeal No. 2481 of 2024, reported in 2024 (2) Crimes 258 (SC)

Relevant extracts from the order:

The High Court having upheld the conviction for the offence punishable under Section 325 of the IPC so far as the two respondents herein are concerned and having reduced the sentence from five years rigorous imprisonment to four

years rigorous imprisonment could not have further diluted the order of sentence by asking the accused persons to pay compensation. In other words, the High Court having once affirmed the conviction and awarded sentence of four years could not have further in lieu of the same reduced it by ordering compensation. To this extent, we have no hesitation in holding that the High Court fell into error.

The idea of victim compensation is based on the theory of victimology which recognizes the harsh reality that victims are unfortunately the forgotten people in the criminal justice delivery system. Victims are the worst sufferers. Victims family is ruined particularly in cases of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation, etc. Theory of Victimology seeks to redress the same and underscores the importance for criminal justice administration system to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace.

The provision of Section 357 recognizes the aforesaid and is victim centric in nature. It has nothing to do with the convict or the sentence passed. The spotlight is on the victim only. The object of victim compensation is to rehabilitate those who have suffered any loss or injury by the offence which has been committed. Payment of victim compensation cannot be a consideration or a ground for reducing the sentence imposed upon the accused as victim compensation is not a punitive measure and only restitutory in nature and thus, has no bearing with the sentence that has been passed which is punitive in nature.

The words "any loss or injury" used in Section 357 of the CrPC clearly indicates that the sole factor for deciding the compensation to be paid is the victim's loss or injury as a result of the offence, and has nothing to do with the sentence that has been passed. Section 357 of CrPC is intended to reassure the victim that he/she is not forgotten in the criminal justice system. It is a constructive approach to crimes based on the premise that mere punishment of the offender may not give solace to the victim or its family.

As such, when deciding the compensation which is to be paid to a victim, the only factor that the court may take into consideration is the convict's capacity to pay the compensation and not the sentence that has been imposed. In criminal proceedings the courts should not conflate sentence with compensation to victims. Sentences such as imprisonment and/or fine are imposed independently of any victim compensation and thus, the two stands on a completely different footing, either of them cannot vary the other. Where an accused is directed to pay compensation to victims, the same is not meant as punishment or atonement of the

convict but rather as a step towards reparation to the victims who have suffered from the offence committed by the convict.

If payment of compensation becomes a consideration for reducing sentence, then the same will have a catastrophic effect on the criminal justice administration. It will result in criminals with a purse full of money to buy their way out of justice, defeating the very purpose of criminal proceedings.

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11. CRIMINAL PROCEDURE CODE, 1973 – Section 439(2)
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 483(3)

Application for cancellation of bail – Stay of operation of bail order pending application – This power can only be exercised in exceptional circumstances when a very compelling *prima facie* case is presented for cancellation of bail – The Court must record sufficient reasons for coming to a conclusion that the case was an exceptional one and a strong *prima facie* case to stay a bail order is made out – An *ex parte* order for stay of bail should not be granted.

दण्ड प्रक्रिया संहिता, 1973 – धारा 439(2)
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 483(3)
जमानत निरस्त करने के लिए आवेदन – आवेदन के लंबन के दौरान जमानत आदेश के प्रवर्तन का रोका जाना – इस शक्ति का उपयोग केवल अपवादित परिस्थितियों में किया जा सकता है जहाँ जमानत निरस्त करने हेतु बाध्यकारी प्रथम दृष्टया मामला आवेदन में प्रस्तुत किया गया हो – न्यायालय को इस निष्कर्ष पर पहुंचने के लिए पर्याप्त कारण अंकित करना आवश्यक है कि मामला अपवादित था और जमानत आदेश को स्थगित करने के लिए एक मजबूत प्रथम दृष्टया मामला निर्मित होता है – जमानत को स्थगित करने के लिए एकपक्षीय आदेश नहीं दिया जाना चाहिए।

Parvinder Singh Khurana v. Directorate of Enforcement
Judgment dated 23.07.2024 passed by the Supreme Court in Criminal Appeal No. 3059 of 2024, reported in AIR 2024 SC 3572

Relevant extracts from the judgment:

In this case, it is so apparent from the first impugned order dated 23rd June, 2023 that the order granting bail was mechanically stayed without considering merits. The application was kept on 26th June, 2023 at 2.30 p.m. The High Court ought to have heard the parties on the prayer for interim relief on 26th June, 2023 if the main application for cancellation of bail could not be heard. From 23rd June,

2023 till the end of June 2024, the application for cancellation of bail was listed on 28 different dates. As noted earlier, there were three recusals. One recusal was made more than one month after the judgment was reserved. The result of all this is that the ex parte order of stay granted on 23rd June, 2023 without considering the merits of the case, continued to operate for one year. Thus, the order of stay granted without hearing the accused continued to operate for more than one year without hearing the accused on merits. Whether such an approach violated the fundamental right to liberty of the appellant is a serious question we must ask ourselves. Except for stating that this is a sorry state of affairs, we cannot say anything further as we must show restraint. Ultimately, in vacation, this Court granted a stay on 7th June, 2024 to the order of stay, paving the way for the appellant's release on bail in terms of the order dated 17th June, 2023 passed one year ago.

There may be good reasons for three learned Judges to have recued themselves. But surely, the ex parte order staying the order of bail passed without considering merits cannot continue to operate for one year without the appellant getting a hearing on the issue of continuation of the interim order. All Courts have to be sensitive about the most important fundamental right conferred under our Constitution, which is the right to liberty under Article 21.

Our conclusions are as under:

a. In an application made under Section 439(2) of the CrPC or Section 483(3) of the BNSS or other proceedings filed seeking cancellation of bail, the power to grant an interim stay of operation of order to bail can be exercised only in exceptional cases when a very strong prima facie case of the existence of the grounds for cancellation of bail is made out. While granting a stay of an order of grant of bail, the Court must record brief reasons for coming to a conclusion that the case was an exceptional one and a strong prima facie case is made out;

b. As a normal rule, the ex parte stay of the bail order should not be granted. The said power can be exercised only in rare and very exceptional cases where the situation demands the passing of such drastic order. Where such a drastic exparte order of stay is passed, it is the duty of the Court to immediately hear the accused on the prayer for continuation of the interim relief. When the Court exercises the power of granting ex parte ad interim stay of an order granting bail, the Court is duty bound to record reasons why it came to the conclusion that it was a very rare and exceptional case where a drastic order of *ex parte* interim stay was warranted.

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12. EVIDENCE ACT, 1872 – Sections 3, 107 and 108
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2, 110 and 111

(i) Presumption – Date of presumed death – Determination – Surendra Singh Solanki son of plaintiff went missing from 25.07.2010 – Army Court of inquiry also accepted that Surendra Singh was missing since 25.07.2010 and thereafter, he was untraceable – He did not contact his family members since then – He was not under any distress/disability nor was in a situation wherefrom he could not contact his family members – Surendra Singh must have died on 25.07.2010 or soon thereafter – Date of death held to be 25.07.2010.

(ii) Burden of proof – Exact time of death is not a matter of presumption – Onus of proving the death lies on the person who claims a right to establishment of that fact.

साक्ष्य अधिनियम, 1872 – धाराएं 3, 107 एवं 108
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2, 110 एवं 111

(i) उपधारणा – उपधारित मृत्यु की तिथि – अवधारण – वादी का पुत्र सुरेन्द्र सिंह सोलंकी दिनांक 25.07.20210 से लापता हो गया था – सेना के जांच न्यायालय ने भी यह स्वीकार किया कि सुरेन्द्र सिंह दिनांक 25.07.20210 से था और उसके पश्चात् उसका पता नहीं चल सका – उसने दिनांक 25.07.2010 से उसके परिवार के सदस्यों से कोई संपर्क नहीं किया – वह किसी भी तनाव/विकलांगता से ग्रसित नहीं था और न ही वह ऐसी स्थिति में था कि वह अपने परिवार के सदस्यों से संपर्क नहीं कर सकता – सुरेन्द्र सिंह की मृत्यु दिनांक 25.07.20210 को या उसके तुरंत बाद हुई होगी – मृत्यु की तिथि 25.07.20210 अभिनिर्धारित की गई।

(ii) सबूत का भार – मृत्यु का एकदम सही समय उपधारणा का मामला नहीं है – यह साबित करने का भार कि मृत्यु हुई है, उस व्यक्ति पर है जो उस स्थापना के अधिकार का दावा करता है।

Chhaya and anr. v. Public at Large and ors.
Judgment dated 27.05.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 2186 of 2023, reported in ILR 2024 MP 1845

Relevant extracts from the judgment:

Though the provisions of Sections 107 and 108 of the Evidence Act are very clear as to the rising of presumption, but these sections do not throw any light upon the date on which a person can be presumed to be dead. In other words, the doubt

or dilemma that arises in cases of this nature is as to the date of death of the person in respect of whom the presumption is raised. The moment it is established that a person has not been heard of for 7 years, the presumption of death arises. Although the presumption under the Evidence Act is confined only to the factum of death, but is silent in respect of the actual date of death or presumed death.

If the test of preponderance of probability laid down by Section 3 of the Evidence Act is applied, that is to say a fact is said to be proved if the court considers its existence to be so probable that a prudent man ought, under the circumstances of the particular case, to act upon certain supposition that it exists, then it would have to be held that Surendra Singh has died on 25.07.2010 or soon there after. If he was alive after 25.07.2010, there was no reason for him not to contact his immediate family members. It is not the case that Surendra Singh left the house in distress or he was under some disability which prevented him from returning home or even contacting his family members. Nor is it shown that Surendra Singh was missing in such circumstances or could be at such place where from he could not even contact his parents or close family members. Considering the fact that Surendra Singh was not under any distress or disability nor was he in the situation where from he could not contact his family members coupled with the fact that he has not contacted his family members at all since 25.07.2010 and has been declared to be dead by the declaratory decree of the competent court makes me, as man of ordinary prudence believe that Surendra Singh must have died on 25.07.2010 or soon there after.

In the instant case the Court of Inquiry has already accepted that since 25.07.2010 Army person Surendra Singh was missing and thereafter he became untraceable. Therefore, it is impossible to think that a person can be presumed to be dead from the date on which he went missing. Unless a period of seven years expire from the date of his missing, the very occasion for the raising of the presumption does not arise. The parents were in continuous correspondence with the Military Department/Union of India since 2010, then after receiving the letter (Ex. P-7) they have filed a civil suit before the Trial Court. The matter has been under consideration of the government for some time as with holding of the benefits due to the family has been causing a great deal of hardship. Hence the date of filing of the present suit would be considered as date of death of Surendra Singh is contrary to above position of law.

Therefore, the finding given by the Trial Court is not based on any cogent material based upon only an inference drawn for which there was no basis for the

aforesaid reasons. In the present case the finding of the both the courts below are erroneous and unsustainable due to lack of proper appreciation of fact and law as indicated above. Hence the appeal deserves to be allowed.

In the result, this second appeal is partly succeeds and partly allowed and the impugned judgment and decree passed by the Trial Court is modified by declaring the date of death of Surendra Singh son of Goverdhan Singh Solanki as 25.07.2010. The appellants are entitled to all the benefits as per aforesaid decision of the Government of India under the circular letter No. 4-52/86-Pen. Dated 03.03.1989. There spondent No.2 is directed to compute and pay GPF, Gratuity, Family pension and all other retiral benefits to the parents of missing soldier Surendra Singh.

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13. EVIDENCE ACT, 1872 – Section 32(1)
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 26
Dying declaration – Reliability – Before accepting, court must be satisfied that it was rendered voluntarily, consistent, credible and devoid of any tutoring – Once such conclusion is reached, great deal of sanctity is attached to a dying declaration and it can form the sole basis for conviction without any corroboration – Attending doctor stated that deceased was conscious and was in a position to give statement which was proved by the endorsement and signature on the dying declaration – Substance of dying declaration is also borne out by the medical history of the patient – No reason to doubt the correctness of the dying declaration.

साक्ष्य अधिनियम, 1872 – धारा 32(1)
भारतीय साक्ष्य अधिनियम, 2023 – धारा 26
मृत्युकालिक कथन – विश्वसनीयता – इसे स्वीकार करने के पूर्व न्यायालय को इस बात से संतुष्ट होना चाहिए कि वह स्वेच्छा से दिया गया था, वह सुसंगत और विश्वसनीय है और वह किसी भी प्रकार से सिखाया पढ़ाया गया नहीं है – एक बार इस तरह के निष्कर्ष पर पहुंचने के पश्चात् ऐसे मृत्युकालिक कथन से अत्यधिक शुचिता जुड़ जाती है और यह बिना किसी संपुष्टि के दोषसिद्धि का एकमात्र आधार हो सकता है – देखभाल करने वाले चिकित्सक द्वारा कहा गया कि मृतक सचेत था और कथन देने की स्थिति में था जो कि ऐसे मृत्युकालिक कथन पर अंकित पृष्ठांकन और हस्ताक्षर से साबित होता था – मरीज की चिकित्सीय पृष्ठभूमि से भी मृत्युकालिक कथन का सार सामने आया है – मृत्युकालिक कथन की सत्यता पर संदेह करने का कोई आधार नहीं है।

Rajendra v. State of Maharashtra

Judgment dated 15.05.2024 passed by the Supreme Court in Criminal Appeal No. 2281 of 2011, reported in 2024 (2) Crimes 324 (SC)

Relevant extracts from the judgment:

Dr. Kiran Kurkure is PW-13. At the relevant point of time, he was serving as medical officer in the S.R.T.R. Medical College and Hospital at Ambajogai. At about 10:15pm on 22.07.2002, a patient by the name Rekha, wife of Rajendra Kolhe, was brought to the hospital by the police. Though she was having 99% burns, she was conscious. Her statement was recorded at 11:45pm At that time, he was present. He stated that at the time of recording of her statement, the patient Rekha was conscious and was in a position to give statement. He further stated that he had put an endorsement on the statement (Ex. 59). It also bore his endorsement to the effect that the patient was fit for giving statement at present which was signed by him. He stated that the contents of Ex. 59 were correct. He proved his endorsements and the signatures on Ex. 59. He also stated that he had put an endorsement before recording the statement and another endorsement after recording the statement; the endorsement date and time was in his hand writing. Regarding the second endorsement after recording of the statement, he stated that the endorsement was his but by mistake he had mentioned the time as 11:45pm. He also stated that at the time of admission of the patient, he had recorded the history narrated by her. The patient had informed him that her husband had set her on fire. He asserted that he had correctly recorded the history as narrated by the patient. It was in his own hand writing, the contents of which were proved by him (Ex. 117). The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.

Section 32 says that statements made by a person who is dead or who cannot be found etc., be it in written form or oral, are themselves relevant facts. As per situation(1), when the relevant facts relate to the cause of death, such a statement would be relevant whether the person who made it was or was not at the time of making the statement under expectation of death. Such a statement would be

relevant whatever may be the nature of the proceedings in which the cause of his death comes into question. The relevancy is not confined to the cause of his death but also to the circumstances of the transaction which resulted in his death.

As already discussed above, there is no reason for us to doubt the correctness of the dying declaration of the deceased (Ex. 59) which has been proved in evidence. Attending doctor has certified that the deceased was capable of narrating her statement. The substance of the dying declaration is also borne out by the medical history of the patient recorded by the doctor which has also been proved in evidence. Further, though there are inconsistencies and improvements in the version of the prosecution witnesses, there is however convergence with the core of the narration of the deceased made in the dying declaration and the medical history recorded by the doctor. That being the position, the evidence on record, particularly Ex. 59, clearly establishes the guilt of the appellant beyond all reasonable doubt.

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14. EVIDENCE ACT, 1872 – Section 68
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 67
SUCCESSION ACT, 1925 – Section 63(c)
Registered Will – Onus of proof – A registered Will by itself does not mean that the statutory requirements of proving the Will need not be complied with – Propounder of Will must prove its execution by examining one or more attesting witnesses as envisaged in section 63(c) of Succession Act and in section 68 of the Evidence Act.

साक्ष्य अधिनियम, 1872 – धारा 68
भारतीय साक्ष्य अधिनियम, 2023 – धारा 67
उत्तराधिकार अधिनियम, 1925 – धारा 63(ग)
पंजीकृत वसीयत – सबूत का भार – पंजीकृत वसीयत का अर्थ यह नहीं है कि वसीयत को प्रमाणित करने की विधिक अनिवार्यताओं का पालन करना आवश्यक नहीं है – उत्तराधिकार अधिनियम की धारा 63(ग) एवं साक्ष्य अधिनियम की धारा 68 के अनुसार वसीयत के प्रतिपादक को एक या अधिक अनुप्रमाणक साक्षीगण का परीक्षण करके इसके निष्पादन को प्रमाणित करना होगा।

Vijay Singh Yadav and ors. v. Smt. Krishna Yadav and ors.

Order dated 17.02.2024 passed by the High Court of Madhya Pradesh in Writ Petition No. 2301 of 2024, reported in ILR 2024 MP 1492

Relevant extracts from the order:

The Supreme Court in the case of ***Bharpur Singh and ors. v. Shamsher Singh, (2009) 3 SCC 687*** has held that it may be true that Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with. In terms of Section 63(c), Succession Act, 1925 and Section 68, Evidence Act, 1872, the propounder of a Will must prove its execution by examining one or more attesting witnesses and propounder of Will must prove that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free Will.

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15. GUARDIANS AND WARDS ACT, 1890 – Sections 7 and 8

Custody of minor girl child – After the death of wife, father handed over the custody of his minor daughter, who at that time was only 10 days old, to his sister-in-law – After about two years, father claimed custody of his daughter – Guiding principles reiterated – Being the natural guardian and to ensure welfare of the minor child to live with natural family, father allowed to take custody.

संरक्षक और प्रतिपाल्य अधिनियम, 1890 – धाराएं 7 एवं 8

अप्राप्तवय बालिका की अभिरक्षा – पत्नी की मृत्यु के बाद, पिता ने अपनी अप्राप्तवय पुत्री की अभिरक्षा, जो उस समय केवल 10 दिन की थी, अपनी मृत पत्नी की बहिन को सौंप दी – लगभग दो वर्ष बाद, पिता ने अपनी पुत्री की अभिरक्षा का दावा किया – मार्गदर्शी सिद्धांतों को दोहराया गया – नैसर्गिक अभिभावक होने के कारण और नैसर्गिक परिवार के साथ रहकर अप्राप्तवय बालिका के कल्याण को सुनिश्चित करने के लिए, पिता को पुत्री की अभिरक्षा लेने की अनुमति दी गई।

Gautam Kumar Das v. NCT of Delhi and ors.

Judgment dated 20.08.2024 passed by the Supreme Court in Criminal Appeal No. 3447 of 2024, reported in AIR 2024 SC 4029

Relevant extracts from the judgment:

Insofar as the fitness of the appellant is concerned, he is well educated and currently employed as Assistant General Manager (Class A Officer) in Central Warehousing Corporation, Delhi. The appellant's residence is also in Delhi whereas respondent No. 6 to whom the custody of the minor child was handed over to by respondent No. 5 is residing at a remote village in West Bengal. Apart from

taking care of his children, the appellant can very well provide the best of the education facilities to his children. The child Sugandha Das, who lost her mother at tender age, cannot be deprived of the company of her father and natural brother. At the relevant time, the appellant had no other option but to look upon the sisters of his deceased wife to nurture his infant child.

In our opinion, merely because of the unfortunate circumstances faced by the appellant as a result of which, respondent Nos. 5 and 6 were given the temporary custody of the minor child Sugandha Das and only because they looked after her for few years, the same cannot be a ground to deny the custody of the minor child to the appellant, who is her only natural guardian.

It is to be noted that a common thread in all the judgments concerning the custody of minor children is the paramount welfare of the child. As discussed hereinabove, we find that, apart from the appellant being the natural guardian, even in order to ensure the welfare of the minor child, she should live with her natural family. The minor child is of tender age, and she will get adapted to her natural family very well in a short period. We are therefore inclined to allow the appeal.

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16. HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 – Section 19
Interim maintenance – Applicant/widowed daughter-in-law filed an application against the respondent/father-in-law u/s 19 of the Act – Family Court rejected the application for grant of interim maintenance on the ground that *prima facie* she has failed to show that father-in-law was in possession of a coparcenary property – Material available on record *prima facie* showed that deceased husband of the applicant was the owner of certain lands which are in the possession of father-in-law – Held, as per section 19(1)(a) of the Act, where widowed daughter-in-law was unable to maintain herself from the estate of deceased husband, she could move an application under the Act – Order of the Family Court was set aside and considering the social status of the parties, interim maintenance to the tune of Rs. 15,000/- per month was allowed.

हिन्दू दत्तक तथा भरण–पोषण अधिनियम, 1956 – धारा 19
अंतरिम भरण–पोषण – आवेदिका/विधवा बहू ने अधिनियम की धारा 19 के अंतर्गत प्रत्यर्थी/ससुर के विरूद्ध आवेदन प्रस्तुत किया – कुटुम्ब न्यायालय ने इस आधार पर अंतरिम भरण–पोषण दिलाए जाने का आवेदन निरस्त किया कि वह प्रथम दृष्टया यह दर्शित करने में असफल रही है कि ससुर सहदायिकी सम्पत्ति के आधिपत्य में है – अभिलेख पर प्रस्तुत सामग्री से प्रथम दृष्टया यह

दर्शित होता है कि आवेदिका के मृतक पति कुछ भूमि के स्वामी थे जो ससुर के आधिपत्य में है – अभिनिर्धारित, अधिनियम की धारा 19(1)(क) के अनुसार जहां विधवा बहू अपने मृतक पति की सम्पदा से स्वयं का भरण–पोषण करने में असमर्थ होती है वहां वह अधिनियम के अंतर्गत आवेदन प्रस्तुत कर सकती है – कुटुम्ब न्यायालय का आदेश अपास्त किया गया एवं पक्षकारों के सामाजिक स्तर को दृष्टिगत रखते हुए 15,000/– रूपये प्रतिमाह का अंतरिम भरण–पोषण अनुमत किया गया।

Prachi Singh v. Narendra Singh

Order dated 26.07.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 2281 of 2024, reported in 2024 (4) MPLJ 577

Relevant extracts from the order:

In absence of any rebuttal, this Court is left with no other option but to accept the submissions made by counsel for petitioner, which are based on documentary material. The respondent himself had filed an objection before the Tahsildar, Tahsil Raghurajnagar, District Satna to the effect that although the lands mentioned in the objection are recorded in the name of Devendra Singh but the same should not be mutated in the name of petitioner and the younger brother-in-law of petitioner (Devar) has also filed a suit for declaration of title and permanent injunction on the basis of so called Will executed by Late Devendra Singh. Thus, it is clear that respondent is in possession of the property belonging to Late Devendra Singh.

Section 19(1)(a) of Hindu Adoptions and Maintenance Act provides that if a widowed daughter-in-law is unable to maintain herself from the estate of her husband, then she can file an application under Section 19 of Hindu Adoptions and Maintenance Act.

If the complaint in the form of objection made by respondent to the Tahsildar, Tahsil Raghurajnagar, District Satna as well as the Civil Suit filed by Rakesh Singh, another son of respondent, are read jointly, then it is clear that late husband of petitioner was the owner of the aforesaid properties and his name was also mutated in the revenue records. Since she has been deprived of her property, therefore, she is entitled for maintenance under Section 19 of Hindu Adoptions and Maintenance Act.

Considering the totality of the facts and circumstances of the case, this Court is of considered opinion that the trial Court committed a material illegality by rejecting the application for grant of interim maintenance.

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***17. HINDU MARRIAGE ACT, 1955 – Section 13B**

Dissolution of marriage by mutual consent – Parties requested to waive off six months cooling period on the ground that they were staying in different stations for work and are facing difficulty in attending the case – Inconvenience of parties cannot be a ground to waive off the said period – Order rejecting such request upheld.

हिन्दु विवाह अधिनियम, 1955 – धारा 13ख

विवाह का विघटन – पारस्परिक सम्मति से – पक्षकारों ने 6 माह की प्रतीक्षा अवधि का अधित्यजन करने का निवेदन इस आधार पर किया कि वे अलग स्थानों पर कार्य करते हैं एवं प्रकरण में उपस्थित होने में कठिनाई अनुभव कर रहे हैं – पक्षकारों की असुविधा उपरोक्त अवधि के अधित्यजन का आधार नहीं हो सकती – ऐसे निवेदन को अस्वीकार करने के आदेश को यथावत रखा गया।

Sushant Kumar Sahu v. Mohini Sahu

Order dated 30.08.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 4933 of 2024, reported in 2024 (4) MPLJ 610

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18. HINDU MARRIAGE ACT, 1955 – Section 13B(2)

Divorce by mutual consent – Power to waive off statutory period of six months – Joint petition u/s 13B of the Act was filed on 01.11.2022 and statements of both the parties were recorded on the same day – Mediation report filed on 30.11.2022 whereby it was reported that both the parties are not ready to live together – Without waiting for statutory period of six months, court on its own motion fixed the case for second motion on 13.01.2023, recorded statements of parties and on the same day passed the judgment and decree of divorce – Held, there is no provision u/s 13B(2) of the Act for waiving off statutory period of six months – Jurisdiction of Court to pass a decree by mutual consent is a limited jurisdiction – Court has to pass a decree upon satisfaction of requirement of law and after expiry of specified cooling period – Courts are empowered to exercise its discretion when application is moved for waiving the cooling period – However, second motion of recording consent of parties for decree of divorce by mutual consent is important and cannot be waived in routine manner – Appeal allowed and decree of divorce set aside.

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

पारस्परिक सम्मति से विवाह विच्छेद – छह माह की विधिक अवधि के अधित्यजन की शक्ति – अधिनियम की धारा 13(ख) के अंतर्गत संयुक्त आवेदन दिनांक 01.11.2022 को प्रस्तुत किया गया और उसी दिन दोनों पक्षों के कथन अभिलिखत किये गये – दिनांक 30.11.2022 को मध्यस्थता रिपोर्ट प्रस्तुत हुई जिसमें यह बताया गया कि दोनो पक्ष साथ रहने को तैयार नहीं हैं – न्यायालय ने स्वयं से 6 माह की विधिक अवधि का अधित्यजन करते हुए प्रकरण दिनांक 13.01.2023 को द्वितीय समावेदन हेतु नियत किया और उसी दिन पक्षकारों के कथन अभिलिखित किए और विवाह–विच्छेद का निर्णय एवं डिक्री पारित की – अभिनिर्धारित, 6 माह की विधिक अवधि के अधित्यजन के लिये धारा 13ख(2) में कोई उपबंध नहीं है – पारस्परिक सम्मति से विवाह विच्छेद की डिक्री पारित करने की न्यायालय की अधिकारिता सीमित है – न्यायालय को विधि की अपेक्षाओं की संतुष्टि होने पर तथा विनिर्दिष्ट की गई प्रतीक्षा अवधि के अवसान के पश्चात् डिक्री पारित करनी चाहिए – जब विधिक अवधि के अधित्यजन हेतु आवेदन प्रस्तुत किया जाता है तब न्यायालयों को अपने विवेक का प्रयोग करने की शक्ति है – आपसी सम्मति से विवाह विच्छेद की डिक्री के लिये पक्षकारों की सहमति दर्ज करने का दूसरा प्रस्ताव महत्वपूर्ण है और नियमित अनुक्रम में इसकी छूट नहीं दी जानी चाहिए – अपील स्वीकार की गई और विवाह विच्छेद की डिक्री अपास्त की गई।

Archana Kanojiya v. Vijay Kanojiya

Judgment dated 19.03.2024 passed by the High Court of Madhya Pradesh in First Appeal No. 1668 of 2023, reported in ILR 2024 MP 1838 (DB)

Relevant extracts from the judgment:

It is not in dispute in the present case that divorce petition on mutual consent was filed on 01.11.2022 and statements at first motion were recorded on 01.11.2022 itself. The mediation between parties was held on 15.11.2022 and on 30.11.2022 next date for recording consent of parties after waiting (waiving) cooling period was fixed for 13.01.2023. It is apparent that learned Family Court had not waited for statutory period of six months before passing judgment and decree of divorce.

The jurisdiction of court to pass a decree by mutual consent is limited jurisdiction, Court has to pass a decree upon satisfaction of requirement of law and after expiry of specified waiting period. From the analysis of Section 13B, it is apparent that filing of petition with mutual consent does not authorise court to pass a decree for divorce. Under sub-section 2, there is period of waiting to six to

eighteen months. This interregnum was obviously intended to give time and opportunity to parties to reflect on their move and seek advise from relatives and friends. In this transitional period, one of the parties may have a second thought and may change the mind not to proceed with petition. Spouse may not be party to joint motion under sub-section (2) after waiting period and there is nothing in Section which prevents such courts. Section does not provide that if there is change of mind by one party, it should not be accepted. It is not the intention of Legislature that once the petition is filed under Section 13B for dissolution of marriage by decree of divorce by mutual consent, any party to motion may not withdraw consent. Meaning thereby, waiting period is prescribed by Legislature for benefit of litigants to take a second thought in respect of their consent and action of dissolution of marriage by mutual consent. If the court is permitted to waive cooling/waiting statutory period without any application/request of parties, it will amount to deprive parties from exercising his/her option to withdraw consent, therefore, the same cannot be permitted, other wise it will defeat very purpose of incorporating waiting period and provisions itself.

There is no provisions in Section 13B(2) of the Act for waiving of statutory period of six months and earlier Apex Court by exercising power under Article 142 of Constitution of India waived statutory period in appropriate cases. However, in the matter of ***Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746***, it was held by Apex Court that in appropriate caseafter considering and satisfying the requirement of waiving the cooling period,court dealing with matter may accept prayer of parties to waive statutory period under Section 13B(2). The relevant paragraphs of the judgment are infra:

> "Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13B(2), it can do so after considering the following:
> (i) the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself;
> (ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/ Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;
(iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

Needless to say that in conducting such proceedings the court can also use the medium of video conferencing and also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the court, to advance the interest of justice.

After examining proceedings dated 30.11.2022, it appears that before fixing case for recording of statements of parties for second motion within a period of two and half months from the date of presentation of petition, learned Family Court has not recorded satisfaction or any reason for waiving statutory period and straight way fixed the case for 13.01.2023 and passed judgment and decree on same day without completing statutory period as stipulated in Section 13B(2) of the Act.

The family court was not empowered to curtail period of reconsideration of consent by parties because the period has been provided by statute to parties for the purpose of reconsideration of their consent and though period mentioned in Section 13B(2) is not mandatory, but it is right of parties to wait for period provided under the Act before giving final consent and if a party is desirous to withdraw the consent, the same may be withdrawn, therefore, fixing of case at an early date without any application/request of parties by Family Court amounts to violation of provisions of law. The question is answered accordingly.

Consequently, the appeal is allowed. Judgment and decree dated 13.01.2023 are hereby set aside and matter is remanded back to Family Court as period of 18 months from the date of filing petition has not been completed till now and family court may proceed further and pass appropriate order/judgment after recording fresh consent by way of statements of parties for divorce by mutual consent. The parties are directed to remain present before learned Family Court on 08.04.2024.

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19. INDIAN PENAL CODE, 1860 – Sections 120B, 364A and 392
BHARATIYA NYAYA SANHITA, 2023 – Sections 61(2), 140(2) and 309(4)
EVIDENCE ACT, 1872 – Sections 3, 9 and 27
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Sections 2, 7 and 23(2)
CRIMINAL PROCEDURE CODE, 1973 – Section 154
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 173

(i) Appreciation of evidence – Kidnapping of minor for ransom and robbery in furtherance of criminal conspiracy – FIR was lodged on the basis of secret information received by the Sub-Inspector – The said report did not reveal the commission of a cognizable offence – Family members of minor boy did not lodge any report even after his return – The fact that the accused person's name was not mentioned in the special report which the investigation officer sent to his superiors, raises doubts about the actions of IO – Kidnapped minor knew one of the suspects before hand and claims to have identified one of the accused at the time of incident but he did not disclose it to the Police until much later – Once the kidnapped boy comes home, threat perception at hands of offenders, if any would have either been diluted or vanished – Unexplained delay in acting lawfully raises significant questions about the credibility of the overall prosecution case.

(ii) Identification – The child who was abducted had previously encountered one of the accused and claimed to have recognized him at the time of the incident – Prosecution's case was completely undermined by the fact that the identity of the accused was not disclosed to police officials until a significant amount of time had passed – During the deposition in the court, the boy identified the accused for the first time in the dock who were not known to him – This raises questions about dock identification of the accused – Therefore, identification of the accused by witness was not found reliable.

(iii) Recovery of money – Since disclosure statements were not proven as per law, prosecution failed to prove recovery of currency notes at the instance of accused – Father of the minor received back currency notes without an order of court; which was a clear act of

unacceptable misconduct on the part of the investigating officer – Recording disclosure statements and so called recovery of currency notes appeared to be a sham – Recovery appeared doubtful and unworthy of credence – Conviction set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 120ख, 364क एवं 392
भारतीय न्याय संहिता, 2023 – धाराएं 61(2), 140(2) एवं 309(4)
साक्ष्य अधिनियम, 1872 – धाराएं 3, 9 एवं 27
भारतीय साक्ष्य अधिनियम, 2023 – धाराएं 2, 7 एवं 23(2)
दण्ड प्रक्रिया संहिता, 1973 – धारा 154
भारतीय नागरिक सुरक्षा संहिता, 2023 – धारा 173

(i) साक्ष्य का मूल्यांकन – आपराधिक षड़यंत्र के अग्रसरण में फिरौती के लिए नाबालिग का अपहरण और डकैती – उपनिरीक्षक द्वारा प्राप्त गुप्त सूचना के आधार पर प्रथम सूचना रिपोर्ट दर्ज की गई थी – उक्त रिपोर्ट से संज्ञेय अपराध के घटित होने का खुलासा नहीं हुआ – नाबालिग बालक के परिवार के सदस्यों ने उसके घर लौटने के बाद भी रिपोर्ट दर्ज नहीं कराई – यह तथ्य कि अनुसंधानकर्ता अधिकारी द्वारा अपने वरिष्ठों को भेजी गई विशेष रिपोर्ट में आरोपी व्यक्तियों के नाम उल्लिखित नहीं थे, जाँच अधिकारी के कृत्यों पर संदेह उत्पन्न करता है – अपहृत नाबालिग, संदिग्धों में से एक को पहले से जानता था, और घटना के समय एक आरोपी की पहचान करने का दावा करता है परन्तु उसने अधिक समय व्यतीत हो जाने के बाद भी पुलिस को इसका खुलासा नहीं किया – अपहृत बालक के घर आ जाने पर अपराधियों से किसी प्रकार के खतरे की अनुभूति यदि है, तो वह कम हो जाती है या समाप्त हो जाती है – विधिक रूप से कार्य करने में हुआ अस्पष्टीकृत विलम्ब अभियोजन के समग्र मामले की विश्वसनीयता पर महत्वपूर्ण प्रश्न चिन्ह लगाता है।

(ii) पहचान – जिस बालक का अपहरण हुआ था, उसका सामना एक आरोपी से पूर्व में हुआ था और घटना के समय बालक द्वारा आरोपी को पहचानने का दावा किया गया – यह तथ्य कि पुलिस अधिकारियों को काफी समय व्यतीत होने के बाद भी आरोपी की पहचान नहीं बताई गई, अभियोजन के मामले को पूर्णतः दुर्बल करता है – न्यायालय में साक्ष्य के दौरान प्रथम बार बालक द्वारा कटघरे में खड़े आरोपियों को पहचाना गया जिन्हें वह पूर्व से नहीं जानता था – यह न्यायालय में आरोपी की पहचान के संबंध में प्रश्न चिन्ह उत्पन्न करता है – इसलिए साक्षी द्वारा की गई आरोपी की पहचान विश्वसनीय नहीं पाई गई।

(iii) धन की बरामदगी – चूंकि प्रकटीकरण कथन विधि अनुसार प्रमाणित नहीं हुए थे, अभियोजन आरोपी के बताए अनुसार नोटो की बरामदगी को प्रमाणित

करने में असफल रहा – बालक के पिता द्वारा बिना न्यायालय के आदेश के नोट वापस प्राप्त किये गये जो अनुसंधानकर्ता अधिकारी के अस्वीकार्य कदाचार का स्पष्ट कृत्य है – प्रकटीकरण कथनों को लेखबद्ध करना और नोटों की तथाकथित बरामदगी बनावटी प्रकट हुई – बरामदगी संदिग्ध और विश्वास योग्य नहीं – दोषसिद्धि अपास्त की गई।

Gaurav Maini v. State of Haryana

Judgment dated 09.07.2024 passed by the Supreme Court in Criminal Appeal No. 696 of 2010, reported in AIR 2024 SC 3601

Relevant extracts from the judgment:

In wake of the discussion, we summarise our conclusions as below:-

i. That the entire prosecution story is totally concocted and does not inspire confidence.

ii. The FIR (Exhibit-PAA/1) could not have been registered on the basis of the secret information received by Jai Singh, SI(PW-27) because the said information did not disclose the commission of any cognizable offence. If at all, the FIR had to be registered, the same should have been done on the basis of the statement of Shamlal Garg recorded by the police officials on 15th April, 2003. However, no such steps were taken by the police officials, thereby, creating a grave doubt on the bona fides of the actions of the Investigating Agency.

iii. That the complainant party failed to offer logical explanation for failing to file an FIR even after the kidnapped boy-Sachin Garg (PW-2) had returned home. It can safely be presumed that once the kidnapped boy had returned home, the threat perception at the hands of the offenders, if any, would have been diluted/disappeared. The delay in taking legal action creates a grave doubt on the truthfulness of the entire prosecution case.

iv. That the kidnapped boy-Sachin Garg (PW-2) knew accused Gaurav Bhalla (A2) from before and claims to have identified him at the time of the incident but in spite thereof, the name of Gaurav Bhalla (A2) was not disclosed to the police officials up to 20th April, 2003 which completely demolishes the veracity of the prosecution case. The omission of the names of the accused persons in the special report forwarded by Investigating Officer (PW-37) to his superior officials is also vital and creates further doubt on the conduct of the Investigating Agency.

v. It is an admitted fact that the accused appellants other than Gaurav Bhalla (A2) were not known to the kidnapped boy Sachin Garg (PW-2) and they were identified by him for the first time in the dock during deposition in the Court. This creates a doubt on the dock identification of these accused by Sachin Garg (PW-2)

who also admitted in the cross-examination that the accused persons were shown to him and his father by the officers of the CIA. This admission lends further succour to the conclusion that the identification of the accused by the witness Sachin Garg (PW-2) is not free from doubt.

vi. That the prosecution case failed to led trustworthy evidence to establish the recovery of the currency notes at the instance of the accused because the disclosure statements were not proved as per law. Furthermore, the currency notes were handed back to Mahesh Garg (PW-1) without any order of the Court which is an act of gross misconduct on the part of the Investigating Officer (PW-37). Rather, this Court is compelled to observe that perhaps the entire exercise of recording disclosure statements and the recovery of the currency notes is totally sham and that is why, the currency notes were neither deposited in the malkhana of the police station/bank nor were the same produced in the Court thereby, creating strong doubt on the very factum of the recovery.

vii. That the prosecution failed to examine the most relevant witness, namely, Shamlal Garg which compels the Court to draw an adverse inference against the prosecution.

The High Court as well as the trial Court failed to advert to these important loopholes and shortcomings in the evidence available on record which are fatal and completely destroy the fabric of the prosecution case.

As a consequence, this Court is of the firm opinion that entire story of the prosecution is nothing but a piece of fabrication and the accused were framed in the case for ulterior motive. There is no iota of truth in the prosecution story what to talk of proof beyond all manner of doubt which establishes the guilt of the accused. The fabric of the prosecution case is full of holes which are impossible to mend. Thus, conviction of the accused appellants as recorded by the trial Court and affirmed by the High Court cannot be sustained. The impugned judgments do not stand to scrutiny.

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20. INDIAN PENAL CODE, 1860 – Sections 120B, 420, 467, 468, 471 and 477A

BHARATIYA NYAYA SANHITA, 2023 – Sections 61(2), 318(4), 338, 336(3), 340(2) and 344

Offence of cheating, forgery and conspiracy – Allegations against the accused persons of widespread conspiracy involving forgery of documents to facilitate illegal transfer of valuable Government land to

private entities – Evidence available on record showed *prima facie* involvement of the accused persons in the offence – The nature and extent of alleged conspiracy, the involvement of accused persons and the actual harm caused to public exchequer need to be judiciously examined in a trial – Such case should not be dismissed at a preliminary stage – Order of quashing the complaint set aside.

भारतीय दण्ड संहिता, 1860 – धाराएं 120ख, 420, 467, 468, 471 एवं 477क भारतीय न्याय संहिता, 2023 – धाराएं 61(2), 318(4), 338, 336(3), 340(2) एवं 344

छल, कूटरचना और षड़यंत्र का अपराध – अभियुक्तगण पर निजी संस्थाओं को मूल्यवान शासकीय भूमि के अवैध अंतरण को सुगम बनाने के लिए दस्तावेजों की कूटरचना से जुड़े व्यापक षड़यंत्र का आक्षेप – अभिलेख पर उपलब्ध साक्ष्य से अपराध में अभियुक्तगण की प्रथम दृष्टया संलिप्तता दर्शित हुई – कथित षड़यंत्र की प्रकृति और विस्तार, अभियुक्तगण की संलिप्तता और राजकोश को हुई वास्तविक क्षति का न्यायसम्मत परीक्षण विचारण के दौरान किया जाना चाहिए – ऐसे प्रकरण को प्रारंभिक प्रक्रम पर निरस्त नहीं किया जाना चाहिए – परिवाद निरस्त किये जाने के आदेश को अपास्त किया गया।

State of Odisha v. Nirjharini Patnaik @ Mohanty and anr.
Judgment dated 26.04.2024 passed by the Supreme Court in Criminal Appeal No. 2270 of 2024, reported in 2024 (2) Crimes 386 (SC)

Relevant extracts from the judgment:

On 20.05.2005, an FIR registered as Capital P.S. Case No. 178 of 2005 was lodged by the then Special Secretary to the Government in the General Administration (G.A.) Department, alleging a widespread conspiracy involving the forgery of documents to facilitate the illegal transfer of valuable government land to private entities. Following the FIR, the Police initiated investigations that culminated in a charge-sheet filed against ten individuals, including the present respondents, accusing them of engaging in a criminal conspiracy under sections 420, 467, 468, 471, 477A, 120B and 34 IPC.

The charge-sheet dated 28.08.2015 detailed that the respondents, along with other co-conspirators, allegedly utilized forged documents such as Hata Patas, Ekpadia, and rent receipts to manipulate judicial processes and revenue records to illegally In short, 'IPC' acquire government lands. These documents were purportedly produced in various revenue and civil courts to secure favorable orders,

which were then used to substantiate false claims of ownership over the disputed properties.

Central to the allegations is a transaction involving the sale of land situated in the heart of Bhubaneshwar, initially leased to one Kamala Devi under dubious circumstances before the independence of India. After her demise, her legal heir, Kishore Chandra Patnaik, continued to assert rights over the property based on this lease, which had been previously declared non-genuine by the competent authorities. Despite adverse findings, the OEA Collector and subsequent judicial rulings set aside earlier decisions and reinstated the lease, albeit amidst allegations of document manipulation and improper legal proceedings.

In the year 2000, Kishore Chandra Patnaik, through a General Power of Attorney2, granted Anup Kumar Dhirsamant (accused no. 5), a real In short, "GPA" estate developer, the authority to manage and dispose of the property. It is alleged that this GPA was later found to be interpolated towards transactions favourable to the Respondents and the other accused persons. Following the interpolation, Dhirsamant executed sales of substantial portions of the land to the respondents at rates grossly undervalued, as per the market rates at the time and transactions that were finalized without proper scrutiny of the title's legitimacy or the GPA's authenticity.

On 26.09.2015, the SDJM, Bhubaneshwar passed an order of cognizance for offence u/s 420, 467, 468, 471, 477(A), 120(B) and 34 IPC and issue of process against the Respondents and the other accused persons which was challenged by the Respondents before the High Court.

The High Court in its impugned judgment, quashed the order taking cognizance against the respondents. It reasoned that there was insufficient evidence of a conspiracy directly implicating the respondents and criticized the preliminary stage of judicial scrutiny as overly thorough, contrary to the standards required for *prima facie* evaluation at the stage of taking cognizance.

The manipulation of the GPA where specific terms were altered to misrepresent the authority granted, was carried out with the help of one Ajya Kumar Samal, a junior clerk (accused no.3). This act of forgery was a deliberate attempt to circumvent the legal procedure for transferring property. Following this forgery, extensive lands were sold at significantly lowered values. Specifically, lands in the heart of Bhubaneswar city were acquired for as little as Rs. 9,000/- per acre, whereas the prevailing market rates exceeded Rs. 50 lakhs per acre. Such drastic

undervaluation raises substantial questions regarding the intent behind these transactions, indicative of a deliberate scheme to evade appropriate stamp duties and registration fees, causing considerable loss to the state. Crucially, part of this land was bought under suspicious conditions by Respondent No.1 and Puspa Choudhury (accused no.8), in transactions managed by Prahallad Nanda (accused no.2), who was temporarily in charge of the Sub-Registrar's office. The intentional undervaluation of this land and the strategic involvement of Respondent No.1, in conjunction with the revocation of the GPA due to its fraudulent tampering, highlight a clear scheme to misappropriate government property and incur losses upon the public exchequer.

This Court believes that dismissing the case at the preliminary stage, especially when linked to a broader pattern of similar frauds involving government lands as part of a larger conspiracy, risks undermining the integrity of multiple ongoing investigations and judicial processes. Such a decision would be detrimental to the investigation of similar fraudulent schemes against public assets.

Therefore, this Court finds that the High Court's decision to quash the proceedings was based on an incomplete assessment of the facts, which could only be fully unraveled through a detailed trial process. The nature and extent of the alleged conspiracy, the involvement of the respondents, and the actual harm caused to the public exchequer need to be judiciously examined in a trial setting. The High Court has hastily concluded that there is no evidence to show meeting of minds between the other accused persons and the Respondents which in our considered opinion, can only be decided after a thorough examination of evidence and witnesses by the Trial Court.

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21. INDIAN PENAL CODE, 1860 – Sections 147, 148 and 302 r/w/s 149
BHARATIYA NYAYA SANHITA, 2023 – Sections 191(2), 191(3) and 103(1) r/w/s 190
Murder – Unlawful assembly – Common object – Presence of appellants is established with other co-accused at the scene of crime – Their presence amounted to unlawful assembly which is sufficient for conviction with the aid of Section 149 even if they may not have been armed with any weapon and may have been assigned any specific role in the commission of offence.

भारतीय दण्ड संहिता, 1860 – धाराएं 147, 148 एवं 302 सहपठित धारा 149 भारतीय न्याय संहिता, 2023 – धाराएं 191(2), 191(3) एवं 103(1) सहपठित धारा 190

हत्या – विधिविरूद्ध जमाव – सामान्य उद्देश्य – अपीलार्थियों की उपस्थिति घटना स्थल पर अन्य सह–अभियुक्तों के साथ स्थापित हुई – उनकी उपस्थिति विधिविरूद्ध जमाव का गठन करती है जो कि धारा 149 की सहायता से दोषसिद्धि के लिए पर्याप्त है, भले ही वे किसी भी हथियार से सुसज्जित न रहे हों और अपराध कारित करने में उन्हें कोई भी विशिष्ट भूमिका सौंपी गई हो।

Suresh Dattu Bhojane and anr. v. State of Maharashtra

Judgment dated 08.07.2024 passed by the Supreme Court in Criminal Appeal No. 412 of 2012, reported in 2024 (3) Crimes 188 (SC)

Relevant extracts from the judgment:

In view of the testimony of the eye-witnesses, the courts below have rightly held that the deceased Mohan Mungase was killed by the accused persons on the fateful day in the house of Mama Bhojane.

The only point which arises for consideration is whether in the facts and circumstances of the case, the accused A-5 and A-6 could also be convicted as they were not alleged to have been armed with any weapon and have not been assigned any specific role.

The aforesaid accused persons may not be armed and may not have been assigned any specific role but nonetheless their presence at the scene of the crime along with other accused persons is duly established. They were held to be part of the unlawful assembly with common object. The evidence of Nandkumar Mungase (PW-5) proves the presence of Suresh (A-5) and Anna (A-6). He has also stated that they were armed with swords at the material time. They were likely to strike him with sword but was timely saved by Savita (PW-4). The testimony of Savita (PW-4) also speaks about the armed presence of both the above accused and that they have gheraoed the deceased Mohan Mungase. The evidence of both the above eye-witnesses clearly proves that both of them were present at the scene of the crime and were having the common object to kill Mohan Mungase. All of them had joined together and have come to the house of Mama Bhojane after a quarrel was picked up with the deceased Mohan Mungase earlier to the incident at the shop of Shiva Chougale situate in the village.

The accused A-5 and A-6 are undoubtedly part of unlawful assembly and were having the common object *viz* the killing of deceased Mohan Mungase and

his brother Nandkumar Mungase. They had a clear motive for the above purpose as the country liquor shop which was settled in favour of A-1 was subsequently entrusted to the deceased and his brother by the owner Mama Bhojane. The accused A-5 and A-6 were present even at the time when the deceased was threatened with dire consequences while he was sitting on the platform of a shop just before the fatal incident. They both were present in the house of Mama Bhojane when the crime took place. The assembly of all the accused persons in the house of Mama Bhojane with the deadly weapons was apparently for the purposes of teaching a lesson to the deceased and his brother to settle the score arising from the entrustment of the country liquor shop. Therefore, both A-5 and A-6 were certainly part of the unlawful assembly having the common object and as such are guilty of the offence as envisaged under Section 149 of the IPC.

The accused A-5 and A-6 have been charged under Section 149 IPC. Therefore, their presence with the other co-accused amounted to an unlawful assembly which is sufficient for conviction, even if they may have not actively participated in the commission of the crime. It goes without saying that when the charge is under Section 149, the presence of the accused as part of the unlawful assembly itself is sufficient for conviction.

In view of the aforesaid testimony of the eye-witnesses and the concurrent findings of the facts recorded by the courts below about the presence of A-5 and A-6 at the scene of the crime as part of unlawful assembly and their active role in surrounding the deceased with the common intention to kill him, we are of the opinion that they cannot escape the conviction.

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22. INDIAN PENAL CODE, 1860 – Sections 304 part-II and 386
BHARATIYA NYAYA SANHITA, 2023 – Sections 105 and 308(5)
When culpable homicide does not amount to murder, explained – Husband and father-in-law of the daughter of accused came to his residence and compelled his daughter to return back – Due to the disagreement, an abrupt confrontation occurred – Father-in-law of the daughter was allegedly stabbed by the accused and his son, resulting in the death of father-in-law and injury to son-in-law – The entire incident happened in the heat of the moment and neither party was able to regulate their anger at the moment – The co-accused was a young man who was 18 years old and was a student of 12th grade – A young man's emotional distress was entirely understandable in the light of the

allegations that in-laws of his sister were ill treating her – The deceased and his son each suffered only one stab wound – The upper body of the deceased and injured were not targetted by the knife – The incident occurred inside the home of the accused, which indicates that it was not pre-meditated – Conviction rightly modified from 304 Part 1 to 304 Part 2.

भारतीय दण्ड संहिता, 1860 – धाराएं 304 भाग–2 एवं 386
भारतीय न्याय संहिता, 2023 – धाराएं 105 एवं 308(5)
आपराधिक मानव वध कब हत्या की कोटि में नहीं आयेगा, स्पष्ट किया गया – अभियुक्त की पुत्री का पति और ससुर उसके घर आए और उसकी बेटी को वापस लौटने के लिए बाध्य किया – असहमति के कारण, अचानक टकराव हुआ – पुत्री के ससुर को अभियुक्त और उसके पुत्र ने कथित तौर पर चाकू मार दिया, जिससे ससुर की मृत्यु हो गई और दामाद घायल हो गया – सम्पूर्ण घटना क्षणिक आवेग में हुई, और कोई भी पक्ष उस समय अपने क्रोध को नियंत्रित करने में असमर्थ रहा – सह–अभियुक्त नवयुवक था, जो 18 वर्ष का होकर 12वीं कक्षा का छात्र था – एक नवयुवक की भावनात्मक पीड़ा को पूर्ण रूप से इस आक्षेप के आलोक में समझा जा सकता है कि उसकी बहन के ससुराल वाले उसके साथ दुर्व्यवहार कर रहे थे – मृतक और उसके पुत्र को चाकू का केवल एक ही घाव करित हुआ – मृतक और आहत के शरीर के ऊपरी भाग को चाकू से निशाना नहीं बनाया गया था – घटना अभियुक्त के घर के अंदर हुई, जो यह दर्शित करता है कि यह पूर्व नियोजित नहीं थी – दोषसिद्धि को धारा 304 भाग 1 से धारा 304 भाग–2 में उचित ही परिवर्तित किया गया।

Hussainbhai Asgarali Lokhandwala v. State of Gujarat
Judgment dated 14.08.2024 passed by the Supreme Court in Criminal Appeal No. 1691 of 2023, reported in AIR 2024 SC 3832

Relevant extracts from the judgment:

On a cumulative analysis of the evidence of the prosecution witnesses, the picture which emerges is that there was a matrimonial dispute between Oneja and her husband Abbas. Despite that they had come home from Ahmedabad on 07.11.2000 for attending the marriage of Merriam. However, because of the strained relationship, Oneja did not stay with Abbas bhai in his residence. Instead, she alongwith her daughter Natasha decided to stay in her father's house which was in the close vicinity of the residence of her husband Abbas. On that fateful day, despite receiving calls from her husband, Oneja refused to come to his house. A maid was sent to bring back the keys of the cupboard of the Ahmedabad house but

Oneja refused to handover the keys to the maid. It was then that Abbas bhai went to the residence of his father-in-law and demanded from his wife that the keys of the cupboard should be handed over to him. At this, pandemonium broke out resulting in a hue and cry as Oneja's father Asgarali accused Abbas bhai of harassing his daughter. When aunt Arvaben went to the residence of Asgarali to diffuse the situation, she was pushed back by Asgarali as a result of which she fell down and suffered injuries. Idrish bhai went to the place of occurrence followed by PW-5. It appears that the very sight of Idrish bhai flared up the situation and an enraged Asgarali caught hold of his (Idrishbhai's) arms from behind, calling upon his son Hussain to finish him off. It has come on record that while asking his son to finish off Idrish bhai, Asgarali had said that these people (referring to Idrish bhai and his son Abbas bhai) had caused lot of distress to them. Therefore, he should be finished off. It was at that stage that Hussain bhai Asgarali Lokhandwala, son of Asgarali, brought a kitchen knife from inside the house and fatally stabbed Idrish bhai. When PW-5 sought to intervene, he was also stabbed in the stomach by Hussain bhai as he had stabbed Idrish bhai. That apart, there also appears to be pelting of stones aimed at the glass door of the house of Asgarali shattering the glass pane besides scuffle between the parties.

The trial court had convicted Asgarali and Hussain bhai under Section 304 Part I IPC as well as under Sections 323 and 324 thereof. On appeal, the High Court by the impugned judgment and order altered the conviction of both Asgarali and Hussain bhai from one under Section 304 Part I IPC to one under Section 304 Part II IPC. While the sentence of Asgarali was modified to the period of incarceration already undergone by him, that of Hussain bhai was modified to five years.

In so far Hussain bhai is concerned, what is discernible from the record is that he was a young man of 18 years of age at the time of the incident studying in Class 12. There was a history of matrimonial dispute between his sister and brother-in-law Abbas bhai. It is natural for a young man to be emotionally upset to see his sister allegedly ill-treated by her in-laws and when the deceased and Abbas bhai came to their residence leading to the ruckus, it is not difficult to visualize the state of mind of Hussain bhai as well of his father Asgarali. The tension was building up since morning as Abbas bhai was first insisting that his wife Oneja should come to his house and then insisting on the cupboard key of the Ahmedabad house to be handed over to him. It is important to note that the incident had taken place inside the residence of Asgarali (and then spilling over onto the street infront) and not in the residence of Idrish bhai. It is quite possible that as a young man, Hussain bhai

was overcome by emotion which led him to physically attack the deceased and his son (brother-in-law). The fact that the incident was not premeditated is buttressed by the happening thereof inside the residence of Asgarali. Besides there was only a stab wound each on the stomach of the deceased and PW-5. The knife was not directed by Hussain bhai at the upper portion of the bodies of the deceased and PW-5.

We are in agreement with the view taken by the High Court that the entire incident had occurred in the heat of the moment and that neither party could control their anger which ultimately resulted into the fateful incident.

That being the position and since the High Court had brought down the charge from Section 304 Part I IPC to Section 304 II IPC, we feel that it would be in the interest of justice if the sentence of the appellant Hussain bhai Asgarali Lokhandwala is further modified to the period of incarceration already undergone by him while maintaining the conviction.

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23. INDIAN PENAL CODE, 1860 – Section 353 r/w/s 186
BHARATIYA NYAYA SANHITA, 2023 – Section 132 r/w/s 221
Obstructing public servant in discharge of public duties – Trial Court acquitted the accused for having committed the offence punishable u/s 7, 13(1)(d) r/w/s 13(2) of Prevention of Corruption Act, 1988 and Section 201 of IPC however, convicted him for the offence punishable u/s 353 of IPC – Charge against accused was that he with an intention to obstruct the trap team in performing their duties, attacked them or exercised criminal force on them – It transpires from the evidence that when the accused was apprehended, he attempted to wriggle out and in the process, jostling and pushing happened as the accused wanted to extricate himself from the arrest – Such act of accused was not with any intention to assault or use criminal force – None of the ingredients of Section 353 are attracted – Conviction of the accused/appellant is therefore, set aside.

भारतीय दण्ड संहिता, 1860 – धारा 353 सहपठित धारा 186
भारतीय न्याय संहिता, 2023 – धारा 132 सहपठित धारा 221
लोक सेवक के लोक कृत्यों के निर्वहन में बाधा डालना – विचारण न्यायालय द्वारा अभियुक्त को धारा 7, 13(1) (डी) सहपठित धारा 13(2) भ्रष्टाचार निवारण अधिनियम, 1988 और भा.दं.सं. की धारा 201 के अंतर्गत दण्डनीय अपराध के आरोप से दोषमुक्त किया गया किंतु भा.दं.सं. की धारा 353 के अंतर्गत दंडनीय

अपराध के लिए दोषी ठहराया गया – अभियुक्त पर आरोप यह था कि उसने ट्रैप टीम के कर्तव्य निर्वहन में अवरोध उत्पन्न करने के आशय से उन पर हमला किया या आपराधिक बल का प्रयोग किया – साक्ष्य से प्रकट हुआ कि जब अभियुक्त को पकड़ा गया, तब उसने भागने का प्रयास किया और इस दौरान धक्का-मुक्की हुई क्योंकि अभियुक्त स्वयं को गिरफ्तारी से बचाना चाहता था – अभियुक्त का उक्त कृत्य हमला या आपराधिक बल का प्रयोग करने के आशय से नहीं था – धारा 353 के कोई भी आवश्यक तत्व आकर्षित नहीं होते – अतः अभियुक्त/अपीलार्थी की दोषसिद्धि को अपास्त किया गया ।

Mahendra Kumar Sonker v. State of Madhya Pradesh
Judgment dated 12.08.2024 passed by the Supreme Court in Criminal Appeal No. 520 of 2012, reported in 2024 (3) Crimes 148 (SC)

Relevant extracts from the judgment:

Insofar as the charge under Section 353 of the IPC was concerned, the allegation was that the appellant in collusion with his wife with an intention to obstruct the members of the trap team in performing their public duty during the trap proceeding, attacked them or exercised criminal force on them. It is this part of the case which has been believed by the courts below.

We have also carefully perused the defence witnesses including the evidence of DW-2 Sitaram Chourasia who generally states that three to four persons came and there was pushing and shoving ('*dhakka mukki*' as is evident from the Hindi deposition) between the accused and those persons.

Having considered the oral evidence and the medical evidence, we are constrained to conclude that the prosecution has not established that the appellant has assaulted or used criminal force against the trap party. In fact, what transpires is that when the appellant was apprehended there appears to have been an attempt by the appellant to wriggle out and in the process, jostling and pushing appears to have happened, in the process of the appellant trying to extricate himself from the arrest. None of the ingredients of assault or criminal force have been attracted.

Further, there is absolutely no evidence to show that the accused used any hard and blunt object. PW-13 Dr. H.L. Bhuria had deposed that the injuries on PW-9 Niranjan Singh, PW-8 N.K. Parihar, Constable Raj Kumar and Constable Shivshankar might have been caused by hard and blunt object. In view of the above, there is no evidence to indicate that the accused assaulted or used criminal force on the trap party in execution of their duties or for the purpose of preventing or

deterring them in discharging their duties. In short, none of the ingredients of Section 353 are attracted. The jostling and pushing by the accused with an attempt to wriggle out, as is clear from the evidence, was not with any intention to assault or use criminal force.

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24. INDIAN PENAL CODE, 1860 – Section 494 r/w/s 34
BHARATIYA NYAYA SANHITA, 2023 – Section 82(1) r/w/s 3(5)
Bigamy – Charge – Common intention – No person other than the spouse to the second marriage could have been charged for the offence punishable u/s 494 simplicitor – In order to rope other persons in the offence with the aid of Section 34 IPC, the complainant would be required to prove not only the presence of those persons but also their overt act or omission in the second marriage ceremony and also establish that such persons were aware about the subsisting marriage of main accused with the complainant.

भारतीय दण्ड संहिता, 1860 – धारा 494 सहपठित धारा 34
भारतीय न्याय संहिता, 2023 – धारा 82(1) सहपठित धारा 3(5)
द्विविवाह – आरोप – सामान्य आशय – दूसरा विवाह करने वाले पति या पत्नी के अतिरिक्त अन्य किसी व्यक्ति को धारा 494 के अंतर्गत दण्डनीय अपराध के लिए आरोपित नहीं किया जा सकता – भा.दं.सं. की धारा 34 की सहायता से अन्य व्यक्तियों को अपराध में सम्मिलित करने के लिए, परिवादी को न केवल उन व्यक्तियों की उपस्थिति को साबित करना होगा, अपितु दूसरे विवाह समारोह में उनके प्रकट कृत्य अथवा लोप को भी साबित करना होगा और यह भी स्थापित करना होगा कि ऐसे व्यक्तियों को मुख्य आरोपी एवं परिवादी के मध्य पूर्व में हुए विवाह के अस्तित्व में रहने की जानकारी थी।

S. Nitheen and ors. v. State of Kerala and anr.
Judgment dated 15.05.2024 passed by the Supreme Court in Criminal Appeal No. 2585 of 2024, reported in 2024 (2) Crimes 320 (SC)

Relevant extracts from the judgment:

At the outset, we may note that the complaint was filed alleging commission of the offence punishable under Section 494 read with Section 34 IPC. However, post recording pre-charge evidence, the learned JMFC passed an order dated 28th May, 2018 directing framing of charge against all the accused persons for the offence punishable under Section 494 IPC.

The essential ingredients of offence under Section 494 IPC, as explained by this Court in the case of ***Gopal Lal v. State of Rajasthan, (1979) 2 SCC 17***0, are as follows:

> "3. The essential ingredients of this offence are:
> (1) that the accused spouse must have contracted the first marriage
> (2) that while the first marriage was subsisting the spouse concerned must have contracted a second marriage, and
> (3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed."

A bare perusal of the penal provision would indicate that the order framing charge is erroneous on the face of the record because no person other than the spouse to the second marriage could have been charged for the offence punishable under Section 494 IPC simplicitor. However, this is a curable defect, and the charge can be altered at any stage as per the provisions of Section 216 CrPC.

It is a peculiar case wherein, the complainant has not sought prosecution of the appellants for the charge of abetting the second marriage by Ms. Lumina (A-1) under Section 109 IPC. The appellants herein are being roped in by virtue of Section 34 IPC with the allegation that they had the common intention to commit the offence under Section 494 IPC. In order to bring home the said charge, the complainant would be required to prima facie prove not only the presence of the accused persons, but the overt act or omission of the accused persons in the second marriage ceremony and also establish that such accused were aware about the subsisting marriage of Ms. Lumina (A-1) with the complainant.

A perusal of the pre-charge evidence led in support of the complaint would reveal that Flory Lopez (A-3) and Vimal Jacob (A- 4) were not even alleged to be present at the time of such marriage. Hence, the involvement of these accused for the charge of having a common intention to commit the offence under Section 494 IPC is not established by an iota of evidence.

So far as S. Nitheen (A-5), P.R. Sreejith (A-6) and H. Gireesh (A-7) are concerned, they are alleged to be the friends of Ms. Lumina (A-1) and Saneesh (A-2) and that they witnessed the alleged bigamous marriage. On perusal of the evidence of the complainant who testified as CW-1, it becomes clear that all he has alleged in his deposition is that accused S. Nitheen (A-5), P.R. Sreejith (A-6) and H. Gireesh (A-7) were the witnesses to the second marriage. However, there is not even a shred of allegation by the complainant that these accused, acted as witnesses

to the second marriage having knowledge that Ms. Lumina (A-1) was already married to the complainant. In absence of such allegation, the prosecution of the S. Nitheen (A-5), P.R. Sreejith (A-6) and H. Gireesh (A-7), for the charge of having a common intention to commit the offence under Section 494 IPC is totally unwarranted in the eyes of law.

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25. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Sections 15 and 94
JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2022 – Rule 65
EVIDENCE ACT, 1872 – Section 35
BHARATIYA SAKSHYA ADHINIYAM, 2023 – Section 29
Determination of age – Preliminary assessment – If birth certificate is found to be suspicious and not a genuine document, then school record and scholar register would prevail for determination of age of the accused – When it is established that age of accused is above 18 years then preliminary assessment u/s 15 of the Act is not required.

किशोर न्याय (बालको की देखरेख और सरंक्षण) अधिनियम, 2015 – धाराएं 15 एवं 94
किशोर न्याय (बालको की देखरेख और सरंक्षण) नियम, 2022 – नियम 65
साक्ष्य अधिनियम, 1872 – धारा 35
भारतीय साक्ष्य अधिनियम, 2023 – धारा 29
आयु का अवधारण – प्रारंभिक निर्धारण – यदि जन्म प्रमाण पत्र संदेहास्पद पाया जाता है एवं वह वास्तविक दस्तावेज नहीं है, तब अभियुक्त की आयु का अवधारण करने के लिये शाला अभिलेख तथा छात्र पंजी अभिभावी होगी – जब यह स्थापित है कि अभियुक्त की आयु 18 वर्ष से अधिक है तब अधिनियम की धारा 15 के अंतर्गत प्रारंभिक निर्धारण की आवश्यकता नहीं है।

Shakeel v. State of Madhya Pradesh
Order dated 23.04.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 4299 of 2023, reported in ILR 2024 MP 1706

Relevant extracts from the order:

The judgment in the case of ***CIDCO v. Vasudha Goarakhnath Mandevlekar (Civil Appeal No. 3615/2009, decided on 15.05.2009)*** and ***Jabar Singh v. Dinesh***

& anr., (Criminal Appeal No.487/2010, decided on ***12.03.2010)*** are judgments prior to the enactment of Act, 2015 and Rules of 2022. The aforesaid judgments would not render any assistance to the facts of the present case. In the present case, the birth certificate produced by the applicant has been found to be suspicious and not genuine and authenticate. On the contrary, the case of the Respondent is that the applicant is an adult person, as per school record, his age is more than 18 years 6 months on the date of the incident. In the case of ***Pawan Kumar v. State of UP & ors. (Criminal Appeal No.3548/2023,*** decided on ***21.11.2023)***, the Court held that hypertechnical approach should not be adopted in a case of border line. In the present case, the Respondents have clearly established from the school record that age of the applicant was 18 years 6 months on the date of the incident. The Board and the Appellate Court have not adopted any hypertechnical approach in this case and the present case is not a case of border line specially when the Respondents have clearly established the age of the accused person more than 18 years. As per Rule 65(5), it is for the Board to decide the authenticity of the certificate in a case where number of suspicious documents are filed. The judgments relied by the applicant are not in the reference of the Rules of 2022. The aforesaid judgments would not render any assistance to the facts of the present case. It is held that if a Birth Certificate is found to be suspicious and genuine document then the school record and scholar register would prevail for determination of the age of an accused.

Apart from that there is no merit in the contention of the counsel for the applicant that a preliminary assessment under Section 15 had not been carried out by the Board. When the case of the Respondent is that the accused/applicant is an adult person more than 18 years and the same is established and proved then preliminary assessment under Section 15 of the Act would not be required and the Board has to make assessment on the basis of documentary evidence. In the present case, the birth certificate filed on behalf of the applicant has been found to be suspicious and not a genuine and authenticate document. On the contrary, the Respondents have proved beyond doubt from the school record proved by the testimony of Principal and other witnesses of the school that the age of the date of birth of the applicant was recorded 15.06.2004 and he was 18 years 6 months at the time of the incident. The aforesaid documents are admissible in evidence as per Section 35 of the Evidence Act.

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26. MOTOR VEHICLES ACT, 1988 – Sections 2, 3 and 10 (2) (d) & (e) Driving licence – Whether a driver holding an LMV licence for vehicles with gross weight of less than 7,500 kg as per section 10 (2) (d) is permitted to operate a 'transport vehicle' without additional authorization u/s 10 (2) (e) of the Act? This question which was referred to a larger Bench (5 Judges) of Apex Court, has been decided in the affirmative. [Upheld : *Kulwant Singh v. Oriental Insurance Co. Ltd., 2018 ACJ 2873 (SC); Mukund Dewangan v. Oriental Insurance Co. Ltd., 2017 ACJ 2011 (SC); Nagashetty v. United India Insurance Co. Ltd., 2001 ACJ 1441 (SC); S. Iyyapan v. United India Insurance Co. Ltd., 2013 ACJ 1944 (SC)*; **Partially Overruled : *National Insurance Co. Ltd. v. Annappa Irappa Nesaria, 2008 ACJ 721 (SC)*; **Overruled :** *New India Assurance Co. Ltd. v. Prabhu Lal, 2008 ACJ 627 (SC); New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir, 2008 ACJ 2161 (SC)* **and** *Oriental Insurance Co. Ltd. v. Angad Kol, 2009 ACJ 1411 (SC)*]**

मोटर यान अधिनियम, 1988 – धाराएं 2, 3 एवं 10(2) (घ) एवं (ड़) चालन अनुज्ञप्ति – क्या अधिनियम की धारा 10(2) (घ) के अनुसार 7500 किलोग्राम से कम सकल भार वाले वाहन को चलाने हेतु एल.एम.व्ही अनुज्ञप्ति धारित करने वाला चालक अधिनियम की धारा 10 (2)(ड़) के अंतर्गत बिना अतिरिक्त प्राधिकार के परिवहन यान को चला सकता है? यह प्रश्न जो उच्चतम न्यायालय की वृहद पीठ (पाँच न्यायाधीश) को संदर्भित किया गया था, को सकारात्मक रूप से निराकृत किया गया है। [सही ठहराया गयाः *कुलवंत सिंह वि. ओरिएंटल इंश्योरेंस कंपनी लिमिटेड, 2018 एसीजे 2873 (एससी), मुकुंद देवांगन वि. ओरिएंटल इंश्योरेंस कंपनी लिमिटेड, 2017 एसीजे 2011 (एससी), नागाशेट्टी वि. यूनाइटेड इंडिया इंश्योरेंस कंपनी लिमिटेड, 2001 एसीजे 1441 (एससी), एस. अय्यपन वि. यूनाइटेड इंडिया इंश्योरेंस कंपनी लिमिटेड, 2013 एसीजे 1944 (एससी),* आंशिक रूप से निष्प्रभावी घोषितः *नेशनल इंश्योरेंस कंपनी लिमिटेड वि. अन्नप्पा इरप्पा नेसारिया, 2008 एसीजे 721 (एससी),* निष्प्रभावी घोषित *न्यू इंडिया एश्योरेंस कंपनी लिमिटेड वि. प्रभु लाल, 2008 एसीजे 627 (एससी), न्यू इंडिया एश्योरेंस कंपनी लिमिटेड वि. रोशनबेन रहमानशा फकीर, 2008 एसीजे 2161 (एससी) एवं ओरिएंटल इंश्योरेंस कंपनी लिमिटेड वि. अंगद कोल, 2009 एसीजे 1411 (एससी)*]

Bajaj Allianz General Ins. Co. Ltd. v. Rambha Devi and ors. Judgment dated 06.11.2024 passed by the Supreme Court in Civil Appeal No. 841 of 2018, reported in 2024 ACJ 2623 (5 Judge Bench)

Relevant extracts from judgment:

The licensing regime under the MV Act and the MV Rules, when read as a whole, does not provide for a separate endorsement for operating a 'Transport Vehicle', if a driver already holds a LMV license. We must however clarify that the exceptions carved out by the legislature for special vehicles like e-carts and e-rickshaws 74, or vehicles carrying hazardous goods 75, will remain unaffected by the decision of this Court.

As discussed earlier in this judgment, the definition of LMV under Section 2(21) of the MV Act explicitly provides what a 'Transport Vehicle' 'means'. This Court must ensure that neither provision i.e. the definition under Section 2(21) or the second part of Section 3(1) which concerns the necessity for a driving license for a 'Transport Vehicle' is reduced to a dead letter of law. Therefore, the emphasis on 'Transport Vehicle' in the licensing scheme has to be understood only in the context of the 'medium' See Rule 8A of MV Rules, 'Minimum training required for driving E- rickshaw or E-cart' See Rule 9 of MV Rules, 'Educational Qualification for drivers of goods carriages carrying dangerous or hazardous goods' and 'heavy' vehicles. This harmonious reading also aligns with the objective of the 1994 amendment in Section 10(2) to simplify the licensing procedure [The classes medium goods vehicle [section (10 (2) (e)], medium (g)] and heavy passenger vehicle [section 10 (2) (f)], heavy goods vehicle [section 10 (2) (g)] and heavy passenger vehicle [section 10 (2) (h)] were deleted and a new class 'transport vehicle' was introduced in section 10 (2) (e).

The above interpretation also does not defeat the broader twin objectives of the MV Act i.e. road safety and ensuring timely compensation and relief for victims of road accidents. The aspect of road safety is earlier discussed at length. An authoritative pronouncement by this Court would prevent insurance companies from taking a technical plea to defeat a legitimate claim for compensation involving an insured vehicle weighing below 7,500 kgs driven by a person holding a driving license of a 'Light Motor Vehicle' class.

In an era where autonomous or driver-less vehicles are no longer tales of science fiction and app-based passenger platforms are a modern reality, the licensing regime cannot remain static. The amendments that have been carried out by the Indian legislature may not have dealt with all possible concerns. As we were informed by the Learned Attorney General that a legislative exercise is underway, we hope that a comprehensive amendment to address the statutory lacunae will be made with necessary corrective measures.

Just to flag one concern, the legislature through the 1994 amendment in Section 10(2)(e) in order to introduce 'transport vehicle' as a separate class could not have intended to merge light motor vehicle (which continued as a distinct class) along with medium, and heavy vehicles into a single class. Else, it would give rise to a situation in which Sri (our hypothetical character), wanting to participate in the cycling sport, is put through the rigorous training relevant only for a multisport like Triathlon, which requires a much higher degree of endurance and athleticism. The effort therefore should be to ensure that the statute remains practical and workable.

Now harking back to the primary issue and noticing that the core driving skills (as enunciated in the earlier paragraphs), expected to be mastered by all drivers are universal – regardless of whether the vehicle falls into "Transport" or "Non-Transport" category, it is the considered opinion of this Court that if the gross vehicle weight is within 7,500 kg - the quintessential common man's driver Sri, with LMV license, can also drive a "Transport Vehicle". We are able to reach such a conclusion as none of the parties in this case has produced any empirical data to demonstrate that the LMV driving licence holder, driving a 'Transport Vehicle', is a significant cause for road accidents in India. The additional eligibility criteria as specified in MV Act and MV Rules as discussed in this judgment will apply only to such vehicle ('medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'), whose gross weight exceeds 7,500 Kg. Our present interpretation on how the licensing regime is to operate for drivers under the statutory scheme is unlikely to compromise the road safety concerns. This will also effectively address the livelihood issues for drivers operating Transport Vehicles (who clock maximum hours behind the wheels), in legally operating "Transport vehicles" (below 7,500 Kg), with their LMV driving license. Perforce Sri must drive responsibly and should have no occasion to be called either a maniac or an idiot (as mentioned in the first paragraph), while he is behind the wheels. Such harmonious interpretation will substantially address the vexed question of law before this Court.

Our conclusions following the above discussion are as under:-

(i) A driver holding a license for Light Motor Vehicle (LMV) class, under Section 10(2)(d) for vehicles with a gross vehicle weight under 7,500 kg, is permitted to operate a 'Transport Vehicle' without needing additional authorization u/s 10(2)(e) of the MV Act specifically for the 'Transport Vehicle' class. For licensing purposes, LMVs and Transport Vehicles are not entirely separate classes. An overlap exists between the

two. The special eligibility requirements will however continue to apply for, inter alia, e-carts, e-rickshaws, and vehicles carrying hazardous goods.

(ii) The second part of Section 3(1), which emphasizes the necessity of a specific requirement to drive a 'Transport Vehicle,' does not supersede the definition of LMV provided in Section 2(21) of the MV Act.

(iii) The additional eligibility criteria specified in the MV Act and MV Rules generally for driving 'transport vehicles' would apply only to those intending to operate vehicles with gross vehicle weight exceeding 7,500 kg i.e. 'medium goods vehicle', 'medium passenger vehicle', 'heavy goods vehicle' and 'heavy passenger vehicle'.

(iv) The decision in ***Mukund Dewangan v. Oriental Insurance Co.Ltd., (2017) ACJ 2011 (SC)*** is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and MV Rules were not considered in the said judgment.

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***27. MOTOR VEHICLES ACT, 1988 – Sections 2 (30) and 166**

Accident during a test drive – Liability to pay compensation – Driver of car and deceased who were employee's of car manufacturer, took the vehicle from dealer for the test drive – Whether dealer can be held liable when he was neither the owner nor in control of the car? Held, No – 'Owner' of vehicle is not limited to the category specified in section 2(30) of the Act – If the context so requires, even a person at whose command or control the vehicle is, could be treated as its owner for the purposes of fixing tortuous liability for payment of compensation. (*cases referred : Godavari Finance Co. v. Degala Satyanaranayanamma, 2008 ACJ 1612 (SC), Guru Govekar v. Filomena F. Lobo, 1988 ACJ 585 (SC), National Insurance Co. Ltd. v. Deepa Devi, 2008 ACJ 705 (SC), Rajasthan State Road Trans. Corpn. v. Kailash Nath Kothari, 1997 ACJ 1148 (SC), Ramesh Mehta v. Sanwal Chand Singhvi, (2004) 5 SCC 409* and *Tata Motors Ltd. v. Antonio Paulo Vaz, (2021) 18 SCC 545.)*

मोटर यान अधिनियम, 1988 – धारा 2 (30) एवं 166

टेस्ट ड्राईव के दौरान दुर्घटना – प्रतिकर भुगतान का दायित्व – कार का चालक एवं मृतक जो वाहन निर्माता कंपनी के कर्मचारी थे, द्वारा वाहन को डीलर से

टेस्ट ड्राईव के लिए ले जाया गया – क्या डीलर को उत्तरदायी ठहराया जा सकता है जबकि वह न तो कार का स्वामी था और न ही वाहन उसके नियंत्रण में था? – अभिनिर्धारित, नहीं – वाहन का '' स्वामी'' अधिनियम की धारा 2(30) में निर्दिष्ट श्रेणी तक सीमित नहीं है – यदि संदर्भ की आवश्यकता हो, तो यहॉ तक कि वह व्यक्ति जिसके आदेश या नियत्रंण में वाहन है, को भी प्रतिकर के भुगतान हेतु अपकृत्य दायित्व तय करने के प्रयोजन के लिए स्वामी माना जा सकता है। [*गोदावरी फाइनेंस कं. वि. डिगाला सत्यनारानयानम्मा, 2008 एसीजे 1612 (एस.सी.), गुरू गोवेकर वि. फिलोमेना एफ. लोबो, 1988 एसीजे 585 (एस. सी.), नेशनल इंश्योरेंस कं. लिमि. वि. दीपा देवी, 2008 एसीजे 705 (एस.सी.), राजस्थान स्टेट रोड ट्रॉस. कार्पोरेशन वि. कैलाश नाथ कोठारी, 1997 एसीजे 1148 (एस.सी.), रमेश मेहता वि. सांवल चंद सिंघवी, (2004) 5 एससीसी 409* एवं *टाटा मोटर्स लिमि. वि. एन्टोनिया पौलो वाज, (2021) 18 एससीसी 545* संदर्भित किये गये]

Vaibhav Jain v. Hindustan Motors Pvt. Ltd.

Judgment dated 03.09.2024 passed by the Supreme Court in Civil Appeal No. 10192 of 2024, reported in 2024 ACJ 1841

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

Motor accident – Involvement of offending vehicle – Accident took place on 15.01.2013 whereas the F.I.R. was lodged on the basis of written complaint on 01.02.2013 – Initially, the registration number of the offending truck was not informed to the police – It was mentioned first time in the complaint dated 01.02.2013 – During the course of investigation, truck was seized and driver was arrested – Insurance company made no effort to examine owner and driver – In such circumstances, merely because the registration number was informed subsequently, it cannot be said that the delay is so fatal so as to demolish the case of the claimants – It has to be borne in mind that the evidence has to be weighed on the principle of 'preponderance of probability' and not on the basis of principle of 'beyond reasonable doubt'.

मोटर यान अधिनियम, 1988 – धारा 166

वाहन दुर्घटना – आक्षेपित वाहन की संलिप्तता – दुर्घटना दिनांक 15.01.2013 को घटित हुई जबकि एफ.आई.आर दिनांक 01.02.2013 को लिखित शिकायत के आधार पर पंजीबद्ध की गई – आरंम्भ में आक्षेपित वाहन ट्रक का पंजीयन क्रमांक पुलिस को नहीं बताया गया – शिकायत दिनांक 01.02.2013 में इसका

पहली बार उल्लेख किया गया – अन्वेषण के दौरान ट्रक को जप्त कर लिया गया और चालक को गिरफ्तार किया गया – बीमा कंपनी द्वारा वाहन स्वामी एवं चालक का परीक्षण कराने का कोई प्रयास नहीं किया गया – ऐसी परिस्थितियों में, केवल इसलिए कि पंजीयन क्रमांक बाद में बताया गया, यह नहीं कहा जा सकता है कि विलम्ब इतना घातक है जो दावाकर्ता के मामले को ध्वस्त कर देगा – यह ध्यान में रखना होगा कि साक्ष्य को ''संभावनाओं की प्रबलता'' के सिद्धांत के आधार पर परखा जाना चाहिए न कि '' युक्तियुक्त संदेह से परे'' के सिद्धांत पर।

Kusum and ors. v. Kalu and anr.

Judgment dated 18.01.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in MA No. 1867 of 2016, reported in 2024 ACJ 1910

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

Assessment of income – Guidelines issued by any State Legal Services Authority should be applied only as a guiding factor in a case where there is no proof of income and ordinarily to settle such case in Lok Adalat – Such guidelines are not binding on High Court or Tribunal to determine just compensation – Courts are at liberty to assess just compensation considering the facts of the case and appreciating the evidence.

मोटर यान अधिनियम, 1988 – धारा 166

आय का निर्धारण – राज्य विधिक सेवा प्राधिकरण द्वारा जारी दिशा निर्देश केवल उन मामलों में मार्गदर्शी कारक के रूप में लागू किये जाने चाहिए जहॉ आय का कोई प्रमाण नहीं है और जहां मामला सामान्यतः लोक अदालत में निराकृत किया जाना हो – ऐसे दिशा निर्देश उचित प्रतिकर निर्धारण करने के लिए उच्च न्यायालय या अधिकरण पर बाध्यकारी नहीं है – न्यायालयों को मामले के तथ्यों पर विचार करने और साक्ष्य का मूल्यांकन कर उचित प्रतिकर निर्धारण करने की स्वतंत्रता है।

Hans Raj v. Oriental Insurance Co. Ltd. and anr.

Judgment dated 20.08.2024 passed by the Supreme Court in SLP (C) No. 3511 of 2020, reported in 2024 ACJ 2088

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30. MOTOR VEHICLES ACT, 1988 – Section 166

Award – Grant of interest – Future medical expenses – Claimant is not entitled to interest on future medical expenses.

मोटर यान अधिनियम, 1988 – धारा 166
अधिनिर्णय – ब्याज का प्रदान किया जाना – भविष्य के चिकित्सीय व्यय – दावाकर्ता भविष्य के चिकित्सीय व्यय पर ब्याज पाने का अधिकारी नहीं है।

Rajendrasinh N. Vadher v. National Insurance Co. Ltd. and ors.

Judgment dated 21.02.2024 passed by the Supreme Court in Civil Appeal No. 2805 of 2024, reported in 2024 ACJ 2014

Relevant extracts from the judgment:

After hearing learned counsel on both sides, we are of the view that disinclination on the part of the High Court in granting interest for the future medical expenses, in other words, interference with the grant of interest by the Tribunal for the said amount, cannot be said to be for a reason which is illogical and therefore, illegal. It is true that the High Court had not given any reason for interfering with the grant of interest for the amount granted under the said head. The fact is that the appellant is yet to incur expenses therefor. In the said circumstances, we do not find any merit in the claim and contentions of the appellant relating to interest on the amount which was granted towards the future medical expenses.

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31. MOTOR VEHICLES ACT, 1988 – Section 166

(i) Contributory negligence – Determination – Car collided with a truck which was left abandoned in the middle of the highway without any warning signs – The collision resulted in death of four occupants of car including driver – Tribunal found that accident could have been avoided had the car driver been cautious and accordingly held him equally negligent – Whether contributory negligence can be attributed to the car driver? Held, No – Accident occurred during night – There was no illumination at the accident site either natural or artificial – Truck was left abandoned in the middle of the road in violation of Rule 15 – There was no evidence to show that car was driven at excessively high speed or car driver did not follow traffic rules – Therefore, the person in control of the offending truck was fully responsible for the negligence leading to the accident.

(ii) Contributory negligence of driver – Whether the driver's negligence in any manner vicariously attaches to the passengers of the vehicle of which he was the driver? Held, No – Contributory negligence on

the part of the driver cannot be vicariously attached to the passengers so as to reduce the compensation awarded to the passengers or their legal heirs, as the case may be.

मोटर यान अधिनियम, 1988 – धारा 166

(i) योगदायी उपेक्षा – निर्धारण – कार एक ट्रक से टकरा गई जिसे बिना किसी चेतावनी चिन्हों के राजमार्ग पर बीच में छोड़ दिया गया था – टक्कर के परिणामस्वरूप चालक सहित कार में सवार चार व्यक्तियों की मृत्यु हो गई – अधिकरण ने पाया कि यदि कार चालक ने सावधानी बरती होती तो दुर्घटना टाली जा सकती थी, तदनुसार उसे भी समान रूप से उपेक्षावान माना – क्या कार चालक को योगदायी उपेक्षा के लिए जिम्मेदार ठहराया जा सकता है? अभिनिर्धारित, नहीं – दुर्घटना रात्रि के समय घटित हुई – दुर्घटना स्थल पर कोई प्राकृतिक या कृत्रिम प्रकाश नहीं था – नियम 15 के उल्लंघन में ट्रक को बीच सड़क पर छोड़ दिया गया था – ऐसा कोई साक्ष्य नहीं था जिससे यह दर्शित हो कि कार बहुत तेज गति से चलाई गई थी या कार चालक ने यातायात नियमों का पालन नहीं किया था – अतः आक्षेपित ट्रक पर नियंत्रण रखने वाला व्यक्ति उपेक्षा के परिणामस्वरूप घटित हुई दुर्घटना के लिए पूर्णतः जिम्मेदार था।

(ii) चालक की योगदायी उपेक्षा – क्या चालक की उपेक्षा किसी भी तरह से उस वाहन के यात्रियों पर प्रतिनिधिक रूप से आरोपित की जा सकती है जिसका वह चालक था? अभिनिर्धारित नहीं – चालक की योगदायी उपेक्षा को यात्रियों पर उन्हें या उनके विधिक उत्तराधिकारियों को दिए जाने वाले प्रतिकर में कमी करने हेतु प्रतिनिधिक रूप से आरोपित नहीं किया जा सकता।

Sushma v. Nitin Ganapati Rangole and ors.

Judgment dated 19.09.2024 passed by the Supreme Court in Civil Appeal No. 10648 of 2024, reported in 2024 ACJ 2161

Relevant extracts from judgment:

We hold that the finding of the Courts below, which reduced the claims of the legal heirs of the deceased and the injured, other than the legal heirs of the driver-Saiprasad Karande (deceased) is also invalid in the eyes of law. The Courts below uniformly applied the principle of contributory negligence while directing deduction from the compensation awarded to the respective appellant-claimants, i.e. the dependents of passengers and the injured as well as the dependents of the driver-Saiprasad Karande @ 50%. Thus, the contributory negligence of the driver of the car was vicariously applied to the passengers which is prima facie illegal and impermissible.

In the case of ***Union of India v. United India Insurance Co. Ltd., 1998 ACJ 342 (SC),*** this Court dealt with the question whether the driver's negligence in any manner vicariously attaches to the passengers of the motor vehicle of which he was the driver, and it was held as below: -

> "There is a well-known principle in the law of torts called the "doctrine of identification" or "imputation". It is to the effect that the defendant can plead the contributory negligence of the plaintiff or of an employee of the plaintiff where the employee is acting in the course of employment. But, it has been also held in ***Mills v. Armstrong, (1888) 13 AC 1, HL*** (also called The Bernina case) that that principle is not applicable to a passenger in a vehicle in the sense that the negligence of the driver of the vehicle in which the passenger is travelling, cannot be imputed to the passenger. (Halsbury's Laws of England, 4th Ed., 1984 Vol. 34, p. 74; Ratanlal and Dhirajlal, Law of Torts, 23rd Ed., 1997, p. 511; Ramaswamy Iyer, Law of Torts, 7th Ed., p. 447.) The ***Mills v. Armstrong, (1888) 13 AC 1, HL*** (also called The Bernina case) in which this principle was laid in 1888 related to passengers in a steamship. In that case a member of the crew and a passenger in the ship Bushire were drowned on account of its collision with another ship Bernina. It was held that even if the navigators of the ship Bushire were negligent, the navigators' negligence could not be imputed to the deceased who were travelling in that ship. This principle has been applied, in latter cases, to passengers travelling in a motor vehicle whose driver is found guilty of contributory negligence. In other words, the principle of contributory negligence is confined to the actual negligence of the plaintiff or of his agents. There is no rule that the driver of an omnibus or a coach or a cab or the engine driver of a train, or the captain of a ship on the one hand and the passengers on the other hand are to be "identified" so as to fasten the latter with any liability for the former's contributory negligence. There cannot be a fiction of the passenger sharing a "right of control" of the operation of the vehicle nor is there a fiction that the driver is an agent of the passenger. A passenger is not treated as a backseat driver. *(Prosser and Keeton on Torts, 5th Ed., 1984, pp. 521- 522.)* It is therefore clear that even if the driver of the passenger vehicle was negligent, the Railways, if its negligence was otherwise proved – could not plead contributory negligence on the part of the passengers of the vehicle. What is clear is that qua the passengers

> of the bus who were innocent, – the driver and owner of the bus and, if proved, the Railways – can all be joint tortfeasors."

It is clear from the ratio of the above judgment that the contributory negligence on the part of a driver of the vehicle involved in the accident cannot be vicariously attached to the passengers so as to reduce the compensation awarded to the passengers or their legal heirs as the case may be.

In the case of ***Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak, 2002 ACJ 1720 (SC)***, this Court while referring to a decision of the High Court of Australia in ***Astley v. Austrust Ltd., (1999) 73 ALJR 403***, went on to hold that: -

> "where, by his negligence, if one party places another in a situation of danger which compels that other to act quickly in order to extricate himself, it does not amount to contributory negligence, if that other acts in a way which, with the benefit of hindsight is shown not to have been the best way out of the difficulty."

In the very same judgment, this Court also referred to and approved the view taken in ***Swadling v. Cooper, (1931)AC 1***, as below: -

> "Mere failure to avoid the collision by taking some extra ordinary precaution, does not in itself constitute negligence."

A three Judge Bench of this Court in the case of ***Archit Saini and anr. v. Oriental Insurance Company Limited, 2018 ACJ 721 (SC)*** had the occasion to consider an identical fact scenario, and after analysing the evidence available on record, it was held:-

> "After having perused the evidence of PW 7, Site Map (Ext. P-45) and the detailed analysis under taken by the Tribunal, we have no he sitation in taking the view that the approach of the High Court in reversing the conclusion arrived at by the Tribunal on issue No.1 has been very casual, if not cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to casually over turn the finding of fact recorded by the Tribunal. As is evident from the analysis done by the Tribunal, it is a well-considered opinion and a plausible view. The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable doubts.

The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW 7 as being unreliable nor has it discarded his version that the driver of the Maruti Car could not spot the parked Gas Tanker due to the flashlights of the oncoming traffic from the front side. Further, the Tribunal also adverted to the legal presumption against the driver of the Gas Tanker of having parked his vehicle in a negligent manner in the middle of the road. The Site Plan (Ext. P-45) reinforces the version of PW 7 that the Truck (Gas Tanker) was parked in the middle of the road but the High Court opined to the contrary without assigning any reason whatsoever. In our view, the Site Plan (Ext. P-45) filed along with the charge sheet does not support the finding recorded by the High Court that the Gas Tanker was not parked in the middle of the road. Notably, the High Court has also not doubted the claimant's plea that the Gas Tanker/offending vehicle was parked without any indicator or parking lights. The fact that PW 7 who was standing on the opposite side of the road at a distance of about 70 feet, could see the Gas Tanker parked on the other side of the road does not discredit his version that the Maruti Car coming from the opposite side could not spot the Gas Tanker due to flashlights of the on coming traffic from the front side. It is not in dispute that the road is a busy road. In the cross-examination, neither has any attempt been made to discredit the version of PW 7 nor has any suggestion been made that no vehicle with flashlights on was coming from the opposite direction of the parked Gas Tanker at the relevant time.

Suffice it to observe that the approach of the High Court in reversing the well-considered finding recorded by the Tribunal on the material fact, which was supported by the evidence on record, cannot be countenanced.

Accordingly, we have no hesitation in setting aside the said finding of the High Court. As a result, the appellants would be entitled to the enhanced compensation as determined by the High Court in its entirety without any deduction towards contributory negligence. In other words, we restore the finding of the Tribunal rendered on issue No.1 against the respondents and hold that respondent No.1 negligently parked the Gas Tanker/offending vehicle in the middle of the road without any indicator or parking lights."

On a holistic analysis of the material available on record, it is established beyond the pale of doubt that the off ending truck was parked in the middle of the road without any parking lights being switched on and without any markers or indicators being placed around the stationary vehicle so as to warn the incoming vehicular traffic. This omission by the person in control of the said truck was in clear violation of law. The accident took place on a highway where the permissible speed limits are fairly high. In such a situation, it would be imprudent to hold that the driver of a vehicle, travelling through the highway in the dead of the night in pitch dark conditions, would be able to make out a stationary vehicle lying in the middle of the road within a reasonable distance so as to apply the brakes and avoid the collision. The situation would be compounded by the headlights of the vehicles coming from the opposite direction and make the viewing of the stationary vehicle even more difficult. Thus, the conclusion drawn by the Courts below that the driver of the car could have averted the accident by applying the brakes and hence, he was equally negligent and contributed to the accident on the application of principle of last opportunity is ex-facie perverse and cannot be sustained. Hence, it is a fit case warranting exercise of this Court's powers under Article 136 of the Constitution of India to interfere with the concurrent finding of facts.

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

Determination of age for applying multiplier – According to school leaving certificate produced by claimants, age of the deceased was shown to be 45 years – High Court relying on Aadhar Card, fixed age at 47 and reduced the multiplier from 14 to 13 – Whether Aadhaar Card is suitable proof for determining the age of deceased? Held, No – As school leaving certificate is accorded statutory recognition, relying on the same, age fixed at 45.

मोटर यान अधिनियम, 1988 – धारा 166

गुणांक लागू करने के लिए आयु का निर्धारण – दावाकर्ता द्वारा प्रस्तुत शाला त्याग प्रमाण पत्र के अनुसार मृतक की आयु 45 वर्ष दर्शित थी – उच्च न्यायालय ने आधार कार्ड पर भरोसा कर 47 वर्ष आयु निर्धारित की और गुणांक को 14 से घटाकर 13 कर दिया – क्या आधार कार्ड मृतक की आयु निर्धारित करने के लिए उपयुक्त प्रमाण है? अभिनिर्धारित, नहीं – शाला त्याग प्रमाण पत्र को वैधानिक मान्यता दी गई है, शाला त्याग प्रमाणपत्र के अनुसार आयु 45 वर्ष निर्धारित की गई ।

Saroj and ors. v. Iffco-Tokio General Ins. Co. Ltd. and ors.
Judgment dated 24.10.2024 passed by the Supreme Court in Civil Appeal No. 12077 of 2024, reported in 2024 ACJ 2523

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

Permanent disability – Assessment – Quantum of award – Injured, a 12 year old school going girl suffered left side hemiparesis resulting in permanent disability at 75% – Tribunal assessed disability at 50% and calculated loss of earning on the basis of notional income as 15,000/- p.a. – High Court took disability at 75% and assessed income at Rs. 5070/- p.m. as per minimum wages of an unskilled worker – Considering the fact that injured was a school going girl, the Apex Court assessed income at Rs. 5,250/- p.m. as per minimum wages of a skilled worker and taking disability at 100%, enhanced the awared under different heads from Rs. 18,97,371 to Rs. 34,07,771/-.

मोटर यान अधिनियम, 1988 – धारा 166

स्थायी निःशक्तता – निर्धारण – अवॉर्ड राशि का परिमाण – आहत जो एक 12 वर्षीय स्कूल जाने वाली बालिका थी, को बाएं हिस्से में हेमिपैरेसिस हुआ, जिसके परिणामस्वरूप उसे 75 प्रतिशत स्थायी निःशक्तता कारित हुई – अधिकरण ने निःशक्तता का आकलन 50 प्रतिशत किया तथा 15,000/– रूपये प्रतिवर्ष काल्पनिक आय के आधार पर आय की हानि की गणना की – उच्च न्यायालय ने निःशक्तता को 75 प्रतिशत माना और अकुशल श्रमिक की न्यूनतम मजदूरी दर के अनुसार आय 5070/– रुपये प्रति माह निर्धारित की – यह मानते हुए कि आहत व्यक्ति एक स्कूल जाने वाली बालिका थी, सर्वोच्च न्यायालय ने एक कुशल श्रमिक की न्यूनतम मजदूरी दर के अनुसार आय 5,250/– रुपये प्रति माह निर्धारित की और निःशक्तता को 100 प्रतिशत मानते हुए विभिन्न मदों के अंतर्गत प्रतिकर राशि में वृद्धि कर उसे 18,97,371/– रुपये से बढ़ाकर 34,07,771/– रुपये कर दिया।

Rushi v. Oriental Insurance Co. Ltd. and anr.
Judgment dated 05.11.2024 passed by the Supreme Court in Civil Appeal No. 12213 of 2024, reported in 2024 ACJ 2518

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

(i) Contributory negligence – Claimant and his wife were riding on a motorcycle and on their way, they came across two tractors which were being driven rashly and swiftly, resulting in an accident – The

claimant's wife passed away, whereas he sustained injuries – The driver of the second tractor exceeded the speed limit and moved from the wrong direction, when the claimant was overtaking the other tractor, which led to a collision – Mere attempt to overtake a vehicle cannot be considered as an act of negligence and rashness – Claimant sustained grievous injuries which also resulted in death of his wife while engaging in a normal activity of overtaking on the road – The claimant cannot be found guilty of contributory negligence when it was proved that the first tractor driver was operating the vehicle rashly and negligently.

(ii) Determination of compensation – Considering the age of deceased between 40 and 50 years and having a fixed salary, future prospects of 25% of her established income was also added – Multiplier of 15 is applied as per Second Schedule and award was modified accordingly.

मोटरयान अधिनियम, 1988 – धाराएं 166 एवं 168

(i) योगदायी उपेक्षा – दावाकर्ता और उसकी पत्नी मोटरसाइकिल पर सवार थे, रास्ते में उन्हें दो ट्रैक्टर मिले जिन्हे उपेक्षा और उतावलेपन से चलाया जा रहा था, जिसके परिणामस्वरूप दुर्घटना घटित हुई – दावाकर्ता की पत्नी की मृत्यु हो गई जबकि दावाकर्ता को भी चोटें आयी – जब दावाकर्ता एक ट्रैक्टर को ओवरटेक कर रहा था तब दूसरे ट्रैक्टर के चालक ने तेज गति से एवं गलत दिशा में आकर वाहन को चलाया, जिससे टक्कर हो गई – केवल वाहन को ओवरटेक करने के प्रयास को उपेक्षा एवं उतावलापन नहीं माना जा सकता – दावाकर्ता को गंभीर चोटें आयीं और सड़क पर ओवरटेक करने की सामान्य गतिविधि में शामिल होने के कारण उसकी पत्नी की मृत्यु कारित हुई – जब यह साबित है कि पहले ट्रैक्टर चालक द्वारा वाहन को उपेक्षा एवं उतावलेपन से चलाया जा रहा था तब दावाकर्ता को योगदायी उपेक्षा का दोषी नहीं माना जा सकता।

(ii) क्षतिपूर्ति का आंकलन – मृतक की आयु 40 से 50 वर्ष के बीच मानते हुए और एक निश्चित वेतन होने के तथ्य को ध्यान में रखते हुए भविष्य की संभावना में 25 प्रतिशत आय को जोड़ा गया – दूसरी अनुसूची के अनुसार 15 का गुणांक लागू किया गया और अधिनिर्णय में तद्नुसार संशोधन किया गया।

Prem Lal Anand and ors. v. Narendra Kumar and ors.
Judgment dated 07.08.2024 passed by the Supreme Court in Civil Appeal No. 8503 of 2024, reported in AIR 2024 SC 3720

Relevant extracts from the judgment:

Record reveals that driver of the tractor No. UP 14-A 1933 had maintained slow speed, prompting the claimant-appellant No.1 to overtake, but, however, the driver of the another tractor bearing No. UP 14-B 9603 was rash and negligent in his act, inasmuch as, not only did he overspeed, but also came from the wrong side, resulting in the collusion.

In the attending facts and circumstances, merely because a person was attempting to overtake a vehicle, cannot be said to be an act of rashness or negligence with nothing to the contrary suggested from the record. Further, it is the claimant-appellant(s) who lost a member of their family. Not only was the claimant-appellant, Prem Lal Anand doing an act which is an everyday occurrence on the road that is overtaking a vehicle, but resultantly suffered extensive injuries himself. That apart, it has also been proved that the offending vehicle was driven rashly and negligently. These two factors taken together lead us to the conclusion that the finding of contributory negligence against the appellant No.1 was erroneous and unjustified. Consequently, compensation awarded on this count has to be revised.

Another aspect to be considered is the grant of future prospects as per ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680***. Para 59.4 thereof provides that if the deceased was self-employed or on a fixed salary, considering the age of the deceased, certain percentages as provided have to be added in respect of future prospects. In the present case, the deceased was between the age of 40 and 50 and accordingly, 25% addition is to be made, to the established income. The Tribunal notes the income of the deceased to be Rs.5000/- per month, therefore 25% of 5000 equals Rs.1,250/-. Yearly income as a result would be Rs 6250 x 12 which equals to Rs.75,000/- per year.

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35. MOTOR VEHICLES ACT, 1988 – Sections 166 and 169
CIVIL PROCEDURE CODE, 1908 – Order 14 Rule 2

(i) Territorial jurisdiction of Claims Tribunal – Application for claim was filed before the Claims Tribunal at Nainital – Claimant's son died in the motor accident which had occurred within the limits of district Udham Singh Nagar – Tribunal found that neither the claimant nor the opposite party No. 1 & 2 (owner & driver) are residing within its jurisdiction – Tribunal held that mere fact that the insurance company got an office within the jurisdictional limits of the Tribunal at Nainital, could not confer jurisdiction on it and

accordingly, dismissed the claim application – Whether Tribunal was justified in dismissing the application for lack of territorial jurisdiction when the opposite party No. 3 Insurance Company has its office within the jurisdiction of Tribunal at Nainital? Held, No [C*ases referred: Kiran Singh v. Chanman Paswan, AIR 1954 SC 340, Malati Sardar v. National Insurance Co. Ltd., 2016 ACJ 542 (SC)* and *Mantoo Sarkar v. Oriental Insurance Co. Ltd., 2009 ACJ 564 (SC)]*

(ii) Claims Tribunal – Practice and procedure – Tribunal framed all necessary issues and permitted the parties to adduce evidence however, rejected the claim for lack of territorial jurisdiction after four years of filing of claim application – Held, Tribunal was obliged to decide the question of jurisdiction at the threshold itself – Once evidence has been recorded, the Tribunal should have passed an award after recording finding on merits of all issues.

मोटर यान अधिनियम, 1988 – धाराएं 166 एवं 169

सिविल प्रक्रिया संहिता, 1908 – आदेश 14 नियम 2

(i) दावा अधिकरण का प्रादेशिक क्षेत्राधिकार – प्रतिकर के लिए आवेदन नैनीताल स्थित दावा अधिकरण के समक्ष प्रस्तुत किया गया – दावाकर्ता के पुत्र की मृत्यु मोटरयान दुर्घटना में जिला उधम सिंह नगर की सीमा के भीतर हुई थी – अधिकरण ने पाया कि न तो दावाकर्ता और न ही प्रत्यर्थी क्रमांक 1 व 2 (मालिक और चालक) उसके अधिकार क्षेत्र में रहते हैं – अधिकरण ने माना कि मात्र इस तथ्य के आधार पर कि बीमा कंपनी का कार्यालय नैनीताल में अधिकरण के क्षेत्राधिकार की सीमा के भीतर स्थित है, उसे क्षेत्राधिकार प्राप्त नहीं होगा और तदनुसार दावा आवेदन निरस्त कर दिया – क्या अधिकरण द्वारा प्रादेशिक क्षेत्राधिकार के अभाव के आधार पर आवेदन को निरस्त करना न्यायोचित था, जबकि विपक्षी पक्षकार क्रमांक 3 बीमा कंपनी का कार्यालय नैनीताल में अधिकरण के क्षेत्राधिकार के अंतर्गत स्थित है? अभिनिर्धारित नहीं। (*किरण सिंह वि. चमन पासवान, एआईआर 1954 एससी 340, मलाठी सरदार वि. नेशनल इंश्योरेंस कं. लिमि., 2016 एसीजे 542 (एस.सी.), मंटू सरकार वि. ओरियंटल इंश्योरेंस कं. लिमि., 2009 एसीजे 564 (एस.सी.)* संदर्भित)

(ii) दावा अधिकरण – प्रथा एवं प्रक्रिया – अधिकरण ने सभी आवश्यक विवाद्यक विरचित किए और पक्षकारों को साक्ष्य प्रस्तुत करने की अनुमति दी, परन्तु दावा आवेदन प्रस्तुत होने के चार वर्ष बाद प्रादेशिक क्षेत्राधिकार न होने के आधार पर आवेदन निरस्त कर दिया – अभिनिर्धारित, अधिकरण आरम्भ में ही क्षेत्राधिकार के प्रश्न को निराकृत करने के लिए बाध्य था – एक बार

साक्ष्य अंकित हो जाने के बाद अधिकरण को सभी विवाद्यकों पर गुण–दोष के आधार पर अधिनिर्णय पारित करना चाहिए।

Balveer Batra v. New India Assurance Co. Ltd. and anr. Judgment dated 08.02.2024 passed by the Supreme Court in Civil Appeal No. 1842 of 2024, reported in 2024 ACJ 2278

Relevant extracts from the judgment:

The words 'at the option of the claimant' employed in Section 166(2) and the options available to a claimant in regard to places for suing for such compensation under Section 166 (2), assume relevance for consideration of the moot question. Indubitably, the statute indicates that option lies with the claimant to make application for compensation either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides. There can be no doubt with respect to the position that if more than one Court has jurisdiction to adjudicate a dispute it will be open to the party concerned to choose one of the competent Courts to decide his dispute. Thus, it is obvious that merely because the claimant made the application for compensation not to the Claims Tribunal having jurisdiction over the area in which the accident occurred or not to the Claims Tribunal within the local limits of whose jurisdiction he resides or carries on business, is no reason to dismiss the application provided it is filed before a Claims Tribunal where it is otherwise maintainable. This aspect calls for consideration not solely confining to strict construction of the rest of the provision under Section 166 (2) of the M.V. Act, but by looking into various other authorities, as well.

In the above context, it is to be noted that for the purpose of deciding the issue of territorial jurisdiction, the Tribunal permitted the parties to adduce evidence before it. The position obtained in the case would reveal that the Tribunal had actually proceeded with the claim petition despite holding the view that it got no territorial jurisdiction. In such indisputable position, it is only apposite to refer to Order XIV, Rule 2 of CPC which mandates a Court to pronounce a judgment on all the issues.

True that in terms of the said provision, the issues regarding territorial jurisdiction ought to be tried as primary issues but when it is evident that the issue could not be decided solely based on the pleadings in the plaint (here claim petition) and when parties are permitted to adduce evidence upon finding that it is a mixed

question of law and facts there was absolutely no justification for not pronouncing an award on all the issues framed besides the one pertaining to its territorial jurisdiction. There cannot be any doubt with respect to the fact that when evidence was permitted to be let in, may be for such issues the possibility of re-appreciation and consequent reversal of finding(s) of the Tribunal cannot be ruled out. But then, if the award was pronounced not at threshold, but after a very long lapse of time and confining consideration only on the issue of territorial jurisdiction and then, answering the other issues as well against the claimant without examining them on their own merits, but solely because of the negative finding on the issue of territorial jurisdiction, as occurred in the case on hand, it would defeat the very purpose of the benevolent legislation providing for grant of compensation under Section 166 of the M.V. Act. As noticed hereinbefore in this case, the question of territorial jurisdiction was decided by the Tribunal after about 4 years since the filing of the claim petition and the appeal filed in 2010 was dismissed, confirming the dismissal of the claim petition after about 6 years. We have also already noted that in the case on hand a great illegality or error has been committed by the Tribunal even after observing that it got no occasion to examine the other six issues but then deciding those six issues against the claimant and in favour of the opposite parties. Since a Claims Tribunal constituted under Section 165, M.V. Act even when lacking territorial jurisdiction cannot be said to be lacking jurisdiction on the subject matter in a claim petition and the award would not be a nullity and therefore, the findings on other issues would be binding on the parties. Hence, in the first instance, failure of justice occurred as the award of the Tribunal virtually rendered the claimant remediless. In cases of this nature, sometimes a remand may also be a futility as passage of such long period may make witnesses unavailable for examination or re-examination for various reasons. Such reasons may also include death of the witness(s). Since the present imbroglio is created because of a mistake or error on the part of the Tribunal, either in proceeding further after returning a negative finding on the question of territorial jurisdiction or in not pronouncing award on all issues, we are of the considered view that the said mistake not entering on merits and into a findings on issues No.1 to 4, 6 and 7 at paragraph 21 against the claimant and in favour of the opposite parties without examining them on merits and hence, they are liable to be set aside in the light of the salutary maxim 'Actus Curiae neminem gravabit', as no party shall be put to suffer for the mistake of a Court.

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36. MOTOR VEHICLES ACT, 1988 – Sections 168 and 174

Disbursement of award – Pay and recover – Tribunal has no power to direct the owner of offending vehicle to furnish bank guarantee for the sum deposited by insurance company and to refuse to disburse the award amount to claimants till such security is furnished – In a case of pay and recover, remedy available to the insurance company is to obtain a certificate from Tribunal in the same manner as arrears of land revenue or seek attachment of the offending vehicle. [Cases referred: *National Insurance Co. Ltd. v. Challa Bharathamma, 2004 ACJ 2094 (SC), National Insurance Co. Ltd. v. Swaran Singh, 2004 ACJ 1 (SC)* and *Pappu v. Vinod Kumar Lamba, 2018 ACJ 690 (SC)]*

मोटर यान अधिनियम, 1988 – धाराएं 168 एवं 174

अवार्ड राशि का वितरण – भुगतान कर वसूली करें – अधिकरण को आक्षेपित वाहन के स्वामी को बीमा कंपनी द्वारा जमा की गई अवार्ड राशि के लिए बैंक गारंटी प्रस्तुत करने का निर्देश देने और ऐसी प्रतिभूति प्रस्तुत किए जाने तक दावेदारों को अवार्ड राशि वितरित करने से इन्कार करने का अधिकार नहीं है – भुगतान कर वसूली करें के मामले में, बीमा कंपनी को यह उपचार उपलब्ध है कि वह भू–राजस्व के बकाया के समान अधिकरण से प्रमाण पत्र प्राप्त करे या आक्षेपित वाहन की कुर्की की मांग करे। [*नेशनल इंश्योरेंस कं. लिमि. वि. चल्ला भाराथम्मा, 2004 एसीजे 2094 (एस.सी), नेशनल इंश्योरेंस कं. लिमि. वि. स्वर्ण सिंह, 2004 एसीजे 1 (एस.सी.) एवं पप्पू वि. विनोद कुमार लांबा, 2018 एसीजे 690 (एस.सी.)* संदर्भित]

Sampat Devi and ors. v. Branch Manager, Shriram General Ins. Co. Ltd. and anr.

Judgment dated 14.03.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 4050 of 2018, reported in 2024 ACJ 2464

Relevant extracts from the judgment:

In para-13 of the judgment of Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Challa Bharathamma, 2004 ACJ 2094 (SC)***, the Hon'ble Supreme Court has held that before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The of ending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. Thus, it is held by the Hon'ble Supreme

Court that insurance company will be entitled to raise a dispute before the executing Court against the owner of the vehicle and that dispute can be directly entertained and there will be no requirement of approaching the Civil Court or any other Court by filing a civil suit for recovery of the dues of the insurance company.

In the case of ***Pappu v. Vinod Kumar Lamba, 2018 ACJ 690 (SC)*** which is a judgment of three Judges Bench and which will have more persuasive value, than that of two Judges Bench in the case of ***Challa Bharathamma*** (supra). Hon'ble Supreme Court in the case of ***Pappu*** (supra) placed reliance on the judgment passed in the case of ***National Insurance Co. Ltd. v. Swarn Singh, (2004) 3 SCC 297***, has clearly held in Para-18 and quoted the excerpt of Paragraph-110 of ***Swarn Singh*** (supra) as under:

> "Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunal in interpreting the policy condition would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.
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> xxx
>
> Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal".

In the present case, since the owner insured has already appeared and he has failed to satisfy the requirement of the orders of the Coordinate Bench of this Court and the judgment of Hon'ble Supreme Court and has not furnished the security, then the course open to the Tribunal is as prescribed in the judgment of three Judges in ***Pappu*** (supra) and by no stretch of imagination, that amount can be withheld by the Tribunal. It is interesting to note that this judgment in the case of ***Pappu*** (supra) was delivered on 19th January, 2018. All the members of the district judiciary have been given a software of SCC by the High Court. Thus, this judgment was available to the concerned Additional Judge of the Tribunal. But, instead of applying himself to the said judgment of Hon'ble Court, which authorises the Tribunal to issue a certificate which can be executed as a RRC, Tribunal became a tool in the hands of the insurance company causing further damage to the claimants by not disbursing the amount by giving narrow interpretation to the judgment of the High Court.

Thus, when examined in the above light and also the act of delinquency on the part of the insurance company in not making an application to the Tribunal for attachment of the offending vehicle in terms of the ratio of the judgment rendered by Hon'ble Supreme Court in the case of ***Challa Bharathamma*** (supra), by no stretch of imagination, for the complacency of the insurance company, the claimants can be made to suffer. If this interpretation as has been given by the Tribunal or the Coordinate Bench of this High Court is allowed to stand, then it will frustrate the basic purpose of the socially beneficial legislation i.e. in the Motor Vehicles Act, therefore, instead of giving such narrow interpretation, and this Court being fortified by the three Judges Bench of Hon'ble Supreme Court in the case of ***Pappu*** (supra), it is directed that the amount of claim along with interest be disbursed in favour of the claimants immediately and the remedy will be available to the insurer as per the judgment of Hon'ble Supreme Court in the case of ***Pappu*** (supra) or as per the judgment of Hon'ble Supreme Court in the case of ***Challa Bharathamma*** (supra) where they can seek attachment of the offending vehicle or obtain an RRC certificate.

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37. MOTOR VEHICLES ACT, 1988 – Section 173

Defence of owner of the vehicle – Burden of proof – In appeal filed by appellant/ owner of offending vehicle, it was contended that claimant was riding his motorcycle in a rash and negligent manner and collided with the standing JCB of the appellant – Burden of proof was on the appellant

to prove that he was not at fault in causing the accident – Appellant has neither produced a single evidence nor cross-examined the claimant on this point – Moreover, driver of the offending vehicle has admitted that chargesheet has been filed against him for causing the accident and he has never made any complaint to higher Police Officer for registering false case against him –Appellant failed to prove his defence – Appeal dismissed.

मोटर यान अधिनियम, 1988 – धारा 173

वाहन स्वामी की प्रतिरक्षा – सबूत का भार – अपीलार्थी/उल्लंघनकारी वाहन के स्वामी ने प्रस्तुत की गई अपील में यह आक्षेपित किया कि दावाकर्ता उतावलेपन एवं उपेक्षा पूर्वक वाहन चला रहा था और उसने सड़क किनारे खड़ी उसकी जे. सी.बी. को टक्कर मार दी – सबूत का भार अपीलार्थी पर था कि वह प्रमाणित करे कि उसका दुर्घटना में कोई दोष नहीं था – अपीलार्थी ने इस बिन्दु पर न तो दावाकर्ता का प्रतिपरीक्षण किया और न ही कोई भी साक्ष्य प्रस्तुत की – यहां तक कि उल्लंघनकारी वाहन के चालक ने यह स्वीकार किया कि दुर्घटना कारित करने के लिए उसके विरूद्ध अभियोगपत्र प्रस्तुत किया गया है और उसने स्वयं के विरूद्ध झूठा मामला पंजीबद्ध करने के संबंध में उच्च पुलिस अधिकारियों को कभी भी कोई शिकायत नहीं की है – अपीलार्थी अपनी प्रतिरक्षा प्रमाणित करने में असफल रहा – अपील निरस्त की गई।

Vijay Kumar Sharma v. Pradeep Kumar and anr.

Order dated 12.01.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 1096 of 2023, reported in ILR 2024 MP 1598

Relevant extracts from the order:

It is settled principle that if police register the case against the offending vehicle after investigation, files a charge sheet before Magistrate Court then Tribunal presume guilty of the driver of the offending vehicle.

Driver of the offending vehicle gave his evidence before the Tribunal and denied the accident, but he accepted in cross- examination that he is driver of offending vehicle and he has accepted that Police Thana Gadi Malhara registered a case against him and filed charge sheet against him and criminal case is pending before criminal Court. He also accepted that he did not produce any document in which he made complaint before the higher officer of police for lodging false case against him.

It means appellant impliedly accepted that accident occurred between motorcycle of the claimant and offending vehicle JCB. But he raise the point that claimant is driving rashly and negligently and dashed the JCB, whichwas stationed on the road side. So burden of proof shifted to the appellant toprove this fact that claimant dashed his motorcycle on stationed JCB, but hehad not produced single evidence on this point and not cross-examined to claimant on this point before Tribunal.

So as per aforesaid discussion, this is considered view of this Court that Tribunal has rightly held that driver of the offending vehicle was driving rashly and negligently and hit the claimant and appellant failed to prove their defence before Tribunal. So argument of appellant that his vehicle was falsely planted in accident has no substance.

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***38. MOTOR VEHICLES ACT, 1988 – Sections 185, 203, 204 and 205**

(i) Liability of Insurance Company – No breath analyser/blood alcohol concentration (BAC) report on record – Driver was examined by doctor within two hours of the accident – MLC states smell of alcohol was coming from mouth – Doctor was not cross-examined on this point – Driver did not get himself examined whereas he was the most material witness – Adverse inference has to be drawn against the driver that he was intoxicated while driving the offending vehicle and caused the accident – Insurance company is not liable to pay compensation as terms and conditions of policy were breached.

(ii) Driving by drunken person – Liability of insurance company – Determination – The amount and extent of consumption of alcohol in blood need not be established for determining liability.

(iii) Nature of evidence – Sections 185, 203, 204 and 205 of the Act relate to criminal offence/liability which has to be proved beyond reasonable doubt – On the contrary, proceedings initiated u/s 166 of the Act is civil in nature and has to be decided on the basis of preponderance of probabilities – These proceedings are summary in nature.

मोटरयान अधिनिमय, 1988 – धाराएं 185, 203, 204 एवं 205

(i) बीमा कम्पनी का दायित्व – अभिलेख पर श्वास परीक्षक/ब्लड एल्कोहल कंसन्ट्रेशन (बी.ए.सी.) की रिपोर्ट नहीं – चिकित्सक ने दुर्घटना के दो घंटे के भीतर चालक का परीक्षण किया था – एम.एल.सी. में

उल्लिखित है कि चालक के मुँह से मदिरा की गंध आ रही थी – चिकित्सक का प्रतिपरीक्षण इस बिन्दु पर नहीं किया गया – चालक ने स्वयं का परीक्षण नहीं कराया जबकि वह सबसे महत्वपूर्ण साक्षी था – चालक के विरूद्ध प्रतिकूल निष्कर्ष निकालना होगा कि वह उल्लंघनकारी वाहन को चलाते समय नशे में था और उसने दुर्घटना कारित की है – बीमा कम्पनी प्रतिकर देने हेतु दायित्वाधीन नहीं क्योंकि पॉलिसी के निबंधनों एवं शर्तो का भंग हुआ था।

(ii) मदिरा सेवन किये हुए व्यक्ति द्वारा वाहन चलाना – बीमा कम्पनी का दायित्व – निर्धारण – दायित्व निर्धारण हेतु रक्त में मदिरा की मात्रा एवं सेवन की सीमा को स्थापित करना आवश्यक नहीं है।

(iii) साक्ष्य की प्रकृति – अधिनियम की धाराए 185, 203, 204 एवं 205 दाण्डिक अपराध/आपराधिक दायित्व से संबंधित एवं इसे युक्तियुक्त संदेह से परे प्रमाणित किया जाना होगा – इसके विपरीत धारा 166 के अंतर्गत संस्थित की गई कार्यवाही सिविल प्रकृति की है एवं इसे संभाव्यता की प्रबलता के आधार पर विनिश्चित करना होगा – यह कार्यवाहियाँ संक्षिप्त प्रकृति की होती है।

Mubarak Khan v. Smt. Sukko Bai Kol and ors.

Order dated 07.03.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 1333 of 2023, reported in ILR 2024 MP 1642

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39. NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 8(c), 21, 29, 42, 50 and 67

(i) Search and seizure of contraband substance – On receiving the information of delivering of contraband/ illicit substance, IO sent the information to superior officer – After preparation of *panchnama,* police party went to bus stand – During raid, one suspect was found in possession of illegal contraband substance and the other suspect escaped from the spot and could not be apprehended – Search and seizure procedure was free from all doubts – Evidence of independent punch witness is found reliable – Sampling of contraband and transmission of sample to chemical analyst process was found free from any doubt – Conviction was proper.

(ii) Plea of non-compliance of Section 42 – Police got secret information that two suspects were bringing illicit substances to a public bus

stand – Section 42 of the Act governs searches and seizures in buildings, conveyances and enclosed places – When search and seizure is conducted at a public place, section 43 of the Act applies and not section 42(2).

(iii) Non-compliance of section 50 – The accused was carrying contraband in a polythene bag that he kept in his hand – Contraband was seized from the said bag – Seizure was not effected during personal search of accused – There was no requirement for the seizing officer to act under the provision of section 50 – Plea of non-compliance of section 50 is unacceptable.

(iv) No recovery from possession of co-accused, effect – Co-accused was not apprehended on the spot – No inquiry was made by the investigating agency regarding identity of the co-accused while he fled away from the spot – First time, the name of co-accused was taken by accused in his statement u/s 67 of the Act – Such type of confessional statements are not admissible in evidence – The co-accused was identified by witness in court after more than 2 years from the date of incident – No contraband substance was recovered from possession of co-accused – Benefit of doubt was given and conviction set aside.

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 8(ग), 21, 29, 42, 50 एवं 67

(i) प्रतिषिद्ध पदार्थ की तलाशी और जब्ती – प्रतिषिद्ध/अवैध पदार्थ के परिदान की सूचना मिलने पर, अनुसंधानकर्ता अधिकारी ने वरिष्ठ अधिकारी को सूचना अग्रेषित की – पंचनामा तैयार करने के उपरांत पुलिस पार्टी बस स्टैंड पर गयी – छापे के दौरान एक संदिग्ध अवैध निषिद्ध पदार्थ के आधिपत्य में पाया गया और दूसरा संदिग्ध मौके से भाग गया जिसे पकड़ा नहीं जा सका – तलाशी और जब्ती की प्रक्रिया समस्त संदेहों से मुक्त थी – स्वतंत्र पंच गवाह का साक्ष्य विश्वसनीय पाया गया – प्रतिषिद्ध पदार्थ का नमूना लेना और रासायनिक विश्लेषक को नमूना भेजने की प्रक्रिया किसी भी संदेह से मुक्त पाई गई – दोषसिद्धि उचित।

(ii) धारा 42 के अपालन का अभिवाक् – पुलिस को गुप्त सूचना प्राप्त हुई कि दो संदिग्ध सार्वजनिक बस स्टैंड पर अवैध पदार्थ ला रहे थे – अधिनियम की धारा 42 भवनों, प्रवहण और परिवेष्टित स्थानों में तलाशी और जब्ती को शासित करती है – जब सार्वजनिक स्थान पर तलाशी और जब्ती की जाती है, तो अधिनियम की धारा 43 लागू होती है न कि धारा 42(2)।

(iii) धारा 50 का अपालन – अभियुक्त एक पॉलीथीन बैग में प्रतिषिद्ध पदार्थ ले जा रहा था जिसे उसने अपने हाथ में रखा था – उक्त बैग से प्रतिषिद्ध पदार्थ जब्त किया गया – जब्ती अभियुक्त की व्यक्तिगत तलाशी के दौरान नहीं की गई – जब्ती अधिकारी के लिए धारा 50 के प्रावधान के अंतर्गत कार्य करने की कोई आवश्यकता नहीं थी – धारा 50 के अपालन का अभिवाक् अस्वीकार्य है।

(iv) सह–अभियुक्त के आधिपत्य से कोई जब्ती नहीं, प्रभाव – सह–अभियुक्त को मौके पर नहीं पकड़ा गया – अनुसंधान एजेंसी द्वारा सह–अभियुक्त जब वह मौके से भागा था, की पहचान के संबंध में कोई जाँच नहीं की गई – पहली बार सह–अभियुक्त का नाम अभियुक्त द्वारा अधिनियम की धारा 67 के अंतर्गत अपने कथन में लिया गया – इस प्रकार के संस्वीकृति कथन साक्ष्य में स्वीकार्य नहीं होते – पहली बार सह–अभियुक्त को गवाह द्वारा अदालत में घटना की तारीख के 2 बर्ष से अधिक समय बाद पहचाना गया – सह–अभियुक्त के आधिपत्य से कोई प्रतिबंधित पदार्थ बरामद नहीं हुआ – संदेह का लाभ दिया गया और दोषसिद्धि अपास्त की गई।

Firdos khan Khurshid khan v. State of Gujarat and anr.
Judgment dated 30.04.2024 passed by the Supreme Court in Criminal Appeal No. 2044 of 2010, reported in AIR 2024 SC 3846

Relevant extracts from the judgment:

It was the fervent contention of learned counsel for the appellants that the search and seizure proceedings are vitiated on account of non-compliance of the mandatory procedure provided under Section 42 of the NDPS Act. The said contention is on the face of record, misplaced. The secret information which was received by Deepak Pareek (PW-2) was to the effect that two suspects would be bringing contraband substance at the ST Bus Stand, Kheda which is a public place.

Section 42 of the NDPS Act deals with search and seizure from a building, conveyance or enclosed place. When the search and seizure is effected from a public place, the provisions of Section 43 of the NDPS Act would apply and hence, there is no merit in the contention of learned counsel for the appellants that non-compliance of the requirement of Section 42(2) vitiates the search and seizure. Hence, the said contention is noted to be rejected.

The name of Firdoskhan (A-2) cropped up for the first time in the statement of Anwarkhan (A-1) recorded under Section 67 of the NDPS Act. However, we are duly satisfied that the sequence in which the said statement came to be recorded completely discredits the reliability thereof. Anwarkhan (A-1) was apprehended at

the bus stand with the packet of narcotic drug at around 4:30 p.m. His signatures had been taken on the panchnama (Exhibit-30) prepared at 9:00 p.m. and thus, it does not stand to reason that the Intelligence Officer would defer arresting Anwarkhan (A-1) to a later point of time because, as per the arrest memo (Exhibit-43) his arrest is shown at 11:45 p.m. It seems that this deferment in formal arrest of Anwarkhan (A-1) was only shown in papers so that the Intelligence Officer could record the statement of Anwarkhan (A-1) under Section 67 of the NDPS Act and avoid the same being hit by the rigours of Article 20(3) of the Constitution of India.

We may observe that as per the case set out in the complaint and the evidence of the NCB officials, the team of narcotic officers/officials was divided into two groups. However, it is not clear from the evidence of any of the four prosecution witnesses as to what was the composition of these two groups. Neither the panch witness Manubhai (PW-1) nor the Intelligence Officer Deepak Pareek (PW-2) identified Firdoskhan (A-2) as the accused who had escaped from the bus stand. In this background, we feel that the first time identification of Firdoskhan (A-2) by Vikram Ratnu (PW-3) during his evidence in the Court recorded on 14th February, 2005 i.e. more than two years from the date of incident, is dubitable. The evidence of Vikram Ratnu (PW-3) to the extent he claimed to have identified Firdoskhan (A-2) is neither reliable nor it gets corroborated by any other independent evidence and hence, his evidence deserves to be discarded to this extent.

There is no dispute that no contraband substance was recovered from the possession of appellant Firdoskhan (A-2).

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***40. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138**

Dishonour of cheque – Respondent issued a cheque to the complainant for purchase of coal in the capacity of proprietor of the firm – No averments in the complaint that respondent was the sole proprietor – Firm was also not arrayed as a respondent – Complaint was held to be not maintainable – Judgment of the Trial Court acquitting the accused was upheld.

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

चैक का अनादरण – प्रत्यर्थी ने परिवादी को कोयला क्रय करने हेतु फर्म के स्वामी की हैसियत से चैक प्रदाय किया – परिवाद में कोई अभिकथन नहीं कि प्रत्यर्थी, फर्म का एकमात्र स्वामी था – फर्म को प्रत्यर्थी के रूप में संयोजित भी नहीं किया गया – परिवाद पोषणीय नहीं माना गया – विचारण न्यायालय का अभियुक्त को दोषमुक्त करने का निर्णय स्थिर रखा गया।

Shree Minerals and Fuels, Katni v. Amit Kumar Chaterji
Order dated 12.04.2024 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 40241 of 2019, reported in 2024 (4) MPLJ 519

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41. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 142
Dishonour of cheque – Amendment in pleadings – Permissibility – Date of cheques incorrectly mentioned in the notice, complaint and affidavit – This is not a simple or curable infirmity but a substantial one – Amendment cannot be allowed if it does not relate to a curable infirmity – Such infirmity cannot be corrected by a formal amendment if there is likelihood of prejudice to other side – In this case, court has taken cognizance of the matter and accused has already appeared in the Court – Amendment if permitted, would change the entire nature of complaint as the dates of cheques itself would be altered – Proposed amendment is not based on subsequent events – Amendment cannot be allowed.

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 142
चैक का अनादरण – अभिवचनों में संशोधन – अनुज्ञेयता – नोटिस, परिवाद एवं शपथपत्र में चैक की तिथि गलत उल्लिखित की गई – इसे साधारण अथवा सुधार योग्य त्रुटि नहीं कहा जा सकता बल्कि यह सारवान त्रुटि है – संशोधन अनुमत नहीं किया जा सकता यदि यह सुधार योग्य त्रुटि से संबंधित नहीं है – यदि दूसरे पक्ष को प्रतिकूल प्रभाव कारित होना संभावित हो तो ऐसी त्रुटि औपचारिक संशोधन द्वारा नहीं सुधारी जा सकती – प्रस्तुत प्रकरण में न्यायालय मामले का संज्ञान ले चुका है और अभियुक्त न्यायालय के समक्ष उपस्थित भी हो चुका है – यदि संशोधन अनुमत किया जाता है तो यह परिवाद के सम्पूर्ण स्वरूप को बदल देगा क्योंकि चैक की तिथियां ही बदल जाएगी – प्रस्तावित संशोधन पश्चात्वर्ती घटनाओं पर आधारित नहीं है – संशोधन मंजूर नहीं किया जा सकता।

Anil Kumar v. Balwantsingh Sethi
Order dated 18.03.2024 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 23534 of 2023, reported in ILR 2024 MP 1743

Relevant extracts from the order:

In the present case, admittedly the defect is of the date of the cheques which as per the complaint has been incorrectly mentioned. However, such mentioning is

in the notice issued to the accused, in the complaint itself and so also in the affidavit filed in support of the complaint. The same cannot be said to be a simple or curable infirmity but relates to a substantial infirmity. As has been held by the Supreme Court in ***S.R. Sukumar v. S. Sunaad Raghuram, (2015) 9 SCC 609*** amendment cannot be allowed if it does not relate to a curable infirmity. Such infirmity cannot also be corrected by a formal amendment if there is likelihood of prejudice to the other side.

The Trial Court has already applied its judicial mind to the contents of the complaint and has taken cognizance of the matter. Summons have already been issued to the accused and he has already appeared before the Court. The amendment if permitted would change the entire nature of the complaint as the date of the cheques itself would be altered. The facts proposed to be insertedby way of the amendment are not at all based upon subsequent events. If the amendment is permitted it would certainly cause prejudice to the accused.Thus, the amendment at this stage of the proceedings could not have been permitted where as the trial Court has erred in doing so.

As a consequence, the impugned order dated 16.05.2023 passed by the trial Court cannot be sustained and is hereby set aside. In view of the same, the trial Court is directed to reconsider and re decide the application under section 142 of the Act, 1881 filed by the accused.

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42. NOTARIES ACT, 1952 – Section 8
NOTARIES RULES, 1956 – Rule 11(2) and 11(8)

(i) Proof of due execution of Notarized Will – Will executed in favour of plaintiff who had no relation with the testator and never remained in possession of the suit property – Will executed on 25.12.1994 and testator died on 26.12.1994 – Perusal of overleaf of first page of Will shows that notary has kept two places earmarked for thumb impression of testator but no thumb impression was affixed by the testator at that place – This fact has not been clarified by the plaintiff or the attesting witnesses – This creates manifold suspicions about due execution of the Will – Plaintiff has failed to remove the suspicions – Due execution of Will not found proved.

(ii) Proof of notarized document – A notarized document is not presumed to be proved without examining the notary – The person

concerned must prove the factum of notarization – In case of dispute about execution of a notarized document, requirement of examination of the notary is crucial to prevent fraud and ensure the authenticity of the document.

नोटरी अधिनियम, 1952 – धारा 8

नोटरी नियम, 1956 – नियम 11(2) एवं 11(8)

(i) नोटरीकृत वसीयत के सम्यक् निष्पादन का सबूत – वसीयत वादी के हित में निष्पादित की गई जिसका वसीयतकर्ता से कोई संबंध नहीं था और वादग्रस्त संपत्ति पर कभी उसका आधिपत्य नहीं रहा – दिनांक 25.12.1994 को वसीयत का निष्पादन किया गया तथा दिनांक 26.12.1994 को वसीयतकर्ता की मृत्यु हो गई – वसीयत के प्रथम पृष्ठ के पृष्ठभाग का परिशीलन यह दर्शाता है कि नोटरीकर्ता ने वसीयतकर्ता के अंगूठा निशान के लिये दो स्थान चिन्हित किये थे, लेकिन उस स्थान पर वसीयतकर्ता द्वारा अंगूठे का कोई निशान नहीं लगाया गया था – इस तथ्य का कोई स्पष्टीकरण वादी अथवा अनुप्रमाणन साक्षीगण द्वारा नहीं दिया गया – यह परिस्थितियां वसीयत के सम्यक् निष्पादन के बारे में अनेक संदेह सृजित करती हैं – वादी सभी संदेहों को दूर करने में असफल रहा – वसीयत का सम्यक् निष्पादन प्रमाणित नहीं पाया गया ।

(ii) नोटरीकृत दस्तावेज का प्रमाणन – नोटरी का परीक्षण किये बिना नोटरीकृत दस्तावेज के प्रमाणित होने की उपधारणा नहीं की जाती – संबंधित व्यक्ति को नोटरीकरण के तथ्यों को प्रमाणित करना होगा – किसी नोटरीकृत दस्तावेज के निष्पादन के संबंध में विवाद की स्थिति में कपट को रोकने और दस्तावेज की प्रामाणिकता सुनिश्चित करने के लिए नोटरी का परीक्षण करने की आवश्यकता महत्वपूर्ण है ।

Rameshwar Prasad Dwivedi v. Rajkumar and anr.

Judgment dated 11.03.2024 passed by the High Court of Madhya Pradesh in Second Appeal No. 972 of 1999, reported in ILR 2024 MP 1829

Relevant extracts from the judgment:

Undisputedly, Gyaniram Brahman was owner of the land in question and after death of his wife there was no Class-I legal heir of Gyaniram and as has been admitted in paragraph 6 of his statement by plaintiff-Rajkumar Tiwari (PW-1), the defendant 1/appellant belongs to the family of Gyaniram and in absence of any Will alleged to have been executed in favour of the plaintiff, the defendant 1 is entitled to get/succeed the property of Gyaniram. So, the only question involved in the

present case is about due and valid execution of Will by Gyaniram in favour of plaintiff, who had no relation with Gyaniram and never remained in possession of the suit property.

Bare perusal of overleaf of first page of Will (Ex.P/1) shows that as per practice prevailing for authentication of a document, notary has kept two places ear marked for thumb impression(s) of Gyaniram. As to why thumb impressions were not affixed by Gyaniram, has not been clarified by the plaintiff or the attesting witnesses namely Jaikaran Singh and Sundar Lal Yadav, whereas both the attesting witnesses have signed at the fixed places of over leaf of first page of the Will. At the end of back side of first page of Will, it has been mentioned by Notary that for execution of Will, he went to house of Gyaniram. As notary himself had gone to the house of Gyaniram and if Gyaniram was present at his house, then there was no reason to not to affix thumb impressions by Gyaniram.

It is not the case of plaintiff that Will was got notarized after execution of the Will, but according to the plaintiff and both the attesting witnesses namely Jaikaran and Sundar Lal Yadav, the Will was written by Satish Chandra Singhai alias Jain Advocate and thereafter in presence of both the witnesses it was executed by Gyaniram. In the entire testimony, both the witnesses have clearly stated that the Will was written by Satish Chandra Singhai, whereas it is a typed document. Upon asking question to the attesting witness Jaikaran (PW-2) about typing of the document/Will, he in para 2 of his cross-examination stated that he did not see as to who had typed the Will. Although, on the over leaf of first page, name of Gyaniram is mentioned regarding purchase of stamp, but the plaintiff in para 8 of his statement, has stated that Gyaniram did not go for purchase of the stamp. However, who brought the stamp, is not clear on record.

In view of the aforesaid decision in the case of ***H.K. Taneja v. Bipin Ganatra Keshavrao J. Bhosle, 2009 (2) MhLJ 855*** and upon perusal of provisions of the Notaries Act, 1952, especially the section 8 ofthe Act as well as the Notaries Rules, 1956, especially the rule No.11(2) & (8) of the Rules, it is clear that a notarized document is not presumed to be proved without examining the notary and the person concerned must prove the factum of notarization by requiring the production of the relevant notarial register.

In my considered opinion, in case of dispute about execution of a notarized document, requirement for examination of the notary is crucial to prevent fraud and ensure the authenticity of the document. The notary's stestimony can provide valuable insights into the circumstances surrounding theexecution of the document and the identity of the signatory. It is noteworthy that notarization is not a guarantee

of the document's validity or legality. The notary's role is limited to attesting the execution of the document and verifying the identity of the signatory. However, where the notary is not available for examination, the court may consider alternative methods of proving the document's genuineness, yet the absence of the notary's testimony may weaken the probative value of the document.

It is also pertinent to mention here that disputed Will is said to have been executed on 25.12.1994 and cremation of Gyaniram was done by plaintiff on 26.12.1994 just contrary to Hindu rituals by burying the body of Gyaniram that too in absence of the defendant and when the defendant and his family members came to know about death of Gyaniram, they came in the Village and with the help of police, Gyaniram's dead body was taken out by digging from the cremation ground and then took the body of Gyaniram to Village Tendua from Village Deora, for performing last rites. All the aforesaid including other circumstances create manifold suspicions about due execution and attestation of the Will and despite the fact that the plaintiff has failed to remove all these suspicions, Courts below have decreed the suit.

In view of the aforesaid discussion it is held that the plaintiff has not been able to prove that on the date of execution of Will, the deceased-Gyaniram was fit and of conscious mind to execute the Will and signed the Will or affixed thumb impressions, consequently, the substantial question of law formulated by this Court deserves to be and is hereby decided in favour of the appellant/defendant 1 and against the respondent/plaintiff.

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***43. PREVENTION OF CORRUPTION ACT, 1988 – Sections 7 and 13**

(i) Proof of demand – Mere possession and recovery of currency notes from the accused without any proof of demand would not establish offence u/s 7 or 13(1)(d) of the Act – Presumption u/s 20 could be drawn only if there was proof of "acceptance of illegal gratification" for which proof of demand was a *sine qua non.*

(ii) 'Accept', 'receipt' and 'obtain' – In order to convert the 'receipt' of illegal gratification into 'acceptance', it must be proved that complainant has offered gratification other than legal remuneration to public servant while demanding a favour from him and public servant has received it – The word 'obtain' means to secure or gain something as a result of request to take and receive with a consenting mind.

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 7 एंव 13

(i) मांग का प्रमाण – मांग के किसी प्रमाण के बिना अभियुक्त का करेंसी नोटों पर मात्र कब्जा एवं उससे जब्ती अधिनियम की धारा 7 अथवा 13(1)(घ) के अंतर्गत अपराध को स्थापित नहीं करेगा – धारा 20 के अंतर्गत उपधारणा केवल तब निकाली जा सकती है जब 'अवैध पारितोषण के प्रतिग्रहण' का प्रमाण हो जिसके लिए मांग का प्रमाण होना पूर्ववर्ती शर्त है।

(ii) 'प्रतिगृहीत करना', 'प्राप्ति' एवं 'अभिप्राप्त करना' – अवैध पारितोषण की प्राप्ति को 'प्रतिग्रहण' में परिवर्तित करने के लिये यह प्रमाणित किया जाना चाहिए कि परिवादी ने लोक सेवक से अनुग्रह की मांग करते समय उसे वैध पारिश्रमिक से भिन्न अन्य पारितोषण का प्रस्ताव दिया है और लोक सेवक ने उसे प्राप्त किया है – शब्द 'अभिप्राप्त करने' का अर्थ है कि मस्तिष्क की सहमति से, लेने और प्राप्त करने के अनुरोध के परिणामस्वरूप कुछ सुरक्षित करना अथवा प्राप्त कर लेना ।

J.S. Yadav v. State of M.P.

Judgment dated 30.05.2024 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 130 of 2016, reported in ILR 2024 MP 1864

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44. PREVENTION OF MONEY LAUNDERING ACT, 2002 – Sections 2(1)(y), 3 and 44 (1)(b)

Complaint for the offence punishable under PMLA – Necessity of being a scheduled offence – The alleged scheduled offences on which the complaint is based are under various sections of the Income Tax Act, 1961 r/w/s 120-B, 191, 199, 200 and 204 of the Indian Penal Code, 1860 – Except for Section 120-B IPC, none of the offences are scheduled offences within the meaning of clause (y) of sub-section (1) of section 2 of PMLA – The offence punishable u/s 120-B IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the schedule – The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence – In the absence of the scheduled offence, there cannot be any proceeds of crime and if there are no proceeds of crime, the offence u/s 3 of PMLA is not made out – In such a case, the Special Court must exercise the power u/s 203 of CrPC to dismiss the complaint.

धन–शोधन निवारण अधिनियम, 2002 – धाराएं 2(1)(म), 3 एवं 44 (1)(ख) धन–शोधन निवारण अधिनियम के अंतर्गत दण्डनीय अपराध हेतु परिवाद – अनुसूचित अपराध होने की अनिवार्यता – कथित अनुसूचित अपराध, का परिवाद आयकर अधिनियम, 1961 की विभिन्न धाराओं के साथ भारतीय दण्ड संहिता, 1860 की धारा 120–बी, 191, 199, 200 और 204 पर आधारित – भा.दं.सं. की धारा 120–बी के अतिरिक्त कोई भी अपराध धन–शोधन निवारण अधिनियम, 2002 की धारा 2 की उप धारा (1) के खण्ड (म) के अर्थ में अनुसूचित अपराध नहीं है – भा.दं.सं. की धारा 120–बी के अंतर्गत दण्डनीय अपराध तभी अनुसूचित अपराध माना जाएगा, जब कथित षडयंत्र किसी ऐसे अपराध को करने का हो, जो विशेष रूप से अनुसूची में शामिल हो – अपराध के आगम के अस्तित्व हेतु पूर्व शर्त एक अनुसूचित अपराध का अस्तित्व में होना है – अनुसूचित अपराध की अनुपस्थिति में, अपराध का आगम नहीं हो सकता है और यदि अपराध का आगम नहीं है, तो धन–शोधन निवारण अधिनियम की धारा 3 के तहत अपराध गठित नहीं होता है – ऐसे मामले में विशेष न्यायालय को परिवाद निरस्त करने के लिए धारा 203 दं.प्र.सं. के तहत अपनी शक्ति का प्रयोग करना चाहिए।

Yash Tuteja and anr. v. Union of India and ors.

Judgment dated 08.04.2024 passed by the Supreme Court in Writ Petition (Crl.) No. 153 of 2023, reported in (2024) 8 SCC 465

Relevant extracts from the judgment:

It is not in dispute that the alleged scheduled offences on which the complaint is based are under various sections of the Income Tax Act, 1961, read with Sections 120-B, 191, 199, 200 and 204 of the Penal Code, 1860 (for short "IPC"). It is also not in dispute that except for Section 120-BIPC, none of the offences are scheduled offences within the meaning of clause (y) of sub-section (1) of Section 2 PMLA. This Court, in the decision in ***Pavana Dibbur v. Enforcement Directorate*** [***Pavana Dibbur v. Enforcement Directorate, (2023) 15 SCC 91: 2023 SCC OnLine SC 1586***], recorded its conclusions in SCC para 31, which reads thus:

> "Conclusions
>
> While we reject the first and second submissions canvassed by the learned Senior Counsel appearing for the appellant, the third submission must be upheld. Our conclusions are:
>
> 31.1. It is not necessary that a person against whom the offence under Section 3 PMLA is alleged, must have been shown as the accused in the scheduled offence;
>
> 31.2. Even if an accused shown in the complaint under PMLA is not an accused in the scheduled offence, he will benefit from the

acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;

31.3. The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;

31.4. The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the second property can be decided only at the time of trial; and

31.5. The offence punishable under Section 120-BIPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule."

Hence, the offence punishable under Section 120-BIPC could become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule to PMLA. In this case, admittedly, the offences alleged in the complaint except Section 120-BIPC are not the scheduled offences. Conspiracy to commit any of the offences included in the Schedule has not been alleged in the complaint. ECIR/RPZO/11/2022, which is the subject-matter of the complaint, is based on the offences relied upon in the complaint. As the conspiracy alleged is of the commission of offences which are not the scheduled offences, the offences mentioned in the complaint are not scheduled offences within the meaning of clause (y) of sub-section (1) of Section 2 PMLA.

In SCC para 15 of the decision in ***Pavana Dibbur v. Enforcement Directorate, (2023) 15 SCC 91,*** this Court held that:

"The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence."

Therefore, in the absence of the scheduled offence, as held in the decision mentioned above of this Court, there cannot be any proceeds of crime within the meaning of clause (u) of sub-section (1) of Section 2 PMLA. If there are no proceeds of crime, the offence under Section 3 PMLA is not made out. The reason is that existence of the proceeds of crime is a condition precedent for the applicability of Section 3 PMLA.

Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 CrPC will apply to the complaint. There is no provision in PMLA which overrides the provisions of Sections 200 to Sections 204 CrPC. Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 PMLA is made out

in a complaint under Section 44(1)(b) PMLA. If the Special Court is of the view that no prima facie case of an offence under Section 3 PMLA is made out, it must exercise the power under Section 203 CrPC to dismiss the complaint. If a prima facie case is made out, the Special Court can take recourse to Section 204 CrPC.

In this case, no scheduled offence is made out the basis of the complaint as the offences relied upon therein are not scheduled offences. Therefore, there cannot be any proceeds of crime. Hence, there cannot be an offence under Section 3 PMLA. Therefore, no purpose will be served by directing the Special Court to apply its mind in accordance with Section 203 read with Section 204 CrPC. That will only be an empty formality.

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45. SPECIFIC RELIEF ACT, 1963 – Sections 5, 34, 38 and 40
CIVIL PROCEDURE CODE, 1908 – Section 37
Suit for declaration of title, possession and mandatory injunction – Relief of compensation of acquired land which is in possession of defendants – Relief of declaration of title and recovery of possession granted to the plaintiff – Appellate Court although upheld the judgment and decree of the trial court but held that defendants are entitled to receive 30% of compensation without there being any claim in appeal or before any other competent authority – Held, such relief cannot be granted – Plaintiff was held entitled to receive full amount payable in respect of acquisition of suit property.

विर्निदिष्ट अनुतोष अधिनियम, 1963 – धाराएं 5, 34, 38 एवं 40
सिविल प्रक्रिया संहिता, 1908 – धारा 37
स्वत्व की घोषणा, आधिपत्य और आज्ञापक निषेधाज्ञा का वाद – अधिग्रहीत भूमि जो प्रतिवादीगण के आधिपत्य में रही, के मुआवजे का अनुतोष – वादी को स्वत्व की घोषणा और आधिपत्य वापसी का अनुतोष प्रदान किया गया – अपीलीय न्यायालय द्वारा यद्यपि विचारण न्यायालय के निर्णय व डिक्री को यथावत रखा गया किंतु यह अभिनिर्धारित किया गया कि प्रतिवादीगण क्षतिपूर्ति की 30 प्रतिशत राशि प्राप्त करने के अधिकारी हैं जबकि उनके द्वारा न तो अपील में और न ही किसी अन्य सक्षम प्राधिकारी के समक्ष ऐसा दावा किया गया था – अभिनिर्धारित, ऐसा अनुतोष प्रदान नहीं किया जा सकता – वादी को विवादित संपत्ति के अधिग्रहण के संबंध में भुगतान योग्य सम्पूर्ण राशि प्राप्त करने का अधिकारी होना निर्धारित किया गया।

Lakshmesh M. v. P. Rajalakshmi (dead by LRs.) and ors. etc. Judgment dated 11.09.2024 passed by the Supreme Court in Civil Appeal No. 9731 of 2024, reported in AIR 2024 SC 4281

Relevant extracts from the judgment:

It is not in dispute that till date, no claim whatsoever has been projected either in the appeal before the High Court or before any other competent authority for the grant of compensation for the land having been acquired. The judgment as has been passed by the High Court affirming the ownership and title of the suit property in favour of the Appellant/Plaintiff has not been challenged by any of these private Defendants. The said judgment and the findings recorded therein have attained finality. In the absence of any claim with regard to their entitlement to compensation for the land acquired, the relief granted by the High Court in the appeal is not sustainable. Given the lack of pleadings, evidence on record, and submissions made at the time of hearing before the High Court, the judgment passed by it granting 30 per cent of the amount payable by way of compensation in respect of the ten sites in possession of the private Defendants, deserves to be set aside. The Appellant/Plaintiff is entitled to receive the full amount payable in respect of acquisition of the suit property for the Metro Rail Project.

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46. SPECIFIC RELIEF ACT, 1963 – Section 28
CIVIL PROCEDURE CODE, 1908 – Section 37

(i) Application u/s 28 of the Act – Recession of contract – Extension of time – Whether the Execution Court has jurisdiction to deal with the application(s) for recession of contract or for extension of time to deposit the balance sale consideration? Held, Yes, provided it is the Court which passed the decree in terms of Section 37 of CPC.

(ii) Application u/s 28 of the Act for recession of contract or for extension of time – Parameters for deciding such application explained.

(iii) Application u/s 28 (1) of the Act – Such application must be decided as an application in the original suit wherein the decree was passed even though the suit has been disposed of.

विर्निदिष्ट अनुतोष अधिनियम, 1963 – धारा 28
सिविल प्रक्रिया संहिता, 1908 – धारा 37

(i) विनिर्दिष्ट अनुतोष अधिनियम की धारा 28 के अंतर्गत आवेदन – संविदा का विखण्डन – समय का विस्तार – क्या निष्पादन न्यायालय को संविदा विखंडित करने या शेष विक्रय प्रतिफल जमा करने के लिए समय का विस्तार करने हेतु प्रस्तुत आवेदन की सुनवाई का क्षेत्राधिकार है? अभिनिर्धारित, हां, लेकिन उसी न्यायालय को क्षेत्राधिकारिता होगी जो धारा 37 सीपीसी के अंतर्गत डिक्री पारित करने वाला न्यायालय हो।

(ii) संविदा के विखण्डन या समय के विस्तार के लिए विनिर्दिष्ट अनुतोष अधिनियम की धारा 28 के अंतर्गत आवेदन – ऐसे आवेदन को निराकृत करने हेतु मापदण्ड समझाए गए।

(iii) विनिर्दिष्ट अनुतोष अधिनियम की धारा 28 (1) के अंतर्गत आवेदन – ऐसे आवेदन को ऐसे मूल वाद जिसमें डिक्री पारित की जा चुकी है, में प्रस्तुत आवेदन के रूप में निराकृत किया जाना चाहिए भले ही मूल वाद निराकृत हो चुका हो।

Ishwar (since deceased) through LRs. and ors. v. Bhim Singh and anr.

Judgment dated 03.09.2024 passed by the Supreme Court in Civil Appeal No. 10193 of 2024, reported in AIR 2024 SC 4232

Relevant extracts from the judgment:

In our view, the expression "may apply in the same suit in which the decree is made" as used in Section 28 of the 1963 Act must be accorded an expansive meaning so as to include the court of first instance even though the decree under execution is passed by the appellate court. This is so, because the decree is in the same suit and, according to Section 37 of the CPC, the expression "the court which passed a decree", or words to that effect, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, would include:

(a) the court of first instance even though the decree to be executed has been passed in the exercise of appellate jurisdiction; and

(b) where the court of first instance has ceased to exist, or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Thus, an application under Section 28 of the 1963 Act, either for recession of contract or for extension of time, can be entertained and decided by the Execution Court provided it is the Court which passed the decree in terms of Section 37 of the CPC.

In ***Chanda v. Rattni, (2007) 14 SCC 26***, this Court held that the power to rescind the contract under Section 28 of the 1963 Act is discretionary in nature and is to do complete justice to the parties. The Court does not cease to have the power to extend the time even though the decree may have directed that payment of balance price is to be made by a certain date. While exercising discretion in this regard, the Court is required to take into account facts of the case so as to ascertain whether the default was intentional or not. If there is a bona fide reason for the

delay/ default, such as where there appears no fault on the part of the decree holder, the Court may refuse to rescind the contract and may extend the time for deposit of the defaulted amount.

The law is, therefore, settled that an application seeking rescission of contract, or extension of time, under Section 28 (1) of the 1963 Act, must be decided as an application in the original suit wherein the decree was passed even though the suit has been disposed of. As a sequitur, even if the Execution Court is the Court of first instance with reference to the suit wherein the decree under execution was passed, it must transfer the application filed under Section 28 to the file of the suit before dealing with it.

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47. SPECIFIC RELIEF ACT, 1963 – Sections 31, 34 and 38

(i) Suit for cancellation of sale deed – Burden of proof – Defendant No. 2 who was the owner of the disputed land, executed a sale deed on 02.12.1985 in favour of plaintiff and his minor brother, which was presented to Sub-Registrar for registration – Document was impounded due to insufficient stamp duty by Sub-Registrar – Before registration of the sale-deed, Defendant No. 2 on 03.12.2010 again sold the same disputed land to Defendant No. 1 – Meanwhile, plaintiff submitted the remaining stamp duty and got registered the sale deed in his favour which was executed on 02.12.1985 – Plaintiff filed a suit for cancellation of subsequent sale deed dated 03.12.2010 – Defendant No. 2 has neither specifically denied in WS that he had executed the sale deed nor entered the witness box and also did not lead any evidence – Burden to prove execution of sale deed and payment of sale consideration was not on the plaintiff.

(ii) Effect of delay in registration of sale deed – Sale deed is registered after 26 years of execution – In case of deficiency in stamp duty, document will remain in custody of registration authorities until remaining stamp duty and penalty is paid – Seller did not remain the owner of land merely because the document of sale is pending for registration – Seller does not have any right to again transfer the land.

(iii) Presumption – Registration of a document carries with it a presumption of correctness until and unless the same is challenged by way of counter-claim or in independent proceedings – In absence

of any such claim, sale deed in favour of plaintiff has to be treated as a valid document.

(iv) Effect of plaintiff being minor at the time of execution of sale deed – Sale deed is executed in favour of both plaintiff and his minor brother on 02.12.1985 – Mother of plaintiff, who is natural guardian, was representing the minor brother of plaintiff – It was found that at the time of execution of sale deed, plaintiff was also minor – It would be deemed that mother was acting on behalf of both her minor sons – Minority of plaintiff would not affect the validity of sale deed.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 31, 34 एवं 38

(i) विक्रय विलेख के रद्दकरण के लिए दावा – प्रमाण का भार – प्रतिवादी क्रमांक–2, जो विवादित भूमि का मालिक था, ने दिनांक 02.12.85 को वादी और उसके अवयस्क भाई के पक्ष में एक विक्रय विलेख निष्पादित किया, जिसे पंजीकरण हेतु उप–रजिस्ट्रार के समक्ष प्रस्तुत किया गया – दस्तावेज को उप–रजिस्ट्रार द्वारा अपर्याप्त स्टाम्प ड्यूटी होने के आधार पर परिबद्ध कर लिया गया – विक्रय विलेख के पंजीकरण के पूर्व, प्रतिवादी क्रमांक–2 ने दिनांक 03.12.2010 को पुनः वही विवादित भूमि प्रतिवादी क्रमांक–1 को विक्रय कर दी – इस बीच, वादी ने शेष स्टाम्प ड्यूटी जमा की और दिनांक 02.12.1985 को निष्पादित विक्रय विलेख स्वयं के पक्ष में पंजीकृत कराया – वादी ने पश्चात्वर्ती विक्रय विलेख दिनांक 03.12.2010 के रद्दकरण के लिए दावा प्रस्तुत किया – प्रतिवादी क्रमांक–2 ने वादोत्तर में न तो विशिष्ट रूप से यह इन्कार किया कि उसने विक्रय विलेख निष्पादित किया था और न ही साक्षी के कठघरे में प्रवेश किया और न ही कोई साक्ष्य प्रस्तुत की – विक्रय विलेख के निष्पादन और विक्रय प्रतिफल के भुगतान को प्रमाणित करने का भार वादी पर नहीं था।

(ii) विक्रय विलेख के पंजीकरण में विलम्ब का प्रभाव – विक्रय विलेख का पंजीकरण निष्पादन के 26 वर्ष बाद किया गया – स्टाम्प ड्यूटी में कमी होने की दशा में दस्तावेज पंजीकरण प्राधिकारी के आधिपत्य में रहता है जब तक कि शेष स्टाम्प ड्यूटी और शास्ति का भुगतान नहीं कर दिया जाता – विक्रेता केवल इसलिए भूमि का स्वामी नहीं रहेगा क्योंकि विक्रय का दस्तावेज पंजीकरण के लिए लंबित है – विक्रेता को भूमि का पुनः अंतरण करने का कोई अधिकार नहीं है।

(iii) उपधारणा – दस्तावेज के पंजीकरण के साथ उसकी सत्यता की उपधारणा रहती है जब तक उसे प्रतिदावे के माध्यम से या स्वतंत्र कार्यवाही में चुनौती नहीं दी गई है – किसी भी ऐसे दावे की अनुपस्थिति में, वादी के पक्ष में विक्रय विलेख को एक वैध दस्तावेज माना जाना चाहिए।

(iv) विक्रय विलेख के निष्पादन के समय वादी की अवयस्कता का प्रभाव – विक्रय विलेख दिनांक 02.12.1985 को वादी और उसके अवयस्क भाई दोनो के पक्ष में निष्पादित किया गया – वादी की माँ, जो नैसर्गिक संरक्षक हैं, वादी के अवयस्क भाई का प्रतिनिधित्व कर रही थीं – यह पाया गया कि विक्रय विलेख के निष्पादन के समय, वादी भी अवयस्क था – यह माना जाएगा कि माँ अपने दोनों अवयस्क पुत्रों की ओर से कार्य कर रही थी – वादी की अवयस्कता विक्रय विलेख की वैधता को प्रभावित नहीं करेगी।

Kaushik Premkumar Mishra and anr. v. Kanji Ravaria @ Kanji and anr.

Judgment dated 19.07.2024 passed by the Supreme Court in Civil Appeal No. 1573 of 2023, reported in AIR 2024 SC 3766

Relevant extracts from the judgment:

The aspect submitted on behalf of respondent was that the appellant No.1 in his deposition has said that he had no proof of the payment of the sale consideration, to assert that the appellant No.1 admitted that he had not paid any sale consideration is not correct. Appellant No.1 was being examined sometime after 2013, i.e. after a gap of 28 years from the date of the sale deed. He could not be expected to remember such facts distinctly and as such he made a fair statement that he did not have any document that could prove the passing of the sale consideration. This would not, by itself, be interpreted to hold that appellant admitted of not paying any sale consideration.

The question of payment of sale consideration would arise only and only if the vendor makes a specific statement in his pleadings as also in his deposition in support of the pleading that he did not receive any sale consideration either by way of cheque or by cash. There is no such pleading and as the vendor did not enter the witness box, even if there was any such pleading, there is no statement to prove such pleading. Thus, the above argument being based on minor discrepancy in the statement of the appellant, no benefit can be derived by the respondents. The argument is accordingly rejected.

There is one more reason to reject this argument. Even if assuming that no sale consideration was paid even though there was a registered sale deed, it would be at the instance of the vendor to challenge the said sale deed on the ground of no sale consideration being paid. In the present case, there is no such challenge to the sale deed for being declared as void or being cancelled on such ground. Thus also, the said argument deserves to be rejected.

The submission with regard to delay of 26 years in getting the document registered also does not extend any benefit to the respondents. Non-registration of a document duly presented for registration could be for many reasons. But once it is registered, there is a presumption of correctness attached to it, that is to say that the document has been duly executed and registered in accordance to law. It was for the defendants (respondents) to come forward and to establish that the document was wrongly registered. They did not lead any evidence in this respect. Instead, they tried to put burden on the plaintiff-appellant by requiring him to call the Sub-Registrar as a witness, which the appellant rightly denied. It was always open for the respondents to have called for the records of the Sub- Registrar's office and also the Sub-Registrar in order to find out any mandatory lacuna or illegality or lack of procedure not being followed with respect to the registration. They did nothing of this sort.

In fact, respondent No.2 did not make any bone of contention with regard to the registration process and the registration of the documents after 26 years by challenging the same before the same authority or any superior authority or any Court of law. Registration of a document carries with it presumption of correctness until and unless the same was challenged by way of independent proceeding or a counter claim. In the absence of any such claim, the sale deed in favour of the appellants has to be treated as a valid document.

The issue of minority of appellant No.1 would also not be of any relevance for the reason that even if he was a minor at the time of the execution of the sale deed and he had so stated honestly in his deposition, the fact remains that the mother of appellant No.1 was already representing his younger brother as guardian who was stated to be a minor in the sale deed. She was also the natural guardian of appellant No.1, and therefore, it would be deemed that she was acting on behalf of both her minor sons.

The High Court recorded the findings that the fact that the purchasers were minors would not per se affect the validity of the sale deed for the reason that the second purchaser Ambrish who was mentioned as a minor in the sale deed was represented through his natural guardian and mother Smt. Malti Premkumar Mishra and also that the age of the first purchaser Kaushik was mentioned to be 18 years in the sale deed.

The issue of registration of a document is with the State, which requires compulsory registration of documents so that it is not deprived of revenue by way of stamp duty payable on such transfers of immovable property. If the purchaser has no means to pay stamp duty or exorbitant demand of stamp duty is made by the

registering authority which the purchaser is unable to pay at that time but he remains satisfied with the fact that the vendor has fairly and duly executed the sale deed presented it for registration and put him in possession of the purchased property which he is peacefully enjoying, he is always at liberty to pay the deficiency of stamp duty at any point of time. The document presented for registration will remain with the Registering Authority till such time, the deficiency is removed. However, this pendency of registration on account of deficiency cannot enure any benefit to the vendor, who has already eliminated all his rights by executing the sale deed after receiving the sale consideration. He cannot become the owner of the transferred land merely because the document of sale is pending for registration. It is the purchaser who cannot produce such document which is pending registration with respect to the immovable property in evidence before the Court of law as the same would be inadmissible in view of statutory provision contained in the TP Act as also the Act, 1908.

The doctrine of bona fide purchaser for value applies in situations where the seller appears to have some semblance of legitimate ownership rights. However, this principle does not protect a subsequent purchaser if the vendor had already transferred those rights through a prior sale deed. In a case where the vendor deceitfully executes a second sale deed 26 years after the initial transfer, without disclosing the earlier transaction and without any ongoing litigation regarding the property, the subsequent purchaser cannot claim the benefits of a bona fide purchaser. Essentially, if the vendor's rights were already severed by the first sale, any later sale deed made without transparency and in bad faith is invalid. The subsequent purchaser, even if unaware of the prior sale, cannot be considered bona fide because the vendor no longer had the legal right to sell the property. Thus, the protection afforded by the bona fide purchaser doctrine is nullified by the vendor's deceitful conduct and the pre-existing transfer of rights. This ensures that the original purchaser's rights are upheld and prevents unjust enrichment through fraudulent transactions.

This is not a case of agreement to sell in favour of appellants but is a case of sale deed transferring ownership rights and possession. It would be open to respondent no.1 to avail such remedy as may be available under law to recover the sale consideration paid by him to respondent No.2. The sale deed in favour of the respondent No.1 dated 03.12.2010 needs to be cancelled and the registering authority be directed to score out the same from the records as directed by the first Appellate Court.

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48. SPECIFIC RELIEF ACT, 1963 – Sections 31, 34 and 38

Suit for declaration and injunction – Undivided property – Transfer of entire property by one co-owner through registered sale deed without determination of his share and partition by metes and bounds – Since suit property had many co-owners, defendant could not have acquired title in the whole property – Purchaser can be restrained by decree of injunction acting in derogation of the property rights of co-owners until and unless partition takes place.

विर्निदिष्ट अनुतोष अधिनियम, 1963 – धाराएं 31, 34 एवं 38

घोषणा और निषेधाज्ञा का वाद – अविभाजित संपत्ति – एक सह–स्वामी ने स्वयं के अंश का निर्धारण कराए बगैर एवं माप और सीमा से विभाजन कराए बगैर सम्पूर्ण संपत्ति को पंजीकृत विक्रय पत्र के माध्यम से अंतरित कर दिया – चूंकि विवादित संपत्ति में कई सह–स्वामी थे अतः प्रतिवादी संपूर्ण संपत्ति का स्वत्व अर्जित नहीं कर सकता था – ऐसे क्रेता को निषेधाज्ञा की डिक्री के माध्यम से विभाजन होने तक सह–स्वामियों के संपत्ति अधिकारों का हनन करने से रोका जा सकता है ।

SK. Golam Lalchand v. Nandu Lal Shaw alias Nand Lal Keshri alias Nandu Lal Bayes and ors.

Judgment dated 10.09.2024 passed by the Supreme Court in Civil Appeal No. 4177 of 2024, reported in AIR 2024 SC 4193

Relevant extracts from the judgment:

In view of the matter, the entire property purchased by the two brothers late Salik Ram and late Sita Ram in the year 1959 vide Exh.1 continued to be the joint property in which both of them had equal rights. On their death, the same devolved upon their respective heirs and legal representatives including Brij Mohan, his three sisters on one side and plaintiff-respondent Nandu Lal, his three brothers and five sisters on the other side. Thus, Brij Mohan alone was not competent to execute a sale of the entire property in favour of the defendant-appellant S.K. Golam Lalchand, that too without its partition by metes and bounds.

Since the suit property has many co-owners including the plaintiff-respondent Nandu Lal and Brij Mohan, the defendant-appellant S.K. Golam Lalchand could not have acquired right, title and interest in the whole of the suit property solely on the basis of the sale deed dated 19.05.2006 executed by Brij Mohan. The said sale deed, if at all, in accordance with Section 44 of the Transfer of Property Act, 1882 may be a valid document to the extent of the share of Brij Mohan in the property

and defendant- appellant S.K. Golam Lalchand is free to take remedies to claim appropriate relief either by suit of partition or by suit of compensation and damages against Brij Mohan.

The suit property which is undivided is left with the co-owners to proceed in accordance with law to get their shares determined and demarcated before making a transfer.

The point for determination formulated in paragraph 12 above is accordingly answered and it is held that Brij Mohan alone was not competent to transfer the entire property without getting his share determined and demarcated so as to bind the other co-owners. Accordingly, the defendant-appellant S.K. Golam Lalchand has rightly been restrained by the decree of injunction in acting in derogation of the propriety rights of the co-owners until and unless the partition takes place.

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49. SPECIFIC RELIEF ACT, 1963 – Section 34
LIMITATION ACT, 1963 – Article 58
CONTRACT ACT, 1872 – Sections 207 and 208

(i) Suit for declaration – Starting point of limitation – Plaintiff sought relief that she be declared owner of one-half of the suit property and sale deed executed by defendant in favour of her husband be declared null and void – Defendant executed the said sale deed, claiming herself to be the power of attorney holder of plaintiff – Plaintiff was staying abroad at the time of execution – Unless it is proved that plaintiff had knowledge of the execution of sale deed, limitation would not start running from the date of execution – In such case, starting point of limitation would be from the date of knowledge of execution of sale deed.

(ii) Power of attorney – Revocation of – Plaintiff and Defendant No.1 who were sisters, jointly purchased a piece of land through registered sale deed dated 16.01.1991 – Plaintiff who was working abroad, executed a power of attorney on 04.12.2003 in favour of defendant No.1 – The said power of attorney authorised defendant No.1 to execute sale deed and receive consideration for and on behalf of plaintiff – Power of attorney had created relationship of principal and agent between the plaintiff and defendant No.1 – Despite the subsistence of said relationship, plaintiff and defendant No.1 jointly

executed a sale deed of a part of land on 18.01.2003 in favour of one 'J' and his wife – Subsequently, in the capacity of power of attorney holder, defendant No.1 transferred share of plaintiff in favour of her husband defendant No. 2 by executing a sale deed on 16.04.2008 – Whether joint execution of sale deed dated 18.01.2008 by plaintiff and defendant No.1 amounts to implied revocation of power of attorney u/s 207 r/w/s 208 of the Contract Act? Held, Yes – In view of implied revocation of authority, defendant No.1 could not have acted as an agent of plaintiff – The sale deed executed by defendant No.1 in favour of her husband therefore, declared to be void *ab initio*.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34
परिसीमा अधिनियम, 1963 – अनुच्छेद 58
भारतीय संविदा अधिनियम, 1872 – धारा 207 एवं 208

(i) घोषणा हेतु वाद – परिसीमा का आरंभ होना–वादी द्वारा सहायता चाही गई कि उसे वादग्रस्त सम्पत्ति के 1/2 भाग का स्वामी घोषित किया जावे एवं प्रतिवादी द्वारा उसके पति के पक्ष में निष्पादित विक्रय विलेख को अवैध एवं शून्य घोषित किया जावे – प्रतिवादी ने स्वयं को वादी का मुख्तारनामा धारक बताते हुए प्रश्नगत विक्रय विलेख निष्पादित किया–निष्पादन के समय वादी विदेश में रहती थी – परिसीमा का आरम्भ निष्पादन दिनांक से तब तक आरंभ नहीं होगा जब तक कि यह साबित नहीं हो जाता कि वादी को निष्पादन का ज्ञान था – इस प्रकार के मामले में परिसीमा काल विक्रय विलेख के निष्पादन के ज्ञान होने की दिनांक से आरंभ होगा।

(ii) मुख्तारनामा – प्रतिसंहरण – वादी और प्रतिवादी क्रमांक 1 जो बहनें थीं, ने संयुक्त रूप से दिनांक 16.01.1991 को पंजीकृत विक्रय–पत्र के माध्यम से भूमि का एक टुकड़ा क्रय किया था – वादी जो विदेश में कार्यरत् थी, ने दिनांक 04.12.2023 को प्रतिवादी कमांक 1 के पक्ष मुख्तारनामा निष्पादित किया – मुख्तारनामा के माध्यम से प्रतिवादी कमांक 1 को वादी की ओर से विक्रय–पत्र निष्पादित करने एवं विक्रय प्रतिफल प्राप्त करने हेतु अधिकृत किया गया था – मुख्तारनामा से वादी एवं प्रतिवादी कमांक 1 के मध्य मालिक एवं अभिकर्ता के संबंध सृजित हुये थे – ऐसे संबंध के अस्तित्व में रहने के उपरांत भी वादी और प्रतिवादी कमांक 1 ने संयुक्त रूप से दिनांक 18.01.2003 को 'जे' और उसकी पत्नी के पक्ष में भूमि के एक हिस्से का विक्रय–पत्र निष्पादित किया – इसके पश्चात मुख्तारनामा धारक की हैसियत से प्रतिवादी कं0 1 ने दिनांक 16.04.2008 को एक विक्रय–पत्र निष्पादित कर वादी के हिस्से को स्वयं के पति प्रतिवादी कं0 2 के पक्ष में अंतरित कर

दिया – क्या वादी और प्रतिवादी कं0 1 द्वारा दिनांक 18.01.2008 को संयुक्त रूप से निष्पादित किया गया विक्रय – विलेख, संविदा अधिनियम की धारा 207 सहपठित धारा 208 के अंतर्गत मुख्तारनामा के विवक्षित प्रतिसंहरण के समान है? – अभिनिर्धारित, हॉ – प्राधिकार के विवक्षित प्रतिसंहरण को दृष्टिगत रखते हुये प्रतिवादी कमांक 1 वादी के अभिकर्ता के रूप में कार्य नहीं कर सकती थी – प्रतिवादी कमांक 1 द्वारा स्वयं के पति के पक्ष में निष्पादित विक्रय–पत्र को आरंभतः शून्य घोषित किया गया।

Thankamma George v. Lilly Thomas and anr.
Judgment dated 09.07.2024 passed by the Supreme Court in Civil Appeal No. 6495 of 2023, reported in (2024) 8 SCC 351

Relevant extracts from the judgment:

The words "when the right to sue first accrues" have been interpreted and held by this Court in ***Neelam Kumari v. U.P. Financial Corpn., AIR 2009 Utt 5***. The starting point for the limitation in the case of setting aside sale deeds has two limbs: the date of execution and the date of knowledge. There is no difficulty in applying the period of limitation expiring three years from the date of execution, provided that the appellant had knowledge of Ext. A-5 on the date of registration and the right to sue first accrued. The respondents, in the circumstances of the case, failed to establish the appellant's knowledge of the execution of Ext. A-5. In the final analysis, Ext. A-5 is held as without authority and void. The applicability of limitation has a different perspective. So, the starting point is when the right to sue first accrued to the appellant. The admitted case of the respondents is that the appellant is a US citizen and she stayed abroad. Therefore, unless it is clearly established as a fact that the appellant had knowledge of Ext. A-5, it cannot be inferred that the appellant had contemporaneous knowledge of Ext. A-5 and the limitation started running from the date of execution of Ext. A-5. That apart, another fact is whether the said exhibit is void or voidable and this depends on the implied revocation relied on by the appellant. From a consideration of relevant circumstances, including the filing of a grievance petition before the Legal Services Authority and the reply of the respondents in the instant suit, we are of the view that the suit is filed within three years from the date when the right to sue first accrued to the appellant and, therefore, the suit is not barred by limitation. Even if the plea of limitation is held against the respondents, the outcome still depends on the relationship as principal and agent between the appellant and Respondent 1 and

the existence and effect of implied revocation pleaded to question the validity of Ext. A-5.

The power of attorney (Ext. A-4) was executed on 4-12-2003. The appellant, on 30.11.2007, claims to have retired from service and settled in India. A power of attorney confers power for the execution of deeds in situations of necessity, including in the absence of the appellant in the country. From the record, it can be noted that from 2007 onwards, the appellant was not entirely absent from India or residing exclusively in USA. Therefore, the appellant and Respondent 1 executed the sale deed dated 18.01.2008 (Ext. A-3). Respondent 2 is one of the witnesses to Ext. A-3. The execution of sale deed dated 16.04.2008 (Ext. A-5) is inconsistent with and contradictory to the power granted to Respondent 1 in Ext. A-4. This is an explicit conduct of the appellant to act for herself on the share she holds in the property purchased in 1991. In ***Deb Ratan Biswas v. Anand Moyi Devi, 2011 SCC OnLine SC 633***, this Court held that the signing of a compromise by the defendants themselves would amount to implied revocation of power of attorney. In a case where the principal chooses to act for himself, particularly to the agent's knowledge and a person to be affected, then it can be held that Section 207 of the Act is attracted. We have no doubt in holding that the appellant, in terms of Section 207, impliedly revoked the authority of Respondent 1, and as required by Section 208, Respondent 2 had the knowledge of the independent dealing with the property by the appellant. Therefore, the revocation takes effect on 18.01.2008. Ext. A-5 was executed on 16.04.2008. Thus, with the operation of implied revocation of authority, Respondent 1 cannot act as an agent of the appellant and, hence, the sale deed insofar as the appellant's share in the suit schedule is held void *ab initio*.

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50. SPECIFIC RELIEF ACT, 1963 – Section 34
TRANSFER OF PROPERTY ACT, 1882 – Section 48

(i) Priority of rights – Two sale deeds were executed with respect to the same land – In such a clash, the previous sale deed shall prevail over the latter sale deed.

(ii) Limitation – Suit for cancellation of sale deed – Plaintiff No. 2 executed a sale deed in favour of Defendant No. 1 – Alleged document was never read over to Plaintiff No. 2 – Plaintiff was under the impression that the sale consideration in the document is Rs. 700 but only Rs. 350 was mentioned – Plaintiff filed an objection and also a Police Report – Despite his protest, the Registrar registered the

sale deed – It was admitted that no consideration was ever passed to the Plaintiff No. 2 – Held, sale is always for consideration – Being void Defendant did not derive any title from such sale deed – Limitation for cancellation of sale deed is 3 years but no suit for such cancellation is required as sale deed is void in itself – Plaintiff had also filed suit for possession, the limitation for which is 12 years – Suit was held to be within limitation.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34
संपत्ति अंतरण अधिनियम, 1882 – धारा 48

(i) अधिकारों की वरीयता – एक ही भूमि के संबंध में दो विक्रय विलेख निष्पादित किये गये – ऐसे विरोध की स्थिति में पूर्ववर्ती विक्रय विलेख पश्चात्वर्ती विक्रय विलेख पर अभिभावी होगा।

(ii) परिसीमा – विक्रय विलेख के रद्दकरण हेतु वाद – वादी क्रमांक 2 ने प्रतिवादी क्रमांक 1 के पक्ष में विक्रय विलेख निष्पादित किया – कथित दस्तावेज वादी क्रमांक 2 को कभी पढ़कर नहीं सुनाया गया – वादी की यह धारणा थी कि विक्रय प्रतिफल दस्तावेज में 700/– रूपये अभिलिखित है जबकि मात्र 350/– रूपये ही अभिलिखित थे – वादी ने आपत्ति प्रस्तुत की एवं पुलिस को शिकायत भी की – उसकी आपत्ति के बाद भी रजिस्ट्रार ने विक्रय विलेख पंजीबद्ध किया – यह स्वीकृत था कि वादी क्रमांक 2 को कभी भी कोई प्रतिफल प्राप्त नहीं हुआ है – अभिनिर्धारित, विक्रय सदैव प्रतिफल के लिए ही होता है – प्रतिवादी को ऐसे विक्रय विलेख से कोई स्वत्व अर्जित नहीं हुआ क्योंकि वह शून्य था – विक्रय विलेख के रद्दकरण के लिए समय सीमा 3 वर्ष है परन्तु रद्दकरण हेतु वाद की आवश्यकता ही नहीं है क्योंकि विक्रय विलेख अपने आप में शून्य है – वादी ने आधिपत्य हेतु भी वाद प्रस्तुत किया था जिसकी परिसीमा 12 वर्ष थी – वाद का परिसीमा के भीतर होना अभिनिर्धारित किया गया।

Mohd. Zahoor and anr. v. Ram Sajeevan and anr.

Judgment dated 11.09.2024 passed by the High Court of Madhya Pradesh in Second Appeal No. 373 of 1998, reported in 2024 (4) MPLJ 593

Relevant extracts from the judgment:

The sale deed Ex. D-19 is void and illegal for reason that this impugned sale deed has been registered later to the sale deed Ex. D-11, though on the same date. As no consideration was paid, the sale deed Ex. D-19, even if it would operate, would not operate from previous day when it was executed, but only from its registration, and has been undisputedly registered later to Ex. D-11, as its registration number assigned is later to that of D-11, as discussed above. Therefore,

as per provision contained in Section 48 of the Transfer of Property Act, 1882 and in the light of decisions of the Supreme Court in the case of ***Atla Sidda Reddy v. BusiSubba Reddy and ors., (2010) 6 SCC*** **666** and of this Court in the case of ***Mohd. Ashraf and another v. M.P. Housing Board and ors., 2011(1) MPLJ 444***, in case of two or more sale deeds of same land, the previous sale deed(s) will prevail over later sale deed(s). Resultingly, the sale deed Ex. D-19 has to give way to Ex. D-11, even if this sale deed had not been void.

In the result, the first substantial question of law is answered in favour of the appellant and it is held that the defendant No.1 has not derived any title out of the sale deed Ex. D-19 executed by plaintiff No.2 in favour of defendant No.1, the said sale deed being void. The Sub-Registrar could not have registered a void document in which even the conditions of the document were not fulfilled and this fact was apprised to the Sub-Registrar. Still, he proceeded to register a void document despite objection of the executant thereof. This registration would not give any life or validity to a void document. The plaintiffs are therefore, entitled to declaration of their rights and title over the suit property.

Now, taking up the second question of limitation. The limitation for cancellation or setting aside of an instrument is 3 years vide Article 59 of Limitation Act, while for possession based on title is 12 years under article 65 of the said Act. It was contended on behalf of the defendants that unless the document is declared void, no relief for possession can be granted.

However, as the sale deed Ex. D-19 has already been held to be void, even cancellation is not required and the plaintiff has to simply sue for declaration of the document being void and of his own title.

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PART – IIA

GUIDELINES ISSUED BY HON'BLE HIGH COURT OF MADHYA PRADESH IN MATTERS PERTAINING TO ALLEGATIONS OF RAPE WHEREIN VICTIM BECOMES PREGNANT IN CONSEQUENCE THEREOF

The Hon'ble High Court of Madhya Pradesh **In Reference (Suo Motu) v. The State of Madhya Pradesh & ors.**, **Writ Petition No. 5184 of 2025 dated 20.02.2025** laid down the following procedure to be adhered in matters pertaining to allegations of rape wherein victim is becomes pregnant in consequence thereof' The directions cover both the situations i.e. when the pregnancy is up to 24 weeks and where the pregnancy is more than 24 weeks, in order to streamline the procedure to ensure timely legal and medical help to such victims:

(a) SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is upto 24 Weeks:

Whenever a case of rape is registered at any police station, the following procedure shall be adopted:

(i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is not more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO;

(ii) The learned Judge of the District Court, preferably Special Judge/POCSO, regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously examine the case of the victim for termination of pregnancy in the light of the statutory mandates as engrafted in Section 3(2)(a) or Section 3(2)(b) of the Medical Termination of Pregnancy Act 1971 & The Medical Termination of Pregnancy Rules, 2003 framed thereunder;

(iii) The concerned medical officer/Board is expected to examine the case so referred expeditiously and accordingly terminate the pregnancy, if the same is permissible in consonance with the aforesaid statutory provisions of Medical Termination of Pregnancy Act 1971 and rules framed thereunder, in a time bound manner preferably within three days from the date of making such referral after obtaining consent of victim or guardian as required by Section 3(4) of the MPT Act;

(iv) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention, medical facilities and other specialist doctors, if required, will be made available to the victim;

(v) The post-operative care, up to the extent required, will be extended to the victim;

(vi) The doctors will ensure that a sample from the foetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case.

(b) SOPs to be followed in case where the age of foetus/pregnancy of survivor of sexual assault or rape or incest is exceeding 24 Weeks:

Whenever a case of rape is registered at any police station, the following procedure shall be adopted:

(i) The SHO of the said police station, on the basis of the MLC of the victim indicating that she is pregnant and the pregnancy is more than 24 weeks, shall forthwith forward the victim to the concerned District Court, preferably Special Judge/POCSO;

(ii) The learned Judge of the District Court preferably Special Judge/POCSO), regardless of any application for termination of pregnancy, though not maintainable, filed before it or not, shall refer the victim to the concerned medical officer/Board to expeditiously submit its report, if the pregnancy of the victim can be terminated;

(iii) The District Court, preferably Special Judge/POCSO, after obtaining the said medical report, under intimation to the victim and her parents, directly refer such case and report to the nearest Registry of the High Court;

(iv) The Registry of High Court, in turn, shall register such reference as a Writ Petition under Article 226 of the Constitution, Suo Motu, and list the matter immediately before the concerned Bench having the roster, so that appropriate orders regarding termination of pregnancy can be passed by the High Court without any undue delay;

(v) If directed by the High Court that termination of pregnancy is required then, the procedure of termination of pregnancy will be carried out in the presence of the expert team of doctors. The expert doctors will explain to the family members as well as the petitioner the risk of getting the termination of her pregnancy and also other factors;

(vi) Every care and caution will be taken by the doctors while terminating the pregnancy. All medical attention and other medical facilities including that

of a presence of a Pediatrician as well as a Radiologist and other required doctors will be made available to the victim;

(vii) The post-operative care, up to the extent required, will be extended to the victim;

(viii) The doctors will ensure that a sample from the foetus is protected for DNA examination and will be handed over to the prosecution for using in the criminal case.

The court clarified that the aforesaid SOPs shall not be construed as to abridge or limit the power of the concerned medical officer/Board to terminate the pregnancy in the cases where the termination of pregnancy of woman is necessitated in accordance with the provisions of the Section 3(2B) and Section 5(1) or other applicable provisions of the Medical Termination of Pregnancy Act, 1971.

The court also directed that any forensic evidence/foetus collected in the course of termination of pregnancy must be preserved for DNA profiling or other investigative purposes in the same manner as provided under Rule 6(6) of the Protection of Children from Sexual Offences Rules, 2020. It also said that the privacy of the survivor shall be maintained strictly.

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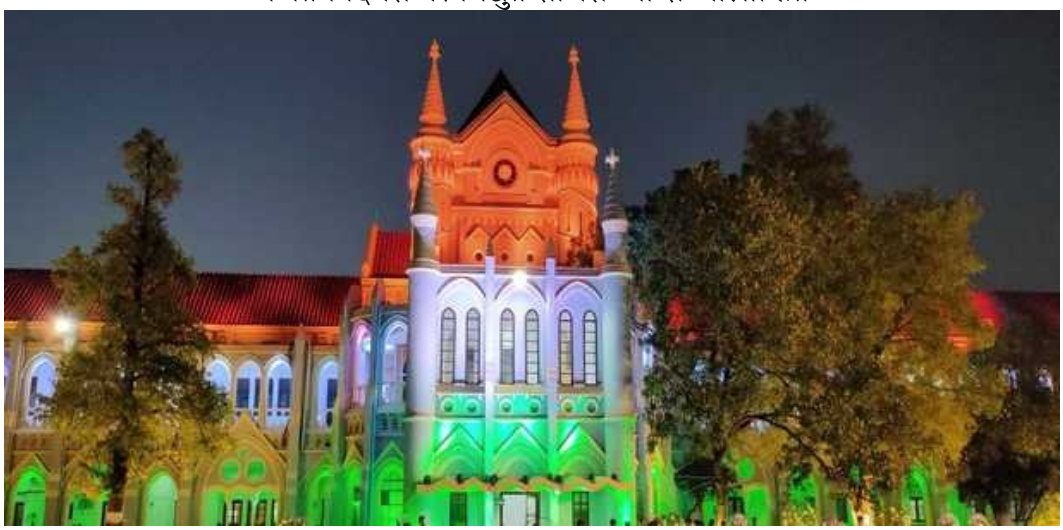
Judgment writing is a layered exercise. In one layer, a judgment addresses the concerns and arguments of parties to a forensic contest. In another layer, a judgment addresses stake-holders beyond the conflict. It speaks to those in society who are impacted by the discourse. In the layered formulation of analysis, a judgment speaks to the present and to the future. Whether or not the writer of a judgment envisions it, the written product remains for the future, representing another incremental step in societal dialogue. If a judgment does not measure up, it can be critiqued and criticized. Behind the layers of reason is the vision of the adjudicator over the values which a just society must embody and defend. In a constitutional framework, these values have to be grounded in the Constitution. The reason which a judge furnishes provides a window - an insight - into the work of the court in espousing these values as an integral element of the judicial function.

— Hon'ble D.Y.Chandrachud J. in Para 17 of ***SBI v. Ajay Kumar Sood, 2023(7)SCC 282***

गणतंत्र दिवस पर विद्युत साजसज्जा से आलोकित



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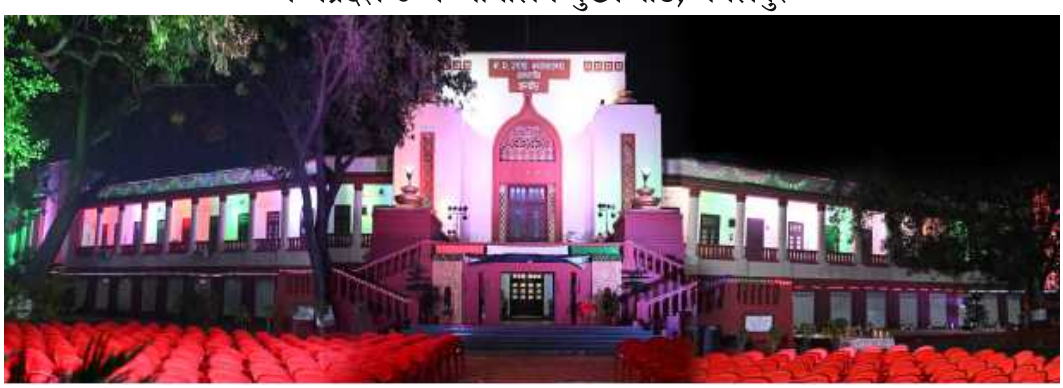

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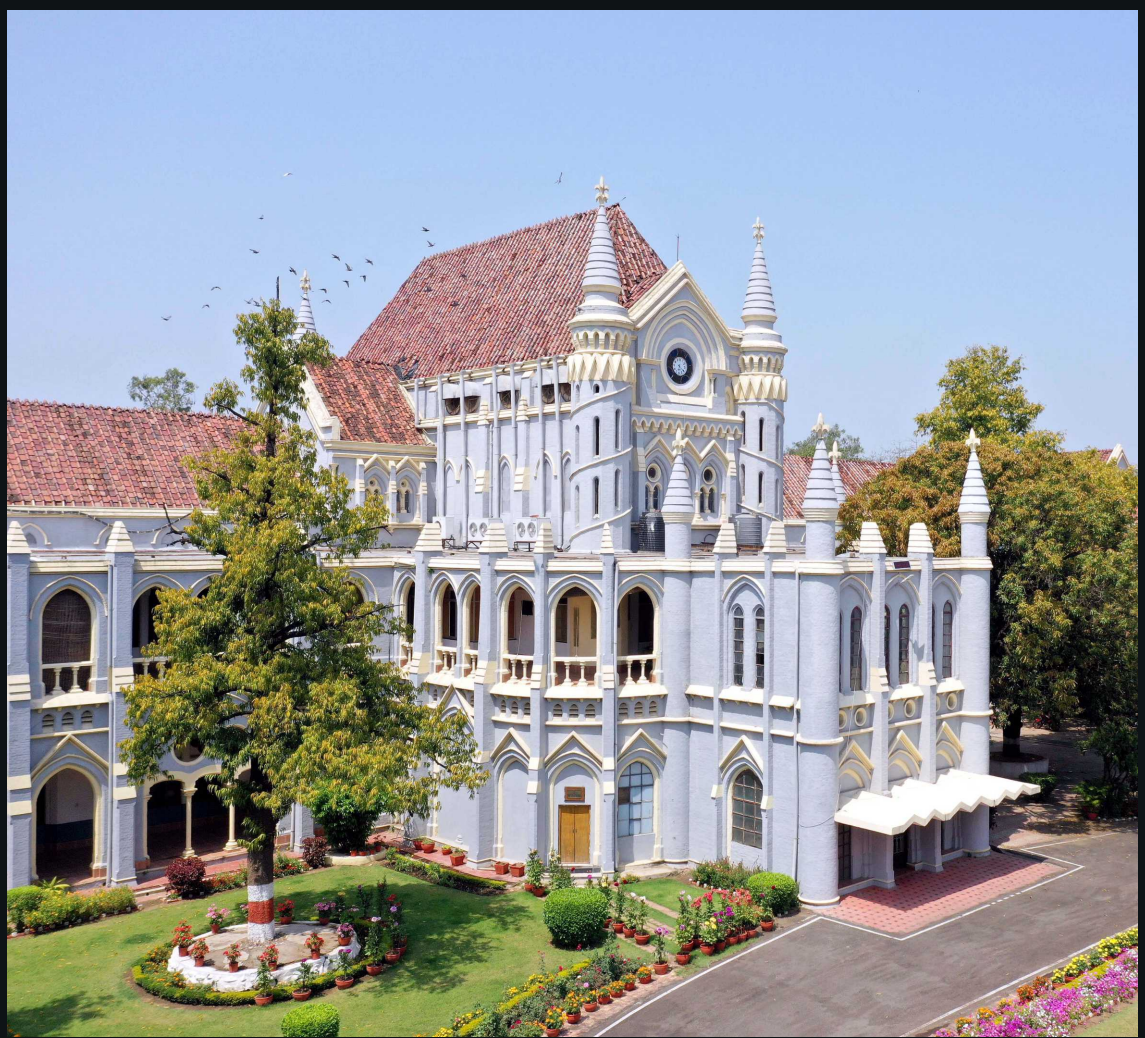

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